INTERNATIONAL LABOUR CONFERENCE

ONE HUNDRED AND THIRD SESSION
GENEVA, 2014

COMMITTEE ON THE APPLICATION OF STANDARDS AT THE CONFERENCE

EXTRACTS FROM THE RECORD OF PROCEEDINGS

- General Report
- Observations of the Committee of Experts on the Application of Conventions and Recommendations – Individual Cases
- Observations and Information Concerning Particular Countries
- Submission, Discussion and Approval

INTERNATIONAL LABOUR OFFICE
GENEVA
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 Provisional Record. 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 publication is structured in the following way: (i) the General Report of the Conference Committee on the Application of Standards; (ii) the observations of the Committee of Experts on the Application of Conventions and Recommendations concerning the individual cases selected by the Conference Committee; (iii) the report of the Committee on the Application of Standards on the individual cases; and (iv) the report of the Committee on the Application of Standards: Submission, discussion and approval.
Contents

Foreword .................................................................................................................................. v

Record of Proceedings No. 13

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 ......................................................................................................................... 13 Part I /1

A. Introduction ....................................................................................................................... 13 Part I /3

B. General questions relating to international labour standards......................................... 13 Part I /8

C. Reports requested under article 19 of the Constitution: General Survey concerning minimum wage systems .......................................................... 13 Part I /25

D. Compliance with specific obligations.............................................................................. 13 Part I /45

E. Discussion on the 19 remaining individual cases .......................................................... 13 Part I /50

F. Adoption of the report and closing remarks ................................................................. 13 Part I /56

Annex 1. Work of the Committee .......................................................................................... 13 Part I /61

Annex 2. Case regarding which governments are invited to supply information to the Committee ................................................................................................................. 13 Part I /75

Observations of the Committee of Experts on the Application of Conventions and Recommendations – Individual cases

Convention No. 26: Minimum Wage-Fixing Machinery Convention, 1928 .... Individual cases/3

UGANDA (ratification: 1963).................................................................................................. Individual cases/3

BOLIVARIAN REPUBLIC OF VENEZUELA (ratification: 1944)........................................ Individual cases/3

Convention No. 29: Forced Labour, 1930 .............................................................. Individual cases/4

SAUDI ARABIA (ratification: 1978).................................................................................... Individual cases/4

MALAYSIA (ratification: 1957).......................................................................................... Individual cases/5

DEMOCRATIC REPUBLIC OF THE CONGO (ratification: 1960)................................ Individual cases/6

Convention No. 81: Labour Inspection, 1947 ............................................................... Individual cases/8

BANGLADESH (ratification: 1972)..................................................................................... Individual cases/8

COLOMBIA (ratification: 1967)......................................................................................... Individual cases/10

PAKISTAN (ratification: 1953).......................................................................................... Individual cases/12

QATAR (ratification: 1976) ............................................................................................... Individual cases/15

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 Individual cases/16

ALGERIA (ratification: 1962)............................................................................................. Individual cases/16

BELARUS (ratification: 1956)............................................................................................ Individual cases/16

CAMBODIA (ratification: 1999)....................................................................................... Individual cases/18

SWAZILAND (ratification: 1978)....................................................................................... Individual cases/19
Convention No. 98: Right to Organise and Collective Bargaining, 1949
CROATIA (ratification; 1991) ................................................................. Individu 1 cases/21
ECUADOR (ratification; 1959) ............................................................... Individu 1 cases/21

Convention No. 102: Social Security (Minimum Standards), 1952
GREECE (ratification: 1955) ............................................................... Individu 1 cases/23

Convention No. 111: Discrimination (Employment and Occupation), 1958
REPUBLIC OF KOREA (ratification: 1998) ........................................... Individu 1 cases/26
DOMINICAN REPUBLIC (ratification: 1964) ........................................ Individu 1 cases/28
KAZAKHSTAN (ratification: 1999) ........................................................ Individu 1 cases/29

Convention No. 122: Employment Policy, 1964
MAURITANIA (ratification: 1971) ........................................................ Individu 1 cases/31
PORTUGAL (ratification: 1981) ........................................................... Individu 1 cases/32

Convention No. 138: Minimum Age, 1973
NIGER (ratification: 1978) ................................................................. Individu 1 cases/34

Convention No. 169: Indigenous and Tribal People, 1989
CENTRAL AFRICAN REPUBLIC (ratification: 2010) ......................... Individu 1 cases/35

Convention No. 182: Worst Forms of Child Labour, 1999
UNITED STATES (ratification: 1999) .................................................... Individu 1 cases/36
YEMEN (ratification: 2000) ............................................................... Individu 1 cases/37

PART TWO

Observations and information concerning particular countries ................................................................. 13 Part II /1
I. Observations and information concerning reports on ratified Conventions (articles 22 and 35 of the Constitution) ....................................................................................................................... 13 Part II /5
A. Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations .............................................................................................................................. 13 Part II /5
(a) Failure to supply reports for the past two years or more on the application of ratified Conventions .............................................................................................................................. 13 Part II /5
(b) Failure to supply first reports on the application of ratified Conventions .............................................................................................................................. 13 Part II /5
(c) Failure to supply information in reply to comments made by the Committee of Experts .............................................................................................................................. 13 Part II /5
(d) Written information received up to the end of the meeting of the Committee on the Application of Standards .............................................................................................................................. 13 Part II /6
B. Observations and information on the application of Conventions .............................................................................................................................. 13 Part II /7
Convention No. 26: Minimum Wage-Fixing Machinery, 1928
UGANDA (ratification: 1963) ............................................................... 13 Part II/7
BOLIVARIAN REPUBLIC OF VENEZUELA (ratification: 1944) ............. 13 Part II/9
Convention No. 29: Forced Labour, 1930 ......................................................... 13 Part II/14
DEMOCRATIC REPUBLIC OF THE CONGO (ratification: 1960) ...................... 13 Part II/14
MALAYSIA (ratification: 1957) ........................................................................ 13 Part II/17
SAUDI ARABIA (ratification: 1978) ................................................................. 13 Part II/22
Convention No. 81: Labour Inspection, 1947 .................................................. 13 Part II/25
BANGLADESH (ratification: 1972) ................................................................... 13 Part II/25
COLOMBIA (ratification: 1967) ....................................................................... 13 Part II/33
PAKISTAN (ratification: 1953) ........................................................................ 13 Part II/38
QATAR (ratification: 1976) ............................................................................. 13 Part II/43
ALGERIA (ratification: 1962) .......................................................................... 13 Part II/48
BELARUS (ratification: 1956) .......................................................................... 13 Part II/52
CAMBODIA (ratification: 1999) ..................................................................... 13 Part II/59
SWAZILAND (ratification: 1978) ..................................................................... 13 Part II/63
Convention No. 98: Right to Organise and Collective Bargaining, 1949 .......... 13 Part II/70
CROATIA (ratification: 1991) .......................................................................... 13 Part II/70
ECUADOR (ratification: 1959) ......................................................................... 13 Part II/74
Convention No. 102: Social Security (Minimum Standards), 1952 ................. 13 Part II/80
GREECE (ratification: 1955) .......................................................................... 13 Part II/80
Convention No. 111: Discrimination (Employment and Occupation), 1958... 13 Part II/86
DOMINICAN REPUBLIC (ratification: 1964) .................................................. 13 Part II/86
KAZAKHSTAN (ratification: 1999) .................................................................. 13 Part II/92
REPUBLIC OF KOREA (ratification: 1998) .................................................. 13 Part II/95
Convention No. 122: Employment Policy, 1964.............................................. 13 Part II/100
MAURITANIA (ratification: 1971) .................................................................. 13 Part II/100
PORTUGAL (ratification: 1981) ..................................................................... 13 Part II/103
Convention No. 138: Minimum Age, 1973 ..................................................... 13 Part II/107
NIGER (ratification: 1978) ............................................................................. 13 Part II/107
Convention No. 169: Indigenous and Tribal People, 1989 ............................ 13 Part II/111
CENTRAL AFRICAN REPUBLIC (ratification: 2010) ................................... 13 Part II/111
Convention No. 182: Worst Forms of Child Labour, 1999 ............................ 13 Part II/112
UNITED STATES (ratification: 1999) ............................................................... 13 Part II/112
YEMEN (ratification: 2000) .......................................................................... 13 Part II/115
II. Submission to the competent authorities of the Conventions and
Recommendations adopted by the International Labour Conference
(article 19 of the Constitution) .......................................................... 13 Part II/120
Observations and information ........................................................................ 13 Part II/120
(a) Failure to submit instruments to the competent authorities .................. 13 Part II/120
(b) Information received ............................................................................. 13 Part II/121
III. Reports on unratified Conventions and Recommendations
   (article 19 of the Constitution) ................................................................. 13 Part II/122
   (a) Failure to supply reports for the past five years on unratified
       Conventions and Recommendations .................................................. 13 Part II/122
   (b) Information received ............................................................................ 13 Part II/122
   (c) Reports received on unratified Convention No. 131
       and Recommendation No. 135 ............................................................ 13 Part II/122

Appendix I. Table of reports received on ratified Conventions
            (articles 22 and 35 of the Constitution) as of 12 June 2014 .......... 13 Part II/126

Appendix II. Statistical table of reports received on ratified Conventions
            (article 22 of the Constitution) as of 12 June 2014 ...................... 13 Part II/126

Index by countries to observations and information contained in the report .......... 13 Part II/129

Record of Proceedings No. 17

Report of the Committee on the Application of Standards: Submission,
   discussion and approval ........................................................................... 17/1
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 Applications of Standards

PART ONE

GENERAL REPORT

Contents

| A. | Introduction | 3 |
| B. | General questions relating to international labour standards | 8 |
| C. | Reports requested under article 19 of the Constitution: General Survey concerning minimum wage systems | 25 |
| D. | Compliance with specific obligations | 45 |
| E. | Discussion on the 19 remaining individual cases | 50 |
| F. | Adoption of the report and closing remarks | 56 |
| Annex 1. | Work of the Committee | 61 |
| Annex 2. | Case regarding which governments are invited to supply information to the Committee | 75 |
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 139 members (117 Government members, 6 Employer members and 16 Worker members). It also included 12 Government deputy members, 81 Employer deputy members, and 226 Worker deputy members. In addition, 27 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

Chairperson: Ms Gloria Gaviria Ramos, Ministry of Labour (Government member, Colombia)

Vice-Chairpersons: Ms Sonia Regenbogen (Employer member, Canada) and Mr Marc Leemans (Worker member, Belgium)

Reporter: Ms Cecilia Mulindeti (Government member, Zambia)

3. The Committee held 18 sittings.

4. In accordance with its terms of reference, the Committee considered 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 Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135).²

Statement by the Chairperson of the Committee on the Application of Standards

5. The Chairperson expressed her honour at being able to preside over the Conference Committee on the Application of Standards. It was worth recalling that this Committee, which was a cornerstone of the regular ILO supervisory system, was the forum for dialogue in which the Organization debated with the governments concerned and social partners with regard to the difficulties encountered in the application of international labour standards. The Committee had a truly unique persuasive capacity and had made a hugely significant impact over the years. She trusted that the overall constructive spirit in

¹ For changes in the composition of the Committee, refer to Provisional Records Nos 4A to 4G. For the list of international non-governmental organizations, see Provisional Record No. 3.

which work was carried out in this Committee would allow for the impasse, which had hindered the harmonious work of the 2012 Committee, to be overcome. The Chairperson encouraged all of the governments and social partner representatives to stay on this path and continue striving for even greater social dialogue. She firmly hoped that the Committee could fulfil its mandate and would make every effort to work harder to meet this objective.

Opening statements of Vice-Chairpersons

6. The Worker members called for a minute of silence to pay homage to the 301 workers who lost their lives in the depths of the Soma mine in Turkey. The Committee could not merely stand by and fail to mention this disaster, which was unquestionably caused by an unbridled quest for profit. Mining accidents were not inevitable, but rather could be avoided, in accordance with the Safety and Health in Mines Convention, 1995 (No. 176).

7. The Worker members expressed the hope that at the end of this 2014 Conference, the climate of crisis prevailing in the work of the Committee would be dissipated and that confidence would reign once again so that the Committee might do its work and reach operational conclusions, providing real prospects of progress for the ILO’s three constituents. The points of contention had been connected to the issue of the right to strike, as reflected in the conclusions of a number of cases concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), examined by the Committee in 2013. Thus, it was stated that: “The Committee did not address the right to strike in this case, as the employers do not agree that there is a right to strike recognized in Convention No. 87.” It should however be noted that there was no record over the past few years of any Committee conclusions referring to the right to strike.

8. Beyond the disputes over wording and legal formula, the efficiency of the supervisory mechanism had to guide the work of the Committee and allow it to unanimously adopt conclusions drafted on the basis of a balanced exchange between the Worker and Employer members. Aware that there was much more to this issue than the right to strike, the Worker members expressed the hope that other Conventions would not be used to wage a war against the standard-setting system under the banner of the competitiveness of enterprises and short-term profit. Undermining core standards when confronted with economic difficulties not only demonstrated a blatant disregard for a legal obligation, committed an injustice, and also posed the threat of making a serious error from an economic standpoint. The year 2013 was a bridge year that did not allow to draw definitive conclusions that could bind the Worker members, particularly with respect to the right to strike. The aim then had been not to repeat the failure of 2012. The year 2014 must be the year of solutions or, at least, the year in which the groundwork will be laid to reach future solutions.

9. The Worker members recalled that the ILO Governing Body was presented, in March 2014, with a document on the follow-up to the events that had occurred in the Committee in June 2012. This document concerned, in particular, the mandate of the Committee of Experts, as expressed in its 2014 report, and the running of the present Committee. In its decisions, the Governing Body had: (1) “reaffirmed that in order to exercise fully its constitutional responsibilities, it was essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents”; (2) “welcomed the clear statement by the Committee of Experts of its mandate as expressed in the Committee’s 2014 report” and “underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference”; and (3) “called on all parties concerned to contribute to the successful
conclusion of the work of the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference”. The Worker members declared that it was within this framework that they would conduct their activities within this Committee.

10. The Employer members looked forward to constructive dialogue in the work of this Committee. The Employer members expressed their appreciation for both the informal and formal interaction enjoyed with the Committee of Experts over the past year, looked forward to working together with the Committee of Experts, and expressed their desire for continued, constructive and sustainable interaction. They also restated the view that international labour standards were of vital importance in an increasingly globalized world and highlighted the opportunity for international labour standards to play an even more important role in enterprises around the globe.

11. The Employer members reiterated their commitment to the ILO supervisory system, both to the work of this Committee and of the Committee of Experts, as these two bodies made up the two pillars of the supervisory system. They hoped that the supervisory system would continue to maintain its relevance and effectiveness, stressed that tripartite governance was necessary to ensure its credibility, continued relevance and sustainability and reaffirmed their continued support in this regard. The Employer members were cohesive and united in their commitment to the proper work of the supervisory system, which was best illustrated by the increase in the number of comments of employers’ organizations provided to the Committee of Experts. They welcomed the opportunity to continue to actively and constructively participate in each of the facets of the supervisory system.

12. The Employer members also wished to thank the Worker members on the work done relating to the list of cases. Within the negotiation process, the Employer members remained committed to the effectiveness of the work of this Committee and concurred with the Worker members on the value of balanced negotiations within the Committee and the hope that the year 2014 would be the year of solutions. They were heartened by the constructive tone of the Worker members and looked forward to a constructive and efficient adoption of the list of individual cases and the constructive and efficient discussion of each individual case.

**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. 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.

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3 Work of the Committee on the Application of Standards, ILC, 103rd Session, C.App./D.1 (see Appendix I).
14. The second part of the general discussion dealt with the General Survey concerning minimum wage systems 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. Section E contains a summary of the discussion on the 19 individual cases for which the Committee did not adopt conclusions. The adoption of the report and closing remarks are contained in section F of this report.

16. The Committee considered 25 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts’ report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers’ and workers’ organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts’ observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases were contained in Part Two of this report.

17. With regard to the adoption of the list of individual cases to be discussed by the Committee, the Chairperson of the Committee announced that the final list of individual cases was now available. 4

18. Following the adoption of the final list of individual cases by the Committee, the Employer members recalled that the adoption of the list of cases was a difficult process. They were pleased that consensus had been reached well in advance of the deadline established. This demonstrated their commitment to ensuring that there was no delay in the work of the Committee. Considerable effort had been made to ensure regional balance, as well as balance between the fundamental, governance and technical Conventions. The Employer members expressed the hope that the work taking place in the Governing Body relating to the process of the adoption of the list of individual cases would continue, including identification of objective criteria for this list. They expressed the hope that the issue would be addressed, at the latest, in the Governing Body held in March 2015, in order to facilitate an orderly and efficient conclusion of the list of cases for the following year.

19. The Worker members recalled their commitment to avoiding a recurrence of the situation in 2012, when there had been no list of cases to discuss, or of the situation in 2013 when they had to concede to the request to include a disclaimer by the Employers’ group in the conclusions adopted by the Committee on a number of individual cases relating to Convention No. 87, to guarantee the adoption of a list. The past issues concerning the Committee of Expert’s mandate were no longer relevant given that this matter had been

4 ILC, 103rd Session, Committee on the Application of Standards, C.App./D.4/Add.1 (see Appendix II).
clarified by the Committee and unanimously recognized by the Governing Body in March 2014. There could therefore no longer be any discussion of incorporating the disclaimer used last year in the conclusions of this year’s individual cases. For a number of years, the selection of individual cases had become a very difficult exercise, whereas it should be a process in which the social partners must work together with a view to reaching compromises without any recourse to veto. Since 2012, the Worker members had been undertaking considerable preparatory work to come up with a proposal for the list of cases, in accordance with the criteria adopted. This list was now challenged by proposals emanating from the Employer members, before being adopted and immediately communicated to the Governments. This year again, in the interest of the smooth running of the Committee’s work, the Worker members had had to waive a number of highly significant cases, such as that of Guatemala and Zimbabwe. It was a source of considerable frustration that the case of Turkey concerning the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was missing from the final list, for reasons that were very obscure. Could this be attributed to the prospect of a special meeting of the World Economic Forum in Istanbul in September 2014, the fear of discouraging foreign investment or the Government’s view that the case was poorly documented in the report of the Committee of Experts? These considerations were not valid reasons because economic development could not be pitted against workers’ fundamental rights, and the Government could have taken the opportunity of a discussion to counter any possible misrepresentations the Committee of Experts might have made in handling the case. The worrying case of Turkey, where the implementation of Conventions Nos 87 and 98 had been examined for years, was included in the preliminary list after considerable reflection by the Turkish trade unions, who nevertheless accepted its withdrawal from the final list – in a spirit of compromise and solidarity that was noteworthy. The Committee’s examination of the matter in 2013 had enabled it to guarantee the follow-up of the issues under consideration, mostly linked to the application difficulties of a legislation that supposedly regulated issues related to freedom of association and collective bargaining. Although reforms had been made, their implementation was encountering serious obstacles and the Government seemed to refuse the assistance that the Committee of Experts and the Office could provide it. As part of its adaptation process to the standards of the European Union, it was in Turkey’s interest to bring itself into line with ILO Conventions. The Worker members therefore formally called upon the Turkish employers and Government to join the workers to take the opportunity provided by this Conference in order to draft, in a constructive spirit, a joint statement in which they committed themselves to continuing their efforts from a legislative standpoint and took the necessary measures to move forward in these areas, even in the absence of a discussion in this Committee.

20. Following the adoption of the list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

Working methods of the Committee

21. 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.
B. General questions relating to international labour standards

General aspects of the supervisory procedure

Statement by the representative of the Secretary-General

22. The representative of the Secretary-General pointed out that the mandate of this Committee under the Constitution and the Standing Orders of the Conference was at the core of the ILO’s work in supervising the effective implementation of international labour standards at the national level. The Committee had a long standing practice of focusing its discussions on a list of individual cases proposed by the representatives of the Employers and Workers on the basis of the report of the Committee of Experts. Further details concerning the work of this Committee were set out in document D.1 which reflected the decisions taken so far by the Committee on the basis of the recommendations made by its tripartite Working Group on Working Methods.

23. With respect to the discussion of the General Survey of the Committee of Experts concerning minimum wage systems, she wished to highlight, in addition to the significance of this topical subject-matter, an important institutional dimension: this year, for the fifth time, the subject of the General Survey had been aligned with the strategic objective that would be examined in the context of the recurrent discussion under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008 (2008 Social Justice Declaration). The General Survey on the minimum wage fixing instruments would inform the recurrent discussion on the strategic objective of social protection (labour protection) to be held at the 104th Session (2015) of the Conference. In accordance with a decision taken by the Governing Body in November 2010, the review of this General Survey by this Committee was to take place, for the first time, one year in advance of the recurrent discussion by the Conference so as to facilitate better consideration and integration of the standards-related aspects in the report prepared by the Office for the recurrent discussion and into the outcome of that discussion.

24. Turning to the follow-up to the 2012 Committee on the Application of Standards (CAS), the representative of the Secretary-General recalled that, following a very constructive discussion in March 2014, the Governing Body had taken a number of decisions. They included a call on all parties concerned to contribute to the successful conclusion of the work of this Committee at the current session of the Conference. The Governing Body had also recommended that this Committee consider convening its Tripartite Working Group on Working Methods to take stock of current arrangements and develop further recommendations in relation to its working methods. This was a matter that the Committee may wish to consider, also having regard to the possible implications on the work of this Committee of the decisions on the reform of the Conference which would be implemented on a trial basis at the 104th Session of the Conference in 2015 (including a reduced duration of the Conference). For these reasons, the necessary arrangements would have to be made for such a meeting of the Tripartite Working Group in November 2014, the findings of which would then be submitted to the tripartite Working Party on the Functioning of the Governing Body and the International Labour Conference before formalizing final recommendations. The Governing Body had also requested the Director-General to prepare a document for its November 2014 session setting out the possible modalities, scope and costs of action under article 37(1) and (2) of the ILO Constitution to address a dispute or question that might arise in relation to the interpretation of an ILO Convention, as well as a document on a time frame for the consideration of remaining
outstanding issues in respect of the supervisory system and for the launching of the standards review mechanism.

25. In terms of other important developments that needed to be highlighted, the speaker stated that the Maritime Labour Convention, 2006, had entered into force on 20 August 2013 and had become binding international law for the first 30 Members whose ratification of the Convention had been registered by 20 August 2012. Argentina had submitted the instrument of ratification on 28 May 2014, bringing the number of ratifying member States to 59 and the coverage of the world fleet to more than 80 per cent. This Convention established minimum international standards for working and living conditions for seafarers and presented novel features of particular relevance to the future orientation of the ILO standards policy that could usefully be considered for the purpose of designing ILO standards that met the requirements of the 2008 Social Justice Declaration. The first meeting of the Special Tripartite Committee (STC) established by the Governing Body in accordance with Article XIII of the Maritime Labour Convention, 2006, had taken place at the ILO in Geneva from 7 to 11 April 2014. The STC had a central role with respect to the more rapid process for amendment of the Convention to allow it to respond to changes and important needs in the sector. Two proposals for amendments had been jointly submitted by the Shipowner and Seafarer representatives and related to financial security in cases of abandonment of seafarers and in the event of death or long-term disability of a seafarer due to occupational injury, illness or hazard. The proposals for amendments had been adopted by the STC and were submitted to the current session of the Conference for approval. This very rapid process for amendment was unique and a source of inspiration in the reflection on the need to keep the ILO body of standards up to date.

26. The speaker further referred to two standard-setting items placed on the agenda of the current session of the Conference: the first related to supplementing the Forced Labour Convention, 1930 (No. 29) – single discussion; and the second related to facilitating transitions from the informal to the formal economy (with a view to the adoption of a Recommendation under the double discussion procedure, the second discussion being scheduled in 2015). In 2016 and 2017, the Governing Body had selected the revision, under the double discussion procedure, of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71) – decent work for peace, security and disaster resilience. It should be noted that a number of Governing Body members – in particular from the Government group, but also the Employers’ group – had consistently underlined that the standards review mechanism adopted by the Governing Body in November 2011 but not yet operationalized should be implemented as soon as possible to keep the ILO body of standards up to date.

27. The representative of the Secretary-General also wished to recall another important decision taken by the Governing Body in relation to the evaluation of the impact of the 2008 Social Justice Declaration to be undertaken by the International Labour Conference in 2016. The evaluation would include the issue of the cycle of recurrent discussions and their coordination with the General Surveys and the related CAS discussion. In taking this decision, the Governing Body had decided to postpone to 2017 the last recurrent discussion of the first cycle, which related to fundamental principles and rights at work and was initially scheduled for 2016.

28. With regard to recent actions taken by the Office to improve the impact of the standards system, including the supervisory system, the speaker reported that the Office had been very active in following up with countries on the basis of the conclusions adopted by this Committee in 2013. The case of the application of Convention No. 182 on the worst forms of child labour by Uzbekistan was a particularly positive example. The 2013 conclusions of this Committee had encouraged the Government to agree on the monitoring of the cotton harvest, and a joint ILO–Uzbek monitoring had taken place from 11 September
The representative of the Secretary-General noted the important work carried out by the Committee on Freedom of Association (CFA) as well as the continued review of its working methods and procedures. At its March 2014 session, the CFA had supported the use of special national complaints mechanisms for the review of alleged violations of freedom of association and had encouraged the Office to continue to foster the further development of such mechanisms with full participation of the social partners. The CFA had invited governments to consider recourse to this practice, especially in cases where it was felt that resolution could be achieved at an early stage. The implementation of such tripartite dispute settlement mechanism in Latin America (mostly in Colombia and Panama) had proved useful to prevent and solve disputes related to freedom of association and collective bargaining. Such a mechanism had just been created in Guatemala, and other countries in the region were considering this possibility. In the framework of the work undertaken under the area of critical importance on the protection of workers from unacceptable forms of work, the possibility of extending the application of this type of tripartite dispute settlement mechanisms both to interested countries in other regions and to areas covered by other international labour standards was currently being considered.

Lastly, the speaker wished to draw attention to the up-to-date Conventions on occupational safety and health (OSH), in particular the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The recent tragic events in the mining sector in Turkey but also in the Central African Republic (2013), Chile (2010), China (2012, 2013), New Zealand (2010), South Africa (2012) and United States (West Virginia, 2010), had
seen the deaths of a staggering number of workers. These events, as well as other tragic events such as in Bangladesh (Rana Plaza, 2013) and in Japan (Fukushima, 2011) underlined the paramount importance of OSH particularly as regards dangerous occupations, such as mining, construction and agriculture. The protection of workers against sickness, disease and injury arising out of their employment was enshrined in the Preamble of the ILO Constitution, while adequate protection for the life and health of workers in all occupations was reaffirmed in the Declaration of Philadelphia and the 2008 Social Justice Declaration. A significant body of international instruments and guidance documents had been developed and adopted by the ILO over the years. Presently it could be affirmed that the right to a safe and healthy working environment was a human right; it was the right of every worker to his or her physical integrity and personal security in the workplace. The representative of the Secretary-General therefore wished to take this opportunity to urge all ILO member States that had not yet done so to examine as a matter of urgency the possible ratification of up-to-date ILO OSH Conventions, including those that addressed specific OSH hazards and dangerous occupations. For those countries with mining industries, the ILO Safety and Health in Mines Convention, 1995 (No. 176), provided an excellent framework for putting in place a coherent policy for occupational safety and health in mines. Workers had a right to information, training and genuine consultation on and participation in the implementation of safety and health measures concerning the hazards and risks they faced in the mining industry, and urgent action was needed to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations.

32. She concluded by congratulating all those governments who had taken action to implement or otherwise give effect to ILO Conventions and Recommendations and the employers’ and workers’ organizations for their engagement to advance the ILO standards agenda.

Statement by the Chairperson of the Committee of Experts

33. The Committee welcomed Mr Abdul Koroma, Chairperson of the Committee of Experts, who expressed his appreciation for the opportunity to participate in the general discussion and the discussion of the General Survey concerning minimum wage fixing systems of the Committee on the Application of Standards. He stressed the importance of a solid relationship between the two Committees in a spirit of mutual respect, collaboration and responsibility.

34. At the outset, the Chairperson of the Committee of Experts paid tribute to Dr Dierk Lindemann who had passed away in March 2014. Dr Lindemann had been appointed by the Governing Body to the Committee of Experts in March 2012; before that he had made an invaluable contribution to standard setting in the maritime field, including as a spokesperson for the Shipowners’ group at the International Labour Conference (ILC) maritime session that had adopted the Maritime Labour Convention, 2006. Dr Lindemann’s expertise and wisdom would be sorely missed in the Committee of Experts.

35. The speaker further pointed out that the special sitting of the Committee of Experts with the two Vice-Chairpersons of the Committee on the Application of Standards, and the participation of the Chairperson of the Committee of Experts in the work of the Committee on the Application of Standards, were the means whereby representatives of the two Committees exchanged views on matters of common interest. During the special sittings of the 2012 and 2013 sessions of the Committee of Experts, the exchange of views had focused on matters arising from the June 2012 discussions of the Committee on the Application of Standards. At the time of the Committee of Experts’ examination of those matters, namely the mandate of the Committee of Experts and the right to strike under
Convention No. 87, diverging views had prevailed among the constituents. As an independent body with a specific mandate vested in it by the Conference and the Governing Body, the Committee of Experts should give priority to fulfilling that mandate. Its credibility and authority rested first and foremost on the quality of its technical and impartial examination of the application of ratified Conventions, which represented a significant amount of work to be performed in a limited period of time. Yet, being cognizant that its work and relationship with this Committee were at the heart of the ILO supervisory system, and that, since June 2012, the integrity, effectiveness and authority of the ILO’s supervisory system were at stake, the Committee of Experts had decided to adopt a constructive approach. It had carefully examined the matters of its mandate and the right to strike under Convention No. 87, in order to contribute to the institutional challenge in a way consistent with its mandate and befitting its role in the overall supervisory system. In this endeavour, it had confidently relied upon the principles at the core of its existence and functioning, and on its dialogue with the Committee on the Application of Standards.

36. The Committee of Experts had made a statement on its mandate, contained in paragraph 31 of its General Report, which the Governing Body had welcomed in March 2014. On the right to strike in relation to Convention No. 87, the Committee of Experts had appreciated the additional thoughts shared by the two Vice-Chairpersons, as well as the extensive presentations by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) concerning the issue; it had noted, however, that the two groups’ viewpoints were diametrically opposed. As indicated in paragraph 92 of its General Report, as an independent body, the Committee of Experts had set out its observations on the right to strike under Convention No. 87 on numerous occasions taking into account the criteria applied by the CFA. These observations could be questioned by the tripartite constituents or recourse could be made to article 37 of the ILO Constitution. As it had noted in paragraphs 26 and 27 of its General Report, the Committee of Experts had devoted considerable time to discussing the issues raised and preparing to communicate its positions, at the expense of time that the Committee would be spending reviewing reports from governments and comments from the social partners. The Committee of Experts had also recalled in its General Report that it had made adjustments to its working methods over the years and would continue to do so, including by reviewing the proposals made during the June 2013 general discussion of the Committee on the Application of Standards. Importantly, it had considered that it was for the tripartite constituents to address and resolve ultimately political issues; the Committee of Experts had never been, and was not, a political body.

37. During its March 2014 session, the Governing Body had encouraged the continuation of informal dialogue between the Committee of Experts and the Committee on the Application of Standards. It had also invited the Committee of Experts to continue to review its working methods with a view to further enhancing effectiveness and efficiency. The Committee of Experts had decided to convene its subcommittee on working methods at its next session. In this regard, the Committee of Experts had also aimed to streamline the contents of its report to ensure that it focused on the most important issues regarding the application of Conventions and to facilitate their examination by this Committee and the Conference.

38. With regard to the General Survey on minimum wage fixing instruments, the speaker indicated that its scope was limited to the most recent and comprehensive ILO wage-fixing instruments, namely the Minimum Wage Fixing Convention, 1970 (No. 131), and its corresponding Recommendation No. 135. These instruments called for the establishment of minimum wage systems covering all groups of wage earners whose terms of employment were such that coverage would be appropriate. He pointed out that, in light of the economic crisis, the Committee of Experts had devoted a chapter to the role of minimum wages in the difficult contexts that some ILO member States faced due to the
economic crisis, as underlined by the Global Jobs Pact, and had recalled the need to involve the social partners in minimum wage fixing, particularly in times of economic difficulties. The Chairperson hoped that the ILO would have the capacity to respond positively to the large number of requests made by governments and employers’ and workers’ organizations for technical or advisory assistance with the implementation or operation of minimum wage fixing machinery. He concluded by indicating that Convention No. 131 was one of the most flexible ILO instruments in terms of its methods of application, making it possible for countries at very different levels of development to give effect to its provisions. The Committee of Experts had concluded that the objectives, principles and methods set out in Convention No. 131 and Recommendation No. 135 remained highly relevant, and that ILO member States that had not ratified the Convention should be strongly encouraged to do so. Minimum wage fixing was positive for employers as well, as it contributed to ensuring a level playing field. It was, therefore, necessary to breathe new life into Convention No. 131 and Recommendation No. 135 to reflect the current trends towards global reactivation of minimum wage policies.

39. The Employer members and the Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee. The Employer Vice-Chairperson thanked the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations for his comments concerning the solid relationship between the two Committees in a spirit of mutual respect, collaboration and responsibility.

**Statement of the President of the Conference**

40. The President of the Conference indicated that his visit came with the responsibility of establishing contact with the Conference committees, determining the status of the work in progress and making himself available. The particularity of the Committee on the Application of Standards lay in the difficulties and tensions of consensus building, and in the satisfaction of achieving that consensus through dialogue. The Organization’s comparative advantage was its standard-setting role and its tripartite structure. The Committee was central to the supervisory work of the Organization. Underscoring the arduousness of such work, he emphasized his unconditional support to the work of this Committee. Fortunately, the list of cases had been adopted and a new stage had begun, namely the discussion of each of the cases, with a shared responsibility based on the wish to maintain harmonious social and labour relations. One had to trust in the efficacy and responsibility of all members of the Committee to reach conclusions that would exemplify the tripartism which was the advantage of the ILO.

41. The Employer members welcomed the attendance of the President and the Vice-Presidents of the Conference in the Committee and greatly appreciated the statement of the President and especially the value given by him to consensus and to the supervisory system as a whole. His words would guide the Committee in its work.

42. The Worker members observed that the presence of the Chairperson and Vice-Chairpersons of the International Labour Conference highlighted the Committee’s importance for the ILO and for its standard-setting system. Adopting standards and monitoring their application was an important way of improving labour relations. Since the ILO was the only global institution in which the workers were directly represented, they fully intended to assume their responsibilities in the matter. He concluded with the hope that the Committee would be guided by the maxim that “every worker is worth more than all the gold in the world”.

13 Part I/13
**Statements by the Employer members**

43. The Employer members emphasized that the Committee of Experts was only one of the two pillars of the ILO supervisory system, and that ultimate responsibility for the supervision of standards lay with the tripartite constituents, who were represented in the Conference Committee. In previous comments, they had emphasized the importance of the role of the Committee of Experts in assisting in understanding the voluminous information provided each year with respect to the application of standards.

44. The Employer members welcomed the fact that the deadline for the selection of individual cases had been met, which reflected the commitment of Employer and Worker members to ensuring that there was no delay in the work of the Conference Committee. They added that the negotiation and adoption of the list of individual cases was a difficult and challenging process for both the Worker and Employer members, which gave rise to concerns with regard to the sustainability of the present system. They emphasized that additional objective criteria needed to be developed and considered for the adoption of the list, based on automatic, objective and transparent elements. They reaffirmed the importance of this issue, which they hoped would be resolved by the March 2015 session of the Governing Body at the latest. They hoped that by the time of the Conference discussion next year, the Worker and Employer members would have an improved method for the adoption of the list in place.

45. Another issue that needed to be highlighted was the negotiation of the conclusions of the Conference Committee. Short, clear and straightforward conclusions were needed indicating in a clear and unambiguous fashion what governments needed to do to improve compliance with ratified Conventions. Moreover, while conclusions could reflect consensual recommendations, from time to time diverging views in the Conference Committee concerning certain conclusions could also arise. The Employer members hoped that, if this was the case, the Conference Committee would be able to note the difference of opinions in its conclusions, where appropriate.

46. The Employer members welcomed the spirit of mutual respect, cooperation and responsibility that had consistently prevailed over the years between the Committee of Experts and the Conference Committee. They encouraged the intensification of frank dialogue, which was vital to the relevance of the supervisory system. They also welcomed the response of the Committee of Experts to the discussions in the Conference Committee and the clarification by the Committee of Experts in paragraph 31 of the General Report concerning the scope of their mandate. The Committee of Experts indicated that their recommendations were non-binding, being intended to guide the actions of the national authorities, which provided clarity on the scope of the mandate of the Committee of Experts, without undermining the importance of the supervisory system. Moreover, noting that the heading “mandate” was used twice, before paragraph 31 of the General Report, as well as in the Reader’s note, the Employer members expected the clarification set out in paragraph 31 should only be set out once in the report so as to avoid confusion. They further encouraged the Committee of Experts to continue to set out this section of the text in bold, in all future reports, including the General Survey, as it was important to highlight its significance.

47. The Employer members reiterated that, as they had done when the mandate of the Committee of Experts was being clarified, they accepted that the role of the Committee of Experts required a certain degree of interpretation when formulating their non-binding guidance. However, to ensure the credibility of the entire supervisory system, it was crucial that the Committee of Experts remained within its mandate. The Committee of Experts should avoid straying into indirect labour standard setting by adding further obligations to Conventions through extensive interpretations, filling in gaps that had
appeared since a Convention was negotiated or by narrowing the flexibility of Conventions by providing subsequent restrictive interpretations. Standard setting was vested solely with ILO constituents and the Employer members vowed to resolutely defend this principle. The Committee of Experts could not fill the void created by the continued absence of an operational standards review mechanism. There was a consensus in the Governing Body regarding the need for a relevant and up-to-date body of ILO standards and the proposals to commence the standards review mechanism were awaited. The non-binding observations and recommendations of the Committee of Experts were not a substitute for a standards review mechanism and any expansion of the mandate of that Committee by the Experts risked undermining the supervisory system and hampering the work in the Governing Body.

48. The Employer members questioned why the Committee of Experts’ annual reports were published with no prior review or approval of the Governing Body. Such a procedure would further strengthen governance within the supervisory system. Moreover, the Committee of Experts should avoid criticizing general government policies, such as austerity measures and fiscal consolidation. Such opinions were not appropriate as the mandate of the Committee of Experts was to examine the application of standards, and it did not have a political mandate.

49. In paragraph 92 of the General Report, the Committee of Experts recalled that it had set out in great detail its observations relating to the right to strike, taking into account the criteria applied by the Committee on Freedom of Association (CFA). This created the risk of a critical misunderstanding. The CFA was neither a mechanism for supervising ILO Conventions nor a tripartite standard-setting body, as its work was based on the call of the ILO Constitution to recognize the principle of freedom of association. The decisions taken by the CFA in relation to specific cases could therefore not be elevated as general principles or general rulings with reference to Conventions Nos 87 and 98. The CFA was not concerned with the application of any Convention, and its recommendations could not be deemed as case law for the interpretation of the principles in Conventions. Moreover, the members of the CFA served in their personal capacities and, while they came from the constituencies of the ILO, they did not represent these constituents.

50. Referring to paragraph 92 of the General Report, the Employer members thanked the Committee of Experts for having recognized that the supervisory system allowed for its work to be questioned and for having confirmed that, if there was a dispute concerning the correct interpretation of a Convention, then article 37 of the ILO’s Constitution provided a way forward. This meant that if the constituents in this Committee did not agree with an interpretation, the correct functioning of a credible supervisory system would require that such a disagreement be visible in its conclusions and, if necessary, brought forward pursuant to article 37. The need for visibility of disagreement in this Committee’s conclusions was at odds with the opening statement made by the Worker members when they challenged the sentence that had been included in the majority of the conclusions adopted by this Committee in 2013 regarding the application of Convention No. 87. The inclusion of this sentence in the conclusions had reflected the position of the Employer members, and consensus at all costs was no longer sustainable or credible. There was no agreement within this Committee on the recognition of a “right to strike” in Convention No. 87, as developed by the non-binding guidance of the Committee of Experts. The crisis resulting from the 2012 General Survey had confirmed that there was a divergence in views between this Committee and the Committee of Experts on the question of the interpretation of the right to strike, which needed to be addressed. There should be a fresh tripartite examination of this subject in light of the overall current industrial relations in ILO member States. In this regard, a discussion at the ILC on the right to strike deserved serious consideration.
51. It was clear that the dispute concerning the right to strike would not go away simply if it was ignored or by postponing consideration of the issue. With regard to the discussion of individual cases concerning the application of Convention No. 87 containing a right to strike issue, the Employer members would be coherent with their approach of the previous year, and would support proposals for conclusions that did not, explicitly or implicitly, call upon governments to bring their law and practice into line with the detailed right to strike rules outlined by the Committee of Experts. Governments under examination for the application of Convention No. 87 were free to confirm during the supervision process whether or not they agreed to adhere to the Committee of Experts non-binding guidance on this subject in their country. The Employer members would insist that, when appropriate, the conclusions should explicitly state that there was no consensus concerning the right to strike and that the conclusions therefore did not cover that subject. The Employer members expected that the agreement of the previous year would continue, particularly as the list of cases for examination this year contained cases concerning the right to strike. The Employer members emphasized that the conclusions adopted had to reflect the views of the participants of the discussion.

52. Regarding the individual cases that had not been selected for discussion, the Employer members indicated that the case of Chile on the application of Convention No. 87 was a clear example of the Committee of Experts exceeding its mandate, as that Committee had been requesting for a number of years the amendment of various sections of the Labour Code regarding the right to strike. Regarding the application by El Salvador of Convention No. 144, the Employer members requested the Government to comply with the Convention by meaningfully consulting with the most representative employers’ and workers’ organizations, within the framework of the Labour Council, to find a solution guaranteeing a balanced tripartite composition in all board councils of autonomous institutions. Moreover, observations submitted to the Committee of Experts had not been taken into account for several cases, including Serbia concerning the application of Conventions Nos 87 and 144, Uruguay concerning the application of Convention No. 98, and the Plurinational State of Bolivia concerning the application of Convention No. 131. The Employer members indicated that the case of Togo, concerning the application of Convention No. 87 was a clear demonstration of breach of freedom of association principles due to government interference in the free and democratic election process of the President of the most representative employers’ organization at national level.

53. The Employer members recalled that the previous year they had made a number of proposals regarding the working methods and outputs of the Committee of Experts. They welcomed the fact that the Committee of Experts had already taken measures to accommodate some of those proposals and trusted that there would be a broader discussion in which all the parties would engage constructively. With regard to the individual points raised the previous year, they made the following comments.

54. Closer cooperation between the Conference Committee, the Committee of Experts and the Office. The previous year, the Employer members had expressed their appreciation of the informal exchange of views organized in February 2013 between the members of the Conference Committee and members of the Committee of Experts, together with representatives of the Office. They emphasized the vital relevance of more direct dialogue with the Committee of Experts to facilitate its understanding of the realities and needs of the users of the supervisory system. They trusted that further steps would be taken in the future to intensify that dialogue and cooperation. One important measure to strengthen links between the Committee of Experts and constituents could be to involve the Bureau for Employers’ Activities (ACT/EMP) and the Bureau for Workers’ Activities (ACTRAV) in the briefing programme for new members of the Committee of Experts.
55. *A more participatory approach for the report of the Committee of Experts.* The Employer members added that they had proposed changes to the format of reports of the Committee Experts with a view to increasing tripartite participation and better reflecting tripartite inputs in its reports. Some progress had been achieved, as the Committee of Experts now reflected more extensively on the submissions made by the International Organisation of Employers and employers’ organizations, both in the General Report and in the observations on individual countries. Further steps in that direction would be desirable and sections of the report could be jointly identified where the views of employers and workers regarding particular supervisory issues could be set out visibly and on a permanent basis. Such sections could, for instance, consist of “general observations” preceding the observations by the Committee of Experts on individual Conventions or groups of Conventions. The Employer members were convinced that a report format which provided more room for inputs from constituents would strengthen the credibility and acceptance of the supervision of ILO standards, and they were prepared to consider jointly with the Committee of Experts and the Office possible adaptations to that effect.

56. *Addressing reporting failures in a more sustainable way.* The Employer members noted that in overall terms compliance with reporting obligations seemed to have improved this year. They noted in particular the efforts made to provide technical assistance to countries with the support of the Special Programme Account (SPA). As the Committee of Experts had indicated in paragraph 82 of its General Report, there had been concrete and tangible examples of improvements brought about by the SPA. Over and above individual cases of progress, the SPA had also made it possible to put in place a strategy for the rationalization of all technical assistance provided by the ILO concerning international labour standards. The Employer members joined the Committee of Experts in welcoming this new approach, thanked the Office for its work and trusted that the SPA would be continued and adequately resourced in the future. Nevertheless, the reporting situation was still far from satisfactory, as over a quarter of all reports due on the application of ratified Conventions had not been received by the beginning of the meeting of the Committee of Experts. Further steps were therefore needed to address the problem at its roots. Ratifying countries should not just rely on the offer of technical assistance, but should take responsibility for reporting seriously. Before ratifying Conventions, countries needed to evaluate and, if need be, reinforce their reporting capacities. From a wider perspective, there was a need to consolidate and simplify ILO Conventions, and to focus reporting on the essential. Identifying ways to do so would be a task for the standards review mechanism, which they hoped would soon be operational.

57. *Achieving more focus in standards supervision by reducing the number and improving the quality of observations.* The Employer members noted significant progress this year, as the report of the Committee of Experts had been shortened by almost one third, with less serious and minor technical cases being addressed through direct requests. The increased focus of the report would make it a more useful tool for the supervisory work of the Conference Committee, which would have a better idea of major infringements of ratified Conventions. They called on the Committee of Experts to continue concentrating its report on the crucial compliance issues and to ensure that its observations were drafted in a clear and straightforward manner. Observations should be limited to real problems of application and requests for information should be made in direct requests only.

58. *Measuring progress in compliance with ratified Conventions in a more meaningful way.* In this regard, the Employer members welcomed the fact that the Committee of Experts had stopped identifying cases of “good practice” in the implementation of Conventions. The identification of such cases, in addition to cases of “progress”, would appear to be outside the scope of the supervision of standards. The identification and dissemination of good practice was a task for the Office in the context of its technical assistance on international labour standards and could involve the preparation of promotional materials.
or the organization of training. They noted that the Committee of Experts had continued to
record cases of progress, with 32 cases of progress noted in 25 countries, bringing the
overall number of cases of progress to 2,946 since the Committee had begun listing them.
The Employer members recalled their proposals made in 2013 on possibilities to improve
the measurement of progress in the implementation of ratified Conventions which went
beyond counting cases of progress. While appreciating that measuring progress in this area
was an ambitious and complex undertaking, they still considered that it should be
attempted. Measuring progress properly would be a means of proving the effectiveness of
the system, and would help to address possible weaknesses to make it even more effective.
That was all the more necessary as the proper implementation of Conventions appeared to
be the exception, rather than the rule. Taking as an indicator government reports which,
according to the Committee of Experts, did not call for observations, and thus reflected
compliance, they noted that there had been only 248 such reports in 2013, out of the
1,719 reports received on ratified Conventions. In other words, only 14 per cent of
ratifying countries were considered by the Committee of Experts to be implementing
ratified Conventions properly, compared to 20 per cent in 2012. The Employer members
once again expressed their readiness to discuss new ways of measuring progress in the
application of ratified Conventions with other ILO constituents, the Office and the
Committee of Experts. Serious consideration should be given to the implementation of
tripartite mechanisms at the national level to deal with problems of application.

59. In conclusion, the Employer members recalled that the outputs of ILO supervisory
mechanisms, including the Committee of Experts, were increasing in relevance and
importance for a number of reasons, including the consideration by national courts of the
international obligations of member States and the globalization of business. In that
case, the Employer members were committed to ensuring the relevance, sustainability
credibility of the ILO supervisory system, as clearly illustrated by the number of
comments made by employers’ organizations to the Committee of Experts in 2013, which
had doubled in comparison with previous years. They added that, as they had stated
previously, they were open to considering different alternatives to make the adoption of the
list of individual cases more transparent and objective, and called for a solution to be found
by March 2015 at the latest. Finally, they recalled that they were committed to working
towards the standards initiative process proposed by the Director-General to make a better
and more transparent ILO supervisory system that responded to the current needs of the
world of work. The technical work undertaken by the Committee of Experts, part of which
was reflected in the report before the Conference Committee, was an invaluable and crucial
part of the system. The standards review mechanism, which they expected would become
operational without further delay so that it could examine at all times whether the body of
standards was up to date, was another crucial piece of the puzzle.

60. The Employer member of Germany stated that the position of the Employer members on
the right to strike was very clear and did not need to be repeated. She wished to clarify that
the agreement on how to deal with the conclusions of Convention No. 87 cases containing
a right to strike that had been reached last year was not limited in time.

Statements by the Worker members

61. The Worker members recalled the consensus concerning the need to have relevant and
sustainable supervisory machinery for the application of international labour standards.
However, given that the Employer members did not envisage the status quo in this respect,
it was vital to act in a constructive way to ensure that the work of the Committee on the
Application of Standards retained all its impact.

62. A number of prospects had appeared feasible after the consultations carried out by the ILO
Director-General and in the context of the March 2014 Governing Body. Without wishing
to gloss over the differences, there was a broad consensus on the need to take rapid action to maintain a strong supervisory body, which had authority and was supported by all the parties.

63. In the light of the above, the Committee on the Application of Standards should operate efficiently and in accordance with its mandate this year. In the medium term, discussions should be initiated, within its working group, on the ways to improve the Committee’s working methods. With respect to the divergence of views on the application or interpretation of international labour standards, an examination of the options available under article 37 of the ILO Constitution should be initiated by the Governing Body at its November 2014 session.

64. The Worker members considered that the matter of the mandate of the Committee had been settled by the Committee itself in its two last reports. The Committee was a body – unique within the United Nations system – made up of eminent jurists with proven expertise, appointed in a tripartite manner by the Governing Body. Its role was to make a technical and impartial evaluation of the implementation in law and in practice of ratified Conventions, while taking account of the various national realities and different legal systems. This acknowledged work allowed the Committee of Experts to guide the action of the national authorities, both the legislative and the judicial action.

65. The Worker members noted that the Employer members not only called into question the work of the Committee of Experts, as it had evolved over the years, but also – and for the first time – that of the Committee on Freedom of Association, a tripartite body, which, by its very composition, represented the Organization’s constituents.

66. Furthermore, the Worker members pointed out that the conclusions adopted by this Committee pursuant to the discussions on the individual cases would be undermined and no longer have any relevance if they were no longer to be adopted by consensus and unanimously, as suggested by the Employer members.

67. Regarding the report of the Committee of Experts, it was regrettable to note that the Committee seemed to be limiting itself in its dialogue with governments. There had been an increase in the number of direct requests, which were far less visible and accessible than the observations. In the case of certain Conventions, the observations were very short. Any attempt to reduce the volume of the report of the Committee of Experts should not be made at the expense of the substance of its comments. This cut in the length of comments contradicted what the experts considered to be the core of their mandate, i.e. their supervisory and advisory functions. Similarly, deferring certain cases to the following report cycle would be liable to undermine the implementation of instruments and create a sense of impunity among governments. The considerable number of comments that received no reply from the governments would only continue to increase if the experts continued on this path of self-censorship.

68. More specifically, the Worker members regretted that the comments of the Committee of Experts concerning the Conventions on maternity protection lacked substance. Discrimination against women on grounds linked to maternity was nonetheless widespread, even when national legislation existed in that area.

69. Furthermore, forthcoming discussions on working methods should allow for a better determination of the nature of a case of progress because a certain number of cases recorded as such in the report of the Committee of Experts had been somewhat surprising.

70. Finally, the Worker members were pleased by the fact that the Committee of Experts had highlighted the follow-up to the conclusions of the Committee on the Application of
Standards. This made it possible to evaluate clearly and rapidly the impact of the Committee’s work.

71. In conclusion, the Worker members stated that they were particularly concerned by the statements of the Employer members.

72. The Worker member of Brazil expressed his concern about the promotion of collective bargaining in Brazil. Convention No. 154 had been ratified by Brazil in 1992, and Article 5(2)(d) and (e) of the Convention stipulated that collective bargaining should not be hampered by the absence or inappropriateness of rules governing the procedure to be used, and that bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining. Although indisputable advances had been made in institutional democratization and the application of international labour standards since the end of the civil–military dictatorship and the adoption of the Federal Constitution in 1988, many mechanisms of state interference in collective bargaining remained in force as a legacy of the period of dictatorship. Those mechanisms discouraged collective bargaining and included the following: (1) provisions of collective labour agreements which established by consensus workers’ financial contributions were constantly overturned by the Labour Prosecution Service, whose rulings were invariably upheld by the labour courts, without being based on any clear criterion of legal reasonableness. These actions made political survival impossible for dozens of workers’ organizations and were a real threat to freedom of association; (2) the use of strike-breakers was not systematically opposed by the Labour Prosecution Service or the labour courts, which operated on the principle of expediency and decided on a case-by-case basis whether an administrative or judicial order was required to prevent that practice; (3) the labour courts, in turn, granted injunctions to prevent picketing – an additional right to the right of action contained in freedom of association –, which in practice made it impossible to exercise the right to strike in various categories; (4) the Brazilian law governing strikes recognized several activities as essential which were not recognized as such by the ILO supervisory bodies; and (5) the final issue was protection of the stability of workers’ representatives through decisions of the Higher Labour Court. In conclusion, the speaker requested the Office to suggest to the Government that a tripartite commission be sent to address the legislative changes that would ensure the effectiveness of Convention No. 154 in Brazil.

73. The Worker member of the Netherlands, speaking on behalf of Worker members of the Nordic countries and Belgium agreed to the statement made earlier by the Employer members highlighting the increased relevance of international labour standards in today’s world of globalization. The ILO Conventions, including Conventions Nos 87 and 98, were crucial for the creation of fair globalization based on common standards, to be respected by all. She recalled the statement of the President of the Dutch employers’ organization that one does not compete on fundamental standards. The Employer members had correctly noted that ILO Conventions were included in national legislation, instruments of regional organizations as well as in codes of conduct of multinational enterprises and international standards for business and human rights, such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development and the UN Guiding Principles on Business and Human Rights. Trade unions in the Netherlands, Belgium and the Nordic countries negotiated in good faith with employers’ organizations and multinational companies about the implementation of these Guidelines. It was hard to believe that the Employer members were committed to the ILO and its supervisory mechanism when they saw no role for these in the protection of the right to strike. This was particularly harmful in countries which did not or insufficiently protected the fundamental rights of workers, and where the responsibility of the Committee was the greatest. Workers took huge risks in these countries by standing up and defending these fundamental rights by going on strike. The Employer members lost their credibility when
taking away the protection from these workers by removing the fundamental right to strike from international protection by the ILO supervisory mechanism.

74. The Worker member of Uruguay indicated that he intended to speak on behalf of the most vulnerable workers who did not have freedom of speech, and stressed that freedom of association was based on three main components, namely the right to organize, the right to engage in collective bargaining and the right of trade unions to draw up their constitutions and formulate their programmes. With regard to the argument that ILO standards did not expressly refer to the right to strike, he highlighted the fact that they did not include the right to private property of companies either. The answer was to be found in dialogue. Tripartism was not an end in itself but was an instrument to achieve better living conditions for all. In that regard, the ILO provided conditions that were conducive to fighting for fundamental rights, which included the right to strike.

75. The Worker member of France considered certain statements made by the Employer members shocking and regretted that the Committee and the most fundamental workers’ rights were once again taken hostage even as discussions were ongoing before the competent body, namely the Governing Body. The right to strike, in France as in many countries, was a right recognized by the Constitution. France was a country of social dialogue but also of relations of power, and extensive strikes had sometimes been necessary to secure recognition of important acquired rights. ILO standards served as a rampart against social Darwinism “where man became a wolf to his fellow men”. Rights must prevail over economic freedoms and maintaining the contrary diverted from the objectives of social justice, democracy and peace which characterized the ILO, and in which the system of supervising the application of standards and the mandate of the experts played a fundamental role. She concluded by underscoring the importance of adopting the Committee’s decisions consensually in order to guide governments as best as possible on the application of the ILO Conventions.

**Statements by Government members**

76. The Government member of France was pleased that agreement had been reached again this year on the list of 25 cases to be examined by the Committee. She trusted that the Committee would work calmly and reach its decisions by consensus, which was one of the ILO’s strong points. Her Government supported the ILO’s standard-setting system, which was at the very heart of the Organization, and the system had to be both effective and credible and include proper supervisory machinery. France was in favour of the establishment of machinery that conformed to the spirit of article 37(2) of the ILO Constitution and her Government would continue to advocate that a solution along those lines be reached on a tripartite basis at the forthcoming Governing Body meeting in November 2014.

77. The Government member of Uruguay, referring to the statement by the Employer members, indicated that his country fully supported the supervisory system. Although a case concerning Uruguay had been examined in the past, reporting to the Committee on the Application of Standards should be no cause for anxiety or concern. Uruguay applied and enforced the principles of freedom of association, collective bargaining and the right to strike. Of course it was possible that some laws might not be in full conformity with ILO standards, but a solution could always be found and the Government had never balked at the cost entailed. It had passed laws that guaranteed the right to bargain collectively in every sector of the economy and submitted a bill to Parliament in which every party would have its say.

78. The Government member of Sudan highlighted the considerable efforts made by her Government to apply international labour standards, which were based on the conviction
that dialogue, coordination and monitoring involving government, employers and workers,
were the only way to realize progress. The ultimate objective for the social partners was to
achieve justice, safeguard rights and achieve equality. Her Government requested ILO
technical assistance with a view to ratifying Convention No. 87. The ILO technical
assistance received to enhance the capacity of labour inspectors had been greatly
appreciated and technical assistance in the area of occupational safety and health would be
equally useful. Highlighting the re-establishment of the National Advisory Committee on
Labour Standards in November 2013, which included the Ministry of Labour and the
social partners in equal numbers as well as relevant ministries and bodies, her Government
invited the Office to participate in the deliberations of this Committee which would be
inaugurated in August 2014.

79. The Government member of Belgium, also speaking on behalf of the Government member
of Germany, expressed his deep concern in the wake of certain views conveyed earlier on.
It was important to respect the decision taken at the previous session of the Governing
Body in March 2014, to reaffirm confidence in the mandate of the Committee of Experts
and the standards supervisory system, to ensure that the Committee’s work was not
jeopardized and that the unanimity principle was not called into question. The complex
issues facing the world as a whole could not be resolved without social dialogue and it was
essential that this principle, which was a defining feature of the ILO, was fully observed by
its constituents, as indicated in the wise words of the President of the Conference.

Reply of the Chairperson of the Committee of Experts

80. The Chairperson of the Committee of Experts recalled that his statement at the opening
sitting of this Committee centred on the importance of the relationship between the
Committee of Experts and the Conference Committee. These two pillars in the ILO
supervisory system were bound by a relationship of mutual respect, cooperation and
responsibility. Through the work of the two Committees, the ILO guided member States to
apply or give effect to Conventions. The combination of this joint work would enable the
ILO to assess accurately the needs of its members and to respond effectively to them. He
considered that his primary duty was to ensure that the Committee of Experts continued to
fully take into consideration the views expressed by the Conference Committee. In
addition to the report of the Conference Committee, which would be communicated to
each member of the Committee of Experts, he would make an oral report to the Committee
during its opening session. The subcommittee on working methods of the Committee of
Experts would certainly give due consideration to the issues raised during this discussion.

81. With respect to the comments made by the Employer members on the appropriate
placement in the report of the Committee of Experts of the statement on its mandate, which
currently appeared in paragraph 31 of the report, the Committee of Experts would certainly
take this comment into account through its subcommittee on working methods.

82. Concerning the comments made by the Employer members during the general discussion
that the Committee of Experts should avoid criticizing general policies of a State, such as
austerity measures or fiscal consolidation policies, he indicated that in accordance with the
mandate of the Committee of Experts set out in paragraph 31 of its General Report, the
Committee of Experts would examine general policies of a State in the economic, fiscal or
other areas only where the Convention itself expressly required member States to declare
and pursue such general policies in a coordinated manner. This was the case under
Article 3(b) of Convention No. 131 which provided that in determining the level of
minimum wages, the following should be taken into consideration: “economic factors,
including the requirements of economic development, levels of productivity and the
desirability of attaining and maintaining a high level of employment”.
83. As regards the comments made by the Worker members on the observations made by the Committee of Experts on the Application of Conventions and Recommendations relating to maternity protection, he indicated that 12 countries whose reports had been due in 2013 had not been received.

84. Turning to the comments by the Employers members that in certain specific cases, comments submitted by employers’ organizations had not been reflected in the report of the Committee of Experts, he referred to paragraphs 95–99 of the General Report concerning the treatment of comments received from employers’ and workers’ organizations in a non-reporting year. The Office was also available to reply to any requests for information concerning the specific comments referred to by the Employer members.

85. With respect to the comments made by the Worker and the Employer members on the criteria used by the Committee of Experts to identify cases of progress, this was a matter which the Committee had regularly examined. In paragraph 72 of its General Report, the Committee of Experts clarified its approach when expressing its satisfaction or interest, in particular: it may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters which, in its view, had not been addressed in a satisfactory manner; in addition, an indication of progress was limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.

86. In conclusion, he assured that he would report the outcome of this meeting of the Conference Committee back to the members of the Committee of Experts for their due consideration.

The reply of the representative of the Secretary-General

87. The representative of the Secretary-General stated that the secretariat would carefully review the issues which had been raised by the Conference Committee and would take the necessary follow-up action where appropriate.

88. Turning to the SPA, such technical assistance was guided by the comments of both the Committee of Experts and the Conference Committee and took into consideration the suggestions made by both Committees concerning priorities in member States. To date, that assistance had targeted 43 countries, which included 24 countries in Africa, seven countries in Asia, three countries in Europe and Central Asia, seven countries in Latin America and the Caribbean, and two countries in the Arab States. The Committee of Experts had welcomed the Programme’s results of the previous year, which were provided in the information document, and both Committees had expressed the hope that the Programme could be expanded and adequately resourced to benefit all member States needing such assistance. During discussions which had taken place since the beginning of the work of the Committee, the Office had taken note of eight additional requests for technical assistance made by member States, namely Afghanistan, Angola, Cambodia, Malaysia, Mauritania, Mozambique, Russian Federation and Sudan. The Programme had been approved by the Governing Body, at its 310th Session (March 2011), for the 2012–13 biennium to provide additional resources with a view to improving the application of international labour standards. With the support of the tripartite constituents, it was hoped that the assistance would continue beyond 2014, particularly as it had significantly impacted the capacity of member States to give effect to international labour standards.

89. With respect to the comments made by the Employer members concerning the submission of the report of the Committee of Experts to the Governing Body, that was a long-standing
matters which was to be decided by the Governing Body. In the early years of the Committee of Experts, the Governing Body had regularly discussed the modalities of its consideration of the report of the Committee of Experts, but it soon had to acknowledge that there was not sufficient time to examine it in detail before its communication to the Conference. Consequently, the Governing Body authorized the Director-General to transmit the report simultaneously to the Conference, without first discussing it. Following the 1946 constitutional amendments, and the corresponding extension of the mandates of both the Committee of Experts and the Conference Committee, those arrangements were considered to have become “standard procedure”, although the right of the Governing Body to discuss the actual contents of the report of the Committee of Experts was reaffirmed. From the mid-1950s to the present, the Governing Body had confined itself to taking note of the report and thus not commenting on it.

90. The representative of the Secretary-General then addressed the historical relationship between the Committee on Freedom of Association (CFA) and the Committee of Experts. In 1953, following the creation of the CFA, the Governing Body noted in its minutes that the “ILO Director-General considered that it would be inappropriate to express an opinion on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), owing to the existence of a special procedure laid down by the Governing Body for dealing with complaints concerning alleged infringements of freedom of association”. That created a long tradition of respect and coherence between the independent body responsible for examining the application of Conventions and Recommendations and the tripartite CFA. The decisions of both Committees, which often cross-referenced one another, reaffirmed that mutual recognition. In addition, the CFA would specifically refer the legislative aspects of certain cases to the Committee of Experts. The Committee of Experts also referred, where appropriate, to the conclusions and recommendations of the CFA concerning country cases. Consequently, when this Committee considered individual cases, it took into account the views of both the Committee of Experts as well as the Committee on Freedom of Association where reflected in the Committee of Experts’ report. To illustrate the dynamic interaction that had taken place between the independent and tripartite perspectives of the ILO supervisory machinery, the representative of the Secretary-General made reference to a case in which the Employer members had noted that: “The conclusions reached on the case by the CFA contained a point concerning the issue of strike pay which had not been taken up in the comments of the Committee of Experts, even though the latter had referred to the conclusions of the CFA in their totality. Considering the reason for such an omission, the Employer members in the Committee on the Application of Standards believed that it might have been due to a more formal reason, since the right to strike had always been examined under Convention No. 87, which was not, however, the Convention under examination by the CEACR last year.” As the issue had, however, been referred to in another case, the Employer members stated that this omission of an issue raised by the CFA “constituted an act of arbitrary judgement by the Committee of Experts and the Employer members could not accept such a procedure”.

91. Finally, the speaker announced that the next meeting of the Tripartite Working Group on the Working Methods of the Conference Committee, which would be held during the next session of the Governing Body, could take place on Saturday, 1 November 2014, so as to ensure proper coordination with the work of the Working Party on the Functioning of the Governing Body and the Conference. The composition of the meeting needed to be agreed upon; during the last meeting, the composition was as follows: nine Employer representatives, nine Worker representatives and nine Government representatives, including two from Africa, two from the Americas, two from Asia-Pacific, two from Europe and one from the Arab States.
C. Reports requested under article 19 of the Constitution

General Survey concerning minimum wage systems

92. The Committee devoted part of its general discussion to the examination of the third General Survey carried out by the Committee of Experts on minimum wages, which covered the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970. In accordance with the usual practice, the General Survey took into account the information provided by 129 member States under article 19 of the ILO Constitution, as well as the information provided by member States which had ratified the Convention in their reports under articles 22 and 35 of the Constitution. The comments received from 95 employers’ and workers’ organizations to which government reports had been communicated, in accordance with article 23, paragraph 2, of the Constitution, were also reflected in the General Survey.

General remarks on the General Survey and its articulation with the 2015 recurrent discussion on social protection (labour protection)

93. Several members of the Committee welcomed the General Survey prepared by the Committee of Experts, emphasizing in particular the relevance of its subject, minimum wage systems, which were of great importance in the world of work.

94. The Government member of Morocco, however, considered that the General Survey should also have covered the Conventions on the protection of wages and the protection of workers’ claims in the event of the insolvency of the employer, in view of the complementarity of those instruments.

95. The Employer members observed that the high number of reports sent by constituents for the preparation of the General Survey reflected the significant interest in the subject of minimum wages. The General Survey was a useful reference point, but had two limitations. In the first place, it showed significant divergences between countries with regard to wage policy and minimum wage systems. That supported the overriding message of employers that one size did not fit all. The divergence of approaches between countries in the establishment of minimum wage systems was not simply a product of whether or not they had ratified Convention No. 131. Secondly, the General Survey did not clearly identify the points on which it dealt with objectively verifiable facts about national law and practice, and those where it dealt with contested opinions or subjective narrative. Some contentious matters were expressed as fact, or as having general application, when they only arose from a specific national circumstance, or the interpretation of the national context by the government or one of the social partners. As the General Survey was by nature limited, as Convention No. 131 served as its reference point, broader areas of wage policy would need to be covered in the discussion, including: the financial capacity of enterprises, enterprise productivity, the trade-off between minimum wages and unemployment, the question of equity in the income levels of employers in small and medium-sized enterprises, as well as the self-employed, and the agility of wage systems to deal with short-term economic change.

96. The Worker members emphasized that the subject covered by the General Survey was topical, as the current tendency was to consider wages as merely an economic variable, and no longer as an element related to decent work and employment protection. For the first time since the implementation of the follow-up to the 2008 Social Justice Declaration an
interval of one year had been introduced between the discussion of the General Survey and the recurrent discussion on the corresponding strategic objective. That interval should allow to better reflect on the operational aspects of the conclusions in the Committee.

97. The Government member of Greece, speaking on behalf of the European Union and its Member States, recalled that it was the third time that a General Survey had covered the minimum wage fixing instruments. For the first time, it addressed the issue in the light of the 2008 Social Justice Declaration, which established a framework on the basis of which the ILO could support the efforts of its member States to promote the four strategic objectives of the Organization (employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work) through the Decent Work Agenda. She welcomed the fact that the discussion of the General Survey would serve to prepare the recurrent discussion in 2015 on social protection (labour protection). The information contained in the General Survey on national law and practice in countries which had and had not ratified the Convention were very useful and would ensure an informed and up-to-date debate. The aim of the discussion should be to provide strategic and action-oriented governance advice to the Office on the action that the Committee considered to be necessary.

98. The Government member of Belgium supported the statement made on behalf of the European Union. He stated that the General Survey would contribute to the recurrent discussion in 2015 on social protection (labour protection), but that there was also a link between minimum wage systems, which contributed to poverty reduction, and the transition from the informal to the formal economy.

99. The Worker member of Uruguay also emphasized the links between the discussion in the present Committee, which was intended to combat inequality and make the world more just, and the debates held in parallel in other Conference committees.

100. The Government member of the Islamic Republic of Iran said that the General Survey, which described different types of minimum wage systems, served as a reference and a source of information for States wishing to apply the principles of Convention No. 131 or to ratify it. In general terms, General Surveys were useful in providing guidance to national authorities for the preparation of a conducive environment for the application of ILO Conventions.

Importance and impact of minimum wage policies

101. The Employer members emphasized that the subject of minimum wages did not give rise to fundamental differences of views. They nevertheless made a number of remarks concerning the issues covered by the General Survey. For example, although poverty reduction and wage equality were objectives attributed to minimum wages, they could not be their sole objectives. It was necessary to preserve the capacity of enterprises to create jobs, as no one could benefit from a minimum wage who did not have a job. It would also have been interesting to have been provided with information on the alternative approaches adopted in certain countries.

102. The Worker members, recalled that, when they affirmed that labour was not a commodity, the ILO had not only affirmed a humanist value, it had given expression to a fundamental economic reality. In contrast with commodities, for which a price could be established that balanced supply and demand, there was no equilibrium price enabling all those offering their services to find an employer willing to give them employment. For the great majority of workers, work was not one commodity among others: it was the means of meeting their needs and those of their families. The response to those who claimed that a minimum wage system had a negative impact on employment was that the absence of a minimum wage did
not prevent those workers who were best placed on the employment market from seizing the available jobs. Certain countries used the setting of a minimum wage as an instrument to combat poverty, inequality and social dumping in the context of globalization. By promoting domestic consumption, the guarantee of a minimum wage could create a virtuous economic circle. It gave workers the assurance that it was possible to go beyond that wage, and provided them with motivation to engage in training and to show commitment to the performance of their enterprise. It was an instrument of progress oriented towards economic growth, and not levelling down. The principle of a minimum wage was linked to other ILO values, such as combating child labour, which was directly related to the insufficiency of their parents’ income. Working and earning a wage for the work performed must enable workers to escape poverty. Unfortunately, this view did not appear to be shared by the International Organisation of Employers (IOE), which called for a minimum income guaranteed by social security or tax policy to make up for low wages. The 2015 recurrent discussion would cover the decisive issue of wages versus income, a fair remuneration from work versus social security. The issue of a decent wage was clearly a matter for the ILO and did not solely lie within the competence of member States.

103. The Government member of Greece, speaking on behalf of the European Union and its Member States, said that minimum wages existed in all the Member States of the European Union, even if they were established in very different ways, such as by legislation or collective bargaining, and they did not cover all those who were employed in all Member States. In general, minimum wages aimed to establish a minimum rate under which any employment relationship was considered unacceptable. Wage and tax policies should allow all earnings and social benefits to interact in a way that lifted people out of poverty and made work pay. The conclusions of the General Survey showed that the principles of minimum wage fixing were also applied in countries which had not ratified Convention No. 131.

104. The Government member of Belgium emphasized the low number of ratifications of Convention No. 131 in comparison with other ILO Conventions. However, the question of low wages arose throughout the world, which was partly due to the current crisis, the growth of inequality and the existence of a world in which many workers were seeing their jobs destroyed, their wages frozen or reduced, or worked for long hours for wages that did not enable them to live in decent conditions. It was also necessary to encourage international initiatives intended to ensure minimum wages throughout the production chain. The debate concerning minimum wage systems had not changed. Opponents of minimum wages considered that they resulted in the loss of many jobs and the delocalization of enterprises, and that they discouraged employers from taking on low-skilled workers, on the grounds that their productivity was lower than their remuneration. In contrast, advocates of minimum wages emphasized their importance for the dignity of workers, their purchasing power and increased consumption. Economists also disagreed on the impact, whether positive or negative, of minimum wages on employment. He considered that challenging minimum wages would only lead to an unbearable rise in poverty for workers, and recalled that wage disparities had increased enormously over the past few decades. The negative employment effects could be avoided, provided that the minimum wage was set at an appropriate level, and the crucial question was therefore the determination of the “ideal” level of minimum wages. Labour market competitiveness was another important element to be taken into account. Agreement between the social partners on this subject, or their consultation, was in principle the best guarantee of this balance. Minimum wages should not however be seen in isolation, nor as the only “anti-crisis” measure. No one should receive the minimum wage for the whole of their career and countries needed to help their population gain access to better jobs. The unions also had an important role to play in the promotion of education, the strengthening of skills and the development of new sectors.
105. The Worker member of Colombia said that in most countries minimum wages were survival wages, adding that it was untrue to claim that wage rises resulted in increased unemployment and inflation. Without Convention No. 131, one would live in a world characterized by social Darwinism in which might was right. Humanity produced great wealth, but most human beings lived in poverty. It was therefore necessary to discuss living minimum wages, which were well above statutory minimum rates so as to create a more just society. The links that existed between minimum wages and other elements, such as pensions, first job policies and apprenticeship contracts, also needed to be taken into account.

106. The Worker member of Chile expressed the view that minimum wages needed to be considered primarily as an instrument of public and social policies. It was unacceptable for wage earners to have to live under the poverty line. Work should allow workers to live with dignity. Advocates of the neo-classical model held that minimum wages were likely to have negative effects on employment. However, recent studies had concluded that the effects of minimum wages on employment were imperceptible, or even positive. It was necessary to stop affirming that wage flexibility would result in full employment. That hypothesis had led to a situation characterized by the greatest income inequalities in history. A development strategy based on an increase in minimum wages resulted in an improvement in enterprise productivity. Minimum wages needed to enable workers and their families to climb out of poverty. They should be universal and determined with the participation of the tripartite partners. Non-compliance with minimum wages should give rise to penalties. Finally, minimum wages needed to be considered as a component of a stable labour market and of economic development.

107. The Government member of the Russian Federation said that the existence of transparent machinery for the determination of minimum wages contributed to compliance with labour rights and the development of industrial relations. They were also an effective means of ensuring that the measures taken to overcome economic crises did not have the effect of reducing the incomes of workers. The exclusion of agricultural workers and domestic workers from minimum wage systems in a large number of industrialized countries was intolerable and needed to be corrected.

108. The Employer member of Costa Rica challenged the claim by the International Trade Union Confederation (ITUC), as reported in the General Survey, that there was no correlation between the minimum wage and economic factors, such as the employment level. That issue was important at a time when the Conference was addressing the question of the transition from the informal to the formal economy.

The role of minimum wages in a context of economic or social crisis

109. The Employer members observed that in Chapter VIII of the General Survey the Committee of Experts had sought to provide evidence for the relevance of minimum wage setting in a crisis context. The Committee of Experts had provided information on the manner in which member States, particularly in Europe, had used minimum wages in the context of the economic crisis. It had also referred to the views of international and European institutions which had been critical of so-called austerity policies, and concluded by emphasizing the positive role which, according to governments, minimum wages had played in the crisis. In the view of the Employer members, wage policy, including minimum wages, had indeed been one component among others in the crisis management of many countries. However, the presentation given by the Committee of Experts could give the false impression that they had been a central element. Minimum wages were a social policy instrument that needed to be open to adaptation in the same way as other areas of national policy. The Global Jobs Pact of 2009 referred to minimum wages, and to
Convention No. 131, as one element among others to be taken into consideration. It referred to many other elements, such as sustainable enterprises. The General Survey should also have referred to the Oslo Declaration, entitled “Restoring confidence in jobs and growth”, adopted at the conclusion of the Ninth European Regional Meeting held in 2013, which was the most recent ILO instrument on crisis management. The Oslo Declaration referred to concepts such as job creation, competitiveness and enterprise sustainability, but did not contain any reference to wages or minimum wages.

110. The Committee of Experts also appeared to suggest that raising minimum wages would generally be the appropriate response in the crisis to prevent a downward trend in labour conditions. In particular, it had indicated that the adoption of counter-cyclical measures had supported private consumption and facilitated Brazil’s emergence from the crisis. The Employer members considered that the Committee of Experts needed to be careful in establishing causal relationships regarding economic matters. There was no proof that it was specifically the increase in the minimum wage that had facilitated Brazil’s emergence from the crisis. Moreover, the examples contained in the chapter showed that quite a number of countries had felt the need to freeze minimum wages, or even to lower them temporarily. There was no one-size-fits-all model of how to deal with minimum wages during a crisis. The recent crisis had shown that the countries that were better prepared for crisis situations, for example by keeping wage levels, including minimum wages, at reasonable levels in line with developments in productivity and enterprise competitiveness, had been in a better position to recover from the crisis.

111. The Worker members emphasized that the reference point for crisis response remained the Global Jobs Pact, which was universal in scope. Regional initiatives, such as the 2013 Oslo Declaration, were relevant to supplement the Global Jobs Pact, but were not intended to replace it.

112. The Government member of Brazil expressed agreement with the idea, set out in paragraph 329 of the General Survey, that “[i]n view of the international nature of the crisis, a generalized reduction in wages aimed at maintaining enterprise competitiveness is likely to have negative impacts on global demand, and on the contrary it would appear to be preferable to maintain the purchasing power of wage earners”. The World of Work Report 2014 was also very relevant in that respect. She also confirmed the indications in the General Survey concerning the measures taken by the Government of Brazil during the debt crisis in 1982 and then at the time of the international economic and financial crisis of 2008.

**Definition of minimum wages**

113. The Employer members recalled that Convention No. 131 did not contain a definition of the concept of minimum wages and that country practice varied in that regard and they observed that the General Survey established a link that could be criticized between the concepts of minimum wages and the living wage, which was much broader. Wages were only part of the income of workers, which also included government allowances and social benefits. The concepts of a living wage and a fair wage were not well understood and their definitions varied. Moreover, the underlying idea of a living wage, according to which wages should ensure workers an income that met their economic and social needs and those of their families, would imply that social assistance measures were no longer necessary. But the advocates of a living wage were not proposing the abolition of such measures. It would appear to be more of a strategy aimed at an increase in minimum wages based on a theory of income- and demand-led growth. However, that theory was open to criticism and, in any case, such issues should not be covered in a report on national law and practice.
114. The Employer member of Mexico, recalling that, within the framework of Convention No. 131, a broad range of mechanisms could be used to determine minimum wages, emphasized the need to ensure that the conclusions of the General Survey did not go beyond the provisions of the Convention. He added that it would be better to keep to minimum wages, and to leave aside such concepts as the living wage or a fair wage.

115. The Employer member of Costa Rica indicated that, as noted in the General Survey, the Convention did not contain a definition of the concept of minimum wages. The definition was left to national legislation, which determined their technical parameters and the criteria for their determination. Minimum wages contributed to setting the rules of the game and provided a basis from which the parties could engage in negotiations. It should be distinguished from the living wage and from the average wage.

The fundamental principles of Convention No. 131 and Recommendation No. 135 and the flexibility of these instruments

116. The Employer members recalled, with regard to the scope of application of Convention No. 131, that the Convention called for the establishment of minimum wage systems which covered “all groups of wage earners whose terms of employment are such that coverage would be appropriate”. It was not therefore necessary to cover all wage earners, or even the majority of wage earners in all cases. Even for the most vulnerable categories of workers, a minimum wage system, if badly designed, could impair their access to the labour market. The General Survey also emphasized that countries were free to adopt the minimum wage fixing machinery of their choice, provided that it was in compliance with the requirements of the Convention. It was however very important that States complied with their other obligations, including those relating to collective bargaining. Collective agreements offered a better basis for the determination of minimum wages than decisions imposed by governments, as they were reached by the parties concerned. Minimum wage systems should not be based on arbitrary political decisions unrelated to the world of work.

117. The Employer members added that Convention No. 131 did not require the establishment of a national minimum wage and that the determination of different minimum wages by region, sector, occupational category or on the basis of other criteria was in principle permitted, on condition that the other requirements of the Convention were met. In particular, minimum wages could not be determined in a discriminatory manner. However, it was important not to confuse cases of discrimination with situations in which different minimum wages were established on the basis of objectively verifiable criteria. Such situations existed in many countries, where minimum wages were differentiated, for example, on the basis of the nature of the job and productivity. That was also the case where different minimum wages were established for young workers or apprentices, which was not a minor matter when it was considered that countries such as India would see 120 million young workers enter the labour market over the next ten years. The temporary introduction of different minimum wages might also be necessary in countries where a minimum wage system was being introduced for the first time.

118. The General Survey correctly emphasized that the consultations required by Convention No. 131 should be real and not a mere formality, should not be limited to the most representative organizations, did not imply the requirement to establish a wage-fixing body and should ensure that all views were taken into account equally. There was no single approach to be adopted in that field and the process of consultation should be responsive, and not rigid. It should be capable of responding to differing circumstances, such as crisis periods. The Convention promoted a framework for information sharing and discussion leading to governments making informed decisions. That did not preclude the
establishment of negotiated mechanisms for the determination of minimum wages, but did not require them either.

119. Convention No. 131 enumerated a wide range of criteria to be taken into consideration in setting minimum wages, and there was no single approach to be followed in that respect. In addition to the economic and social factors mentioned in the General Survey, such as the needs of workers and their families, the cost of living, inflation and productivity, other factors, such as the financial capacity of enterprises and the need to attract investment also needed to be taken into consideration. The Employer members criticized the position taken by the Committee of Experts in considering that minimum wages could be established beyond the financial capacity of enterprises. That would imply the adoption of special support measures, which would have consequences on social security and taxation. The General Survey should be confined to observations on country practice, and should avoid encouraging particular practices.

120. The Employer members considered that, without enforcement measures, minimum wages would be meaningless. However, such measures needed to be adaptable to changing circumstances, such as periods of financial crisis. The General Survey emphasized the need for effective penalties to underpin the enforcement of minimum wages, although Convention No. 131 did not require penalties as such. Non-penal responses could also be adopted to issues of non-compliance. Countries should be encouraged to develop a broad range of means to encourage compliance with the relevant provisions, rather than simply focusing on penalty regimes, which might incentivize the development of informality.

121. The Worker members observed that the principle that a minimum wage should apply to all workers was related to the definition of the employment relationship, and therefore to informal work, disguised employment relationships and atypical forms of employment. Difficulties arose in relation to restrictions on the scope of minimum wage systems and the principle of equal remuneration for work of equal value. That raised other fundamental questions, including: the needs that should be covered by net wages and the means by which such needs were to be determined; the hours of work to which the minimum wage should correspond and, if it was considered to cover a full-time job, the manner in which the needs were covered of workers who were not able to work full time, or could not work at all, for example due to disability; the arrangements for the payment of the minimum wage, exclusively in cash, or totally or partially in the form of benefits in kind; the alternative between a minimum wage fully covered by the employer, or a system based on some form of sharing; and the age from which the minimum wage had to be guaranteed. The latter issue was fundamental for the employment of young persons in view of the many abuses that had been observed. The Worker members were firmly opposed to the very principle of a “youth wage” related to the age of the worker without any other objective justification. Moreover, recourse to practices such as apprenticeship and training contracts were likely to result in abuses and led to the exploitation of young workers. Employers needed to ensure that apprenticeship contracts were focused on training, and not used to obtain low-paid labour.

122. Convention No. 131 required measures to be taken for the full consultation of employers’ and workers’ organizations, not only concerning the coverage of minimum wage systems, but also at all stages of the establishment and operation of such systems. Many comments had been made concerning the difficulties encountered in complying with this requirement. The choice of criteria for determining and adjusting minimum wages was also a difficult matter. The Convention called for account to be jointly taken of both the needs of workers and their families and of economic factors, and the General Survey showed that this principle was not always given effect. The question of the intervals between adjustments of minimum wages also gave rise to difficulties, and it was particularly important to ensure that their level remained adapted to the economic and social situation of the country.
123. The Committee of Experts emphasized that neither Convention No. 131 nor Recommendation No. 135 required member States to establish a national minimum wage or, in contrast, a system based on sectoral minimum wages. It was for the tripartite constituents to determine the system that was best adapted to the national context. For example, they could take into account differences in productivity between sectors, or any differences in the cost of living between urban and rural areas, as well as objectives such as the reduction of inequality, poverty reduction and the need to ensure fair competition. The Worker members endorsed the comment made by the Committee of Experts that “whatever system is chosen at the national level, it needs to ensure respect for the principle of equal remuneration for work of equal value”, including with regard to young and trainee workers, migrant workers and persons with disabilities. They also supported the call made by the Committee of Experts for any national practice to be abolished that was likely to reintroduce a different minimum wage for men and women workers. The crisis and austerity were sometimes invoked as a pretext to overlook the fundamental obligation of equality between men and women. The objective evaluation of jobs was necessary to prevent the introduction or reintroduction of discrimination that was hidden to a greater or a lesser extent.

124. All of that was inconceivable without effective social dialogue, as provided for by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Compliance with the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), was also essential. As emphasized by the Committee of Experts, the close involvement of employers’ and workers’ organizations, at all stages of the process of determining minimum wages, was essential for the effective operation of the process. However, social dialogue was endangered in many countries. Guarantees of the existence of open and constructive dialogue conducted in good faith were therefore a key element in the application of Convention No. 131. That was all the more essential as, behind the question of the setting of minimum wages by the social partners, there remained the issue of the coverage of collective bargaining, as well as that of freedom of association. Recent events in Cambodia, Bangladesh and the Philippines in the context of action to claim a decent wage illustrated the close links between those Conventions.

125. Finally, if minimum wages were to be legally binding, it was necessary for there to be a clear legal framework which prohibited the avoidance of minimum wages through practices such as unpaid trial periods and on-call work. An effective system of inspection and penalties was also necessary. That presupposed the existence of sufficient numbers of trained labour inspectors provided with the material means and powers necessary to be able to discharge their duties. Effective procedures for the enforcement of penalties in cases of violation were also necessary. In addition, workers required access to rapid procedures for the recovery of amounts that were due and protection from the risk of victimization for asserting their rights.

126. The Employer member of Mexico indicated that the only criteria that needed to be taken into account for the determination of minimum wage levels were those indicated in Article 3 of the Convention, namely, where appropriate in the national situation, the needs of workers and their families and economic factors, including productivity. If the economic situation of the country was not taken into account, that would give rise to an inflationary situation, resulting in serious economic problems and a reduction in the purchasing power of workers. He also emphasized that consultations needed to be held with the most representative organizations of employers and workers, as provided for in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).
\textit{National practices}

127. The Government member of Germany explained that a statutory minimum wage, applicable to all economic sectors, would be introduced in Germany on 1 January 2015 and that the social partners had significantly participated in the process. The only workers excluded from coverage by the minimum wage would be young persons under 18 years of age and the long-term unemployed. As from 2018, a minimum wage commission, including representatives of employers and workers in equal numbers would re-examine the minimum wage with a view to proposing adjustments. The federal Government was convinced that the introduction of a minimum wage would result in greater social justice in the country.

128. The Worker member of Germany indicated that in his country nearly one worker in four was on a low wage. The unions had been fighting for a long time for the introduction of a statutory minimum wage so as to bring an end to downward pressure on wages and they therefore welcomed the introduction of a minimum wage in the near future. However, the exclusion of young persons under 18 years of age and the long-term unemployed was a cause of concern and would be opposed by the unions. In that regard, it should be noted that paragraph 175 of the General Survey reported that provisions fixing lower minimum wages for young workers had been repealed or restricted in scope in a significant number of countries in view of their discriminatory nature.

129. The Government member of the Bolivarian Republic of Venezuela welcomed the fact that on several occasions the General Survey noted progress in his country in the determination of minimum wages, particularly with regard to the protection of domestic workers, the guarantee of equality of treatment for migrant workers and workers with disabilities, and the penalties applicable in the event of failure to comply with minimum wage provisions. The 1999 Constitution required the State to determine and revise annually a minimum living wage for all workers and the labour legislation provided for the adoption of a national minimum wage without discrimination in its application. The cost of the basic consumer basket had to be taken into consideration in the determination of the minimum wage. In 2014, its amount had been adjusted twice, with an increase of 10 per cent in January and 30 per cent in May.

130. The Government member of Brazil confirmed that, as indicated in the General Survey, the annual adjustment of the minimum wage in Brazil took into account inflation and fluctuations in the gross domestic product (GDP), which made it possible to maintain the purchasing power of workers while at the same time sustaining economic growth and social inclusion.

131. The Government member of Morocco reviewed the history of the national legislation on minimum wage fixing since 1936. The new Labour Code, which had entered into force in 2004, reaffirmed that the statutory minimum wage could not be lower than the rates set by decree for agricultural and non-agricultural work after consultation with the occupational organizations of employers and the trade unions of the most representative wage earners. The minimum wage ensured workers with a limited income a purchasing power which followed changes in price levels and contributed to economic and social development, as well as enterprise development. The provisions governing the minimum wage formed part of public law and infringements gave rise to fines. The Labour Code also established the right of workers to recover amounts due to them. The Moroccan minimum wage system was in conformity in its overall configuration with the relevant international standards. Morocco, which had already ratified the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), had ratified Convention No. 131 in 2013.
132. The Worker member of Morocco recalled the importance of tripartite social dialogue in determining minimum wages. Unfortunately, in Morocco, social dialogue had been frozen for two years, with catastrophic repercussions on the purchasing power of workers. Moreover, many workers did not receive even two-thirds of the minimum wage rate and were dismissed if they put forward wage claims. He hoped that the Moroccan Government would follow the recommendations of the Committee of Experts so that a minimum wage could be adopted that guaranteed the dignity of workers.

133. The Government member of Mexico emphasized that the minimum wage was of a high priority and that it was essential to endeavour to re-establish the purchasing power of the minimum wage in relation to productivity growth. Technical knowledge should be strengthened and effective tripartite strategies proposed to ensure compliance with the provisions of Convention No. 131. The Government recognized the need to reinforce its efforts to improve wages and to increase labour productivity which, together with the formalization of labour, was a prerequisite for the improvement of wages and, as a consequence, the strengthening of the internal market, which would in turn have a positive impact on families and enterprise competitiveness.

134. The Government member of Mozambique said that the issue of minimum wages was a priority for the national authorities in her country. She described the role played by the Labour Advisory Commission in determining sectoral minimum wages. Regulations on domestic work had been adopted in 2010, although the determination of the wages of these workers still required in-depth reflection.

135. The Worker member of Ireland criticized the modification of the national legislation on minimum wage fixing which had been introduced in response to the crisis. The Government had been forced to reduce the rate of the minimum wage. As a result of a campaign led by the unions, it had subsequently been brought back up to its original level, even if the new change had been made under the terms of the same bad legislation. The country was slowly beginning to come out of the crisis and it was essential for ILO standards to prevail, and not emergency measures. Moreover, the hourly wage rate was only part of the story in view of the development of on-call work, and particularly zero-hours contracts, which were unfair and undermined the whole purpose of Convention No. 131. Finally, the growth of unpaid work, in the context of internships, work trials and work experiences, was also a problem. The labour inspection services should ensure that the workers involved benefited from the minimum wage.

136. The Employer member of the Plurinational State of Bolivia said that minimum wage fixing was a very sensitive issue for Bolivian employers. It was important to seek alternatives to improve wage income, as the setting of a national minimum wage only offered part of the solution, which depended on comprehensive policies in different areas of state action. Although Convention No. 131 had been ratified in 1977, the Government had since 2007 been determining unilaterally the annual increases in the minimum wage, as well as the minimum rates for the negotiation of sectoral wage rises. Over that period, the national minimum wage had almost tripled. Moreover, those increases had had a multiplier effect, as the minimum wage served as a basis for the calculation of certain bonuses and allowances. In 2012, the Confederation of Private Employers of Bolivia (CEPB) had been called into a meeting with Government representatives and the Bolivian Central of Workers with a view to launching negotiations on wage increases. Apart from that initiative, which had not been successful in view of the refusal of the workers’ representatives to enter into dialogue with the employers’ representatives, the latter had been totally excluded from the process of determining the national minimum wage and sectoral wage rises, with the Government only maintaining contact with workers’ representatives. Employers’ representatives had on many occasions drawn attention to the need for tripartite dialogue in that area with a view to developing balanced policies. The
Government had not yet taken up the call. In conclusion, he reaffirmed the need to consult both employers’ and workers’ organizations when setting minimum wages, to take into account the differences between economic sectors and the importance of establishing measures to increase the income of workers and their families, without however neglecting the productivity factor in setting wage levels.

137. The Government member of Argentina indicated that there was an error in the General Survey in relation to the participation of union representatives in the work of the National Council on Employment, Productivity and the Minimum Adjustable Wage. In the General Survey, the Committee of Experts appeared to share the views expressed by one trade union concerning the method of selecting workers’ organizations invited to sit on the Council. However, it was not correct to indicate that the composition, structure and operation of the Council were faulty. The Government of Argentina had always followed the principle set out in the ILO Constitution, article 3 of which referred to the most representative industrial organizations. The National Council on Employment, Productivity and the Minimum Adjustable Wage had been operating without interruption since 2004 and included, under the presidency of a Government representative, 16 employers’ representatives and 16 workers’ representatives. The General Confederation of Labour of the Republic of Argentina (CGTRA) and the Confederation of Workers of Argentina (CTA) were represented on it.

138. The Worker member of Kenya recalled that his country had ratified Convention No. 131, as well as Conventions Nos 98 and 144. In 1973, the Government had issued wage revision guidelines which had made it compulsory to review collective agreements every two years and had put in place annual wage increases based on inflation, productivity and comparisons between workers receiving the highest and the lowest wages, with a view to narrowing the wage gap. Tripartite wage councils revised sectoral minimum wages on 1 May each year. Unfortunately, this year the Minister of Labour and Social Security had declined to announce the increase in the minimum wage on the pretext that the tripartite General Wage Council had not met, when he was the one who had failed to convene it. Moreover, the National Labour Board, which had the role of advising the Minister on all issues pertaining to the well-being of workers, had not met for a year. He called on the Government to respect the right of workers to fair remuneration and reasonable working conditions. If it did not do so, the unions would complain to the Committee of Experts that the Government was in violation of the Conventions ratified by the country.

139. The Government member of Lebanon explained that, in accordance with the Labour Code, the minimum wage had to be sufficient to meet the essential needs of wage earners and their families, taking into account the nature of the work. The concept of essential needs needed to be re-examined, as many types of needs, such as housing, transport and education, were now considered essential. The minimum wage in the private sector had been adjusted in 2012. Its rate was higher than the minimum wage in the public sector and the difference was being made up temporarily by a monthly allowance. However, Lebanon was facing a difficult situation in view of the large number of refugees living in the country, who represented around one third and perhaps even half of the population. The presence of refugees gave rise to a situation of competition between workers, as they would agree to work for less than the minimum wage. The public debt was high, the balance of payments was in deficit and the unemployment rate was 46 per cent of the active population. The national economy was moribund and the country was also exposed to security problems. The question arose of how a minimum wage could be set under such conditions. Lebanon had embarked upon a process of amending its Labour Code to bring it into conformity with ILO standards and those of the Arab Labour Organization, and draft legislation was being prepared on domestic workers and agricultural workers. In that respect, it should be noted that the wages of domestic workers could sometimes be higher than those of other workers due to the fact that they enjoyed benefits such as food and
accommodation. Lebanon was also envisaging the ratification of Conventions Nos 87 and 144 and the Domestic Workers Convention, 2011 (No. 189). Assistance from international organizations, including the ILO, would be necessary to resolve the economic problems related to the presence of Syrian refugees. It was important to prevent recourse to child labour in the country, as cheap labour intended to improve competitiveness.

140. The Government member of Malaysia provided information on the conclusion of the process of setting minimum wages in Malaysia following the adoption of legislation on the subject in 2011. The process had been completed as a result of collaboration between the Government and employers’ and workers’ representatives in the National Wages Consultative Council. Enforcement of the relevant provisions was ensured through many inspections, as well as complaints brought by workers to the Labour Department and the settlement of disputes relating to the payment of minimum wages. Minimum wages had to be reviewed at least once every two years. In 2014, a seminar organized with the participation of the ILO and the World Bank had enabled the members of the National Wages Consultative Council to improve their knowledge of the parameters to be taken into consideration in reviewing minimum wages. Another seminar, in the context of ASEAN, was due to be held before the end of 2014, and Malaysia would be grateful for ILO technical assistance in that connection.

141. The Government member of Libya indicated that, although his country had ratified Convention No. 131 in 1971, minimum wages had been frozen for many years. An advisory board on minimum wages, including representatives of employers’ and workers’ organizations, as well as experts, had been established in accordance with the Labour Code. The board had decided that the minimum wage would be doubled. Family allowances and housing assistance would also be increased. In accordance with the Labour Code, the minimum wage had to be reviewed regularly on the basis of studies on the cost of living so as to ensure decent living standards for workers.

142. The Government member of Uruguay recalled that the Committee on the Application of Standards had examined the application of Convention No. 131 by his country in 2003. At that time, the minimum wage had been set at US$100. It has since risen exponentially, and it was now set at US$500. As a result of social dialogue and collective bargaining, most workers earned more than the national minimum wage. A large number of collective agreements had been concluded, which contributed to the rise in real wages. Over half of the labour market had now been formalized and the unemployment rate was at a historically low level. The methods used for the determination of wages, in a context of social dialogue, had contributed to the redistribution of wealth in the country.

143. The Worker member of Uruguay, emphasizing that minimum wages needed to be determined as a function of the economic situation of each country, referred to inequalities of income in Uruguay. The national minimum wage rate did not allow a single person to afford decent housing. There were also negotiated sectoral minimum wages covering 24 groups of activities. It was not only necessary to discuss minimum wages, but also to take into account the most precarious jobs when determining wage policy. The Uruguayan trade union movement had done that recently through its support for supermarket cashiers.

144. The Government member of Senegal indicated that her country gave effect to the provisions of Convention No. 131 and Recommendation No. 135 through the establishment of guaranteed minimum interoccupational wages set by Presidential decree and wages for occupational categories set by collective agreement, which determined the occupational categories and the corresponding sectoral minimum wages at rates that were higher than those set by decree. Their rate varied according to the work performed, the level at which workers were recruited and the competitiveness of the economic sectors. Minimum wages were determined through social dialogue in the National Advisory
Labour and Social Security Council, as well as the joint commission, composed of employers and workers. In practice, the basic wages specified in collective agreements or enterprise agreements were applied in nearly all economic sectors, as they were higher. Reflection was being undertaken with a view to the coverage in future of workers in the informal economy, who were currently excluded from the minimum wage system. Moreover, the application of the principle of equal remuneration for men and women workers for work of equal value was guaranteed by the Labour Code. Finally, in view of the importance of the purchasing power of workers and the need for them to benefit from an effective social protection system, the Government had lowered taxes on wages in 2013 and had begun a process of reviewing low retirement pensions.

145. The Government member of Sudan said that his Government was making praiseworthy efforts to give effect to international labour standards. As a result of the collaboration of the social partners, a collective agreement setting minimum wages in the private sector had been concluded in March 2014, which would remain in force until 2017.

146. The Employer member of Costa Rica explained that in Costa Rica the formula for the adjustment of minimum wages had been established in 2011 on a tripartite basis. It took into account inflation and productivity, which made it possible to ensure the real growth of the minimum wage. The unemployment rate and changes in the exchange rate were also taken into consideration.

147. The Government member of the Islamic Republic of Iran said that, although his country had not ratified Convention No. 131, it endeavoured to implement its provisions. The national minimum wage was adjusted every year in full consultation with the social partners, in the context of the Supreme Labour Council. The legislation provided for the inflation rate to be taken into account and that the minimum wage should be sufficient to meet the living expenses of a family, irrespective of the physical and intellectual capacities of workers and the characteristics of their work. He emphasized the importance of a clear definition of the minimum wage and of taking into account Paragraph 1 of Recommendation No. 135, under the terms of which “[m]inimum wage fixing should constitute one element of a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families”. In that regard, it was necessary to shed light on the concept of poverty for operational purposes.

148. An observer speaking on behalf of the International Trade Union Confederation (ITUC) said that, following the struggles of the workers’ movement in Cambodia, a minimum wage had been set for the garment sector. However, the minimum wage setting mechanism was strongly dominated by the Government and by employers. This lack of transparency had led to a national strike in December 2013 calling for an increase in the minimum wage. Five workers had been killed and 23 workers and union representatives had been arrested and were being prosecuted. The establishment of an appropriate mechanism to set the minimum wage, so that it could be determined in accordance with Convention No. 131, was therefore of particular importance. It was also essential for workers to be informed of minimum wage rates so that they could ensure their rights.

Prospects for ratification and status of Convention No. 131

149. The Employer members observed that the ratification prospects of Convention No. 131, as they appeared in the General Survey, did not seem to be overwhelming. The Committee of Experts had indicated that there were real prospects of ratification in 13 member States. However, most countries that had provided replies on that point indicated that they had not yet considered the possibility of ratification, or that they were not envisaging ratification, partly because of divergences between the provisions of the Convention and national law.
and practice. In particular, larger countries, such as Bangladesh, China, Germany, India, Indonesia, Islamic Republic of Iran, Russian Federation, Turkey, United Kingdom and United States did not seem to have any intention of ratifying the Convention. It was also interesting to note that in a number of countries the trade unions were not in favour of ratification either.

150. The Committee of Experts had endeavoured to dispel the concerns expressed by a number of governments which had reported problems in relation to specific provisions of the Convention, particularly with regard to the possibility of setting minimum wages by collective bargaining or in relation to the criteria for determining minimum wages. However, the Employer members considered that there existed important rigidities and other difficulties of application which hindered ratification, particularly in relation to the following points.

151. The objective of the Convention was not quite clear. If it was poverty reduction, as suggested by the Committee of Experts, that should have been addressed in a more integrated manner, and not by dealing with minimum wages in isolation. Article 1 of the Convention provided that any exemptions from its application had to be indicated in the first report on the application of the Convention, which was due one year after ratification, and it was not possible to introduce exemptions subsequently. Article 2 required minimum wages to have the force of law and not to be subject to abatement. That meant that enterprises confronted with a difficult economic situation were unable to conclude agreements with their workers for temporary reductions of the minimum wage. Moreover, collective agreements that did not have force of law would not be eligible as a method of minimum wage setting under the Convention. Article 3, which dealt with criteria to be considered in minimum wage setting, did not require the competitive needs of enterprises to be taken into account. Governments were free to give priority to social criteria, which could have potentially damaging effects for sustainable enterprises. Article 3 could also be clearer with regard to the extent to which wage supplements provided by the State, such as tax credits and family allowances, could be considered in determining the needs of workers, and hence in setting minimum wages. In view of those rigidities, the Employer members did not agree with the view expressed by the Committee of Experts that Convention No. 131 remained “an up-to-date and topical instrument and that member States not yet parties to this Convention should be strongly encouraged” to ratify it. The revision of the Convention should be envisaged and the standards review mechanism could be the appropriate forum for that purpose.

152. The Worker members agreed with the Committee of Experts that Convention No. 131 was one of the most flexible of ILO Conventions in terms of the means for its implementation. It did not require the adoption of a national minimum wage, nor its establishment by legislative means. The level of minimum wages had to be determined taking into account both the needs of workers and their families and economic factors. Its provisions could therefore be applied in countries with very different levels of development. Many countries recognized the relevance of its principles, but had not taken the step of ratifying the Convention. Countries which had not ratified the Convention included many of the wealthiest industrialized countries, and most of the Member States of the European Union, which was a very bad signal. Nevertheless, the reasons for which countries held back from ratification could be very different and nuanced, and did not necessarily mean that the Convention was not useful. One of the lessons of the General Survey was that problems arose in the understanding of the concepts of the Convention and that more in-depth assistance was necessary for the effective application of a flexible and resolutely modern instrument. The ILO should take the following action: (1) formulate a complete plan to promote the ratification of Convention No. 131, without overlooking its links with other instruments, such as Conventions Nos 87 and 98, and the Labour Inspection Convention, 1947 (No. 81); (2) provide support to governments so that they could resolve legal issues
that were likely to arise when envisaging the adoption of minimum wage regulations; (3) provide guidance through appropriate tools on the setting of minimum wages in conformity with the requirements of the Convention; (4) supply exhaustive comparative data on wage trends and minimum wage legislation; and (5) provide guidance on best practices in relation to minimum wage machinery and the application of minimum wages. They recalled in that regard that the ILO Training Centre in Turin had valuable expertise in that field which should be put to good use.

153. The Worker member of Morocco expressed support for the statement made by the Worker members in relation to the five types of action that should be taken by the ILO.

154. The Government member of Belgium thanked the Committee of Experts for providing replies in the General Survey to the issues raised by his Government in the report provided for the preparation of the survey. Those replies would enable Belgium to re-examine the possibility of ratifying Convention No. 131.

155. The Government member of Germany indicated that, in the view of her Government, the provisions respecting the national minimum wage that would be introduced as of 1 January 2015 were in conformity with the Convention, and the possibility of ratification would therefore be examined.

156. The Worker member of Germany regretted that his country had not yet ratified the Convention, but welcomed the announcement made by the Government member of Germany in that respect. There were no legal or political obstacles to the implementation of the Convention in Germany. The German Confederation of Trade Unions (DGB) would be at the side of the Government in overcoming political and parliamentary hurdles to its ratification.

157. The Government member of Mozambique reported that her country was making efforts with a view to the ratification of the Convention and would appreciate the provision of technical assistance from the Office for that purpose.

158. The Government member of the Russian Federation said that her country had set itself the objective of raising the minimum wage to the level of the subsistence threshold by 2018. The General Survey was useful in preparing the ground for the ratification of the Convention, to which effect the Russian Federation was currently examining the conformity of national legislation with the Convention. She concluded by calling on the Office to provide technical assistance to countries which so wished, with a view to strengthening their minimum wage systems.

159. The Employer member of Denmark recalled that his country had not ratified the Convention. He raised the issue of possible conflicts between Article 2 of the Convention and the principle of collective bargaining, which meant that ratification could hamper national collective bargaining systems. He endorsed the observations made by the Government of Cyprus, as was reflected in paragraph 375 of the General Survey. Those who had a vital interest in wage determination, namely employers and workers, were best placed to fix wage levels.

**Concluding remarks**

160. The Employer members said that the discussion had been useful and had gone into the subject in depth, despite the lack of time available to discuss such a complex subject. The discussion had provided a very interesting basis for reflection on the existing instruments and to envisage future instruments. It showed that national circumstances needed to be taken into account in the setting of minimum wages. Many governments had established
minimum wage systems in very different national contexts. The Employer members welcomed the explanations provided by members of the Committee concerning the difficulties and tensions which arose in relation to the criteria for the determination of minimum wages and the need to take into account the financial capacity of enterprises, productivity and competitiveness. Those considerations were important if minimum wage legislation was not to be solely theoretical.

161. In response to the comments made by the Worker members, the Employer members recognized the very serious efforts, and sometimes the struggles of unions for the establishment of minimum social rights in the various countries. The opinions expressed during the discussion converged on many points, including the fact that the process of setting minimum wages needed to be consultative and inclusive, and that a credible system for the enforcement of the relevant provisions was necessary to guarantee the implementation of the Convention. However, there were divergent views on two points. In the first place, Convention No. 131 dealt with the minimum wage, and not the concept of the living wage. In certain countries, the two concepts might be closely linked, particularly where there was no functioning social welfare system. Article 3 of the Convention, in relation to the criteria for the determination of minimum wages, made direct reference to the needs of workers and their families, as well as to “economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment”. The balance between those considerations was important for the Employer members and should be central to future ILO work. Secondly, in the view of the Employer members, it was not contrary to the provisions of the Convention to establish a different minimum wage for young workers, apprentices and trainee workers. In that respect, sufficient attention needed to be paid to Article 3(b) of the Convention, in view of the importance of the access of young persons to the labour market. Where they were justified in light of the national situation, measures to establish different minimum wage rates on the basis of objective and verifiable criteria were not incompatible with the Convention.

162. In conclusion, the Employer members welcomed the discussion in the ILO of this important issue. It was important for the Office, in the framework of capacity-building programmes, to provide support for employers in their efforts to provide jobs which could lift the population out of poverty by ensuring minimum wages.

163. The Worker members disagreed with the idea put forward by the Employer members that it was necessary to review the Convention. In contrast, they agreed with the Committee of Experts that the objectives of Convention No. 131 and Recommendation No. 135 were just as relevant now as when the instruments had been adopted in 1970, despite the major changes and developments which had affected the world of work. The Declaration of Philadelphia had proclaimed 70 years ago that labour was not a commodity. Wages were not merely a price that balanced supply and demand. That was not merely a humanistic principle, but also a fundamental socio-economic reality. The fundamental problem, which was emphasized by many union representatives, some of whom had spoken during the discussion, was that the minimum wages applicable at the national level were not sufficient to meet the needs of workers and their families, even when they were in full-time employment. It was necessary to recognize the numerous issues that arose in relation to the definition of minimum wages and the need to take into account the economic and social situation in each country. However, the Worker members profoundly disagreed with the position expressed by the Employer members on the subject of minimum wages for young workers and the constraints on their employment prospects resulting from the minimum wage. Those issues would be examined in greater depth in 2015 during the recurrent discussion on social protection (labour protection). In any case, emphasis needed to be placed on the added value of the close involvement of the social partners in that area. Moreover, the General Survey and several interventions during the discussion had
suggested that certain countries were hesitant to ratify the Convention out of a fear that it prohibited the setting of minimum wages by collective agreement. That interpretation was paradoxical in countries where social dialogue was undertaken in accordance with the letter and the spirit of ILO standards, and clarification on that point would be desirable. In conclusion, the Worker members expressed the hope that several countries would ratify the Convention in the near future.

* * *

164. In response to a comment by the Government member of Argentina to the effect that the information contained in the General Survey concerning the participation of the social partners in the operation of national minimum wage systems was not accurate, the Chairperson of the Committee of Experts indicated that the respective passage in the General Survey referred to the comment made on the subject by a workers’ organization.

Outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning minimum wage systems

165. The Committee examined the draft outcome of its discussion of the General Survey concerning minimum wage systems (document C.App./D.17). The Employer members supported the draft, drawing attention to the final paragraph, which requested the Office to take into account the General Survey and the outcome of its discussion by the Committee in the preparation of the report for the recurrent discussion on social protection (labour protection) to be held at the 104th Session (2015) of the Conference, so that it can feed into the framework within which priorities are set for future ILO action. The Worker members supported the statement of the Employer members and the proposal to adopt the examined draft.

166. The Committee approved the outcome of its discussion of the General Survey concerning minimum wage systems, which is reproduced below and which it wishes to bring to the attention of the Conference concerning the recurrent discussion on social protection (labour protection) which will take place at its 104th Session (2015).

Introduction

1. The Committee on the Application of Standards welcomes the opportunity, in the context of its examination of the General Survey on the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970, to discuss issues of critical importance to the world of work. It notes in this respect that it was not possible to reflect in full in the General Survey the detailed information contained in the reports provided by governments, and the comments made by employers’ and workers’ organizations, and it hopes that the Office will make this information available to constituents in an easily accessible format.

2. The Committee notes that, in accordance with the decisions taken by the ILO Governing Body, its examination of the General Survey is being undertaken for the first time one year before the recurrent discussion by the Conference of the corresponding strategic objective. It welcomes this innovation and firmly hopes that the interval of one year will make it possible for the outcome of its work to be fully taken into account in the framework of the recurrent discussion on social protection (labour protection) to be held at the 104th Session (2015) of the Conference.

3. As emphasized in the Preamble of Convention No. 131, minimum wage fixing is intended to protect wage earners against unduly low wages. It gives effect to the principle, set out in the Declaration of Philadelphia of 1944, that “labour is not a commodity”. Convention No. 131 also provides that the price of labour cannot be determined purely and simply through the application of the rules of supply and demand and that minimum wage is to be provided to all employed and in need for such protection.
4. Minimum wage fixing also offers a means of establishing a level playing field for all employers. Moreover, the Committee recalls that appropriate minimum wage systems supplement and reinforce social and employment policies. Several types of measures can be used to tackle income and labour market inequality, including policies to generate decent work and reduce informal employment, which can be combined with other initiatives, such as wage policies, including appropriately designed minimum wage systems to protect wage earners against unduly low pay. The Committee also emphasizes that the protection of workers through minimum wages requires first of all that they have a job, that pro-employment social and economic policies, including public and private investments, are necessary, and that the promotion of sustainable enterprises is essential for that purpose.

5. The Committee has also examined the role played by minimum wage policies in a context of economic crisis or where fiscal consolidation policies are applied with a view to reducing excessive public debt. It recalls that the Global Jobs Pact, adopted by the Conference in 2009, calls for a series of measures to be taken in response to the international financial and economic crisis that has affected certain countries since 2008. These measures within a structural reform approach cover a large number of fields, including for instance the priority to be given to employment protection and growth through sustainable enterprises, and the regular adjustment of minimum wages so as to avoid a deflationary wage spiral. In this respect, the Global Jobs Pact refers explicitly to Convention No. 131. The Oslo Declaration, adopted by the ILO’s Ninth European Regional Meeting in 2013, which supplements the Global Jobs Pact at the regional level, also outlines a series of measures to be taken by the ILO to assist constituents to address social and economic crises. This includes the promotion of policies that foster decent work and job creation through employment-friendly macroeconomic policies and investment in the real economy; an enabling environment for enterprises; appropriate strategies to enhance competitiveness and sustainable development while respecting fundamental principles and rights at work, as well as strategies that improve job quality and close the gender wage gap.

The essential principles of Convention No. 131 and Recommendation No. 135

6. Convention No. 131 and Recommendation No. 135 set out a number of essential principles, while offering flexibility to member States in their implementation.

7. The first of these principles is the full consultation and, insofar as possible, direct participation, on a basis of equality, of the social partners at all stages of the establishment and operation of minimum wage systems. To be effective, such consultations have to be carried out in a context of open social dialogue and held before decisions are taken by the public authorities, and employers’ and workers’ organizations need to have access in advance to relevant information as a basis for formulating their views.

8. Secondly, national minimum wage systems have to cover “all groups of wage earners whose terms of employment are such that coverage would be appropriate”. While the determination of the protected groups of wage earners is the responsibility of the competent national authorities, in agreement with the employers’ and workers’ organizations concerned, or at least after they have been fully consulted, exclusions should be kept to a minimum, as called for by Recommendation No. 135, particularly in relation to vulnerable categories of workers, such as domestic workers. Moreover, according to Article 1, paragraph 3, of Convention No. 131, exclusions can only be made in – and by the time of – the first article 22 report, not later on.

9. Thirdly, compliance with the principle of equal remuneration for work of equal value, as set out in the Preamble to the ILO Constitution, must be ensured when determining the coverage of minimum wage systems, particularly where different minimum wages are set by sector or by occupational category. For that purpose, the objective evaluation of jobs is essential to prevent any indirect discrimination against women as a result of their over-representation in certain categories of jobs. It is also important to avoid wage discrimination against migrant workers and workers with disabilities.

10. There is a link between the implementation of the principle of equal remuneration for work of equal value and the provisions adopted in a number of member States, where reduced minimum wages are applicable to young workers below a certain age with a view to facilitating their entry into the labour market. In other countries, such differences have been abolished or limited in scope in the framework of policies to combat discrimination on
grounds of age. In this regard, the Committee considers that it is essential to avoid wage differentiation which is not based on objective valid reasons, such as educational objectives, work experience or skills. The same considerations apply in cases where different minimum wage rates are in force for apprentices and trainee workers.

11. Fourthly, Convention No. 131 provides that, in determining and periodically adjusting minimum wage rates, the elements to be taken into consideration include, on the one hand, the needs of workers and their families and, on the other, economic factors. The maintenance of an appropriate balance between these two sets of considerations is crucial to ensuring the operation of a minimum wage system adapted to the national context which ensures both effective protection for workers and the development of sustainable enterprises, as well as the proper application in practice. The precise criteria set out in the Convention, such as the cost of living and levels of productivity, are of great importance in this respect, but are not exhaustive.

12. Fifthly, Convention No. 131 requires the adoption of appropriate measures to ensure the effective application of the provisions on minimum wages, and Recommendation No. 135 sets out a series of complementary measures for that purpose. These measures include labour inspection services with sufficient capacities and powers to carry out their duties, as provided for in the Labour Inspection Convention, 1947 (No. 81), provisions enabling workers to recover amounts due to them, while being protected against victimization, and adequate sanctions for infringements of the relevant provisions. Employers’ and workers’ organizations also have an important role to play in this regard. Incentive measures to encourage compliance with minimum wages can also contribute to these efforts, while reducing the risk of the expansion of the informal economy.

**Flexibility of the instruments examined**

13. Far from seeking to impose a single model on all ILO member States, Convention No. 131 is based on the idea that effective and sustainable minimum wage systems need to reflect the specific circumstances of the different countries and correspond to their level of economic and social development. For that reason, it offers member States some flexibility in the implementation of the principles that it establishes. Accordingly, it does not define its scope of application precisely, but leaves decisions on that point to the national authorities, in the context of dialogue with the social partners. The Convention does not set out requirements concerning the machinery for fixing minimum wages which may be established by legislation, by decision of the public authorities after consultation of employers’ and workers’ organizations, or on a tripartite basis, or through collective agreements provided they are legally binding. Nor does it require the establishment of a national minimum wage, or different minimum wages by region, sector or occupational category. Convention No. 131 does not contain an exhaustive list of criteria which have to be taken into account in the determination of minimum wage rates, or a universal formula for the periodic adjustment of such rates.

**Contribution to the preparation of the recurrent discussion on social protection (labour protection)**

14. The follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, calls for the organization of recurrent discussions with a view to understanding better the diverse realities and needs of member States and responding to them more effectively, using all the means of action at the disposal of the Organization, including standards-related action, technical cooperation, and the technical and research capacity of the Office.

15. In this regard, a number of lessons can be drawn from the General Survey on minimum wage systems and its examination by the Committee.

**The needs of member States**

16. The General Survey has shown that existing minimum wage systems in ILO Member States are diverse and that many approaches are possible. With a view to establishing operational minimum wage systems adapted to specific national circumstances, governments, as well as employers’ and workers’ organizations, need to have an in-depth knowledge of the various aspects of these systems. These include: institutional minimum wage fixing machinery; possible variations between a system based on a national minimum wage and different minimum wages by region, sector or occupational category; the type of factors to be
taken into consideration in determining minimum wage rates and the weighting to be given to such factors; procedures for the adjustment of minimum wages; and the most appropriate measures to ensure the effective application of the relevant provisions. The General Survey and the Committee’s work have also shown that certain provisions of Convention No. 131 and Recommendation No. 135 require further analysis so that their purpose, scope and application can be clearly understood by all concerned.

17. Constituents also need to have at their disposal reliable statistical data and analytical capacities to enable them to take decisions based on empirical data and for the subsequent evaluation of the impact of minimum wage adjustments. From this perspective, access to data on wage distribution and trends is indispensable. Knowledge of minimum wage systems and their effects in other member States is also important. Furthermore, constituents need to have access to studies on the effects of minimum wage policies on variables such as employment, income inequality and poverty, as well as the articulation between minimum wage policies and other policies and instruments.

**ILO means of action**

(1) **Standards-related action**

18. The Committee considers that the principles established by Convention No. 131 and Recommendation No. 135 remain relevant. Convention No. 131 has currently been ratified by 52 member States, with the latest ratification, by Morocco, being registered in 2013. Thirteen member States referred to real prospects of ratification in the reports provided for the preparation of the General Survey. The Committee also welcomes the fact that the Government representatives of four other countries (Belgium, Germany, Mozambique and Russian Federation) announced during the discussion that they would examine the possibility of ratifying the Convention. Some countries are considering ratification. Some countries have indicated that they do not plan to ratify, partly because of concrete divergences between the Convention and their national laws and practices. On the other hand, the General Survey has also shown that many member States which are still bound by one of the older Conventions on minimum wage fixing, or which have not ratified any instruments on the subject, nevertheless comply with the fundamental principles underlying Convention No. 131. The Committee further recalls that the Convention contains some flexibility clauses allowing the development of minimum wage systems adapted to the circumstances of countries. However, it would appear to be necessary to provide information on the precise scope of some of its provisions.

19. The Committee invites member States that examine the possibility of ratifying Convention No. 131 to request, where necessary, the technical assistance of the Office.

(2) **Technical cooperation and assistance**

20. Many governments, as well as employers’ and workers’ organizations, requested technical assistance or advisory services from the Office in the reports that they provided for the preparation of the General Survey, or during its discussion by the Committee. These requests relate, for example, to the undertaking of surveys or studies with a view to the adjustment of minimum wages, capacity building for constituents involved in the operation of such systems, and the dissemination of good practices. The Committee hopes that the Office will have the necessary capacity to respond to these requests with a view to facilitating the establishment or improvement of national minimum wage systems.

21. Capacity building for constituents should deal with, in particular: different approaches of minimum wage fixing; means of ensuring compliance with the principle of equal remuneration for work of equal value; the various economic and social indicators that can be used as criteria for setting and adjusting minimum wages; and measures to ensure effective compliance with minimum wage rates. The exchange of good practices between member States should also be encouraged. In addition, the Committee invites the Office to develop tools, such as practical guides and training manuals, to improve understanding of the requirements of Convention No. 131 and to facilitate the implementation of its provisions.

(3) **The technical and research capacity of the Office**

22. The Committee considers it important for the Office to continue and develop its research work in the field of wage policies, including the impact of minimum wages, as a function of their level, on income and employment, particularly for vulnerable workers, such as young workers and domestic workers; the articulation between minimum wage fixing and
social protection; interactions between minimum wages and collective bargaining; and the
effects of the various policy measures intended to enforce compliance with minimum wage
provisions.

* * *

23. The Committee requests the Office to take into account the General Survey on
minimum wage systems and the outcome of its discussion of the General Survey, as reflected
above, in the preparation of the report for the recurrent discussion on social protection (labour
protection) to be held at the 104th Session (2015) of the Conference, so that it can feed into
the framework within which priorities are set for future ILO action.

D. Compliance with specific obligations

167. 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.

168. The Employer members noted a general improvement in terms of compliance with
reporting obligations, with an increase of around 6 per cent as compared to last year. They
noted in particular the efforts made by eight countries with persistent difficulties in
previous years (Grenada, Ireland, Kiribati, Kyrgyzstan, Libya, Sao Tome and Principe,
Seychelles and Sierra Leone), which had now complied with their constitutional
obligations vis-à-vis ratified Conventions. Despite this progress, the Employer members
believed that the reporting situation was still not satisfactory given that more than a quarter
of all due reports on the application of ratified Conventions were not received by the time
of the meeting of the Committee of Experts. Further steps were therefore needed to address
the problem at its roots. As far as ratifying countries were concerned, the Employer
members stressed that these countries should not just rely on the offer of technical
assistance but take their responsibility for reporting seriously. Even before ratifying an ILO
Convention, countries needed to consider whether they would be able to discharge their
reporting obligation and, if need be, reinforce their reporting capacities. From a wider
perspective, there was a need to consolidate and simplify ILO Conventions and thus focus
reporting on the essential. Identifying ways to do so would be a task for the standards
review mechanism. The Employer members trusted that it would soon be operational.

169. The Worker members stated that although some countries had made an effort, an effective
supervisory system implied that each State had to meet its obligations. Submitting
instruments to the competent authorities was therefore part and parcel of the process.
Unless that was done, the competent authorities could have no knowledge of the ILO’s
instruments and of the action taken by the Organization. As to the failure of some countries
to respond to the Committee of Experts’ comments, the latter had to be able to analyse
government reports on the subject. It was essential that there be fewer and fewer cases
each year of countries failing to meet their standards-related obligations.

170. 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.

171. In applying those methods, the Committee decided to invite all governments concerned by
the comments in paragraphs 44 (failure to supply reports for the past two years or more on
the application of ratified Conventions), 50 (failure to supply first reports on the
application of ratified Conventions), 53 (failure to supply information in reply to
comments made by the Committee of Experts), 106 (failure to submit instruments to the
competent authorities) and 113 (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

172. 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.

173. The Committee noted from the report of the Committee of Experts (paragraph 104) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Botswana, Georgia, Peru and Ukraine.

### Failure to submit

174. 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 92nd Session in June 2004 to the 101st Session in June 2012, 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.

175. The Committee noted the regret 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.

176. 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.

177. The Committee noted that 38 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, Angola, Bahrain, Belize, Brazil, Comoros, Côte d’Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Mali, Mauritania, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Vanuatu. 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

178. The Committee noted that by the date of the 2013 meeting of the Committee of Experts, the percentage of reports received was 72.5 per cent (67.8 per cent for the 2012 meeting). Since then, further reports had been received, bringing the figure to 80.6 per cent (as compared with 78.9 per cent in June 2013, and 77.4 per cent in June 2012).

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

179. 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: Burundi, Comoros, Equatorial Guinea, Gambia, San Marino, Somalia, Tajikistan and Vanuatu.

180. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

<table>
<thead>
<tr>
<th>State</th>
<th>Conventions Nos</th>
</tr>
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<tbody>
<tr>
<td>Afghanistan</td>
<td>Since 2012: Conventions Nos 138, 144, 159, 182</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>Since 1998: Conventions Nos 68, 92</td>
</tr>
<tr>
<td>Sao Tome and Principe</td>
<td>Since 2007: Convention No. 184</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>Since 2008: Conventions Nos 87, 98, 100, 111, 182</td>
</tr>
<tr>
<td></td>
<td>Since 2010: Convention No. 185</td>
</tr>
</tbody>
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181. It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

182. In this year’s report, the Committee of Experts noted that 69 governments had not communicated replies to the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of 476 cases (compared with 387 cases in December 2012). The Committee was informed that, since the meeting of the Committee of Experts, 12 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

183. 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 2013 from the following countries: Burundi, Cambodia, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Gambia, Ghana, Guinea, Guyana, Haiti, Malaysia (Malaysia Peninsular, Malaysia Sarawak), Malta, Mauritania, Rwanda, San Marino, Sierra Leone, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkmenistan and Vanuatu.

184. The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: Afghanistan, Angola, Eritrea, Guyana, Kuwait, Libya, Mauritania, Papua New Guinea and Sudan.
Supply of reports on unratified Conventions and Recommendations

185. The Committee noted that 217 of the 385 article 19 reports requested on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), had been received at the time of the Committee of Experts’ meeting. This is 56.4 per cent of the reports requested. Since then, further reports had been received, bringing the figure to 56.8 per cent of the reports requested.

186. 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: Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Libya, Marshall Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu and Vanuatu.

Communication of copies of reports to employers’ and workers’ organization

187. 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

188. 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 74 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 32 such cases, relating to 25 countries; 2,946 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.

189. This year, the Committee of Experts listed in paragraph 77 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 157 such instances in 95 countries.

190. 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

191. The Government members of Afghanistan, Angola, Bahrain, Brazil, Cambodia, Comoros, Guyana, Jordan, Kazakhstan, Kuwait, Libya, Mauritania, Papua New Guinea, Sudan and Suriname had promised to fulfil their reporting obligations as soon as possible.
Special case

192. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.

193. As regards the application by Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee took note of the written and oral information provided by the Government representative and the discussion that ensued.

194. The Committee took note of the comments of the Committee of Experts and of the report transmitted to the Governing Body in March 2014 of the direct contacts mission, which visited the country in January 2014 with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry.

195. The Committee noted that in light of the findings and concrete proposals formulated by the direct contacts mission, the Government has accepted ILO technical assistance to conduct a series of activities aimed at improving social dialogue and cooperation between the tripartite constituents at all levels, as well as enhancing knowledge and awareness of freedom of association rights. The Committee took note of the Government’s statement that these activities would contribute to the effective implementation of the recommendations of the Commission of Inquiry. The Government considered, in particular, that a seminar for the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere would improve its effectiveness and thus assist in addressing Recommendations Nos 5 and 7; a training for judges, prosecutors and lawyers would assist in implementing Recommendations Nos 4 and 8; and an activity on collective bargaining would allow the elaboration of a set of guidelines on collective bargaining to ensure that trade union pluralism is respected in practice, thus addressing Recommendations Nos 6 and 12.

196. Noting the Government’s stated commitment to social dialogue and cooperation with the ILO, the Committee expressed the hope that these activities would give rise to concrete results. The Committee hoped, in particular, that the Tripartite Council would evolve into a forum where solutions could be found at the national level, including as regards cases of anti-union discrimination and issues relating to trade union registration. The Committee expected that amendments would be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid, the Law on Mass Activities and the Labour Code, in line with the provisions of the Convention. The Committee called upon the Government to continue engaging with the ILO, to intensify its cooperation with all the social partners in the country and to accelerate its efforts towards rapid and effective implementation of the outstanding recommendations of the Commission of Inquiry.

197. The Committee invited the Government to submit detailed information on the results of the abovementioned activities and all other measures taken to implement the outstanding recommendations of the ILO supervisory bodies to the Committee of Experts at its meeting this year, and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.
Participation in the work of the Committee

198. The Committee wished to express its gratitude to the 52 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.

199. 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: Burundi, Croatia, Democratic Republic of the Congo, Côte d’Ivoire, Djibouti, El Salvador, Fiji, Guinea, Haiti, Iraq, Jamaica, Kyrgyzstan, Malaysia (Malaysia Peninsular, Malaysia Sarawak), Mali, Malta, Mozambique, Pakistan, Rwanda, San Marino, Sierra Leone, Somalia, Syrian Arab Republic, Turkmenistan and Uganda. 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.

200. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: Belize, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Marshall Islands, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Solomon Islands, Tajikistan, Timor-Leste, Tuvalu 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 on the 19 remaining individual cases

201. The Worker members stated that they were facing a situation where it was no longer feasible to reach any kind of conclusions by consensus, and that the Employer members had tabled demands that were simply not compatible with the working methods of the Committee. The Worker members asked the Employer members to explain why elements on which there was no consensus should be included in the Committee’s conclusions.

202. The Employer members wished to clarify their position on the issue. They remained ready to negotiate the conclusions of the cases before the present Committee. The Employer members were of the view that it had been the Worker members who had refused to negotiate the conclusions of 19 cases because of a disagreement between the parties with respect to a legal issue that involved three cases. The Employer members considered that it was the Worker members who must explain the reason why they had adopted the position to decline negotiations on the conclusions of 19 cases due to difficulties that had arisen in three cases.

203. The Worker members stated that they did not refuse to negotiate the 19 cases which had been discussed, but they emphasized that it was impossible to negotiate consensual conclusions. It was inappropriate to introduce divergent elements in the conclusions since the latter should give governments clear guidelines on adjusting and improving practices. The difference of views between the Worker members and the Employer members only related to three cases, but that put into question the whole mechanism, which had been functioning since the 1980s. Today, it concerned three cases, but tomorrow it could be four, five or six, depending on the number of cases relating to Convention No. 87 to be discussed. Consequently, the Worker members requested that the Employer members explain why they wanted to include non-consensual elements in the conclusions.
204. The Employer members pointed out that, in paragraph 91 of its General Report, the Committee of Experts had taken note of the arguments advanced by both sides on the issue as to whether the right to strike was included in Convention No. 87, and had observed that the views of the two groups continued to be diametrically opposed. The Committee of Experts had therefore recognized the divergence of views in its report. The Employer members were prepared to negotiate conclusions with respect to the three cases involving the right to strike issue, provided that their view on the right to strike was reflected in the conclusions by the inclusion of the sentence agreed upon by the social partners and adopted by the Committee the previous year. This sentence had constituted the compromise solution at the 2013 Conference. Since the issue remained unresolved, the Employer members had requested that the very same sentence be included in the conclusions to record their views in this regard. It was thus regrettable that the Worker members refused such inclusion and any negotiation of the conclusions relating to these three cases. The Employer members found it, however, deeply regrettable that, because of their request to have the difference of opinion appropriately reflected, the Worker members had now taken the position not to negotiate any conclusions on the remaining 19 cases. They requested the Worker members to clarify why they declined the negotiation of 16 conclusions, none of which faced any divergence of views and which concerned the supervision of a variety of Conventions. The Employer members remained willing to negotiate conclusions for all outstanding cases and asked for an explanation as to why a disagreement on three cases had to result in a refusal to negotiate on all 19 cases.

205. The Worker members confirmed their willingness to provide the necessary explanations. They emphasized that the situation facing the Conference Committee was not of their making and stated that they were willing, in line with what had been decided under the agreement reached within the Governing Body at its 320th Session in March 2014, to participate in the work of the Committee in a constructive manner. Regarding the reference made by the Employer members to the mandate of the Committee of Experts, it should be recalled that the Governing Body had unanimously accepted the Committee of Experts’ own formulation of its mandate and that this was not the place to be calling that mandate into question again. The differing views of the Employer members concerning the right to strike were well known but that was not an issue to be settled in the context of the Conference Committee but in another place, at another time and according to other procedures. After some 30 years of adopting consensus-based conclusions, consensus was no longer possible today. It was regrettable to observe that certain elements had been brought into the debate albeit clear that they were going to create problems. Today it was Convention No. 87 that was concerned but tomorrow it might be other Conventions on which the Employer members disagreed with the Committee of Experts. It should be recalled that the purpose of the conclusions was to give clear and consensual instructions to governments reflecting the agreement of the two groups.

206. In reply to the Employer members, the Worker members set out the reasons why such a situation had been reached and started by recalling certain elements to be taken into consideration in order to have a clear understanding of the situation and to assess the kind of solutions capable of achieving the future restoration of the standards system in which they believed. The ILO had a key role to play in promoting and achieving progress, social justice and fundamental rights such as freedom of association and the effective recognition of the right to collective bargaining. Social dialogue and the practice of tripartism by governments and representative workers’ and employers’ organizations at the national, regional and international levels were the most meaningful way to arrive at solutions that were useful not only to workers and employers but also to governments.

207. The Worker members believed in the standards system of the ILO, whose tripartite structure was unique within the United Nations system. At the heart of that system was the supervision of the application of standards in law and in practice, through the interaction
between the Committee of Experts and the Committee on the Application of Standards, together with the work of the Committee on Freedom of Association, which was another tripartite component of the supervisory machinery. There now appeared to be a growing tendency to push for a “soft law” approach and for purely voluntary rules as opposed to binding standards, and that was something that the Worker members refused to countenance. It was testimony to the fact that the issues which had been fiercely debated when the ILO had been founded in 1919 were still relevant in 2014, and more so than ever. Standards were just as relevant today and there was no question of forgetting the lessons of the past.

208. In March 2014 the Governing Body had reaffirmed that “in order to exercise fully its constitutional responsibilities, it was essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents”. There was thus tripartite agreement on the standard-setting activity, on the one hand, and on the supervision of that activity, on the other. The Governing Body had also stressed “the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference”. The Committee’s mandate was linked to the application of articles 19 and 35 of the Constitution, and implicit in supervising the application of Conventions and Recommendations was a discussion of the information that would be supplied by member States, and specifically those on the list of 25 cases. According to the document on working methods, the list was established in terms of the likelihood of the discussion having a tangible impact on the countries on the list. As the governments had often asserted, notably in the discussions on working methods, drawing up the list was the joint responsibility of the social partners. That responsibility presupposed that joint conclusions reached by consensus could be adopted on the cases that the Employer and Worker members had together decided to examine. Consequently, if the Committee was to function fully and effectively as required by its mandate, it needed to be able to consider conclusions that were presented jointly by the two groups.

209. The Worker members refused to submit conclusions that became non-consensual as soon as it concerned the interpretation of Convention No. 87, and considered that accepting once again the reservations put forward by the Employer members on the cases concerning Convention No. 87 would give the impression that a tacit jurisprudence in relation to freedom of association cases was creeping into the Committee. Furthermore, discussions in the Committee had shown that the Employer members were also turning their attention to other Conventions. In the case of the application of Convention No. 98 by Croatia, for example, the Employer members had requested that the conclusions should reflect their disagreement with the interpretation given by the Committee of Experts to Article 6 of the Convention in question. However, conclusions were meaningless unless they had a tangible impact on the country concerned, and it might be asked how a tangible effect could result from conclusions in which the Employer members stated that they did not agree that the right to strike was recognized in Convention No. 87. That formulation served no purpose at all. As far as effectiveness was concerned, one might wonder how asking one group to give in to another could be effective. The Worker members declared that they did not intend remaining silent and referred once again to the Governing Body decision of March 2014, in which the Governing Body “deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention”. A reference to paragraphs 1 and 2 of article 37 of the ILO Constitution was clearly implicit in those words. The Governing Body had also recognized “that a number of steps could be examined with a view to improving the working methods of the standards supervisory system”. This was not an attempt to avoid discussion because a working group could be set up on the matter. By reiterating their request to introduce the reservations they had expressed the previous year, the Employer members were clearly
undermining the attempts to find common ground that had been made within the Governing Body.

210. In 2012, even though there had been nothing to suggest it would happen, the Conference Committee had failed to function. In 2013, to prevent any recurrence of the failure of 2012, the Worker members had made a one-time concession. They had also clearly indicated that they would no longer accept that the situation of 2012 repeated itself nor a repetition of the 2013 wording. The Employer members had expressed their disagreement at the time, as freedom of speech had entitled them to do, but they had been informed of the clear and determined position of the Worker members. In June 2014, the Worker members were resolved to negotiate the conclusions as they had undertaken to do in March but the situation had turned out differently and, in order to reach solutions, they had had to make constructive proposals throughout the negotiations. They had proposed to include in the Committee’s report, after the summary of the statements but before the jointly adopted conclusions, the following sentence (in bold and in the same font as the conclusions): “The Committee took note of the opinions expressed by the Employers’ group according to which it does not agree that the right to strike is recognized in Convention No. 87 and recalled that the question of the interpretation of Conventions is currently under discussion in the Governing Body”. The Worker members deeply regretted that that proposal had not been supported by the Employer members.

211. The Worker members emphasized that the absence of conclusions, which was not their choice but something imposed upon them, did not do justice to the Worker members who, for the second time, were returning to their countries more vulnerable than ever. As part of the follow-up to the Conference, the Worker members proposed that the Committee should request the Governments whose cases had been discussed to provide a report for examination by the Committee of Experts at its next meeting. Deploiring the situation that had been imposed on them, the Worker members concluded that the intransigence which had been shown could never, in the context of tripartism and social dialogue, be the way to finding a solution that was acceptable to all.

212. The Employer members emphasized their commitment to the ILO supervisory system. They recognized the immeasurable value of the work of the Office, of the Committee of Experts and of the International Labour Standards Department within the Office. This work was particularly important at the present time, due to the increasing globalization that was taking place. The Employer members wished to participate in the work of the Organization in every way, including in the supervision of international labour standards. They remained fully committed to tripartism and recognized the unique nature of the ILO. Tripartism was the ILO’s greatest strength, which gave it relevance and credibility. However, tripartism did at times entail difficult disagreements. That said, there was much more that united the Worker and Employer members than that which divided them. It was possible to move forward, while at the same time allowing tripartite constituents to express disagreement from time to time. The legitimate difference between the Employer and the Worker members on the question as to whether the right to strike was included in Convention No. 87 had existed for decades. In 2012, it had become clear that this difference of view needed to be managed with a new approach. As a result, in 2013 the social partners had agreed to resolve their disagreement with the inclusion in the conclusions of six cases that involved the issue of the right to strike of a single simple, short sentence that nevertheless represented compromise. The sentence had been “The Committee does not address the right to strike in this case, as Employers do not agree that there is a right to strike in Convention No. 87.” It had been a compromise that allowed the Employers’ view to be reflected visibly within the conclusions of the Committee.

213. During the current session of the Conference, the Employer members had negotiated the list of cases for consideration in good faith, and had delivered the list to the governments
by the proposed deadline. The Employer members had advised the Worker members that there were cases on the list that involved the right to strike, which the Employer members considered to be outside the mandate of the Committee of Experts. For the last two years, the Employer members had been transparent about their views both before the present Committee and the Governing Body that the Employers’ view on the right to strike was to be visibly reflected in the conclusions of the Committee. They had therefore highlighted to the Worker members that they expected that the conclusions of cases concerning Convention No. 87 which involved the right to strike would again include the sentence that had been agreed upon the previous year. After negotiating the list of cases for examination, the Committee had moved forward, and had completed the discussion of all 25 cases over the course of the week. The discussions of each case had been fruitful and the Committee had had the opportunity to provide guidance to governments on how to ensure that national law and practice complied with international labour standards. The Employer members appreciated the effort the Government members had made to travel to Geneva, as well as their time and the presentations they had made. The Committee’s work had proceeded, and, in their view, the cases had been supervised. A number of cases had raised extremely serious issues relating to violations of fundamental Conventions. The Committee’s work had progressed well and conclusions had been adopted for the six double-footnoted cases. The Employer members had worked diligently towards reaching conclusions on the remaining 19 cases. There had only been three cases (Algeria, Cambodia and Swaziland), where disagreement had emerged as to how to reflect the difference of opinion regarding the right to strike. The Employer members had expressed the expectation that the issue could be addressed by using the same sentence that had been used in 2013. However, they had been open to other forms of compromise, such as the inclusion of a second sentence in the conclusions expressing the Worker members’ views on the right to strike; or the use of different language to reflect the Employer members’ views, provided that the substance remained the same. The Committee of Experts had observed the divergence of views in paragraph 91 of its report. The Employer members had proposed that the exact wording of that paragraph of the Committee of Experts’ report be included in the conclusions, as a possible compromise. However, the Worker members had adopted the position that under no circumstances could the Employer members’ view be reflected in the conclusions.

214. The Employer members had not proposed a new approach this year; they had believed, and hoped that, given that the issue had remained unresolved before the Governing Body, the sentence agreed upon the previous year and adopted by the Committee could be used again, at the current session, and would again provide a way of coping with the difference of opinion. However, the Worker members had rejected that approach. The Employer members had been disappointed, but they nevertheless tried to remain constructive, and had proposed to continue negotiating conclusions on the 16 outstanding cases to which the disagreement was irrelevant. In their view there had been an opportunity for broad consensus on those cases. The Employer members had been, and were still ready, to proceed to adopt conclusions on the cases where agreement already existed. Disagreement on one issue should not be used to prevent consensus on other issues. The Worker members’ refusal to work to agree conclusions on all the remaining 16 cases was unfortunate.

215. The Employer members reaffirmed their commitment to the supervisory system including the present Committee. The work that the Committee had accomplished over the last two weeks was very important and was central to the work of the ILO. The Employer members regretted that the Committee’s work would not culminate in conclusions, at the election of the Worker members. Nevertheless, Governments had been made aware of the Committee’s opinions on the cases that concerned them, and the Employer members hoped that they would take appropriate action. They agreed that the relevant Governments should report to the next meeting of the Committee of Experts. The Employer members remained willing and committed to seek solutions to the issue relating to the right to strike in a
tripartite manner. In their view, a sentence reflecting the views of the Employer members did not in any way undermine the nature of the conclusions or the authority of the present Committee. The direction given to governments with respect to the supervision of the cases remained clear. Disagreements were part of tripartism, and it was appropriate that they be reflected from time to time.

216. The Government member of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), regretted the present scenario which put the Committee in a similar situation to that of June 2012, in which it seemed that the Governments’ role was reduced to one of mere spectators. GRULAC had never been a mere spectator in the discussion and those present knew that in all situations, from 2012, it had presented well-founded views aimed at safeguarding the good name and leadership of the Organization, with strict respect for legality. GRULAC called on the social partners to intensify their dialogue and involve the governments from the outset, as a core component of tripartism, which was the fundamental pillar of the Organization. The speaker regretted that the institutional channels made available by the Office had not been used with regard to the Governments. She urged the social partners to find an inclusive solution for the benefit of the system. Until now, short-term solutions had been proposed but no holistic remedy had been identified. GRULAC reaffirmed its commitment to the roadmap adopted in March 2014 relating to the present situation, and recalled that the Organization had the support of the Governments of Latin America and the Caribbean in finding a solution. The regional group reserved the right to comment more extensively to the Conference, once it was provided with more complete and accurate information on the current events.

217. The Government member of Canada, speaking on behalf of the members of IMEC, noted that the situation was profoundly disappointing and worrying. The issues that had so deeply divided the Committee in 2012 were presently under Governing Body consideration and, while that work was under way, it was imperative for the good of the entire ILO supervisory system that differences of opinion regarding the right to strike not prevent the Conference from fulfilling its appointed task. That previous March, the Governing Body had “underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference” and had “called on all parties concerned to contribute to the successful conclusion of the work of the Committee on the Application of Standards [CAS]”. The IMEC members welcomed the fact that a final list of country cases had been negotiated by the Worker and Employer members and had been adopted, on schedule, by the Committee, which was an important accomplishment. However, it took more than a list of cases to bring the Committee’s work to a successful conclusion. While Governments had no role in negotiating the conclusions or determining the contents of the list of country cases, they had a vested interest in the Committee’s successful adoption of conclusions in all cases which had been discussed. Those conclusions reflected the Committee’s deliberations and highlighted the importance that the Committee attached to the application of international labour standards in those cases. If they were unable to reach conclusions, the Committee would not have fulfilled its commitment to ensuring the successful completion of its work, and the IMEC members were deeply troubled by the message which that failure would send, not only to the rest of the Conference but, more importantly, to the entire international community about the strength and credibility of the ILO supervisory system, of which their Committee was an essential component. The IMEC members urged, once again, that the Worker and Employer members find a mutually-acceptable solution that would allow for the adoption of conclusions. They recognized that the solution would not be perfect, as that was the nature of compromise, and that it could be temporary. Nevertheless, the Governing Body must be allowed to continue its deliberations with a view to finding more lasting solutions that all groups could accept. They reiterated their strong support for the Director-General and the process towards a
lasting solution. If the conclusions could not be adopted for the 19 cases, their Governments would be profoundly disappointed.

### 218. The Government member of Greece, speaking on behalf of the European Union and its Member States, aligned themselves with the statement of IMEC. She emphasized the importance of the ILO supervisory system, which contributed to the promotion of universal human rights and which played a key role in monitoring and promoting international labour standards. The members attached great importance to maintaining a functioning Conference Committee for its impartial supervision of the implementation of international labour standards. The failure to produce conclusions jeopardized the credibility of the ILO supervisory system and freedom of association, a basic human right all over the world. It also affected the European Union, as some of its policies and instruments made references to the promotion of international labour standards and to the results of their supervision, including the conclusions of the Conference Committee. The members were seriously concerned about the current situation of the Committee, observing a real risk for the ILO’s unique tripartite setting and its cornerstone activity of supervision. They called on all constituents, in particular the social partners, to support the work of the Governing Body and the Director-General in seeking a long-term solution to the points of disagreement.

### 219. The Government member of Brazil aligned himself with the statement of GRULAC. As agreed at the session of the Governing Body in March 2014, it was essential that the ILO had an efficient system of standards which had been agreed upon by Governments and Worker and Employer members. The Governing Body had stressed the importance of the good functioning of the Conference Committee and encouraged all members of the Committee to contribute to ensure that its work would be conducted successfully. Under article 37 of the ILO Constitution, all questions or disputes relating to the interpretation of a Convention had to be submitted to the International Court of Justice. That article gave only one alternative, i.e. a tribunal to expeditiously deal with the interpretation of Conventions. Without prejudice to the authority of the International Court of Justice, the Constitution provided that the Governing Body might establish rules for the setting up of that tribunal and submit them for approval by the Conference. The Conference Committee could not act as the tribunal. Questions regarding the interpretation of Conventions should not be included in the conclusions of that Committee. He recognized the historical role of the Committee of Experts in consolidating international labour standards. Members of the Conference Committee could express individual views on questions related to international labour standards. In this respect, he considered that the right to strike was recognized under international law. However, it had to be emphasized that the Conference Committee had no interpretation mandate, and needed to abstain from pronunciation on matters that were the object of the consensus achieved in March 2014.

### F. Adoption of the report and closing remarks

#### 220. The Committee’s report was adopted as amended.

#### 221. The Government member of Libya asked why his country had been mentioned in paragraphs 177 and 186 of the General Report, as he had provided explanations in this regard to the Committee.

#### 222. The Chairperson underlined that the explanations to which he referred had been noted in the General Report in paragraphs 184 and 191 respectively.
223. The Worker members referred to the issue of who was responsible for the absence of conclusions on the 19 individual cases. They observed that draft conclusions had only been discussed for the six double-footnoted cases, and not for the other 19 cases. They emphasized that their position was the product of mature reflection after several fruitless attempts to reach a compromise in accordance with the spirit of social dialogue. Fundamentally, what was at stake was a conception of the role of the ILO. It was easier to destroy than to save what had been built up over the years in the very complex perspective of finding a lasting means of reconciling human development, peace and prosperity, based on cultural, geographical, geopolitical and legal realities that sometimes appeared irreconcilable. The Worker members reaffirmed their will to save the situation, without being bogged down in an ideological debate on “how it could be saved”, while at the same time being aware that the status quo was not a viable option. In their view, the responsibility for this task now lay with the Governing Body. They reiterated their readiness to explore short-term solutions, particularly for the work of the 2015 Conference, through discussion of working methods or any other solution which would provide an uncontested framework for discussion in the years to come, and for however long that was necessary.

224. The Worker members recalled that there was nothing neutral in political terms in the work of the ILO. Those who made the law, who applied it and enforced it were by default engaged in political activity. ILO Conventions were negotiated in the Conference, taking into account the need to reconcile legal cultures strongly influenced by social and economic factors, and also by societal choices that influenced the law. The supervision of standards was a legal, but also a political, process, as member States made political choices in terms of both the ratification and application of standards.

225. The Worker members referred to certain cases that had been examined by the Committee in the course of its work, the discussion of which shed light on the probable roots of future difficulties over and above the disagreements concerning Convention No. 87. They referred in particular to the discussion of the application by Greece of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 2013 and 2014 respectively, during which the Employer members had expressed the view that the Committee was not supposed to address issues of economic policy. However, addressing legal and political aspects was not in itself an error. Convention No. 102 was an instrument that addressed economic systems and the level of development of countries. In 2013, in Oslo, there had been tripartite agreement that the Convention was a legal treaty which was necessarily embedded in a political context. The Worker members also referred to the discussions on the application of the Employment Policy Convention, 1964 (No. 122), by Portugal and Mauritania, during which the Employer members had denied the right of the Committee of Experts, the Conference Committee and the ILO to assess the validity, efficacy or soundness of the measures adopted by a government, or to take inspiration from the principles of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The Worker members reaffirmed that in its work the Committee of Experts made use of all documents relevant to the application of Conventions, including texts produced by the ILO, such as the MNE Declaration. Finally, in the discussion of the application of Convention No. 98 by Croatia, the Employer members had raised the issue of the mandate of the Committee of Experts in relation to certain articles of that Convention. The Worker members reiterated their belief in the relevance of binding standards, the supervision of their application, and not in corporate social responsibility, which would only be worth discussing when it left the sphere of the optional and a framework was developed within which assessment and supervision could be exercised.
226. The Worker members refused to be denied the right in the future to discuss individual cases relating to freedom of association in which reference could be made to the right to strike. Convention No. 87 was one of the international instruments that provided a basis for the right to strike and for collective action. The claim to regulate the right to strike solely at the national level was unacceptable, as the strengths at that level were clearly unbalanced. What was happening was a national war against unions and against social dialogue, instigated by a very small group of actors who had chosen the wrong social model and had failed to understand that there could be no productive economy unless there was a high quality labour supply from the workers.

227. The Worker members welcomed the fact that it had been possible to complete the preparatory work during the months of April and May 2014 with the Employer members. The Committee had been able to discuss the six double-footnoted cases and to adopt conclusions on a consensual basis. It had also been possible to discuss the other 19 cases. Only the question of the conclusions to the three cases involving Convention No. 87 had tipped the balance developed in good faith when agreeing on the list of 25 cases. According to the Employer members, agreement had been reached in 2013 on a wording for Convention No. 87 cases which would be used at all the sessions of the Committee. The Worker members did not agree with that interpretation, as they had indicated in their statements in 2013 (see, for example, paragraph 231 of the General Report of the Committee of 2013) and in 2014. In 2013, so as not to repeat the failure of 2012, they had made concessions, as a further failure would have been fatal to the Committee. Moreover, the work of the Governing Body in March 2014 had “underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate”. The decision adopted by the Governing Body had also “deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention”. Underlying that point there was a clear reference to the possible use of paragraphs 1 and 2 of article 37 of the Constitution. The Governing Body had also “recognized that a number of steps could be examined with a view to improving the working methods of the standards supervisory system”. The Committee should therefore have been able to work without raising issues of interpretation, which were due to be addressed by the Governing Body in November 2014 and thereafter, if necessary. In the meantime, it was clear that it was not appropriate to change working methods that were considered valid until a decision was made to modify them. The Worker members considered that the only error they had made was to have kept their word to the Governing Body and to have wanted the Committee to fulfil its mandate by seeking conclusions on a consensual basis, as only such conclusions were of any use, in all the cases discussed. They reaffirmed their belief in the ILO, which had a vital role to play in promoting and achieving progress and social justice, and in the importance of fundamental rights, such as freedom of association and the effective recognition of the right to collective bargaining. They believed in social dialogue and tripartite practices involving governments and the representative organizations of workers and employers.

228. The Employer members reiterated their full commitment to the ILO supervisory system. They also remained fully committed to tripartism, which was a driving force behind the work of the ILO. However, tripartism did at times entail difficult disagreements, which had occurred this year in the Committee’s work. The legitimate difference between the Employer and the Worker members on the question as to whether the right to strike was included in Convention No. 87 had existed for decades. In 2012, it had become clear that this difference of views needed to be managed with a new approach. As a result, in 2013 the social partners had reached a compromise to address this disagreement, with the inclusion in the conclusions of cases that involved the issue of the right to strike of a single simple and short sentence.
229. During the current session of the Conference, the Employer members had negotiated the list of cases for consideration in good faith, and the short list had been delivered to the Governments by the proposed deadline during the first week of discussion. They had advised the Worker members that there were cases on the list that involved the right to strike, which the Employer members considered to be outside the mandate of the Committee of Experts. The Employer members had accordingly highlighted that they expected that the conclusions of any case which involved the right to strike would again include the sentence that had been agreed upon in 2013. After negotiating the list of cases for examination, the Committee had moved forward, and had completed the discussion of all 25 cases. A number of cases had raised extremely serious issues relating to violations of fundamental Conventions. The Committee’s work had progressed well and conclusions had been adopted for the six double-footnoted cases. The Employer members had worked diligently towards reaching conclusions on the remaining 19 cases. They disagreed with the characterization by the Worker members of their work in this regard, as they had provided comments and engaged in negotiations with regard to conclusions on 14 of the cases discussed. They had also intended to review and negotiate conclusions for four other cases when the Worker members had made it clear that they would not move forward with negotiations with the remaining cases.

230. While larger issues were being considered by the Governing Body, it had been necessary to find methods to allow the Committee to continue with its work. Therefore, the Employer members had not proposed a new approach this year. They had hoped that the sentence agreed upon in 2013 could be used once more, to again provide a way of coping with the divergence of views with regard to Convention No. 87 and the right to strike.

231. In an effort to be constructive, the Employer members had proposed using the language of the Committee of Experts to reflect this divergence. They had proposed that the exact wording of paragraph 91 of the General Report of the Committee of Experts, which referred to the diametrically opposing views of the two groups, be included in the conclusions, as a possible compromise. The Employer members had also remained open to amending the language in the sentence, as long as the substance of the concerns raised were reflected, and they had been receptive to inserting an additional sentence to reflect the views of the Worker members regarding the right to strike. However, the Worker members had rejected these approaches. The Worker members had subsequently refused to continue negotiations on the three cases (Algeria, Cambodia and Swaziland) where disagreement had emerged as to how to reflect the difference of opinion regarding the right to strike, and had indicated that they were not prepared to adopt conclusions on the other 16 cases. The position of the Worker members was regrettable, as the Employer members had remained open to adopting conclusions for the cases on which there was agreement. There had been an opportunity for broad consensus, and disagreement on one issue should not be used to prevent the adoption of conclusions for such cases. It was unfortunate that a disagreement on the legal and technical provisions of a Convention, which impacted only three cases, had prevented the negotiation on conclusions for all of the cases discussed by the Committee, save six. The Employer members emphasized that their conduct could not be understood as a refusal to supervise or discuss cases on the application of Convention No. 87 in the Committee. They had agreed to several cases concerning Convention No. 87 on both the short and long lists, and had engaged in negotiations on the conclusions of those cases. There had also been agreement on several issues within these cases.

232. The Employer members indicated that they would not respond to the comments of the Worker members concerning the individual cases discussed in the Committee. The opportunity for discussion of these cases had passed, due to the Worker members’ refusal to negotiate conclusions. Despite the regrettable position of the Worker members, and the adoption of conclusions in only six cases, the Committee had been able to engage in supervision of 25 cases. Governments had been able to make submissions on all cases, and
had been made aware of the opinions of the social partners with regard to guidance and supervision in the application of various Conventions. The Employer members hoped that governments would take appropriate action to bring national law and practice into compliance with the Conventions examined. The Employer members remained willing and committed to seek solutions to the issue relating to the right to strike in a tripartite manner. They looked forward to a constructive and positive resolution of these issues in the future.

233. The Chairperson said that she shared the concerns expressed and considered that the approach to be adopted to resolve them was to further develop social dialogue and tripartism. She thanked the Employer and Worker Vice-Chairpersons, the Reporter and all the Government, Employer and Worker members for their engagement in the work of the Committee. She also thanked the secretariat for its continuous collaboration and support.

Geneva, 10 June 2014

(Signed) Ms Gloria Gaviria Ramos
Chairperson

Ms Cecilia Mulindeti
Reporter
Annex 1

INTERNATIONAL LABOUR CONFERENCE
C.App./D.1
103rd Session, Geneva, May–June 2014
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 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 a report. Since 2007, in response to the wishes expressed by ILO constituents, the report has been published both in the Record of Proceedings 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 on the Application of Standards was set up in June 2006 and has met 11 times since then. The last meeting took place in November 2011. On the basis of these consultations, and the recommendations of the tripartite 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 for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for Governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of individual cases. ⁴ Since 2010, cases included in the final list have been automatically registered and


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

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

⁴ See below Part V, B.
scheduled by the Office on the basis of a rotating alphabetical system, following the French alphabetical order; the A + 5 model has been chosen to ensure a genuine rotation of countries on the list. Since 2012, the Committee has begun its discussion of individual cases with those cases in which the Committee of Experts on the Application of Conventions and Recommendations requested governments to submit full particulars to the Conference (“double-footnoted cases”). In 2013, a decision was made to begin the discussion of the double-footnoted cases on the first Saturday of the Conference. Steps have been taken to ensure that, as soon as this discussion is completed, the discussion of the other individual cases can begin.

Improvements have been introduced in the preparation and adoption of the conclusions relating to cases. Since June 2010, important arrangements have been implemented to improve time management. 5 Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum. 6

In June 2008, measures were adopted to address those cases in which Governments were registered 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. In November 2010, the tripartite Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference. In such a case, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue. 7

In addition, modalities have been established for discussion of the General Survey of the Committee of Experts, in light of the discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. 8

At its last meeting in November 2011, the tripartite Working Group reached the following main conclusions:

(i) Adoption of the list of individual cases: at the time, it was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session (2012) 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 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

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

6 See below, Part V, F.

7 See below, Part V, D, footnote 21.

8 See below, Part V, A.
suspended in 2008 due to concerns about time management. The issue would be kept under review. 9

In addition, the question of the impact of the deliberations of the Working Party on the Functioning of the Governing Body and the International Labour Conference on the work of the tripartite Working Group on the Working Methods of the Committee has been considered. During the last meeting of the tripartite Working Group, in November 2011, it was recalled that the Working Group reported to the Conference Committee on the Application of Standards. At the same time, it was noted that the work of the Conference Committee could also be affected by discussions in the Working Party on the Functioning of the Governing Body and the International Labour Conference. At the last meeting of the tripartite Working Group, it was decided that although there was no need for the Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, including to follow-up, as necessary, upon questions raised by the Working Party on the Functioning of the Governing Body and the International Labour Conference.

At its 320th Session (March 2014), under the item The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, the Governing Body recommended to the Conference Committee on the Application of Standards that it consider convening its Working Group on the Working Methods of the Committee to take stock of current arrangements and develop further recommendations on the Committee’s working methods. 10 At the meeting of the Working Party on the Functioning of the Governing Body and the International Labour Conference during the 320th Session (March 2014) of the Governing Body, the representative of the Director-General indicated that the findings of the tripartite Working Group on the Working Methods of the Committee on the Application of Standards would be submitted to the Working Party before formalizing final recommendations. 11

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.

9 See below Part V, B.

10 See document GB.320/LILS/PV/Draft, para. 50(a).

11 See document GB.320/INS/13, para. 11.
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 43–586). 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–xvii), and by country (pages xix–xxvi).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments. 12

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. 13 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. 14 A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 633–645).

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. 15

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. 16


15 See paras 71–77 of the General Report of the Committee of Experts. See also Appendix II to the present document on the criteria for identifying cases of progress.

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum WageFixing Recommendation, 1970 (No. 135).

B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of the arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 19, 22 and 35 of the Constitution. 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) 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 589–604);

(ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning minimum wage fixing instruments) 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 II, pages 203–208);

(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) 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 616–632).

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, when these governments are on the list of individual cases adopted by the Conference Committee.

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 fifth time, the subject of the General Survey has been aligned with the strategic objective that will be examined in the context of the recurrent discussion under the follow-up to the 2008 Social Justice Declaration. Thus, the General Survey on the minimum wage fixing instruments will inform the recurrent discussion on the strategic objective of social protection (labour protection) to be held at the 104th Session (2015) of the Conference. It should be recalled in this respect that, at its 309th Session (November 2010), the Governing Body decided 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 as this would facilitate better consideration and integration of the standards-related aspects into the recurrent discussion. 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. The shift will be effective for the first time at the current session of the Conference.

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 obligations

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.

17 See documents GB.309/10, para. 8, and GB.309/PV, para. 288.

18 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 countries 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 undisputed 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, 2008 and 2013.

Supply of information and automatic registration

1. Oral replies. The governments 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 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 “U”, thus continuing the experiment started in 2011.

Cases will be divided in 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 66 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:

19 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, above; and Part V, E, below). 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 them 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 (1980) of the Conference 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(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 to the competent authorities, in accordance with article 19 of the Constitution. 20

– 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. 21

20 This year the sessions involved would be the 92nd (2004) to 101st (2012).

21 In conformity with the decision taken by the Committee at the 73rd Session (1987) of the Conference, as amended at the 97th Session (2008) of the Conference, 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 draw attention in its report to 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).
- 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

Excerpts of the General Report of the Committee of Experts (103 III(1A))

61. In order to identify cases for which it inserts special notes, the Committee uses the basic criteria described below, while taking into account the following general considerations. First, the criteria are indicative. In exercising its discretion in the application of the criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, the 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 a “double footnote”. The difference between these two categories is one of degree. Third, 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) when there has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to “double footnotes” in deference to the Conference Committee’s decisions as to the cases it wishes to discuss.

62. The criteria to which the Committee has regard are the following:

– 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.

63. In addition, the Committee wishes to emphasize that its decision not to double footnote a case which it has previously drawn to the attention of the Conference Committee in no way implies that it has considered progress to have been made therein.

64. At its 76th Session (November–December 2005), the Committee decided that the identification of cases in respect of which a government is requested to provide detailed information to the Conference would be a two-stage process: first, the expert initially responsible for a particular group of Conventions recommends to the Committee the insertion of special notes; second, in light of all the recommendations made, the Committee will, after discussion, take a final, collegial decision once it has reviewed the application of all the Conventions.
Appendix II

Criteria for identifying cases of progress

Excerpts of the General Report of the Committee of Experts (103 III(1A))

72. At its 80th and 82nd Sessions (2009 and 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 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.

73. Since first identifying cases of satisfaction in its report in 1964, 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.

76. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979. 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 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

INTERNATIONAL LABOUR CONFERENCE C.App./D.4/Add.1
103rd Session, Geneva, May–June 2014
Committee on the Application of Standards

Case regarding which governments are invited to supply information to the Committee

The list of the individual cases on the application of ratified Conventions appears in the present addendum to Document D.4.

The text of the corresponding observations concerning these cases will be found in document C.App./D.4/Add.2.
### Index of observations regarding which governments are invited to supply information to the Committee

Report of the Committee of Experts  
(Report III (Part 1A), ILC, 103rd Session, 2014)

<table>
<thead>
<tr>
<th>Country</th>
<th>Convention No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>87 (page 50)</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>81 (page 351)</td>
</tr>
<tr>
<td>Belarus</td>
<td>87 (page 62)</td>
</tr>
<tr>
<td>Cambodia</td>
<td>87 (page 74)</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>169 (page 558)</td>
</tr>
<tr>
<td>Colombia</td>
<td>81 (page 360)</td>
</tr>
<tr>
<td>Croatia</td>
<td>98 (page 90)</td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td>29 (page 133)</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>111 (page 291)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>98 (page 98)</td>
</tr>
<tr>
<td>Greece</td>
<td>102 (page 516)</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>111 (page 312)</td>
</tr>
<tr>
<td>Republic of Korea</td>
<td>111 (page 315)</td>
</tr>
<tr>
<td>Malaysia</td>
<td>29 (page 137)</td>
</tr>
<tr>
<td>Mauritania</td>
<td>122 (page 431)</td>
</tr>
<tr>
<td>Niger</td>
<td>138 (page 207)</td>
</tr>
<tr>
<td>Pakistan</td>
<td>81 (page 384)</td>
</tr>
<tr>
<td>Portugal</td>
<td>122 (page 441)</td>
</tr>
<tr>
<td>Qatar</td>
<td>81 (page 392)</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>29 (page 153)</td>
</tr>
<tr>
<td>Swaziland</td>
<td>87 (page 120)</td>
</tr>
<tr>
<td>Uganda</td>
<td>26 (page 465)</td>
</tr>
<tr>
<td>United States</td>
<td>182 (page 265)</td>
</tr>
<tr>
<td>Bolivarian Republic of Venezuela</td>
<td>26 (page 465)</td>
</tr>
<tr>
<td>Yemen</td>
<td>182 (page 273)</td>
</tr>
</tbody>
</table>

Note: The page numbers in parentheses refer to the English version of the Report of the Committee of Experts.
<table>
<thead>
<tr>
<th>Saturday 31 May morning</th>
<th>Monday 2 June morning</th>
<th>Tuesday 3 June morning</th>
<th>Wednesday 4 June morning</th>
<th>Thursday 5 June morning</th>
<th>Friday 6 June morning</th>
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REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

OBSERVATIONS OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS – INDIVIDUAL CASES
Observations of the Committee of Experts on the Application of Conventions and Recommendations

Individual cases
**Uganda**

*(Ratification: 1963)*

Articles 1–4 of the Convention. Establishment and operation of minimum wage fixing machinery. With reference to its previous observation, the Committee notes with regret that, to date, no concrete progress has been made with regard to the reactivation and proper functioning of the Minimum Wages Board despite the Committee’s repeated requests over several years to re-adjust the minimum wage rate, which was last set in 1984. In its latest report, the Government merely indicates that it has initiated a process of identification of the persons to be appointed to the Board, including the social partners, and also that a draft Cabinet paper has been prepared for submission to the competent authority for consideration. In addition, the Government requests the Office to provide technical and financial support with a view to carrying out a study on wage trends in different sectors of the economy. In view of the ongoing stalemate, the Committee again urges the Government to undertake the long-overdue readjustment of the minimum wage, and, to this end, take prompt action – with the technical assistance of the Office – to enable the Minimum Wages Board to discharge its responsibilities under the Minimum Wages Advisory Boards and Wages Councils Act.

**Venezuela, Bolivarian Republic of**

*(Ratification: 1944)*

Articles 1 and 3 of the Convention. Minimum wage fixing methods. Consultation of employers’ and workers’ organizations. The Committee notes the comments by the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 15 July 2013 and forwarded to the Government on 9 September 2013. The IOE and FEDECAMARAS report that the new Basic Act of 30 April 2012 on work and men and women workers assigns to the Government a primary role in minimum wage fixing thus displacing the social partners, consultation of whom was mandatory under the former Act. The process of consultation with the National Tripartite Committee has been eliminated from the new Act. Henceforth, the Government, following broad consultations with various social organizations and socio-economic institutions of its choosing, is to fix the minimum wage yearly by presidential decree. The IOE and FEDECAMARAS further state that, since 2002, the Government has fixed the minimum wage unilaterally each year, without any real social dialogue on the matter, in breach of the Convention and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee also takes note of the IOE’s further comments of 17 July 2013, in which the IOE states that the involvement of the social partners in fixing, adjusting and implementing the minimum wage is vital, and notes with concern that economic factors such as the productivity rate are not taken into account in determining the minimum wage.

In its reply received on 15 November 2013, the Government explains that only twice between 1991 and 1999 did the members of the National Tripartite Committee reach agreement on adjusting the minimum wage – both times to the detriment of other worker entitlements, such as social benefits. The Government indicates that, as a consequence, one of the most frequent requests of workers’ assemblies during the 1999 constitutional process was for a minimum wage fixing mechanism that is immune to individual political interests. Since 2000, the Government has therefore reviewed and fixed the minimum wage annually on the basis of the recommendations made by social, economic, and employers’ and workers’ organizations and without affecting the other rights of workers. The Committee nevertheless points out that Article 3 of the Convention prescribes, as a fundamental principle of any minimum wage-fixing system, real and effective consultations with employers’ and workers’ organizations and their participation in equal numbers and on an equal footing in wage fixing machinery. The Committee accordingly asks the Government to specify how it intends to secure full observance of the obligation to consult employers’ and workers’ organizations, on an equal footing, in decision-making on minimum wages.
Saudi Arabia

(Ratification: 1978)

Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour. In its previous comments, the Committee noted the vulnerable situation of migrant workers, particularly domestic workers who are excluded from the provisions of the Labour Code and work under the visa sponsorship system. In this regard, the Committee noted the information in the report of the UN Special Rapporteur on violence against women that “upon arrival, all migrants have their passport and residency permit taken away from them ... and some find themselves in slave-like conditions”. Moreover, “female domestic workers who are among the most vulnerable to abuse ... are sometimes locked up in the house with no possibility to make or receive phone calls, or are prohibited from leaving the house at their will” (A/HRC/11/6/Add.3, 14 April 2009, paragraphs 57 and 59). It further noted a 2012 report of the International Trade Union Confederation (ITUC) that migrant workers are forced to work long hours, often all day long with little or no time for rest and that the sponsorship system, also known as the kafala system, ties migrant workers to particular employers, limiting their options and freedom. A migrant worker is not allowed to change employers or leave the country without the written consent of the employer. Workers cannot leave their job and, in case a worker escapes the employer, then she/he cannot search for a new job or leave the country. The ITUC asserted that this system, in conjunction with the practice of confiscating travel documents and withdrawing wages, puts workers under conditions akin to slavery. However, the Committee also noted the Government’s statement that it was aware of the magnitude and seriousness of the situation of migrant domestic workers and that it was committed to expediting the process of adopting regulations on the work of this category of workers. The Committee expressed the firm hope that any new regulations adopted would include provisions specifically tailored to the difficult circumstances faced by migrant domestic workers and in particular to the problems caused by the visa sponsorship system.

The Committee notes the Government’s statement that the Regulation on domestic workers and similar categories of workers was approved by virtue of Order No. 310 of 7 September 2013, taken by the Council of Ministers. The Government states that this Regulation aims to regulate the relationship between an employer and a domestic worker, by clarifying the rights and obligation of both parties. Sections 2 and 7 of the Regulation prohibit an employer from giving work other than the work agreed upon in the contract, or work that is hazardous to health, demeaning or for a third party. Section 7 also obliges an employer to pay the worker the wage agreed upon at the end of each month (to be confirmed by the written signature of the worker) and to provide appropriate housing, nine hours of daily rest, sick leave and paid leave after two years of service. Section 8 provides for a weekly day of rest with the agreement of both parties. Section 17 states that employers who violate the Regulation may be subject to a fine, or a ban from recruiting workers for a number of years.

Regarding the obligations of the worker, section 6 of the Regulation states that domestic workers must respect the teachings of Islam, the rules and regulations in place in the Kingdom and the specificity and culture of Saudi society, and that they may not refuse work or leave their service without a legitimate reason. Section 18 provides that workers who violate the provisions of the Regulation may be subject to a fine, a prohibition from working in the country, and the cost of returning to his or her own country. In addition, section 13 of the Regulation provides that if a worker leaves the household without notice, the employer can notify the police, who will then notify the department in charge of passports, as well as the labour office. Lastly, the Regulation provides for the establishment of a committee under the Minister of Labour, to examine financial disagreements between the employer and worker that are not of a criminal nature.

While noting that the new Regulation constitutes a first step towards regulating the work of migrant domestic workers, the Committee observes that the Regulation does not address several of the factors identified by the Committee that increase the vulnerability of these workers to situations of forced labour. Particularly, the Regulation does not address the possibility of changing employers or leaving the country without the written consent of the employer, or the issue of the retention of passports. Moreover, it does not appear to provide for recourse for migrant domestic workers to a competent authority for non-financial complaints. In this regard, the Committee reiterates the importance of taking effective action to ensure that the system of employment of migrant workers (the sponsorship system), including migrant domestic workers, does not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices, such as retention of passports, deprivation of liberty, and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. The Committee once again urges the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour, including by addressing the difficult circumstances which may be faced by such workers due to the visa sponsorship system. Particularly, it urges the Government to take specific measures to respond to cases of abuse of migrant workers and to ensure that victims of such abuse are able to exercise their rights in order to halt violations and obtain redress. It requests the Government to provide information on the measures taken in this regard, including measures to implement the Regulation on domestic workers and similar categories of workers, as well as measures to allow domestic workers to transfer their services to a new employer or to terminate their employment. Moreover, noting an absence of penal sanctions in the Regulation, and recalling that Article 25 of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced, the Committee requests the Government to provide information on the penalties which may be applied to employers who engage migrant workers in situations amounting to forced labour.

The Committee is raising other points in a request addressed directly to the Government.
Malaysia

(Ratification: 1957)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013)

The Committee notes the communication from the International Trade Union Confederation (ITUC) dated 31 August 2013, as well as the Government's report. It also takes note of the detailed discussions that took place at the Conference Committee on the Application of Standards in June 2013 concerning the application by Malaysia of the Convention.

Articles 1(1), 2(1) and 25 of the Convention. 1. Trafficking in persons. The Committee previously noted the ITUC's statement that Malaysia is a destination, and to a lesser extent, a source and transit country for trafficking of men, women and children, particularly for forced prostitution and forced labour. The ITUC also alleged that prosecution for forced labour trafficking was rare. The Committee also noted the launching of the National Action Plan on Trafficking in Persons (2010–15), as well as information from the Government on the number of prosecutions and convictions related to trafficking, but not the specific penalties applied to perpetrators.

The Committee notes the Government's statement that it is taking measures to strengthen the capacity of the labour inspectorate to identify victims and deal with the complaints received, including capacity building courses in collaboration with the ILO and workshops with the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants. The Government indicates that between 2012 and August 2013 there were a total of 120 cases brought under the Anti-Trafficking in Persons Act, resulting in 23 convictions. There were 30 cases discharged and 67 cases pending trial. The Committee once again notes an absence of information on the specific penalties applied to those convicted.

The Committee notes that the Conference Committee on the Application of Standards, in June 2013, took note of the concern expressed by several speakers regarding the magnitude of trafficking in persons in the country, as well as the absence of information provided on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act. The Committee, like the Conference Committee on the Application of Standards, urges the Government to reinforce its efforts to combat trafficking in persons and to strengthen the capacity of the relevant public authorities in this respect. It also requests the Government to continue to provide information on measures taken in this regard, including the implementation of the National Action Plan on Trafficking in Persons (2010–15), and on the results achieved. Lastly, it requests the Government to continue to supply information on the application in practice of the Anti-Trafficking in Persons Act, including the specific penalties applied to those convicted under the Act, starting with the 23 convictions reported by the Government between 2012 and August 2013.

2. Vulnerable situation of migrant workers with regard to the exaction of forced labour. The Committee previously noted the ITUC's allegation that some workers who willingly enter Malaysia in search of economic opportunities subsequently encounter forced labour at the hands of employers or informal labour recruiters. These migrant workers are employed on plantations and construction sites, in textiles factories, and as domestic workers, and experience restrictions on movement, deceit and fraud in wages, passport confiscation and debt bondage. Domestic workers face difficult situations, including the non-payment of three to six months wages. There had been no criminal prosecutions of employers or labour recruiters who subject workers to conditions of forced labour. The Committee also noted the information from the International Organization for Migration, that as of 2009, there were approximately 2.1 million migrant workers in Malaysia, and that migrant workers in the country may be subject to unpaid wages, passport retention, heavy workloads and confinement or isolation. It further noted that a Memorandum of Understanding had been signed between the Governments of Indonesia and Malaysia.

The Committee notes the Conference Committee on the Application of Standards urged the Government to take immediate and effective measures to ensure that perpetrators were prosecuted and that sufficiently effective and dissuasive sanctions were imposed, as well as to ensure that victims were not treated as offenders and were in a position to turn to the competent judicial authorities in order to obtain redress in cases of abuse and exploitation. The Conference Committee also encouraged the Government to continue to negotiate and implement bilateral agreements with countries of origin, so that migrant workers were protected from abusive practices and conditions that amounted to the exaction of forced labour once they were in the country, and to work with the countries of origin to take measures for their protection prior to departure.

The Committee notes that the ITUC, in its most recent comments, states that there has been no action taken by the Government since the Conference Committee’s discussion and that the Government has not followed any of the recommendations made by that Committee. The ITUC asserts that the situation and treatment of migrants workers in the country has further deteriorated, causing more migrant workers to suffer from forced labour. The Government has not taken any measures to monitor the deception of migrant workers due to false documents or the switching of employment contracts upon arrival, although this is a well-known issue. Despite protections in law, most migrant workers work long hours and are subject to underpayment or late payment of wages. An estimated 90 per cent of employers retain the passports of migrant workers, and these workers are afraid to report abuse or even request information concerning labour rights. Migrant workers who leave their employer due to abuse become de facto undocumented workers, subject to deportation. The Government has further criminalised migrant workers, identifying 500,000 undocumented migrant workers for deportation without adequately assessing whether they are victims of forced labour. While the Ministry of Human Resources announced its intention in 2008 to introduce a regulation on the working conditions of domestic workers, this regulation has not yet been introduced. The ITUC urges the Government to abolish the labour outsourcing system, and to include domestic workers within the scope of the Employment Act (Minimum Standards).

The Committee notes the Government's indication that measures taken to protect migrant workers include the implementation of a programme that will result in the development of an updated list of foreign workers in the country, which will contribute to the protection of these workers against unscrupulous employers. This programme will create a platform for Malaysia to collaborate with sending countries to ensure the orderly entry of migrant workers, so that they can be protected from exploitation. The Government is also implementing an awareness-raising programme for foreign domestic workers and their employers, and has held seminars regarding the rules and regulations which are enforceable in Malaysia for 5,651 participants. Additionally, it has set up a Special Enforcement Team, consisting of 43 officers, to enforce the regulations.
enhanced enforcement activities to combat forced labour issues. The Department of Labour carried out 41,452 workplace inspections in 2012 and 15,370 inspections in the first nine months of 2013, to check for forced or compulsory labour practices, and no forced or compulsory labour practices were recorded. The Government further indicates that it has signed a Memorandum of Understanding with the Government of Bangladesh regarding the recruitment of workers.

While noting certain awareness-raising and data collection measures taken by the Government, the Committee observes that the implemented law enforcement measures appear to have yielded few tangible results. In particular, it notes with concern that the considerable number of inspections carried out appear not to have had a concrete impact with regard to combating forced labour practices in the country and ensuring that perpetrators of this practice are penalized. In this regard, the Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse, as such practices might cause their employment to be transformed into situations that could amount to forced labour. Therefore, the Committee once again urges the Government to take the necessary measures to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. In this regard, it urges the Government to take specific measures to respond to cases of abuse of migrant workers and to ensure that victims of such abuse are able to exercise their rights in order to halt violations and obtain redress. It also requests the Government to take concrete action to identify victims of forced labour among migrant workers and to ensure that these victims are not treated as offenders. Moreover, noting an absence of information in the Government's report on any prosecutions undertaken, the Committee urges the Government to take immediate and effective measures to ensure that perpetrators are prosecuted and that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to provide, in its next report, information on the number of prosecutions and convictions concerning the exploitative employment conditions of migrant workers, and the specific penalties applied. Lastly, the Committee requests the Government to continue to provide information on the implementation of bilateral agreements with countries of origin, as well as any other cooperation measures undertaken in this regard.

The Committee notes that the Conference Committee, in June 2013, requested the Government to accept a technical assistance mission to ensure the full and effective application of the Convention. It also notes that the ITUC, in its most recent comments, urges the Government to accept an ILO mission to the country. In this regard, it notes the Government’s statement in its report that it is still considering the offer, as forced labour in Malaysia is an issue which cuts across many government agencies. Taking note of the Government’s statement, the Committee strongly encourages the Government to avail itself of ILO technical assistance, and to accept and receive a technical assistance mission in the near future.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2014.]

Democratic Republic of the Congo
(Ratification: 1960)

Articles 1(1), 2(1) and 25 of the Convention. Forced labour and sexual slavery in the context of armed conflict. Since 2010, the Committee has been expressing its deep concern at the serious violations of human rights committed by state security forces and various armed groups in the context of the armed conflict that is afflicting the Democratic Republic of the Congo. The Committee has noted the information contained in reports of several United Nations agencies on the situation in the Democratic Republic of the Congo, the observations made by the Confederation of Trade Unions of Congo (CSC) in September 2011 and 2013 and the International Trade Union Confederation (ITUC) in September 2012, as well as the discussion in the Committee on the Application of Standards of the International Labour Conference in June 2011. This information confirms cases of the abduction of women and children with a view to their use as sexual slaves and the imposition of forced labour, particularly in the form of domestic work. Moreover, in mines, workers are hostages to conflicts for the exploitation of natural resources and are the victims of exploitation and abuse that amounts, for many of them, to forced labour. The Committee noted in 2012 the confirmation by the ITUC of the persistence of cases of sexual slavery, especially in mines in the regions of North Kivu, Orientale Province, Katanga and East Kasai, perpetrated by illegal armed groups and elements of the armed forces of the Democratic Republic of the Congo (FARDC). The ITUC referred to the systematic use of violence by armed groups to terrorize civilians and force them to transport arms, ammunition, booty from looting and other provisions, or to build housing or work in the fields. The Committee urged the Government to take the necessary measures, as a matter of the utmost urgency, to bring an immediate end to these practices which constitute a serious violation of the Convention and to re-establish a climate of legal security in which recourse to forced labour does not go unpunished.

The Committee notes the information provided by the Government in its latest report, which mainly concerns the action taken to protect children working in mines and child victims of violence, including sexual violence in the context of the armed conflict. The Government has also provided a document analysing the cases brought to the courts under the new provisions of the Penal Code regarding “offences of sexual violence”. The Committee observes that these cases concern instances of sexual violence against children. This information will be examined in the context of the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), under which a report is due in 2014.

The Committee notes the report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, covering the period between November 2011 and May 2013 (A/HRC/24/33 of 12 July 2013). According to this report, throughout the period under review, “many resource-rich areas, mostly in Orientale Province, the Kivus and Northern Katanga, bore witness to human rights violations, including forced labour linked to the illegal exploitation of such resources, allegedly committed by both armed groups and state agents”. The report refers to attacks by armed groups intended to spread
terror and a large number of cases of the abduction of civilians and of forced labour committed by armed groups and by combatants of the Allied Democratic Forces. Many of those abducted are forced to engage in work, such as timber cutting, gold mining and agricultural production for the benefit of the armed groups. The Committee notes that the High Commissioner reports some progress, such as the creation of the National Human Rights Commission and the conviction of certain state agents guilty of human rights violations, such as sexual violence. At the same time, the High Commissioner emphasizes the deterioration in the situation, particularly in the east of the country, with “an important increase in the number of human rights violations and serious violations of international humanitarian law that could amount to war crimes, committed by national security and defence forces, as well as by foreign and national armed groups”.

Although aware of the complexity of the situation and the efforts made by the Government to re-establish peace and security, the Committee recalls that failure to respect the rule of law, the climate of impunity and the difficulty of victims in gaining access to justice contribute to the continued perpetration of these serious violations of the Convention. It urges the Government to take measures as a matter of urgency to bring an end to the violence perpetrated against civilians with a view to engaging them into forced labour, including sexual slavery. It urges the Government to continue to combat impunity resolutely and to ensure that the perpetrators of these serious violations of the Convention are brought to justice and punished, and that the victims are compensated for the damage suffered.

Article 25. Criminal penalties. The Committee recalls that, with the exception of section 174c and 174e respecting forced prostitution and sexual slavery, the Penal Code does not establish criminal penalties conducive to penalizing the impositions of forced labour. Moreover, the penalties established by the Labour Code in this respect are not of the dissuasive nature required by Article 25 of the Convention (section 323 of the Labour Code establishes a principal penalty of imprisonment of a maximum of six months and a fine, or one of these two penalties). In its latest report, the Government indicates that the Bill for the eradication of forced labour, containing effective criminal penalties, is still being examined by Parliament and that a copy will be provided once it has been adopted. The Committee requests the Government to ensure that the text prohibiting forced labour will be adopted and enacted in the very near future so that effective and dissuasive criminal penalties can be applied in practice to persons imposing forced labour, in accordance with Article 25 of the Convention.

Repeal of legislation allowing the exaction of work for national development purposes, as a means of collecting unpaid taxes and by persons in preventive detention. For several years, the Committee has been requesting the Government to repeal or amend the following legislative texts and regulations, which are contrary to the Convention:

• Act No. 76-011 of 21 May 1976 respecting national development and its implementing order, Departmental Order No. 00748/BCE/AGRI/76 of 11 June 1976 on the performance of civic tasks in the context of the National Food Production Programme: these legal texts, which aim to increase productivity in all sectors of national life, require, subject to criminal penalties, every able-bodied adult person who is not already considered to be making his/her contribution by reason of his/her employment to carry out agricultural and other development work, as decided by the Government;

• Legislative Ordinance No. 71/087 of 14 September 1971 on the minimum personal contribution, of which sections 18 to 21 provide for imprisonment involving compulsory labour, upon decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions; and

• Ordinance No. 15/APAJ of 20 January 1938 respecting the prison system in indigenous districts, which allows work to be exacted from persons in preventive detention (this Ordinance is not on the list of legal texts repealed by Ordinance No. 344 of 15 September 1965 respecting prison labour).

The Committee trusts that, when adopting the Act for the eradication of forced labour, the legal texts to which it has been referring for many years, and which the Government indicates are obsolete, will finally be repealed formally.

The Committee is raising other points in a request addressed directly to the Government.
Bangladesh

(Ratification: 1972)

The Committee notes the Government’s reply, received by the Office on 9 February 2011, to the observations made by the Bangladesh Free Trade Union Congress (BFTUC), dated 26 August 2010, and the observations of the Bangladesh Employers’ Federation (BEF) transmitted with the Government’s report on 16 September 2012.

Articles 2, 4 and 23 of the Convention. Legislative reforms, reform of the labour inspection system and scope of labour inspection. 1. Legislative reform. The Committee notes that the Government, in reply to the observations made by the BFTUC concerning the absence of specific occupational safety and health (OSH) provisions for the various sectors now covered by the revised Bangladesh Labour Act (BLA), expresses the view that OSH issues are adequately addressed in Chapters 6, 7, 8 and 12 of the Act. In this regard, the Committee notes that the BEF emphasizes the progress already achieved through the adoption of additional provisions in several areas (OSH, social security, maternity benefits, etc.) and refers to continuing legislative reforms. The Committee notes that the Bangladesh Labour (Amendment) Act, 2013 (Act No. 30 of 2013) was adopted in July 2013 and establishes some additional requirements in the area of OSH (such as the creation of safety committees in factories with more than 50 workers, the mandatory use of personal protective equipment and the establishment of health centres in workplaces of more than 5,000 workers, etc.). The Government is requested to keep the ILO informed of any further progress made in the process of reviewing the BLA and to supply a copy of the amended text and any implementing regulations, once they have been adopted.

2. Reform of the labour inspection system. The Committee understands that the BEF emphasizes the need for the legislative amendments to be accompanied by effective labour inspection so as to ensure the effective implementation and enforcement of the new legislation. In this context, the Committee notes the Government’s indications that, in view of the large number of factories and other establishments in the country, the restructuring of the labour inspection system is currently under active consideration (according to the data provided in the Government’s report, the number of (registered) factories increased from 10,500 in 2006 to 26,463 in 2011). In this regard, the Committee notes the information provided by the Government that the Ministry of Labour and Employment (MOLE) is working on a project entitled “Modernization and Strengthening of the Department of Inspection for Factories and Establishments (DIFE)”. The Committee notes that in this framework it is envisaged to: (i) restructure the organization of the DIFE, including through the establishment of additional field and regional offices throughout the country; (ii) increase the total manpower of the DIFE; (iii) improve the material means available to; and (iv) training for labour inspectors. The Committee also notes that an increase in the budget allocated to labour inspection is envisaged for this purpose. The Committee asks the Government to keep the Office informed of any measures taken or envisaged within the proposed restructuring of the labour inspection system, with a view to strengthening it.

3. Labour inspection in export processing zones (EPZs). The Committee recalls the comments previously made by the National Coordination Committee for Workers’ Education (NCCWE), according to which EPZs are totally excluded from the scope application of national labour laws, and that there is a separate Act applicable to workers in EPZs providing for limitations of inspection.

The Committee notes the Government’s indications that industrial relations in EPZs are governed by the 2010 EPZ Workers Welfare Association and Industrial Relations Act (EWWIRA) and the “1989 Bangladesh Export Processing Zones Authority (BEPZA) Instructions (1 and 2)”. It further notes that, under section 40 of the EWWIRA, so-called counsellors are responsible for the enforcement of the EWWIRA and the BEPZA instructions, and for ensuring the rights of workers and safe and healthy working conditions. Since June 2005, 60 counsellors have been working in the different EPZs in the country, reporting directly to the “managers for industrial relations” responsible for the respective EPZs. The Committee further notes the Government’s indications that the BEPZA conducts training programmes for the members of the elected Workers Welfare Association (WWA) and for the human resources personnel of the respective enterprises, including on OSH, industrial relations, decent working conditions, grievance handling procedures and social dialogue. The Committee also notes that the BEPZA established two training institutes in Chittagong and Dhaka, among others, to raise awareness on workers’ rights and duties.

The Committee notes from the discussions during the International Labour Conference in June 2013 on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by Bangladesh, that the BLA is not applicable in EPZs and that, following the expiration of the EWWIRA on 31 December 2013, the Committee asks the Government to keep the Office informed of any measures taken or envisaged within the proposed restructuring of the labour inspection system, with a view to strengthening it.

4. Labour inspection in the construction sector. The Committee previously noted the BFTUC’s comments that despite the high number of fatal casualties in the construction sector (106 registered deaths in 2009), a separate inspectorate or agency, as foreseen under the Bangladesh National Building Code (BNBC) of 1993, had not been established. In this regard, the Committee notes the Government’s...
indications that the DIFE assumes the function of inspection in the construction sector in practice, but only performs irregular inspections due to the lack of inspection staff. It further notes that only six cases of labour violations in this sector were recorded during the reporting period. The Committee once again asks the Government to indicate the measures taken or envisaged to ensure that the construction sector is inspected effectively (including the establishment of a separate inspectorate or agency as foreseen under the BNBC, the increase in the number of inspections by the DIFE, the specific training of labour inspectors, etc.) and to provide relevant statistical data on the activities undertaken in this sector.

Articles 7, 10, 11 and 16. Human and material resources of the labour inspectorate. Training of labour inspectors. The Committee notes from the data provided by the Government in its report that the number of labour inspectors has increased by approximately 20 per cent (from 155 in 2006 to 185 in 2011), the number of inspection visits has almost doubled (from 35,950 in 2006 to 61,184 in 2011), and the number of registered factories liable to inspection has more than doubled (from 10,500 in 2006 to 26,463 in 2011). The Committee also notes the general information provided by the Government on the training of labour inspectors. The Committee further notes an upward trend in the budget allocated to the DIFE, from 36,530,000 Bangladeshi takas (BDT) in 2009–10 (approximately US$468,754) to BDT50,343,000 (US$646,002) in 2011–12, which the Government still considers to be insufficient for the effective performance of labour inspection functions (this amount makes up 7 per cent of the total budget allocated to the Ministry of Labour and Employment (MOLE)). However, the Committee notes that it is envisaged, in the framework of the proposed restructuring of the labour inspection services, to increase the budget allocated to labour inspection and to provide for improved human and material resources. The Committee once again encourages the Government to do its utmost, in the framework of the restructuring of the labour inspection services, to furnish the labour inspectorate with the resources that it needs to operate effectively, in order to ensure that the number of labour inspectors is adequate in relation to the number of workplaces liable for inspection (Article 10 of the Convention), they are provided with the material means and transport facilities necessary for the performance of their duties (Article 11) and they receive adequate training for the performance of their duties (Article 7(3)).

In this regard, the Committee asks the Government to continue to provide information on the total number of labour inspectors and their distribution at headquarters and in the districts, in relation to the number of workplaces liable to inspection and the workers employed therein. Please also provide more specific information on the training that is provided during the period covered by the Government’s next report including on the frequency, subjects and duration of training, as well as on the number of participants.

Articles 9 and 14. Notification of industrial accidents and cases of occupational diseases. The Committee notes that the Government has not provided any comments in relation to the functioning of the recording of industrial accidents in practice and the presumed discrepancy between the registered numbers and actual fatalities, as indicated by the BFTUC in 2008. The Committee further notes the Government’s indications that, while it is currently working on the rules for the procedure of notification of cases of occupational diseases, in application of section 82 of the BLA, no cases of occupational diseases have yet been recorded due to the lack of staff to determine such cases and the absence of the required recording devices for this purpose. The Committee asks the Government to provide an appreciation of the functioning in practice of the reporting of industrial accidents and, where applicable, the measures taken for its improvement (awareness raising among employers concerning their obligations in this regard, sanctions imposed for non-compliance, etc.).

It asks the Government to report on progress made in the formulation of the procedural rules for the notification of cases of occupational diseases adopted pursuant to section 82 of the BLA and to provide the Office with a copy, once they are adopted. Please also provide information on any progress made in the development of a relevant system and its implementation in practice (including the recruitment of additional medical inspectors, and the conduct of, or referral for, medical exams by inspectors). In this regard, the Committee would once again like to draw the Government’s attention to the ILO code of practice on the recording and notification of occupational accidents and diseases, published in 1996, which contains useful guidance intended for those responsible for the reporting, recording and notification of occupational accidents and diseases and which can be found on the ILO website.

Articles 6, 12(1) and 15(c). Right of inspectors to enter workplaces freely. Status and conditions of service of labour inspectors and duty of confidentiality in relation to complaints. The Committee previously noted the repeated indications by the BFTUC that employers are informed in advance of the date of intended inspection visits. In this regard, the Committee notes the Government’s explanations that, while there is no requirement in the BLA to inform employers in advance about inspection visits, giving prior notice is in some cases necessary for the effective performance of inspections in practice (for instance, where the presence of the employer or his/her representative is required for access to registers and documents). It further notes the Government’s indications that both inspections with advance notice and unannounced visits without prior notice are regularly carried out.

The Committee also recalls its previous comments in which it emphasized, in the context of the comments made by the BFTUC and the NCWCE concerning the fear of workers to report breaches of the law for fear of reprisals, that the granting of appropriate status and conditions of service to labour inspectors, including appropriate wages and career prospects, in accordance with Article 6, and the requirement for labour inspectors to comply with the duty of confidentiality, under Article 15(c), are essential safeguards against improper behaviour.

In this regard, the Committee notes that the BLA, in its amended version of July 2013, still does not contain any legal requirement to refrain from disclosing the identity of the author of a complaint or from indicating that an inspection took place as a result of a complaint. Furthermore, the Government has not provided the Office with any text governing the conditions of service of labour inspectors, as requested. However, the Government states that labour inspectors are granted conditions similar to those of other Government employees, receive wages based on their length of service and have equal career prospects in accordance with the applicable rules, all of which ensures their stability of employment and their independence from improper external influences. In this regard, it notes the Government’s explanations, according to which, as the Committee understands them, the lack of material resources, including transport facilities and the absence of proper training, is more likely to threaten the observance of confidentiality in practice than the other factors mentioned above.

Considering all of the above, the Committee refers to paragraph 263 of its 2006 General Survey on labour inspection and recalls that the performance of a sufficient number of unannounced inspection visits in relation to inspections with prior notice is indeed necessary to
enable labour inspectors to discharge their obligation of confidentiality with regard to the source of any complaint and also to prevent the establishment of any link between the inspection and a complaint (Article 15(c)). The Committee once again requests the Government to take appropriate measures to ensure that the duty of confidentiality regarding the existence of a complaint and its source is duly reflected in law and to provide information on the operation and impact of these measures in practice. It also asks the Government once again to keep the ILO informed of the progress made and to provide any text governing the conditions of service of labour inspectors. It also requests the Government to indicate the number of unannounced visits in relation to the total number of inspection visits during the next reporting period and to provide information on the results secured from unannounced visits (violations identified, sanctions imposed, compliance actions taken) in comparison to announced visits.

Articles 17 and 18. Legal proceedings and effective enforcement of adequate penalties. The Committee previously noted the BFTUC’s suggestions for the prosecution of breaches of national labour law, which included: (i) the creation of more labour courts, in addition to the seven labour courts already existing, which might be too remote from the main labour inspection office; and (ii) the recruitment of lawyers to represent inspectors in the filing and prosecuting of cases, which according to the BFTUC, is a function that is extremely time consuming. In this regard, the Committee notes with interest the Government’s information on the establishment of three additional labour courts in the three new administrative divisions Rangpur, Sylhet and Barisal.

The Committee also previously noted the observations made by the BFTUC according to which no cases involving a failure to comply with health and safety duties under the BLA 2006 have been filed in three of the seven labour courts. In this regard, the Government indicates that most cases lodged with the courts relate to OSH, and that the number of cases filed has increased (from 777 cases in 2009 to 1,096 cases in 2011). However, the Committee also notes the Government’s indications that, due to the lack of personnel and relevant data management systems, the cases filed could not be disaggregated according to the legal provisions to which they relate.

Finally, the Committee notes the Government’s indications that the increased level of penalties under the BLA 2006 has had a positive impact on industrial relations. In this regard, it notes that the number of inspection visits increased from 39,123 in 2008 to 61,184 in 2011; the number of violations detected increased from 52,423 in 2008 to 69,539 in 2011; the number of cases filed with the labour courts increased from 910 in 2008 to 1,558 in 2011; and the amount of the fines imposed increased from 1,214,000 Bangladeshi takas (BDT) in 2008 (approximately US$15,578) to BDT1,520,000 (approximately US$19,504) in 2011. The Committee requests the Government to continue to provide information on the number of violations detected (and the number of these violations relating to OSH), the corresponding fines issued and the number of cases filed with the labour courts and their outcome (number of convictions in relation to the infringements reported, amount of fines imposed, etc.).

Articles 20 and 21. Publication of an annual inspection report. The Committee notes that no annual report on the activities of the labour inspection services has been received by the Office and that the last annual report within the meaning of the Convention was communicated in 2003. The Committee notes that the BEF, like the Government in its previous report, emphasizes the importance of keeping systematic records of inspection data (number of inspections, violations detected, corrective measures ordered, outcomes of cases filed with the labour courts, statistics of occupational accidents and cases of occupational diseases, etc.) as a basis for evaluating the effectiveness of the activities of the labour inspection services. In this regard, it also notes that the Government’s indications on the need for technical assistance for the development of improved data management systems. The Committee once again asks the Government to indicate the measures taken with a view to setting up a register of workplaces liable to inspection and the workers employed therein (particularly through inter-institutional cooperation, as recommended in its 2009 general observation), and to provide information on any measures taken for this purpose, with a view to the fulfilment by the central inspection authority of its obligation to publish and transmit to the ILO an annual report in accordance with Articles 20 and 21 of the Convention.

Technical assistance. The Committee notes the Government’s indications on technical assistance needs in various areas, that is the restructuring of the labour inspectorate, the establishment of additional labour courts, the strengthening of the human and material resources, including measuring devices available to the labour inspectorate, training for labour inspectors and the development of improved data management systems. The Committee invites the Government to provide information on any action taken or envisaged related to labour inspection as a result of the technical assistance provided by the Office, particularly in the context of the programme to improve safety and health in the garment industry.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 103rd Session and to report in detail in 2014.]

**Colombia**

(Ratification: 1967)

The Committee notes the Government’s report received on 31 August 2013 and the attached documents. It also notes the observations of 27 August 2013 by the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI) and the Government’s reply of 18 October 2013 to these comments. It further notes the observations of 29 August 2013 by the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC), which were forwarded to the Government on 16 September 2013. The comments refer for the most part to issues the Committee is already examining, and particularly: the conciliation function; the conditions of service of labour inspectors; the need for suitable continuous training for labour inspectors; the insufficient number of inspectors and the inadequacy of the resources available to inspectors for the performance of their duties; and the ratification of Part II of the Convention. The comments by the IOE and the ANDI focus on the efforts made by the Government to formalize employment in several sectors, particularly the sugar sector, the adoption of Act No. 1610 of 2 January 2013 regulating certain aspects of labour inspection and the employment formalization agreements, and the progress made in the technical cooperation project on international labour standards, in relation to the strengthening of labour inspection.

Technical cooperation project on international labour standards. The Government reports that four handbooks and other teaching...
material have been prepared on: (a) criteria for the graduation of penalties; (b) conduct of administrative sanction procedures; (c) the conduct of the administrative sanctioning procedure as it relates to breaches of the right to organize; (d) the conduct of an administrative sanction procedure for improper use of labour intermediation and other forms of intermediation that infringe the rights of workers. Furthermore, a training programme was implemented on administrative labour procedure, the formalization of employment and labour intermediation, with a focus on critical sectors such as mining, dock work and sugar, palm and flower production; collective rights and dispute settlement and the functions pertaining to inspection, supervision and control. The Committee requests the Government to send information, with supporting figures, on the impact of the project’s implementation on the performance of labour inspection duties, as provided for in Article 3(1)(a) and (b) of the Convention; the action taken on infringements of the labour legislation and the enforcement of adequate sanctions, in accordance with Articles 17 and 18 (indicating the provision of the law in question), including in respect of trade union rights.

The Committee welcomes the information that a baseline is being devised for the development of a computerized system to record and analyse labour inspection data. The Committee hopes that, thanks to progress made in implementing the computerized data entry and analysis system for information on labour inspection in the context of the abovementioned project the Government will soon be in a position to send an annual report on the work of the labour inspection services containing information on the subjects set forth in Article 21(a)–(g) and to ensure that a copy is sent regularly to the ILO within the time limits prescribed in Article 20.

Articles 3(1)(b), 17 and 18 of the Convention. Implementation of a preventive approach to labour inspection; prosecution and punishment of offences. In its previous comments, the Committee noted that, according to the CUT and the CTC, the system of “preventive” inspections established by Decrees Nos 1293 and 1294 of 2009, and Resolution No. 2605/09, in practice turned into a system of tolerance of violations of workers’ rights.

As to the criteria for planning the different types of inspections, the Government states that in the territorial directorates, in some cases visits are triggered by a complaint from a worker, in which event the appropriate inquiry is launched, and in other cases, they are conducted automatically. Working conditions are analysed at the territorial level and workplace inspections are carried out in critical sectors, such as transport, mining, flower growing and the sugar sector. The Government reiterates that, pursuant to section 91 of Decree No. 1295 of 1994, the territorial director may impose a fine and also order activities to be suspended for up to six months in the event of imminent risk, without the need for a specific risk prevention order from the Ministry’s Occupational Risk Directorate. In reply to its previous comments, the Government indicated that the Ministry of Labour, although it does not have a system of information on judicial proceedings, addressed a memorandum to the territorial directorates pointing out that their officials are required to forward any complaints they receive for violation of the right of association. Noting that the Government has not provided the information requested in this regard, the Committee again requests the Government to provide information on the measures taken to ensure the deterrent effect of sanctions and to secure their enforcement. Furthermore, the Committee draws the Government’s attention to its general observation of 2007, and encourages it to take measures to ensure effective cooperation between the labour inspection system and the justice system, and provide the labour inspectorate with access to a register of judicial decisions.

Furthermore, observing that the Government has not replied to its comments on this matter, the Committee again requests it to specify whether, in the case of “preventive” visits, inspectors have the discretion to give warning and advice instead of instituting or recommending procedures, in accordance with Article 17(2) of the Convention.

The Committee also requests the Government to supply disaggregated information on the number of “preventive” visits, namely inspections conducted primarily for prevention and to improve working conditions, without recourse to any enforcement mechanisms, compared with general inspections and those conducted in response to complaints, the findings of inspectors in “preventive” visits and other types of inspections; the period and manner in which inspectors monitor the implementation of “improvement agreements” and the action they take if the results are unsatisfactory. Lastly, the Committee asks the Government to state whether measures have been taken to evaluate, with the participation of the social partners, and particularly the Labour and Wage Policy Commission, the impact of the “preventive” inspection model on the effective application of the legislation relating to conditions of work and the protection of workers.

Articles 10, 16 and 21(b) and (c). Numbers and geographical distribution of labour inspectors. Statistics of workplaces liable to inspection and number of workers employed therein. The Committee notes that the CUT and the CTC reiterate that the number of labour inspectors is too low for an economically active population of 20,696,000, according to the 2012 figures of the National Statistics Department (DANE), which is reflected in the fact that there have been only 165 enforceable decisions in four years.

The Committee notes the geographical distribution among the territorial directorates of the Ministry of Labour of the 624 labour inspectorate posts existing at the end of August 2012. It further notes that, according to the Government’s report, in April 2013 there were 501 serving labour inspectors and that by the end of August 2013 there was a total of 530 inspectors and 94 labour inspector posts were vacant. The Committee requests the Government to provide statistics on the workplaces liable to inspection, and the number of workers employed therein. By virtue of Article 10 of the Convention, the number of labour inspectors shall be determined with due regard for, inter alia, the number, nature, size and situation of the workplaces liable to inspection and the number and classes of workers employed in such workplaces. The Committee would also be grateful if the Government would specify the current number of inspectors in the various categories in practice, indicating which of them conduct inspections of workplaces. It also once again asks the Government to provide information on the results of the diagnosis which was under way in August 2012, on the structure, human and technological resources and location of all the territorial directorates, indicating their offices and the inspections they carry out, as well as eventual recommendations made within this framework and any measures taken or envisaged in order to ensure monitoring.

Articles 11(1)(b) and (2), 12(1)(a) and 15(a). Transport facilities available to labour inspectors and the principle of inspectors’ independence and impartiality. Referring to the observations made in 2012 in this regard by the CGT, the CUT and the CTC, the Committee notes that according to section 3(2) of Act No. 1610 of 2 January 2013 regulating certain aspects of labour inspection and certain decisions on the formalization of employment, labour inspectors may, subject to authorization from the territorial directorate, seek logistical assistance...
from the employer, worker, trade union organization or applicant for trade union status, where conditions on the ground so require, to gain access to the site where the inspection, monitoring and control are to be carried out. The Committee points out that this provision is inconsistent with the provisions of the Convention, and particularly Article 11(1)(b), which places an obligation on the competent authority to make arrangements to furnish labour inspectors with the transport facilities necessary to the performance of their duties where suitable public facilities do not exist. The Committee stresses that the abovementioned provision is contrary to the impartiality and authority that inspectors need in their relations with employers and workers. Consequently, the Committee requests the Government to take the necessary measures without delay to amend the legislation so as to align it with the Convention on this essential point, and to keep the Office informed in this regard.

In its previous comments, the Committee also pointed out that labour inspectors’ travel expenses were refunded only up to an amount of 4,000 Columbian pesos (COP), so any amounts in excess have to be borne by the labour inspectors themselves, and that according to the CUT and the CTC, in practice travel expenses are not refunded when inspections are carried out without prior authorization from the territorial directorate, and unforeseen expenses are not repaid either. The Committee notes in this connection the information from the Government to the effect that the Ministry, through its administrative and financial subdirectoriate, assigns annual budgets to each of the territorial directorates, which include appropriations for commissions and travel expenses. The Committee would be grateful if the Government would take the necessary steps to ensure that resources assigned to labour inspectors are determined in accordance with the essentially mobile nature of their duties, so that labour inspectors are provided with transport facilities that are appropriate to the performance of their work, particularly in the territorial directorates and inspection offices which are the furthest removed from urban centres, and that they are refunded any unforeseen expenses, and any transport costs. Furthermore, the Committee again asks the Government to provide information on the application in practice of the right of labour inspectors to enter workplaces liable to inspection freely, without prior authorization (Article 12(1)(a)).

Article 12(1)(c) and 15(c). Principle of confidentiality regarding the source of complaints. With reference to the comments that the Committee has been making for several years on the adoption of measures to establish a legal basis to ensure that labour inspectors respect the principle of the confidentiality of complaints so as to protect workers from any reprisals from the employer or his representative, the Government indicates that the Ministry of Labour issued an internal memorandum reminding officials of the obligation to keep complaints confidential in so far as the workers so request. Highlighting, once again, the importance of the principle of confidentiality regarding the source of complaints. prescribed by Article 15(c) of the Convention, the Committee emphasizes that labour inspectors must as a rule respect this principle, as provided in this provision of the Convention, and must refrain from intimating to the employer or his representative that an inspection was made pursuant to a complaint. In this regard, the Committee invites the Government to refer to paragraphs 236 and 237 of its 2006 General Survey on labour inspection, as well as to paragraph 275 of the same survey which indicates that labour inspectors should conduct interviews in the manner they deem most appropriate. The Committee accordingly once again requests the Government to take appropriate measures to ensure, on a legal basis, the protection of workers against possible reprisals by employers and to ensure that fear of disclosure of their identity is not an obstacle to their cooperation with labour inspectors.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is requested to reply in detail to the present comments in 2014.]

Pakistan

(Ratification: 1953)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013)

The Committee notes the conclusions of the Conference Committee on the Application of Standards on the application of this Convention, the comments made by the International Trade Union Confederation (ITUC), dated 21 August 2013, and communicated to the Government on 29 August 2013, as well as the Government’s report received by the Office on 30 August 2013 and its various annexes.

The Committee notes the discussion on: (1) the effectiveness of labour inspection and the enforcement of legal provisions in the context of the delegation to the provinces of legislative powers and jurisdiction in the area of labour; (2) labour inspection and occupational safety and health (OSH) in the context of the recent fire in the garment factory in Karachi, in which nearly 300 workers lost their lives; (3) the human and material resources of the labour inspectorate; (4) restrictive policies for labour inspection; and (5) the regular publication and communication to the ILO of annual labour inspection reports.

In its conclusions, the Conference Committee requested the Government to include in its report to the Committee of Experts, due in 2013, complete information on all the issues raised, as well as detailed data in an annual report on the work of the labour inspection services in each province on all the items listed in Article 21 of the Convention, including information on workplaces liable to inspection and the number of workers employed therein, statistics of inspection visits, violations and the penalties imposed, industrial accidents and cases of occupational diseases. It expressed the hope that the steps taken concerning the application of this governance Convention would be reflected in the Government’s next report to the Committee of Experts. The Committee welcomed the request by the Government for technical assistance and hoped that this assistance would enable the Government to effectively apply the Convention.

1. Effectiveness of labour inspection and the enforcement of legal provisions in the context of the delegation to the provinces of legislative powers and jurisdiction in the area of labour. Legislative process in the provinces

The Committee notes the indication by the Government during the discussions that took place in the Conference Committee that through the delegation of powers to the provincial governments, the inspection regime would be strengthened. The Committee further notes the Government’s indications in its report that, following this delegation of legislative powers, the provinces are currently in the process of
adopting their own labour laws. In this regard, it notes the copies of various legislative texts provided by the Government adopted by the provinces of Punjab and Khyber Pakhtunkhwa in 2012 and 2013. It also notes the observations made by the ITUC, according to which the lack of coordination between the provinces in this process has led to a patchwork of labour laws and regulations that does not meet international labour standards. The trade union further emphasizes the need for laws and regulations on labour inspection to be promulgated immediately, which has not been done in any of the provinces. The Committee asks the Government to keep the Office informed of any further progress made by the provinces in the process of adopting labour laws, in particular in the area of labour inspection and OSH, and to supply copies of these texts once they have been adopted with an indication of the specific provisions that give effect to the Articles of the Convention.

Articles 4 and 5(b). Supervision and control by a central labour inspection authority. Determination of inspection priorities in collaboration with the social partners. The Committee recalls that the conclusions of the Conference Committee emphasized the importance of an effective system of labour inspection in all provinces, the need to agree on the priorities of labour inspection and to adopt a strategic and flexible approach in consultation with the social partners. The Committee recalls in this regard the Government's indications in its previous report concerning plans to introduce a coordination mechanism at the federal level to replace the national inspection authority that had previously been planned. It notes the Government's indications that the Ministry of Overseas Pakistanis and Human Resources Development (MOPHRD) is responsible for the coordination and supervision of labour legislation in the provinces and that the coordination mechanism at the federal level includes a coordination committee (composed of the provincial labour secretaries and headed by the Federal Secretary of the MOPHRD) and a technical committee (composed of representatives of the federal Government and the ILO). While the Committee notes the observations made by the ITUC, according to which the 2006 inspection policy adopted by the federal Government is not binding on the provinces, it also notes the Government's indications that the federal labour inspection policy of 2006 and the labour policy of 2010 provide orientations for the provinces and that many of them have implemented various aspects of these policies, including the rationalization and consolidation of labour laws, the computerization of labour inspection records, etc. The Committee asks the Government to provide information on the measures taken for the determination of the priorities of labour inspection with a view to improving its effectiveness and to making best use of the rare human and material resources available, and to specify the role of the social partners in this process. Please also provide specifications on the implementation measures that have been adopted in the provinces in relation to the subjects and points raised by the Committee previously concerning the 2006 inspection policy and 2010 labour policy documents. In this regard, the Committee also asks the Government to provide further information on the mandate, composition and activities of the coordination committee and technical committee and copies of any applicable texts.

Articles 3(1)(b), 17, 18, 20 and 21. Effective enforcement of sufficiently dissuasive penalties. The Committee notes the indications by the Government during the discussions that took place in the Conference Committee that through the delegation of powers to the provincial governments, the inspection regime would be strengthened and would enable inspectors to work more efficiently adopting a preventive approach. The Committee also notes the Government's indications in its report that labour inspectors are instructed to focus on persuasion, guidance and warning and that prosecutions are only initiated as a last resort. The Committee further notes the information provided by the Government and annexed to its report on the number of prosecutions initiated by labour inspectors, the pending cases before the labour courts, decisions rendered and the amount of fines imposed. In this regard, the Committee notes the ITUC's indications that there are no adequate penalties for violations of labour laws and the obstruction of labour inspectors in their duties, and that the fines that may be imposed for the violation of labour legislation are extremely low and are not such as to deter employers from violating the law. Furthermore, the ITUC alleges that employers often refuse access by labour inspectors to company records, and even though labour inspectors can apply to the courts for access to these records, the relevant proceedings can take several months and only lead to insignificant fines. The Committee reminds the Government, in terms of the 2006 General Survey on labour inspection, paragraphs 279 and 282, that the advice and information provided for in Article 3(1)(b) of the Convention can only encourage compliance with legal provisions but should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. The functions of enforcement and advice are inseparable in practice. Recalling the request by the Conference Committee to provide detailed data in the annual reports on the work of the labour inspection services on all the items listed in Article 21 of the Convention, including on the violations and penalties imposed, the Committee asks the Government to continue to provide relevant information as well as particulars of the classification of such infringements according to the legal provisions to which they relate, and to ensure that this information is included in the annual labour inspection reports. The Committee also asks the Government to indicate the number of instances in which inspectors are refused access to company records by employers and the number of cases initiated in cases of obstruction of labour inspectors and their outcome.

The Committee further asks the Government to provide information on the measures taken or envisaged to increase the fines and penal provisions in the current legislative reforms, and to provide the relevant legal texts once they have been adopted.

2. Labour inspection and OSH in the context of the recent fire in the garment factory in Karachi, in which nearly 300 workers lost their lives

Articles 3(1)(a)–(b), 5(b), 9 and 13. Labour inspection activities in the area of OSH, including in industrial undertakings in the province of Sindh. Supervision of private auditing and certification systems for labour standards by the labour inspection services. The Committee notes that the Government announced measures during the discussions that took place in the Conference Committee to compensate the victims and their families affected by the factory fire in Karachi and to avoid the recurrence of such incidents in the future. In this regard, the Committee also notes the reference made by the Government during these discussions to the signature of a joint statement of commitment in the province of Sindh by the ILO and the social partners for the establishment of a plan of action to address the issues of labour inspection and OSH in view of the serious accidents that have taken place in the country, in particular the factory fire in Karachi in September 2012. The Committee further notes the information provided in the Government’s report that efforts are made at the provincial level to secure compliance of legal provisions in the area of OSH, including the provision of free training and technical services by labour inspectors in workplaces. It further notes the Government’s indications that the labour inspection services at the provincial level are backed
up by teams of technical experts providing advisory services and expertise in the areas of industrial hygiene, occupational safety and other technical areas.

The Committee also notes the observations made by the ITUC, according to which the abovementioned factory in Karachi had previously received a deeply flawed certificate by a private auditing firm attesting compliance with international standards, amongst others, in the area of OSH. It further notes the indications by the ITUC that the province of Sindh, in which Karachi is located, has no functioning labour inspection system, that there are no regular inspections of industrial workplaces and that measures to eliminate or minimize workplace hazards are completely absent, since employers are aware that they will not be held accountable for their failure in this regard.

The Committee asks the Government to provide information on the progress made in the establishment of the above plan of action to improve labour inspection and the level of compliance with OSH in the province of Sindh, and to communicate a copy to the Office, once it has been adopted, as well as any measures taken for its implementation.

The Committee requests the Government to provide detailed information on the labour inspection activities in the area of OSH, in particular in the province of Sindh (number of inspection visits, violations reported, legal provisions concerned, types of sanctions imposed and measures adopted with immediate executory force in the event of an imminent danger to the health or safety of workers), as well as on the number of industrial accidents and cases of occupational diseases reported.

The Committee further asks the Government to make any comments it deems appropriate in relation to the observations made by the ITUC and to provide detailed information on the manner in which private auditing firms are supervised by the labour inspectorate.

Please also provide information on the number, qualification, status and geographical distribution of the technical experts providing advisory services and expertise in the areas of industrial hygiene, occupational safety and other technical areas, and indicate any collaboration with the social partners to ensure compliance with OSH legislation.

Articles 3(1)(a)–(b), 13, 17, 18, 20 and 21. Labour inspection and OSH in the mining sector in the province of Balochistan. The Committee recalls the Government’s indications during the discussions in the Conference Committee that the delegation of powers to the provincial governments would enable inspectors to work more efficiently. Following up on the discussions on labour inspection and OSH in industrial undertakings in the province of Sindh, the Committee notes that the ITUC also reports a high number of deaths and injuries in the coal mines operating in the province of Balochistan, where workers are reported to work with virtually no protective equipment and where mine owners take very few safety precautions. In this regard, the trade union refers to a series of methane explosions at a coal mine near Quetta leading to the deaths of 43 workers in 2011. Recalling that the Conference Committee requested the Government to include detailed data in the annual reports on the work of the labour inspection services in each province, including on industrial accidents and cases of occupational diseases, the Committee asks the Government to provide separate statistical information on the labour inspection activities carried out in the area of OSH in the province of Balochistan, in particular in the coal mines operating in this province, and to ensure that such information is included in the annual labour inspection reports.

3. Human and material resources of the labour inspectorate

Articles 7, 10 and 11. Human and material resources of the labour inspectorate and training of labour inspectors. The Committee notes that the conclusions of the Conference Committee emphasized the importance of providing adequate human and material resources and appropriate training to labour inspectors.

In this regard, it notes the observation made by the ITUC that there is a critical shortage of labour inspectors in the country. It further notes that, although the Government indicates that transport facilities are limited in number, shared by several inspectors and that there is a possibility for labour inspectors to be reimbursed when using their private vehicles for inspections, the ITUC indicates that, in most cases, inspectors are required to use their own vehicles to carry out inspections and are rarely, if ever, reimbursed for their travelling expenses. The Committee further notes that, while the Government refers to adequate training of labour inspectors, the trade union indicates that labour inspectors only receive very rudimentary training and that little training is provided to develop the capacities required for inspections in specific sectors. The Committee asks the Government to take the necessary measures to ensure that sufficient human and material resources are allocated to the labour inspection services to secure the effective discharge of their duties. It asks the Government to provide up to date information on the number of labour inspectors in each province and details of the material means available to the labour inspection services in each province, such as office facilities and means of transport for inspection. Please also describe the applicable reimbursement rules (travelling allowance per kilometre, procedure to be followed, etc.) and the number of cases in which travel expenses have been reimbursed. The Committee further asks the Government to provide information on the training provided to labour inspectors in each province (subjects covered, number of participants, duration, etc.) during the period covered by the Government’s next report.

4. Restrictive policies for labour inspection

Article 12(1). Restrictive policies for labour inspection. The Committee notes the Government’s assurance during the discussions that took place in the Conference Committee that there are no bans on inspections in any province. In this regard, the Committee notes the ITUC’s observations that, while it is true that the long-standing restrictive policy barring labour inspectors from entering factory premises as a consequence of pressure from the industry lobby and previously referred to by the Pakistan Workers Confederation (PWC) has been overturned in Punjab province, inspectors are still required to provide prior notice to employers concerned well in advance of inspections in the province of Sindh. In this regard, the Committee notes that the Government reiterates in its report that labour inspections are not banned in any province and that regular inspections have been reinstated in the province of Punjab, as explained in the Government’s previous report. The Committee asks the Government to provide any observations it deems appropriate in relation to the comments by the ITUC and, where appropriate, to indicate the measures taken in law and practice to ensure that labour inspectors are empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, so that labour inspectors can perform their duties in all provinces of the country in accordance with the provisions of the Convention.

5. Regular publication and communication to the ILO of annual labour inspection reports

Articles 20 and 21. Publication of an annual inspection report. The Committee notes that the conclusions of the Conference Committee
emphasized the importance of complete information on all of the subjects covered by Article 21 of the Convention for the evaluation of the extent to which the legal provisions relating to conditions of work and the protection of workers while engaged in their work are being respected in each province. The Committee notes that the report of the province of Sindh, annexed to the Government’s report, contains some information on the number of inspections conducted, the number of prosecutions, pending cases before the labour courts, decisions rendered and the amount of fines imposed for the period from 2011 to 2013. It also notes the statistics on the number of inspections, prosecutions and fines imposed between 2008 and 2012 in the report for the province of Khyber Pakhtunkhwa (relating to child labour, wages, maternity benefit, OSH, etc.) and the statistics on the number of inspections, prosecutions, pending cases before the labour court, decisions rendered and amount of fines imposed for the province of Balochistan. However, the scarce information provided and the absence of information on the number of workplaces covered by labour inspection does not provide a basis for a thorough appreciation of the application of the Convention. While the Committee notes the information that labour inspection documentation is currently being computerized in the province of Punjab, it observes that no information on the activities of the labour inspection services in this province has been provided.

In this regard, it also notes the information provided by the ITUC that the last report on the activities of the labour inspection services relates to 2007, and that there is no central authority to collect the information and establish an annual report for the whole country. The trade union indicates in this regard that the Ministry for Inter Provincial Coordination is supposed to oversee this matter, but has not done so to date. The Committee requests the Government to make every effort to ensure that the central labour authority publishes and communicates to the ILO an annual labour inspection report (Articles 20 and 21 of the Convention), and to indicate the measures taken in this regard. It also requests the Government to provide with its next report statistical information on labour inspection in the provinces and in different sectors, including in export processing zones that is as detailed as possible (industrial and commercial workplaces liable to inspection, number of inspections, infringements detected and the legal provisions to which they relate, etc.) in each of the provinces.

Technical assistance. Recalling that the Conference Committee welcomed the request by the Government for technical assistance and hoped that this assistance would enable the Government to apply the Convention effectively, the Committee invites the Government to provide information on any follow-up in this respect.

[The Government is requested to reply in detail to the present comments in 2014.]

**Qatar**

*(Ratification: 1976)*

Articles 8, 10, 20 and 21 of the Convention. Functioning of the labour inspection system and information contained in the annual labour inspection report. The Committee notes the statistical information contained in the annual reports for 2011, 2012 and the first half of 2013. It notes from this source that the staff of the labour inspectorate now includes 150 labour inspectors (117 in the area of general labour conditions and 33 in the area of occupational safety and health), of which six are women. The statistical data provided since 2007 reveal that the number of workplaces liable to inspection has at least doubled (now calculated to be 44,912), and the number of workers has at least quadrupled (the number of migrant workers, which make up to 95 per cent of the labour force of Qatar, is now calculated by the Government to be 1,359,715). The Committee notes that 46,624 labour inspections were carried out in 2012, and recalls that the annual labour inspection report for 2004 referred to 2,240 inspection visits. The Committee asks the Government to provide an explanation for the exponential increase of the number of labour inspections and the manner in which these inspection are carried out by the number of inspectors identified above.

While it notes the progress made concerning the subjects covered by the annual labour inspection report for 2012 (now also including information on the staff of the labour inspection service, statistics of occupational diseases, etc.), it once again draws the Government’s attention to Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), on the level of detail that is desirable (for instance, in relation to the statistics of violations and penalties) in the required information so that the annual report can serve as a basis for the determination of the advisory and enforcement activities of the inspection services needed to improve conditions of work at workplaces.

The Committee asks the Government to explain the reasons for the low number of women in the labour inspection staff and to provide information on any efforts undertaken to stimulate the interest of potential female candidates for the labour inspection service. Please also continue to indicate the distribution of the inspection staff by gender in the various positions and grades.

Labour inspection activities in the construction sector. The Committee notes from the statistical information in the annual labour inspection report for the first half of 2013 that 522,022 of the 1,359,715 migrant workers of the country are working in the construction sector. The Committee also notes from the information available in the media that several hundred thousand migrant workers are expected to be recruited for the 2022 World Cup and that a high number of fatal accidents have occurred on the relevant construction sites. In this regard, it also notes that the Government announced the recruitment of additional labour inspection staff, and that the Building Wood Workers’ International (BWI) sent a mission to Qatar on 7 October 2013 to inspect the working conditions on construction sites and elaborate a relevant report. The Committee asks the Government to indicate the measures taken or envisaged to ensure that the construction sector is effectively inspected, including the recruitment and training of additional labour inspectors, and to provide relevant statistical data on inspection visits in this sector and their outcomes, as well as on industrial accidents and cases of occupational diseases in this sector.

The Committee is raising other points in a request addressed directly to the Government. [The Government is requested to reply in detail to the present comments in 2014.]
Algeria  
(Ratification: 1962)

The Committee notes the Government’s reply to the observations of 2013 from the International Trade Union Confederation (ITUC) in which it rejects the alleged violations of civil liberties against trade union leaders and trade unionists, including arrests, criminal prosecutions and restrictions to the freedom to travel. Nevertheless, the Committee notes that the Government has not replied to the comments submitted in 2012 by the ITUC, Education International (EI), the National Autonomous Union of Public Administration Staff (SNAPAP) and the National Autonomous Union of Secondary and Technical Education Teachers (SNAPEST), which included allegations relating to acts of intimidation and threats, including death threats, towards trade union leaders and members. The Committee therefore requests the Government to provide its comments thereon.

The Committee also notes that the Government’s report has not responded to the issues previously raised in the Committee’s comments. In these circumstances, the Committee must therefore repeat its previous observation.

The Committee, like the Committee on Freedom of Association (Case No. 2701, November 2012 session), notes with satisfaction the registration of the National Union of Vocational Training Workers (SNTFP), which had been awaiting approval since 2002.

Article 2 of the Convention. Right to establish trade union organizations. The Committee previously noted that section 6 of Act No. 90-14 of 2 June 1990 restricts the right to establish a trade union organization to persons who are Algerian by birth or who have had Algerian nationality for at least ten years. Recalling that the right to organize must be guaranteed to workers and employers without distinction whatsoever, with the possible exception of those categories specified in Article 9 of the Convention, and that foreign workers too must have the right to establish organizations, the Committee asked the Government to take the necessary steps to amend section 6 of Act No. 90-14 so as to grant all workers, without distinction as to nationality, the right to establish a trade union. The Committee notes that the Government reiterates in its report that the amendment requested by the Committee will be examined as part of the reform of the Labour Code. The Committee hopes that the announced legislative reform will occur in the near future and urges the Government to provide information on developments in this respect, especially regarding any amendment of section 6 of Act No. 90-14 securing to all workers, without distinction as to nationality, the right to form a trade union.

Articles 2 and 5. Right of workers to establish and join organizations of their own choosing without previous authorization and to establish federations and confederations. In its previous comments the Committee asked the Government to take specific measures to amend the legislative provisions that prevent workers’ organizations, irrespective of the sector to which they belong, from forming federations and confederations of their own choosing (sections 2 and 4 of Act No. 90-14). The Committee notes that the Government reiterates that the Committee’s request will be taken into account as part of the reform of the Labour Code. The Committee again urges the Government to report any developments regarding the amendment of section 4 of Act No. 90-14 so as to remove all obstacles preventing workers, regardless of the sector to which they belong, from establishing federations and confederations of their own choosing.

Article 3. Right of organizations to carry on their activities in full freedom and formulate their programmes. In its previous comments the Committee referred to section 43 of Act No. 90-02, under which strikes are forbidden not only in essential services the interruption of which may endanger the life, personal safety or health of the citizen, but also where the strike “is liable to give rise to a serious economic crisis”. Noting that the Government reiterates that the interpretation given to this section is similar to that of the Committee, which refers to “strikes which, by reason of their scope and duration, are liable to cause an acute national crisis”, the Committee requests the Government to give examples of specific cases in which recourse to strike action has been prohibited on the grounds of its possible effects.

Finally, the Committee previously commented on section 48 of Act No. 90 02, which empowers the minister or the competent authority, where the strike persists and mediation has failed, or where compelling economic or social needs require, to refer the dispute to the National Arbitration Commission after consulting the employers’ and workers’ representatives. The Committee notes the additional information provided by the Government in its report, especially with regard to the composition of the National Arbitration Commission (section 2 of Executive Decree No. 90-148 of 22 December 1990), which is a tripartite body containing equal numbers of representatives of the employers, the workers and the State and which is chaired by a magistrate. The Committee further notes the Government’s indication that only one dispute has been referred to the National Arbitration Commission since its establishment in 1990. The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Belarus  
(Ratification: 1956)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013)
Follow-up to the recommendations of the Commission of Inquiry (Complaint made under article 26 of the Constitution of the ILO)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2013 concerning the application of the Convention. It also notes the 369th Report of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.
The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 30 August 2013 alleging numerous violations of the Convention, including denial of the right to hold pickets and demonstrations, deregistration of a primary trade union affiliated to the Radio and Electronic Workers’ Union (REWU), and pressure and threats exercised by the authorities on leaders of the Free Metal Workers’ Union (FMWU). The Committee requests the Government to provide detailed observations on the ITUC’s allegations. The Committee further notes the comments submitted by the International Organisation of Employers (IOE) in a communication dated 30 August 2013.

Article 2 of the Convention. Right to establish workers’ organizations. The Committee recalls that in its previous observations it had urged the Government to take the necessary measures to amend Presidential Decree No. 2, its rules and regulations, so as to remove the obstacles to trade union registration (legal address and 10 per cent minimum membership requirements). The Committee notes that, in its statement at the Conference Committee in June 2013, the Government referred to its proposal to amend the Decree by revoking the 10 per cent membership requirement for the establishment of a union at the enterprise level. The Committee regrets that no further information has been provided by the Government on the progress made in this respect. The Committee further deeply regrets that there have been no tangible measures taken by the Government, nor have there been any concrete proposals, to amend the legal address requirement, which appears to continue to hinder registration of trade unions and their primary organizations in practice.

In this connection, and with reference to its previous observation and the 369th Report of the Committee on Freedom of Association, the Committee expresses its concern at the situation of trade union rights at “Granit” enterprise. The Committee recalls the allegation that the management of the enterprise refused to provide a primary organization of the Belarus Independent Trade Union (BITU) with the legal address required, pursuant to Decree No. 2, for registration of trade unions. The Committee notes that, in its report, the Government indicates that the majority of members of the Council for the Improvement of Legislation in the Social and Labour Sphere (the Council), having discussed the matter at the Council’s meeting in March 2013, raised doubts about the establishment of the BITU primary trade union and considered that the actions of the enterprise management were justifiable as the BITU had failed to submit the minutes of the founding meeting. The Government submits that, while the legislation does not contain any numerical requirement for the establishment of primary trade union organizations, other requirements must to be fulfilled, including the requirement to hold a constituent meeting. According to the Government, the analysis of the situation raised sufficient doubts as to whether the meeting had really taken place and therefore whether the organization had been established. The Committee further notes the Government’s indication that, according to the legislation, the employers are not obliged to provide a union with premises and that this question is to be regulated through collective bargaining. On the other hand, the union is not obliged to have its legal address on the premises of the enterprise and is free to rent a space elsewhere. According to the Government, while the Belarusian Congress of Democratic Trade Unions CDTU alleged that it faced refusal when attempting to rent a suitable space, it provided no specific information to sustain its allegations. Finally, the Government indicates that to date the BITU has not approached the registration authorities concerning the registration or recording of its primary trade union organization.

The Committee notes what appears to be contradictory information about the establishment of the BITU primary organization, as referred to by the Government in its communications to this Committee and the Committee on Freedom of Association. The Committee recalls that the 2004 Commission of Inquiry had examined at length the difficulties with obtaining legal address faced in practice by trade unions outside of the structure of the Federation of Trade Unions of Belarus (FPB) (see paragraphs 590–598 of the Report). It deeply regrets that almost ten years later, these difficulties still appear to exist. The Committee understands that in the absence of legal address, due to the legal address requirement set forth by Decree No. 2 and the restrictions as to what can constitute a valid legal address imposed by, among other pieces of legislation, the Housing and Civil Codes, the BITU could not apply for the registration of its primary trade union. While noting the Government’s indication that in 2012, there have been no cases of refusal to register trade union organizations, the Committee notes with deep regret that, despite the numerous requests by the ILO supervisory bodies, there have been no tangible measures taken by the Government to amend the Decree. In view of the above, the Committee urges the Government, in consultations with the social partners, to amend Decree No. 2 and to address the issue of registration of trade unions in practice, including by re-examining the situation of the BITU primary trade union with a view to allowing its registration. The Committee requests the Government to indicate in its next report all progress made in this respect.

Concerning the Committee’s previous request to provide detailed observations on the CDTU’s earlier allegation that the Polotsk municipality refused to register the free trade union primary organization of “Self-employed workers at Polotsk outdoor collective farm market”, the Committee regrets that the Government’s reply is limited to indicating that the union has failed to provide a complete file of documents required for the registration. It therefore expects that the Government’s next report will contain detailed observations thereon.

Articles 3, 5 and 6. Right of workers’ organizations, including federations and confederations, to organize their activities. The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the CDTU, BITU and REWU to hold demonstrations and meetings and requested the Government to conduct independent investigations into these allegations, as well as to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee notes the Government’s indication that those allegations are too general, which makes it difficult for the Government to comment. The Committee notes with concern the ITUC’s allegation of refusal by the Minsk City Executive Committee to grant permission to hold a picket planned by the BITU for 20 July 2013. Recalling that peaceful protests are protected by the Convention and that public meetings and demonstrations should not be arbitrarily refused, the Committee urges the Government, in working together with the abovementioned organizations, to investigate all of the alleged cases of refusals to authorize the holding of demonstrations and meetings and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests.

The Committee recalls that it had previously noted with concern the CDTU’s allegation that after the chairperson of the Soligorsk BITU regional organization met with several women workers (on their way to their workplaces), she was detained by the police on 4 August 2010 and subsequently found guilty of committing administrative offence and fined. According to the CDTU, the court had decided that by having
met members of the union near the entrance gate of the company, the trade union leader had violated the Act on Mass Activities. The Committee had requested the Government to provide its observations on the facts alleged by the CDTU. The Committee deeply regrets that the Government provides no information in this respect. It therefore once again reiterates its request.

In this connection, the Committee recalls that for a number of years it had been requesting the Government to amend the Act on Mass Activities, which imposes restrictions on mass activities and provides that an organization (including a trade union) can be liquidated for a single breach of its provisions (section 15), while organizers may be charged with a violation of the Administrative Code and thus subject to administrative detention. The Committee deeply regrets that once again no information has been provided by the Government on concrete measures taken in this respect. It therefore reiterates its previous request.

With regard to its previous request to amend Presidential Decree No. 24 concerning the use of foreign gratuitous aid, the Committee notes the Government’s indication that there have been no refusals to register such aid and that the organizations that have requested the registration have obtained it. While noting this information, the Committee recalls that the Commission of Inquiry observed in its report that the Decree prohibited “the use of foreign gratuitous aid for, among others, carrying out public meetings, rallies, street processions, demonstrations, pickets, strikes and the running of seminars and other forms of mass campaigning among the population. Violation of this provision can result in the imposition of heavy fines, as well as the possible termination of an organization’s activities. While the Government stated that Decree No. 24 was only aimed at rendering the previous situation transparent and created a simple and rapid procedure for the registration of foreign aid, the Commission heard from one of the employers’ organizations that, to the contrary, the process was costly and time-consuming. The Commission recalls from the principles elaborated by the ILO supervisory bodies that the right recognized in Articles 5 and 6 of the Convention implies the right to benefit from the relations that may be established with an international workers’ or employers’ organization. Legislation which prohibits the acceptance by a national trade union or employers’ organization of financial assistance from an international workers’ or employers’ organization, unless approved by the Government, and provides for the banning of any organization where there is evidence that it has received such assistance, is not in conformity with this right. Although there were no specific allegations as to the practical application of this Decree, the Commission reiterates the conclusions made by these supervisory bodies that the previous authorization required for foreign gratuitous aid and the restricted use for such aid set forth in Decree No. 24 is incompatible with the right of workers’ and employers’ organizations to organize their own activities and to benefit from assistance that might be provided by international workers’ and employers’ organizations’ (see paragraphs 623 and 624 of the report of the Commission of Inquiry). The Committee therefore once again urges the Government, in consultation with the social partners, to amend Decree No. 24 so as to ensure that workers’ and employers’ organizations may effectively organize their administration and activities and benefit from assistance international organizations of workers and employers in conformity with Articles 5 and 6 of the Convention. It requests the Government to provide information on all measures taken in this respect.

The Committee regrets that no information has been provided by the Government on the concrete measures taken to amend sections 388, 390, 392 and 396 of the Labour Code affecting the right of workers’ organizations to organize their activities in full freedom. The Committee notes that in its report the Government requests to clarify to what degree the position of the Committee in this respect reflects a balanced position of the social partners pursuant to the principles of tripartism. The Committee recalls that it has been requesting the Government to amend the above provisions since the adoption of the Labour Code in 1999. It therefore encourages the Government to revise these provisions, in consultation with the social partners, and to provide information on all measures taken or envisaged to that end.

The Committee notes with deep regret that no progress has been made by the Government towards implementing the recommendations of the Commission of Inquiry and improving the application of this Convention in law and in practice during the reporting year. Indeed, the Government has not provided any information on steps taken to amend the legislative provisions in question, as previously requested by this Committee, the Conference Committee, the Commission of Inquiry and the Committee on Freedom of Association. The Committee therefore urges the Government to intensify its efforts in ensuring that freedom of association and respect for civil liberties are fully and effectively guaranteed in law and in practice and expresses the firm hope that the Government will intensify its cooperation with all the social partners in this regard.

The Committee welcomes the acceptance by the Government of a direct contacts mission with a view to obtaining a full picture of the trade union rights in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry. The Committee hopes that the mission will take place in the very near future. [The Government is asked to supply full particulars to the Conference at its 103rd Session and to reply in detail to the present comments in 2014.]

Cambodia

(Ratification: 1999)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2013 concerning the application of the Convention.

The Committee notes with regret that the Government’s report has not been received.

The Committee recalls that it had previously urged the Government to send its observations on the comments made in 2010, 2011 and 2012 by the International Trade Union Confederation (ITUC), the Cambodian Labour Confederation (CLC), Education International (EI), the Cambodian Independent Teachers’ Association (CITA) and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), which referred to serious acts of violence and harassment against trade union leaders and members. The Committee notes with concern...
the new comments submitted by the ITUC in a communication dated 21 August 2013 alleging serious violations of the Convention. The Committee urges the Government to provide its observations on all outstanding comments submitted by the ITUC, CLC, EI, CITA and the FTUWKC.

The Committee notes the comments of the International Organisation of Employers (IOE) and the Cambodian Federation of Employers and Business Association (CAMFEB) in a communication dated 30 August 2013. The Committee notes that both organizations consider that “freedom of association and the right to organize are extremely well practiced in Cambodia”, refer to the challenges resulting from the growing multiplicity of unions, dispute the allegations concerning the use of fixed duration contracts and are of the opinion that the issue of the Trade Union Act should not be addressed by the Committee.

The Committee notes the latest conclusions and recommendations of the Committee on Freedom of Association in Case No. 2318 concerning the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy and the continuing repression of unionists, which had to be examined in the absence of a response from the Government and was considered as an extremely serious and urgent case (370th Report, paragraphs 144–168). In the absence of the Government’s reply, the Committee, like the Committee on Freedom of Association and the Conference Committee, once again strongly urges the Government to ensure that thorough and independent investigations into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy are carried out expeditiously to ensure that all available information will finally be brought before the courts in order to determine the actual murderers of these trade union leaders and instigators, punish the guilty parties and bring to an end the prevailing situation of impunity as regards violence against trade union leaders. The Committee further requests the Government to conduct an independent and impartial investigation into the prosecution of Born Samnang and Sok Sam Oeun, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process. The Committee requests the Government to provide information on the outcome of the investigations and on the measures of redress for their wrongful imprisonment.

Trade union rights and civil liberties. In its previous observations, the Committee urged the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives as well as the lives of their families. The Committee notes with regret the absence of the Government’s reply, particularly in view of the comments made by a number of workers’ organizations alleging serious acts of violence and harassment against trade union leaders and members, and in the wake of the Conference Committee’s discussion on Cambodia relating to the persistent climate of violence and intimidation towards union members. The Committee is bound to recall, once again, that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers’ organizations, and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. It further recalls that workers have the right to participate in peaceful demonstrations to defend their occupational interests. In light of the above, the Committee once again urges the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation or risk to their personal security and their lives, as well as the lives of their families, in accordance with the abovementioned principles. The Committee requests the Government to provide information in this regard.

Independence of the judiciary: In its previous observations, the Committee noted the conclusions of the ILO direct contacts mission of April 2008, referring to serious problems of capacity and lack of independence of the judiciary. The Committee requested the Government to take concrete and tangible steps, as a matter of urgency, to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption. In this regard, the Committee notes that, in June 2013, the Conference Committee urged the Government to: (i) adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts, and ensure their full implementation; (ii) provide information on the progress made in this regard, as well as in respect of the creation of labour courts; and (iii) transmit the draft texts to the Committee of Experts. The Committee notes with regret that none of these texts have been transmitted. It once again requests the Government to indicate whether these laws have been adopted, and, if so, to provide a copy thereof. If this is not the case, the Committee urges the Government to take all necessary measures to ensure their adoption without delay.

The Committee also requests the Government to provide in its next report information on any progress made concerning the creation of labour courts.

The draft Trade Union Act. The Committee notes that the June 2013 Conference Committee once again called on the Government to intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, to ensure the rapid adoption of the Trade Union Act by the end of 2013 so as to fully guarantee the rights under the Convention. The Committee once again requests the Government to provide information on the steps taken towards the adoption of the Act, and expresses the firm hope that the social partners will be fully consulted throughout the process, and that the final draft legislation will take into account all its comments and in particular that civil servants, teachers, air and maritime transport workers, judges and domestic workers will be fully guaranteed the rights enshrined in the Convention.

Swaziland

(Ratification: 1978)

Comments from employers’ and workers’ organizations. The Committee notes the 2013 comments made by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) concerning issues already under examination as well as allegations of continued restrictions of trade union activities in practice. The Committee takes note in particular of the ITUC's
denunciation of the refusal of the Government to register the Amalgamated Trade Union of Swaziland (ATUSWA) in September 2013, the shutdown by the police of a Global Inquiry Panel held in September 2013 and the brief detention of some of its participants. **Noting the seriousness of these latest allegations, the Committee urges the Government to provide its observations thereon.**

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013)**

The Committee notes the discussion which took place in the Conference Committee in June 2013. The Committee observes that the Conference Committee took note of the Government’s statement that all pending legislative issues would be attended to within the framework of the relevant tripartite institutions as a matter of urgency. Furthermore, the Conference Committee observed, in its conclusions, the grave issue concerning the revocation of the registration of the voluntarily unified Trade Union Congress of Swaziland (TUCOSWA) in April 2012, strongly urged the Government to immediately take the necessary steps to ensure that the social partners’ views were duly taken into account in the finalization of the Industrial Relations Amendment Bill, and expected that this action would enable all the social partners in the country to be recognized and registered under the law, in full conformity with the Convention. The Conference Committee also expected that the tripartite structures in the country would effectively function with the full participation of all social partners, including TUCOSWA, and that the Government would guarantee that these organizations could exercise their rights under the Convention and the Industrial Relations Act (IRA). Finally, the Conference Committee called on the Government to accept a high-level ILO fact-finding mission to assess the progress made on pending matters, including the steps taken to amend the IRA to enable federation registration and the actual registration of the TUCOSWA.

The present Committee also takes note of the latest conclusions and recommendations of the Committee on Freedom of Association concerning the revocation of the registration of the TUCOSWA (Case No. 2949) and, in particular, that the Committee on Freedom of Association urged the Government to ensure that the amendments to the IRA were adopted without delay so that federations of workers and employers could be registered and function in the country, and requested that, in the meantime, the TUCOSWA be able to effectively exercise all its trade union rights without interference or reprisal against its leaders, including the right to engage in protest action and peaceful demonstrations in defence of its members’ occupational interests.

The Committee takes due note of the information provided by the Government on progress achieved to follow up on the comments made by the Committee for many years. It notes in particular the Government’s indication that the tripartite structures in the country are functioning with the full participation of the federations of employers and workers (the Federation of Swazi Employers and Chamber of Commerce, the Federation of the Swazi Business Community and TUCOSWA). The Committee notes with regret the Government’s indication that the IRA amendment bill, approved by Cabinet and published as Bill No. 14 of 2013, could not be tabled to Parliament due to other pressing parliamentary issues (the Government had committed to table the Bill by the end of June 2013). **The Committee further observes with deep regret that the TUCOSWA is still not registered and urges the Government to ensure that the necessary steps are taken for the registration without delay of the TUCOSWA and the other workers’ and employers’ federations affected.**

Furthermore, while taking note of the information on the meetings held within the National Steering Committee on Social Dialogue and the Labour Advisory Board, the Committee firmly trusts that the Government will report in the near future on concrete progress made on the Committee’s long-standing requests concerning amendments and modifications to the following legal texts:

- **The Public Service Bill:** The Committee notes that the bill is pending before the Labour Advisory Board.
- **The Industrial Relations Act (IRA):** The Committee notes from the Government’s report that the Labour Advisory Board agreed in July 2013 to set up a subcommittee to review the whole Act and come up with proposed amendments taking into account the Committee’s previous recommendations concerning the civil and criminal liabilities of trade union leaders and the determination of a minimum service in sanitary services.
- **The 1973 Proclamation and its implementing regulations:** In relation to the status of this Proclamation, the Committee notes that its previous recommendations have been discussed in June 2013 within the Steering Committee on Social Dialogue and are still part of its agenda.
- **The 1963 Public Order Act:** The Committee has been requesting the Government for a number of years to take the necessary measures to amend the Act so as to ensure that it could not be used to repress lawful and peaceful strike action. The Committee notes the indication that the Attorney-General will review the Act and submit a progress report to the Steering Committee on Social Dialogue.
- **The Correctional Services (Prison) Bill:** In relation to the recognition of the right to organize of prison staff, the Committee previously noted that the draft Correctional Services (Prison) Bill was circulated to the Labour Advisory Board in September 2012. The Committee notes that no information has been provided on the present status of the Bill.
- **The Code of good practice for protest and industrial action:** The Committee notes that the technical assistance of the Office has been requested in June 2013 to finalize the Code.

Finally, noting with regret that the high-level ILO fact-finding mission requested by the Conference Committee was postponed until next year, the Committee firmly hopes that it will take place in the near future and that it will be able to assess tangible progress on the pending issues.

The Committee is raising other points in a request addressed directly to the Government. **[The Government is asked to reply in detail to the present comments in 2014.]**
C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Croatia

(Ratification: 1991)

The Committee notes that the Government’s communication, dated 29 November 2013, does not respond to the following comments previously made by the Committee:

Article 1 of the Convention. Protection of workers against acts of anti-union discrimination. In its previous comments, the Committee, referring to allegations of excessive court delays in dealing with cases of anti-union discrimination, had noted that a comprehensive process of reform had been initiated to enhance the efficiency of the judicial process and reduce the backlog of cases and that a pilot project on mediation in courts showed positive results. The Committee had noted that, according to the ITUC, in spite of some improvements, law enforcement through the judicial system remained slow and labour inspection capacities remained weak. The Committee requests the Government once again to provide information in its next report on the progress made with respect to the measures aimed at improving the efficiency of the legal protection, as well as a copy of the instruments adopted as a result of the reform process.

Articles 4 and 6. Promotion of collective bargaining. In its previous observation, the Committee had requested the Government to reply to the 2010 comments made by the Trade Union of State and Local Government Employees (TUSSLGE) alleging that the Local and Regional Self-Government Wage Act of 19 February 2010 restricts the right to organize and to bargain collectively of employees of local and regional self-government units, in particular the right of employees of financially weaker local and regional self-government units (i.e. where aids exceed 10 per cent of the unit income) to bargain collectively over the wage formation basis. The Committee notes that, according to the Government’s observations in relation to these comments, the Act on civil servants and civil service employees in local and regional self-government specifies that salaries of civil servants in local and regional self-government units are adjusted to salaries of civil servants at state level (the Committee understands that the salaries at the state level are determined after consultations and negotiations with the most representative workers’ organizations in the public sector). The Committee requests the Government to provide information on the application in practice of the adjustment of salaries of civil servants in local and regional self-government units to the salaries of civil servants at state level.

Furthermore, the Committee had noted the allegations that the Act on the realization of the Government’s budget of 1993 allowed the Government to modify the substance of a collective agreement in the public sector for financial reasons. It had requested the Government to provide a copy of the legislative provisions allowing the Government to modify the substance of collective agreements in the public service and information on their application in practice. Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee once again requests the Government to provide, with its next report, a copy of the said legislative provisions, as well as information on their application in practice.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Finally, the Committee notes the comments submitted in 2013 by the International Trade Union Confederation (ITUC) on matters being examined by the Committee and in 2012 by the Association of Croatian Trade Unions (MATICA) denouncing the cancellation of the Basic Collective Agreement in the public sector and the content of the new Representativeness Act, as well as the Government’s observations thereon. The Committee noted that the Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining was adopted on 13 July 2012 and observes that no national employers’ organization and only one national trade union organization has submitted comments in this regard. With a view to examining the conformity of the new Act with the Convention, the Committee wishes to receive any views or comments the most representative employers’ and workers’ organizations may wish to make in respect of this matter, so as to enable it to assess the established representativeness criteria, assessment which would need to take into account to a certain extent the specificities of the industrial relations system and to determine whether the established criteria are shared by the most representative social partners.

Ecuador

(Ratification: 1959)

The Committee notes the Government’s reply to the comments of the Ecuadorian Medical Federation of 2012 and the comments made by the International Trade Union Confederation (ITUC) in 2011.

Application of the Convention in the private sector

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee previously requested the Government to take the necessary measures to ensure that the legislation includes a specific provision guaranteeing protection against acts of anti-union discrimination at the time of recruitment. In view of the lack of information provided by the Government on this issue, the Committee cannot but reiterate its previous request.

The Committee also regrets that the Government has not provided its observations on the comments made by the ITUC in 2009 which referred to serious allegations of anti-union practices in various enterprises and institutions. The Committee requests the Government to conduct an inquiry into these allegations and, if these practices are confirmed, to take the necessary measures to ensure that they are punishable by sufficiently dissuasive penalties.

Article 4. Promotion of collective bargaining. The Committee noted previously the need to amend section 229(2) of the Labour Code respecting the submission of the draft collective agreement, so that minority trade union organizations with a membership amounting to no more than 50 per cent of the workers subject to the Labour Code may, on their own or jointly (when there is no majority union representing
all the workers) negotiate on behalf of their own members. The Committee requests the Government to take measures for this purpose.

The Committee also notes that various national trade union federations allege that the social partners have not been consulted concerning the draft reform of the Labour Code, which is reported to contain provisions that are contrary to the Convention. The Committee requests the Government to provide its observations on this matter and to ensure that any draft reform is the subject of in-depth consultations with the representative organizations of workers and employers.

Application of the Convention in the public sector

The Committee notes the 2013 comments of the ITUC and of the Trade Union Confederation of Ecuador and the joint comments by Public Services International Ecuador, the National Confederation of Educational Workers, the General Confederation of Workers of Ecuador, the Federation of Oil Workers of Ecuador, the Trade Union Confederation of the Public Sector in Ecuador, the Confederation of Health Professionals, the National Federation of Public Servants and various local trade union organizations referring to matters already raised by the Committee and also indicating that: (i) the new legislation applicable in the public sector does not provide for penalties for acts of anti-union discrimination or interference; (ii) the legislation classifies as public servants the great majority of workers in the public sector, thereby denying them the right to collective bargaining; (iii) Executive Decree No. 225 of 2010 institutionalizes the capacity of the Ministry of Industrial Relations to unilaterally revise collective agreements applicable to workers in the public sector; and (iv) the Basic Act on Higher Education (LOES) of 2010 and the Basic Act on Intercultural Education (LOEI) of 2011 do not recognize the right of public employees in the education sector to engage in collective bargaining. The Committee expresses its concern at the content of these allegations and requests the Government to provide its observations on this matter.

Articles 1 and 2. Protection against acts of anti-union discrimination and interference. The Committee notes that the Committee on Freedom of Association drew to its attention the legislative aspects of Case No. 2926 relating to allegations of numerous anti-union dismissals in the public sector through the procedure of the “compulsory purchase of redundancy” introduced by Executive Decree No. 813 [see Committee on Freedom of Association, 370th Report, paragraph 385]. In this respect, the Committee observes that the legislation respecting the public sector adopted in recent years (Organic Act on the Civil Service (LOSEP), LOEI, LOES) in general prohibits discrimination in employment, but does not contain specific provisions respecting anti-union discrimination. Under these conditions, the Committee requests the Government to indicate: (i) the provisions applicable to the public sector which guarantee that any acts of anti-union discrimination envisaged in Article 1 of the Convention are effectively prohibited; (ii) the procedures and mechanisms applicable in cases of anti-union discrimination; and (iii) the provisions establishing penalties applicable to acts of anti-union discrimination in the public sector. Furthermore, under the terms of Article 2 of the Convention, the Committee requests the Government to indicate the provisions which protect organizations of public servants and public sector workers against acts of interference by the employer, and to specify the penalties applicable in such cases.

Article 4. Promotion of collective bargaining. In its previous comments, the Committee noted Constituent Resolutions Nos 002 and 004, and Executive Decree No. 1406, which set a ceiling on remuneration in the public sector and exclude from collective bargaining a series of matters, even where public sector enterprises have sufficient income, and accordingly impose permanent limitations on collective bargaining that are incompatible with the Convention. The Committee notes that the LOSEP and the Organic Act on Public Enterprises (LOEP) contain provisions which maintain these limitations and even extend them in relation to remuneration. The Committee therefore requests the Government to take the necessary measures to restore the right to collective bargaining on all matters which affect the working and living conditions of workers in the public sector that are covered by the Convention, and to provide information in this respect.

Furthermore, with reference to constituent Resolution No. 008, Ministerial Order No. 00080 and Order No. 00155A, the Committee recalled its previous comments that the determination of any abusive character of clauses in collective agreements in the public sector should not be carried out by the administrative authorities, but by the judicial authorities. The Committee notes that section 18 and the first transitional provision of Executive Decree No. 225 of 2010 continue to empower the Ministry of Industrial Relations to determine any abusive character of clauses in collective agreements in the public sector. Under these conditions, the Committee once again requests the Government to take the necessary measures to ensure that the determination of any abusive clauses in collective agreements in the public sector lies within the competence of the judicial authorities.

Article 6. Scope of application of the Convention. In its previous comments, the Committee noted that, under the terms of the LOEP and the LOSEP, the list of public servants excluded from the right to collective bargaining goes beyond the exclusions allowed by Article 6 of the Convention. The Committee also notes that the LOES and LOEI exclude all public servants in the education sector, including teachers, from the right to collective bargaining. Under these conditions, and recalling that under Article 6 of the Convention, only public servants engaged in the administration of the State may be excluded from its scope of application, the Committee once again requests the Government to take the necessary measures to ensure that all categories of public servants who are not engaged in the administration of the State enjoy the right to collective bargaining.

The Committee hopes that the Government will take into account all of the comments that it has been making for years and that, in consultation with the most representative organizations of workers and employers, it will take the necessary measures to amend the provisions of the laws and regulations referred to above, including those contained in the Labour Code that is currently being revised. The Committee requests the Government to provide information in its next report on any developments in this respect and reminds it that the technical assistance of the Office is at its disposal.
Recalling the conclusions made in its observations of 2012 and having examined the information provided by the Government in 2013 in its report on the Convention and in the 31st annual report on the application of the European Code of Social Security (thereafter the Code), the Committee finds that the continued contraction of the economy, employment and public finances caused by the policy of continuous austerity threatens the viability of the national social security system and has resulted in the increased impoverishment of the population, which seriously undermines the application of all accepted parts of the Convention.

The Committee therefore invites the Government to respond to these recommendations of the Council of Europe by conducting such an assessment of the current austerity programmes, preparing the necessary policy corrections and applying them without delay with a view to preserving the immediate viability and the longer term sustainability of the national social security system. The Committee hopes that the participation of Greece in the European working group on “Efficiency and effectiveness of social spending and financial arrangements”, to which the Government refers in its report on the Convention, will help the Government to assess the effectiveness of its social spending sufficiently in time to arrest the destructive effects of the present financial arrangements.

Stopping the increasing impoverishment of the population. The Committee highlights that the following considerations concern some major developments affecting benefits in 2013 and should be read in continuation of its previous conclusions concerning the impact of austerity measures on poverty levels in Greece in 2012. Referring to austerity measures implemented in the Memorandum of Understanding on the Medium-Term Fiscal Strategy 2013–16 (Memorandum III) between the Government of Greece and the IMF, the European Commission and the European Central Bank, the 31st report on the Code states that, as of 1 January 2013, by Law 4093/2012, the amount of monthly pension or the sum of monthly pensions of €1,000 and above were reduced by between 5 and 20 per cent. Also from 1 January 2013, the Christmas, Easter and holiday bonuses were abolished, meaning an additional 6 per cent reduction in annual income from pensions of IKA–ETAM. The report on the Code also states that 910,048 IKA pensions (out of a total of 1,205,513 computerized pensions), which are lower than €1,000, were decreased by 1 per cent after all the deductions, including the Christmas, Easter and holiday bonuses. Besides direct cuts in pensions, further financial savings from the pension system were generated by reducing the number of recipients through imposition of stricter qualifying conditions in terms of higher retirement age and income criteria. Thus, the stricter conditions for the entitlement to old-age pension set by Law 3863/2010 that were supposed to come into force on 1 January 2015 were applied from 1 January 2013, increasing from 65 to 67 years the retirement age for pensions provided by the Social Security Funds under the competence
of the Ministry of Labour, Social Security and Welfare, as well as the Bank of Greece. According to Law 4093/2012, from 1 January 2014, in order to be entitled to the Social Solidarity Allowance (EKAS) the recipients of old-age, invalidity and survivors’ pensions should reach the age of 65 (instead of 60), with the exception of surviving children. By Law 3996/2011, EKAS is subject to the new income test, which now covers the entire income, including profits and earnings from room renting, truck renting, personal business, sales as travelling salesmen, etc. The non-contributory pension of €360 (€345 net) financed from the state budget and granted by the Agricultural Insurance Organization (OGA) to uninsured persons of old age who do not receive any other pension, provides, since 1 January 2013, for more stringent age, residence and income conditions, which need to be met cumulatively. Nevertheless, according to the report on the Code, there are still 779,661 pensions (with an average monthly amount of around €483.18) that have not been subject to any monthly decrease since 2011. No reductions were made to the minimum pension for old age and disability (€486.84 for persons insured before 31 December 1992, and €495.74 for those insured after 1 January 1993) and for survivors (€438.16 for persons insured before 1992 and €396.58 for those insured subsequently), as well as to EKAS, which constitutes an amount from €30 to €230 (average is around €175.62).

While noting the Government’s efforts to shield low-income pensioners from new reductions, the Committee observes that existing thresholds and safeguards are largely insufficient to prevent poverty in old age: the report on the Convention indicates that the rates of relative poverty and the material deprivation for people over 65 have worsened more than for the population on average, and that this phenomenon requires monitoring. The Committee hopes the Government understands that the aim of monitoring poverty is to reduce it, which cannot be achieved by new pension cuts. The Committee observes that, direct pension cuts in 2013 resulted in a reduction of pensions ranging from 12 to 27 per cent in total. The impact on the population would be greater if one considered also the effect of the introduction of much stricter legal conditions for entitlement to various pensions. The European Committee of Social Rights stated in this respect that “the cumulative effect of the restrictions … is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned” (Complaint No. 76/2012, Federation of employed pensioners of Greece (IKA–ETAM) v. Greece, Decision on the Merits, 7 December 2012, paragraph 78). One might add to this that pension reductions now constitute one of the main remaining sources of budgetary savings that Greece promised to its international creditors in 2013: about half of the €9.37 billion budgetary savings affects pensions. The Committee is saddened to observe that the aggravation of poverty in Greece is not a natural but an artificially created phenomenon perceived as inevitable “collateral damage” to fulfilling the country’s financial obligations before its international lenders. This Committee fully shares the conclusion of the Committee of Ministers of the Council of Europe that a State ceases to fulfill its general responsibilities for the proper management of the social security system and the due provisions of benefits if its social security benefits slide below the poverty line, and would be seen as socially irresponsible if its social security benefits fall below the subsistence level. In the light of these conclusions of the Committee of Ministers, the Council of Europe, as a human rights institution, has the legal and moral grounds to hold the Greek Government and its international lenders responsible for the “programmed” impoverishment of the population and the human costs it involves. With respect to the position of the Greek Government, the Committee considers that the adoption by the Government of the socially responsible policy would imply, inter alia, the fulfilment of the following requests made by the Committee in its previous observation and restated by the Committee of Ministers in its 2013 Resolution on the application of the European Code of Social Security by Greece: (1) to urgently assess past and future social austerity measures in relation to one of the main objectives of the Convention and the Code, which is the prevention of poverty; (2) to put this question on the agenda of its future meetings with the parties of the international support mechanism for Greece; (3) to enable the National Actuarial Authority, in terms of additional financial and human resources, to analyse the redistributive effects of benefit cuts; (4) to determine the most rapid scenarios for undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level; and (5) to make full use of ILO technical assistance to support the quantitative analysis of these options and of the subsequent revision of the 2012 actuarial projections for the national pension system.

According to the report on the Code, the General Secretariat for Social Security of the Ministry of Labour, Social Security and Welfare has forwarded these requests of the Council of Europe and the ILO to the Government and expects the political leadership of the country to take relevant decisions.

The Committee, for its part, hopes that these decisions will be socially responsible and will be forthcoming sooner rather than later, if only considering that since the beginning of austerity the country has been shaken by no less than 39 general strikes. With respect to the proposal to assess the impact of austerity measures on poverty, the Committee finds it encouraging that, in its report on the Convention, the Government refers to the analogous conclusion coming out of the Social Protection Committee of the European Union, namely that member States implementing economic adjustment programmes should assess the social impact of measures prior to implementing those programmes. The Government cites point 7 of the policy conclusions of the report of the above Committee addressed to the European Commission and the European Council for the preparation of the Annual Development Report, which states “Member States implementing economic adjustment programmes (EAPs) have shown an extraordinary commitment to reforms which are painful for their population. Their experience offers a unique source of lessons to be learned. Many of the implemented measures strengthened their social protection systems, while others failed to halt the rise of poverty and in particular child poverty. Social impact assessment must therefore precede the economic adjustment programmes in order to choose the most appropriate path of reforms and adjust the resulting distribution impact across income and age groups.” As a first step towards binding measures decided upon at European level to that effect, the Government refers to the pilot ex ante examination of sectoral economic reforms in the Member States based on the proposal submitted by the European Commission for “ex ante coordination of plans for major economic policy reforms” (Communication, 2013) following its authorization by the EU Summit. The Committee is pleased that the repeated calls of the Council of Europe and the ILO to conduct structural adjustment programmes in a socially responsible manner avoiding large-scale pauperization of significant segments of the affected populations have been heard and acted upon by the European Commission. Considering that the European Commission forms part of the Troika, the Committee trusts that the Greek Government will not fail to seize the opportunity of using the above ex ante examination of its economic reforms to conduct the post factum examination of the impact of those reforms and the policies of continuous austerity on the rise of poverty and in particular child poverty. The Committee wishes to underscore that such an assessment will no doubt offer “a unique source of lessons to be learned” not only by the European Commission and other members of the...
Troika, but by all European countries and the international community at large in order to prevent, in future, the creation of widespread poverty.

Establishing a national social protection floor. With respect to the role of the social security system in poverty reduction, the Committee recalls that Greece continues to be the only Eurozone country with no basic social assistance scheme that provides a safety net at the subsistence level determined in terms of the basic needs and the minimum consumer basket. The report on the Convention explains in this respect that the question of indicators based on categories of goods and services is being discussed at the European Union level, where there is no agreement among Members States on the methodology for the elaboration of such indicators that is subject to the Peer Review on “Using reference budgets for drawing up the requirements of a minimum income scheme and assessing adequacy”. However, in the framework of the European Strategy “Europe 2020”, Greece has committed itself to building a social safety net guaranteeing access to basic services and fixed specific quantitative targets for the reduction of poverty and social exclusion in the National Reform Programme: by 2020 the number of people at-risk-of-poverty or material deprivation or living in households with no working member should have been reduced by 450,000 (from 28 per cent in 2008 to 24 per cent in 2020); and the number of children at-risk-of-poverty by 100,000 (from 23 per cent in 2008 to 18 per cent in 2020). In monitoring trends in poverty, the Government is focusing on persons who experience extreme poverty and the unemployed. For the first group, Law 4093/2012 established a pilot programme to set up a minimum guaranteed income scheme, which is being prepared in cooperation with the World Bank and, in the first phase, will be applied in two Greek regions with different socio-economic characteristics. With regard to the unemployed, the Government started discussions with the Troika and intends to revise the benefit for the long-term unemployed. The Committee welcomes these initiatives which commit the World Bank and the Troika to taking into account the urgent needs of the people concerned. The Committee considers that in the present situation the establishment of the basic social assistance scheme, in line with the Convention, becomes an urgent necessity and would like the Government to refer in this respect to the ILO Social Protection Floors Recommendation, 2012 (No. 202). It hopes that in establishing such a scheme and determining the guaranteed minimum income, as well as the amount of the benefit for the long-term unemployed, the Government will rely not only on the poverty indicators, but will ensure that the established minimum amounts remain in all cases above the physical subsistence level for different age groups of the population.

[The Government is asked to supply full particulars to the Conference at its 103rd Session and to reply in detail to the present comments in 2014.]
The Committee notes the observations of the Federation of Korean Trade Unions (FKTU), attached to the Government’s report, and the Government’s reply thereto, as well as the communication from the Korean Confederation of Trade Unions (KCTU), dated 31 August 2012 and the Government’s reply thereto. It also notes the communication of the International Organisation of Employers (IOE), dated 27 August 2013.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013).

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2013, and the conclusions adopted. The Conference Committee requested the Government to take steps, in collaboration with employers’ and workers’ organizations, to ensure that the Employment Permit System (EPS) provided appropriate flexibility for migrant workers to change employers and did not in practice give rise to situations in which they became vulnerable to discrimination. It also requested the Government to continue to strengthen initiatives to ensure that migrant workers received all the assistance and information they needed, and were made aware of their rights. The Conference Committee also asked the Government to examine the impact of the recent measures taken to address non-regular employment on the employment of women and to take measures to ensure that women could freely choose their employment and had access in practice to a wide range of jobs. It further called on the Government to ensure rapid, effective and accessible procedures to address discrimination and abuse in practice. The Conference Committee also urged the Government to take steps to ensure effective protection against discrimination based on political opinion, in particular for pre-school, primary- and secondary-school teachers.

Articles 1 and 2 of the Convention. Migrant workers. For a number of years, the Committee has been drawing attention to the need to provide appropriate flexibility to allow migrant workers to change workplaces and to ensure the effective protection of these workers against discrimination. In this context, it recalls, as noted by the Conference Committee, the changes made to the EPS, including section 25(1)(2) of the Act on foreign workers’ employment, etc., and the Notification (No. 2012-52) issued by the Ministry of Employment and Labour (MEOL) providing that “unfair treatment” – as one of the causes not attributable to the worker, for workplace change – covers “unreasonable discrimination by the employer based on nationality, religion, gender, physical disability and so on”. The Committee further notes the Government’s indication that “unreasonable discrimination” is determined according to social norms and it is difficult to set criteria in advance for its determination. With regard to how it is “objectively recognized” that a foreign worker suffers from discrimination, and who is the authority responsible, the Government explains that a foreign worker can file a complaint with the National Human Rights Commission (NHRC) and submit the outcome of the decision of the NHRC to the jobcentres which then decide in a prompt manner whether to allow the foreign worker to change workplace. When a foreign worker applies for a workplace change directly to the jobcentres, without filing a complaint to the NHRC, jobcentres carry out an investigation into whether the case constitutes discrimination before determining the workplace change. The Committee notes that it is still not entirely clear how the jobcentres “objectively recognize” a victim of discrimination, which would allow the worker concerned to request an immediate change of workplace, pursuant to section 25(1)(2) of the Act on foreign workers’ employment etc. The Committee notes that the KCTU and the FKTU reiterate that further positive measures are required in order to provide appropriate flexibility to migrant workers to choose their employer, whereas the IOE considers that frequent mobility would undermine employers’ ability to manage their workforce. The IOE provides statistics showing that the number of workers applying for a workplace change has increased from 60,542 applications for 156,429 foreign workers in 2006 to 75,033 applications for 189,189 foreign workers in 2011. The Government considers that it is dealing with workplace changes in an integrated manner, considering protection of foreign workers’ human rights, employers’ benefit, possible negative impact on vulnerable groups due to frequent workplace changes of foreign workers and deterioration of working conditions. The Committee encourages the Government to continue its efforts to ensure that migrant workers are able, in practice, to change workplaces when subject to violations of the anti-discrimination legislation, and requests it, in cooperation with employer’s and workers’ organizations, to keep the applicable legislation governing migrant workers, the EPS and related measures, under regular review, and to continue to provide information in this respect. Please provide information on the number of migrant workers who applied to the jobcentres for a change of workplace on the basis of “unfair treatment by the employer”, the outcome of those cases, and the manner in which the jobcentres “objectively recognize” a victim of discrimination.

With regard to enforcement of the anti-discrimination provisions in respect of migrant workers, the Committee notes that according to the information provided by the Government, only six cases were lodged by migrant workers with the NHRC, five of which were rejected. It notes, however, that between June 2012 and March 2013, 4,025 cases were brought to the MEOL by foreign workers (including workers under the EPS) with regard to delayed payment of wages, of which 2,244 cases were settled, 1,608 faced judicial action and 173 remained pending in court. The Government also indicates that in 2012, in the 4,402 workplaces inspected, 5,078 cases were found that concerned violations of the Act on foreign workers’ employment etc., which resulted in the issuing of 4,887 corrective orders (most of which were related to insurance for foreigners). The Government also provides information on additional measures taken to raise awareness among the foreign workers of the relevant legislation and available procedures for redress. The Committee requests the Government to continue to provide information on the measures taken to ensure that the legislation protecting migrant workers from discrimination is fully implemented and enforced, and that migrant workers have access in practice to speedy complaints procedures and effective dispute resolution mechanisms when subject to discrimination on the grounds set out in the Convention. Please continue to provide information on the inspection of workplaces employing migrant workers, including the number and nature of violations detected, and remedies provided, as well as the number, content and outcome of complaints brought by migrant workers before...
labour inspectors, the courts and the NHRC.

Discrimination based on sex and employment status. The Committee recalls the policy measures taken by the Government in 2011 with a view to eliminating discrimination against non-regular workers, many of whom are women. The Committee notes that the KFTU considers that following the implementation of the above measures, the quality of female employment in the public sector deteriorated. According to the KFTU the proportion of female non-regular workers in the public sector decreased (from 44.2 per cent in August 2011 to 42.3 per cent in August 2012), in particular the proportion of female workers on fixed-term contracts of less than two years (converted into open-ended contracts), whereas the proportion of female, dispatched and part-time workers increased. According to the KCTU, the number of "indirectly employed" workers has doubled and wage discrimination of workers already converted is not being addressed. The IOE indicates that a growing number of enterprises are changing or planning to change their non-regular workers into regular workers and that labour inspections have been undertaken on a regular basis since August 2012; also, the MEOL can order directly the rectification of any discrimination. The Committee notes the Government's indication that, in 2012, a total of 22,069 non-regular workers were converted into workers with open-ended contracts, 479 cases of illegally dispatched workers were found and 2,958 workers were ordered to be hired directly by their employers; another 66,711 non-regular workers will be converted to regular workers between 2013 and 2015, and measures are being taken to improve the working conditions and wages for workers with open-ended contracts. The Government disagrees that the employment status of female workers in the public sector has changed as a result of the implementation of the measures adopted in 2011 and indicates that conversion of non-regular workers to open-ended contracts is taking place mainly in occupations (nutritionists, cooks and librarians) where many female workers are employed. The Committee asks the Government to continue to assess the impact of the measures taken to address discrimination against non-regular workers on the employment of fixed-term, part-time and dispatched workers, and provide information on the results achieved, including statistics disaggregated by sex and employment status. Noting the Government's intention to improve further the effectiveness of the anti-discrimination measures through the revision of the Act on protection, etc. of fixed-term and part-time employees and the Act on the protection, etc. of dispatched workers, the Committee asks the Government to provide information on any developments in this regard.

Equality of opportunity and treatment between men and women. The Committee recalls the low labour force participation of women (54 per cent in recent years) and the measures taken by the Government to address gender discrimination and promote women's employment. The Committee notes the Government's intention to implement a roadmap to achieve an employment rate of 70 per cent, including measures to assist workers, in particular women having taken career breaks, and to reconcile work and family life, including through the system of reduced working hours and parental leave. In this regard, the Committee refers the Government to its direct request on this Convention and its 2011 observation on the Workers with Family Responsibilities Convention, 1981 (No. 156). Regarding affirmative action schemes, the Committee notes that as of May 2013 the measure was extended to businesses with less than 50 employees, but that there was only a minor increase in the ratio of women workers and women managers employed in workplaces in the private and public sectors subject to the scheme in 2012. The Committee notes that the IOE points to the positive results of the affirmative action schemes in the private sector, whereas the FKTU considers that the affirmative action measures do not provide enough incentives to increase female employment in large businesses. The FKTU also finds it difficult to assess whether any improvement has been made in the quality of women's employment in terms of employment type (daily, temporary or regular work), and indicates that more efforts are needed to increase the number of female workers and managers in public institutions. In this regard, the Government indicates that "a name and shame" system will be introduced to ensure compliance with affirmative action measures and that the relevant amendment Bill to the Act on equal employment and support for work-family reconciliation is pending in the National Assembly. Regarding the honorary equal employment inspectors (a person recommended by both labour and management among the workers concerned in the workplace), the Committee notes that their number increased to 4,958 inspectors in 4,955 workplaces in 2012, and that 19 consultative bodies were set up and are currently functioning to enhance their expertise. In reply to concerns expressed by the FKTU regarding the effectiveness of the system of honorary equal employment inspectors, the Government indicates that the MEOL will monitor progress in implementing the system, promote the system and consult with relevant government agencies to secure a budget for further strengthening the inspectors' expertise to address employment discrimination and promote gender equality. The Committee asks the Government to continue to take steps, in consultation with workers' and employers' organizations, to promote in an effective manner the access of women to employment in a wider range of jobs both in the public and the private sectors, and to take measures to address the underlying causes of gender discrimination, including gender stereotypes regarding job preferences of men and women, and provide detailed information in this regard. Please continue to provide information on results achieved through the implementation of affirmative action schemes in the private and the public sectors and any specific measures taken to improve their implementation in the public sector, and on any progress made in the adoption of the amendment Bill to the Act on Equal Employment and Support for Work–Family Reconciliation. Please also indicate the results achieved through the measures to improve the effectiveness of the system of honorary equal employment inspectors, and its impact on addressing gender discrimination in employment.

Discrimination on the basis of political opinion. The Committee recalls its previous observation noting the concerns of Education International (EI) and the Korean Teachers and Education Workers' Union (KNU) regarding alleged discrimination based on political opinion against pre-school, primary- and secondary-school teachers. The Committee notes that the Government reiterates the differences in duties between elementary, middle and high-school teachers and the duties of university teachers. The Government also recalls articles 7, 31, and 31(6) of the Constitution regarding the right to education, political neutrality of government officials and political neutrality of education, and refers to rulings of the Constitutional Court in this respect. The Government also indicates that the Government Officials Act and the Act on the establishment, operation, etc. of trade unions for teachers limit political activities of government officials and teachers' trade unions. In addition, according to the Government, the Supreme Court ruled that "a declaration by teachers of the state of the affairs constitutes "collective action for matters other than their duty" (Supreme Court Decision 2010D06388)." The Committee notes that the IOE recalls the ruling of the Supreme Court of 19 April 2012 and concurs with the Government's views regarding political neutrality of teachers of public schools, while the KCTU reiterates the observations submitted by the KTU in 2012, including the request that the ILO send a fact-finding
mission to Korea to investigate discrimination on the basis of political opinion. The Committee notes the explanations by the Government but must conclude that the information provided does not demonstrate that any concrete and objective criteria are being used to determine the very limited cases where political opinion could be considered an inherent requirement of a particular job, including that of pre-school, primary- and secondary-school teachers, in the context of the Convention. The Committee therefore urges the Government to take immediate measures to ensure that elementary, primary- and secondary-school teachers enjoy protection against discrimination based on political opinion, as provided for in the Convention, and to establish concrete and objective criteria to determine the cases where political opinion could be considered an inherent requirement of the particular job, in accordance with Article 1(2) of the Convention. The Committee asks the Government to provide full information on the measures taken in this respect, as requested by the Conference Committee, including any steps taken to avail itself of ILO technical assistance.

The Committee is raising other points in a request addressed directly to the Government.

**Dominican Republic**

*Ratification: 1964*

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013).

The Committee notes the discussion in the Conference Committee in June 2013. In its conclusions, the Conference Committee recalled that the case had last been examined in 2008 and that it raised issues relating to discrimination in employment and occupation against Haitians and dark-skinned Dominicans, discrimination based on sex, and particularly mandatory pregnancy testing and sexual harassment, and mandatory testing to establish HIV status. The Conference Committee requested the Government, in collaboration with employers’ and workers’ organizations, to take firm steps to ensure that workers are protected against discrimination, particularly workers of Haitian origin and dark-skinned Dominicans, migrant workers in an irregular situation, women working in export processing zones and workers in construction and agriculture. It also urged the Government to continue and reinforce its efforts to raise awareness and to bring an end to the practice of pregnancy testing and HIV testing to gain access to and keep a job. The Conference Committee also asked the Government to ensure the efficacy and accessibility of monitoring and enforcement to address discrimination, and to ensure that complaint mechanisms are accessible to all workers in practice, including those not represented by trade unions. The Conference Committee hoped that the technical assistance requested by the Government would be provided in the near future. The Committee observes that the Government’s report in response to the request made by the Conference Committee on the Application of Standards in June 2013 has not been received.

The Committee notes the communication of the International Organisation of Employers (IOE) and the Employers’ Confederation of the Dominican Republic (COPARDOM) of 30 August 2013, which refers to the legal framework relating to non-discrimination and the tripartite activities carried out with a view to preparing a policy on HIV/AIDS in the workplace for export processing zones, as well as training activities on gender violence and harassment. According to these comments, the Migration Act No. 285-04 and the Migration Regulations (No. 631-11) establish a mechanism with a view to issuing a work visa to migrant workers, and pilot initiatives have been adopted in the agricultural sector through which visas were issued to 325 workers and training is provided to migrant workers with a view to their regularization.

In this regard, the Committee notes with deep concern Ruling No. TC/0168/13 of the Constitutional Court, issued on 23 September 2013 which, applying the law retroactively, denies Dominican nationality to a person born in the country who is the daughter of foreign migrants (Haitians) considered to be in transit or transitively resident. In the same ruling, the Constitutional Court ordered the Central Electoral Board to: conduct a detailed audit of the birth registers of the Civil Registry from 21 June 1929 up to the date of the ruling to identify all foreign nationals registered and set out in a separate list all those registered unlawfully; notify all births contained on this list of persons registered unlawfully to the respective consulates and embassies; forward the list to the National Migration Council so that, under the terms of section 151 of the Migration Act, it can draw up within 90 days a national plan for the regularization of illegal foreign nationals and provide a report to the executive authorities, who shall implement the plan. Although the Government’s report has not been received, the Committee notes the communication sent by the Government to the Office on 28 October 2013 containing its official statement relating to the ruling of the Constitutional Court and indicating its sensitivity to the situation of those persons who consider themselves to be Dominican and whose rights are affected as a consequence of the ruling, with the indication that the National Migration Council will prepare a report within 30 days on the impact of the ruling on the foreign nationals, both in regular and irregular situations, recorded in the registration system. The plan for the regularization of foreign nationals will also be drawn up. The Committee observes that this ruling of the Constitutional Court (as recognized by the Court) affects hundreds of thousands of persons considered to be foreign despite having been born or residing in the country for decades by creating uncertainty regarding their nationality. It particularly affects persons of Haitian origin, who account for the majority of foreign nationals in the country. The Committee recalls that it has been referring for a number of years to the discrimination against Haitians and dark-skinned Dominicans and recalls that in 2008 the Conference Committee called on the Government to address the intersection between migration and discrimination with a view to ensuring that migration laws and policies do not result in discrimination based on race, colour or national extraction. The Conference Committee once again examined the situation of workers of Haitian origin in the country in 2013. The Committee observes that Ruling No. TC/0168/13 increases the vulnerability of a significant section of the population which was already recognized as being subject to discrimination on grounds of race and national extraction. The Committee is concerned about the impact of this decision on workers of Haitian origin and migrant workers in an irregular situation pending the adoption of the Regularization Plan envisaged in section 151 of the Migration Act. The Committee requests the Government to take all the necessary measures to ensure that

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Individual cases/ 28

Report generated from NORMLEX database
the assessment of the impact of the Constitutional Court’s ruling, and in particular with respect to section 151 of the Migration Act, is undertaken without delay and that it takes into account, in particular, the consequences on foreign nationals, with an indication of the number of persons affected and their national origin, and of the direct and indirect consequences on their life and work. The Committee asks the Government to provide detailed information on this subject, and on the preparation, adoption and implementation of the plan for the regularization of foreign nationals.

Discrimination on the basis of sex. The Committee has for a number of years been raising concerns about the persistence of cases of discrimination based on sex, particularly mandatory pregnancy testing, sexual harassment and the failure to apply the legislation in force effectively, including in export processing zones. The Committee once again urges the Government to take specific measures, including through the Committee to Promote Equal Opportunities and Prevent Discrimination at Work of the Ministry of Labour, to ensure the effective application of the legislation in force and to take proactive measures to prevent, investigate and punish sexual harassment, the requirement of pregnancy testing to obtain or keep a job, and to provide adequate protection to victims. The Committee also requests the Government to:

(i) take the necessary measures to reinforce the penalties against such acts and to ensure that the mechanisms for settling disputes regarding discrimination in employment and occupation are efficient and accessible to all workers, including those in export processing zones;

(ii) provide information on the scope of section 47(9) of the Labour Code, and on the status of the proposed amendments to the Labour Code relating to sexual harassment and pregnancy testing, and it expresses the firm hope that the amendments will include an explicit prohibition of both quid pro quo and hostile environment sexual harassment and will establish adequate penalties; and

(iii) provide detailed information on the training measures for judges, labour inspectors and the social partners on sexual harassment and pregnancy testing, including representative samples of the training materials used.

Real or perceived HIV status. With regard to mandatory testing to establish HIV status, the Committee noted in its previous observation the adoption of Act No. 135-11 of 7 June 2011, section 6 of which prohibits HIV testing as a requirement for obtaining or keeping a job, or for obtaining promotion. The Committee requests the Government to continue providing information on the measures adopted to prevent and eradicate discrimination based on HIV and AIDS. It requests the Government to provide statistical data on the complaints filed with the administrative and judicial authorities concerning discrimination based on HIV and AIDS, and particularly mandatory HIV and AIDS testing, and the decisions handed down in this respect.

The Committee is raising other points in a request addressed directly to the Government. [The Government is asked to supply full particulars to the Conference at its 103rd Session and to reply in detail to the present comments in 2014.]

Kazakhstan

(Ratification: 1999)

The Committee notes that the Government’s report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

Article 1 of the Convention. Prohibition of discrimination. The Committee recalls that section 7(2) of the Labour Code of 2007 covers all prohibited grounds listed in Article 1(1)(a) of the Convention, except the ground of colour. It also recalls that section 7(2) includes a number of additional grounds, as envisaged in Article 1(1)(b) of the Convention (such as age, physical disability, tribe and membership in a public association). The Committee asks the Government to provide information on the implementation of section 7(2) of the Labour Code, including information on any activities undertaken to make the legislation known and information on the number, nature and outcome of discrimination cases dealt with by the courts or the labour inspectorate. The Committee again recommends that the prohibited ground of colour is added to section 7(2) of the Labour Code.

Article 2. Exclusion of women from certain occupations. The Committee recalls that the list of jobs for which it is prohibited to engage women and the maximum weights for women to lift and move manually pursuant to section 186(1) and (2) of the Labour Code shall be determined by the state labour authority in agreement with the health authorities. The Committee recalls that protective measures applicable to women’s employment which are based on stereotypes regarding women’s professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. Provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (General Survey on the fundamental Conventions, 2012, paragraph 840). The Committee asks the Government to provide a copy of the list referred to in section 186 of the Labour Code for examination by the Committee, and to indicate how it is ensured that any measures limiting women’s employment are strictly limited to maternity protection.

Equality of men and women in employment and occupation. The Committee recalls that the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women provides for gender equality in labour relations and in education and training, among others. It also recalls that the objectives of the Strategy for Gender Equality 2006–16 include: (i) achieving equal representation of men and women in the executive and legislative bodies and in decision-making positions; and (ii) developing women’s entrepreneurship, and increasing women’s competitiveness in the labour market. The Committee again asks the Government to provide full information on the practical application of the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women, as well as on all the measures taken to implement the Strategy for Gender Equality 2006–16, and on the results achieved, including

Report generated from NORMLEX database Individual cases/29
The Committee also recalls that sections 194 and 195 of the Labour Code grant paid leave to adoptive parents and unpaid childcare leave to parents until the child reaches the age of 3, which are available for women and men on an equal footing. However, the Committee also recalls that section 187 of the Labour Code requires written consent of women with children under the age of 7 years and other persons bringing up children under the age of 7 years without a mother in cases of night work, overtime work, business trips or rotation work. Under sections 188 and 189, fathers have the right to child-feeding breaks and to part-time work only in respect of children without a mother. The Committee recalls that when legislation reflects the assumption that the main responsibility for family care lies with women or excludes men from certain rights and benefits, it reinforces and prolongs stereotypes regarding the roles of women and men in the family and in society. The Committee considers that, in order to achieve the objective of the Convention, measures to assist workers with family responsibilities should be available to men and women on an equal footing (General Survey, 2012, paragraph 786).

The Committee asks the Government to amend sections 187–189 of the Labour Code, so as to grant the entitlements on an equal footing for women and men. The Committee also asks the Government to provide information on the extent to which the entitlements under sections 194 and 195 of the Labour Code are being used by men and women.

Practical application. The Committee notes that the Government has adopted the Employment Programme 2020, which seeks to foster employment opportunities and to provide subsidized trainings to self-employed, unemployed and poorer people, as well as to facilitate entrepreneurship in rural areas. It also notes the Government’s indication that in order to tackle the financial crisis, it has adopted a package of measures to stimulate the economy, including the regional employment and managerial training strategy. As a result of financing US$2.3 billion to this strategy in 2009 and 2010, 258,600 jobs in 2009 and 132,000 jobs in 2010 were created. In addition, 200,000 persons from targeted groups were placed in temporary, state-subsidized jobs and 150,000 persons received training for new jobs. The Government also indicates that the unemployment rate fell from 6.6 per cent in 2008 to 5.4 per cent in 2011. The Committee further notes that the United Nations Committee on the Elimination of Racial Discrimination (CERD), in its concluding observations of 2010, noted that, while ethnic groups represented about 36.4 per cent of the population in 2010, more than 84 per cent of public servants as a whole and more than 92 per cent in central government bodies were ethnic Kazakhs; the CERD recommended that the Government takes effective measures with a view to improving the representation of minority groups in state bodies and public services and preventing and combating all forms of discrimination in the selection and recruitment process in the central and local administration (CERD/C/KAZ/CO/4 5, 6 April 2010, paragraph 12). With regard to enforcement, the Committee notes the Government’s indication that it has set up a monitoring and social protection committee in the Ministry of Labour and Social Protection and local monitoring and social protection departments in all regions. The Committee asks the Government to provide the following:

· (i) detailed information on the specific measures taken to promote and ensure equality of opportunity and treatment for women and men in employment and occupation, including measures to promote women’s access to occupations and employment in areas where they are currently under-represented, including within the civil service;

· (ii) the impact of the measures taken to tackle the financial crisis, including statistical information on the participation of men and women, disaggregated by sex, in the labour market (private and public sectors), branch of economic activity, occupational group and status of employment;

· (iii) information indicating how the principle of gender equality has been integrated into the programmes and measures to promote employment, including in the context of the Employment Programme 2020, including statistical information on the number of women who have benefited from employment promotion measures;

· (iv) statistical information on the position in the labour market of men and women belonging to ethnic or religious minorities, including information on their participation in employment in the civil service, as well as the measures taken to increase the representation of ethnic or religious minorities in the civil service;

· (v) information on the measures taken to plan and implement activities to raise awareness of the principle of equality, in cooperation with workers’ and employers’ organizations, as envisaged under Article 3(a) and (b) of the Convention; and

· (vi) information on the training provided for law enforcement officials concerning the principle of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.
C122 - Employment Policy Convention, 1964 (No. 122)

Mauritania

(Ratification: 1971)

The Committee notes the observations made by the General Confederation of Workers of Mauritania (CGTM) in a communication transmitted to the Government in September 2013 concerning, on the one hand, the absence of a national employment policy, and on the other hand, the lack of consultations with trade unions so that they cooperate fully in the formulation of employment policies. The Committee requests the Government to provide any comments it may wish to make in response to the observations of the CGTM. Moreover, the Committee notes that the Government report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

Employment promotion. The Committee takes note of a new observation from the General Confederation of Workers of Mauritania (CGTM) forwarded to the Government in September 2012. The CGTM once again deplores the absence of a defined national employment policy. At the public service level, recruitment has become episodic and occurs to fill positions due to retirement. At the private sector level, employment and placement offices have ceased to exist. The CGTM again expressed concern with respect to the actions of multinational companies operating in the mining sector. These companies recruit employees without complying with the minimum standards required of professional qualifications. In its 2011 observation, the Committee had already noted the concern of the CGTM for the State to fulfil its obligation to define and promote employment policy in the country, which would be the best means of combating poverty in the current crisis and also of ensuring the best possible distribution of natural resources. In this regard, the CGTM had noted the systematic recourse to multinational companies, which exploit the principal mining, fishing and agricultural resources of the country without adopting genuine policies to promote employment. Furthermore, according to the CGTM, the multinational companies make use of expatriate staff to fill high-level positions. The CGTM considers that it is incorrect to say that there is a lack of skills among the national workforce. The CGTM also indicates that the major sectors which are the sources of employment, such as agriculture and stock breeding, are seriously dysfunctional. The Committee refers once again to its direct request of 2010 concerning the application of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), where it noted that, in response to a crucial problem of unemployment, the Government established the National Youth Employment Promotion Agency (ANAPEJ) and had once again authorized labour inspectorates to open employment offices. The Committee refers to its 2010 General Survey concerning employment instruments, in which it emphasized that one of the fundamental steps contributing towards the achievement of full employment is to build or strive to build institutions that ensure an efficient public employment service and to regulate the operation of private employment agencies (paragraph 786). The Committee invites the Government to provide, in its next report, information on the measures taken to reinforce the institutions necessary for the achievement of full employment. It hopes that the report will contain precise information on the contribution of existing employment offices in the country towards ensuring the adequate placement of available workers in the labour market. It recalls that assistance is available from the ILO to promote the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. In its previous comments the Committee noted the “National Employment Strategy and Plan of Action 2008–12”. The Government indicated that the objectives pursued by the National Employment Strategy were geared to those laid down by the Strategic Framework for Poverty Reduction 2006–10 (CSLP 2), namely reducing the unemployment rate to less than 25 per cent and increasing the rate of persons completing technical or vocational training to 55 per cent in 2010. According to the latest estimates, even though the poverty index in 2008 was 42 per cent, compared to 46.7 per cent in 2004, this figure is still far removed from the 25 per cent target fixed for 2015. The National Employment Strategy had enabled the main gaps in employment policy to be identified, namely a very high unemployment rate, a national economy dominated by the informal sector and a mismatch between training and the needs of the national labour market. Issues and structures related to employment would now be grouped together within the Ministry of Employment, Integration and Vocational Training (MEIFP). The Committee asks the Government to provide detailed information on the results achieved under the National Employment Strategy in terms of the creation of lasting employment and the reduction of underemployment and poverty. In particular, the Committee would be grateful if the Government would supply information on the steps taken to improve the vocational and technical training available for young persons and women, to promote small and micro-enterprises, and to create productive and lasting employment in conditions which are socially satisfactory for workers in the informal economy.

Employment promotion and labour-intensive programmes. In its National Employment Strategy, the Government indicated that its economic choices had concerned industrial and commercial projects and labour-intensive programmes. The labour-intensive approach (HIMO) aimed at integrating persons with few or no skills in working life had been tried out in numerous programmes, such as the stone masonry programme, the urban development programme and the integrated national programme to support small and micro-enterprises. The Committee invites the Government to provide information on the number of jobs created by the labour-intensive programmes and on their impact on the creation of productive employment.

Compilation and use of employment data. The Committee previously noted that the sixth component of the employment strategy underlined the need to establish a national information system on the employment market and a mechanism for technical and vocational training. This system would cover three main areas: (a) creation and operation of the network of producers and users of employment and training data, with the joint involvement of the Ministry of Employment, the National Office for Statistics, sectoral departments and the private sector; (b) monitoring of employment and the technical and vocational training mechanism; and (c) focusing on studies and analysis to improve the system and share information. The Committee invites the Government to provide information on the progress made in the compilation of employment data, stating the employment policy measures further adopted thanks to the establishment of a new national employment information system.

Report generated from NORMLEX database

Individual cases/ 31
Article 3. Participation of the social partners in policy formulation and implementation. The Committee previously noted that, in the context of the National Employment Strategy, two institutional mechanisms would be established, namely an Inter-Ministerial Committee on Employment and a Higher Council for Employment, Training and Labour (CSEFT), chaired by the Ministry of Employment, and that within these two bodies the social partners would be represented. The Committee invites the Government to supply detailed information on the operation of these two bodies, and also on the participation of the social partners in the implementation of the National Employment Strategy. It also requests the Government to indicate the steps taken or contemplated to involve representatives of persons living in rural areas and those operating in the informal economy in the consultations provided for by the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Portugal

(Ratification: 1981)

Measures to alleviate the impact of the crisis. The Committee notes the report provided by the Government for the period ending in May 2012, including observations from the General Workers’ Union (UGT) and the General Confederation of Portuguese Workers—National Trade Unions (CGTP–IN). In reply to the previous comments, the Government indicates that the four most representative employers’ organizations and one of the two most representative trade union confederations accepted the changes to the Labour Code. Agreements between the Government and the social partners include the Tripartite Agreement for Competitiveness and Employment (2011) and the Commitment to Growth, Competitiveness and Employment (2012). In its previous observation, the Committee invited the Government to provide information allowing an assessment of the manner in which the reduction of labour costs has permitted the creation of productive and quality jobs. The Government indicates that the reduction of some labour costs due to the changes introduced by the revision of the Labour Code, and in particular as a result of the revision in 2012, are the result of legislation subsequent to the reporting period and it will only be possible to evaluate the respective effects later. The Government indicates that, in the reporting period, the principal component of the framework of government policies is the Economic Adjustment Programme, following an agreement with the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF). The Committee notes that a joint EC, ECB and IMF mission met with the Government in the first half of 2013 to assess compliance with the terms and conditions set out in the Memorandum of Understanding. The mission concluded that the programme implementation is broadly on track, against the background of difficult economic conditions. According to the data of the Employment and Vocational Training Institute (IEFP), the number of unemployed persons registered with the employment centres at the end of the first quarter of 2012 rose to roughly 661,400 persons (51.2 per cent of whom were women). This number reflects an increase of 9.3 per cent compared to the fourth quarter of 2011 and 19.8 per cent compared to the first quarter of 2011. With respect to active employment measures (employment, vocational training, professional rehabilitation), the Government reports that 466,172 people were covered by measures implemented by the IEFP in 2010, 455,119 in 2011, and 146,561 from January to March 2012. The majority of individuals covered by the active employment measures implemented by the IEFP during the reporting period were women (roughly 60 per cent), and the largest percentage of individuals covered by these measures was from 25 to 34 years old (over 25 per cent of all individuals covered), followed by individuals from 35 to 44 years (roughly 23 per cent) and individuals up to 24 years old (also roughly 23 per cent). The Committee notes that the unemployment rate worsened significantly, rising from 12.4 per cent in the first quarter of 2011 to 15.2 per cent in the first quarter of 2012. The Committee notes that the unemployment rate continued to rise after the reporting period. In June 2013, unemployment was higher than 17 per cent. The UGT states that it is important for employment policies to aim to promote jobs, but quality jobs, with new and improved working conditions. In this context, the UGT indicates that it has advocated that the Government and the social partners should pay more attention to active employment policies and reorient them so that they are able to more effectively and more efficiently address existing issues and weaknesses. The Committee further notes the observations of the CGTP–IN stating its view that the Government is not implementing the necessary measures to meet the objectives of the employment policy to which the Convention refers, especially with respect to full and freely chosen employment. The CGTP–IN indicates that the revision of the Labour Code will not solve the employment problem. Instead, the problem will worsen in that it contains measures that, besides cutting workers’ pay and hours, may cause unemployment to rise. The CGTP–IN further indicates that offers for available jobs are increasingly insecure even for permanent and poorly paid jobs, including for highly qualified individuals and the public employment services do not perform any quality analyses. In a context of austerity policies, in which joblessness is on the rise and social protection is on the decline, unemployed workers are increasingly forced to accept undignified and insecure jobs with low wages that are not on par with their qualifications. The Committee considers that the outcome of the Ninth European Regional Meeting (Oslo, 8–11 April 2013) is relevant to the application of the Convention in Portugal. It notes that the Oslo Declaration “Restoring confidence in jobs and growth” stated that fiscal consolidation, structural reform and competitiveness, on the one hand, and stimulus packages, investment in the real economy, quality jobs, increased credit for enterprises, on the other, should not be competing paradigms. The Committee expresses its concern at the deterioration of the employment situation since its previous observation made in 2011. The Committee therefore invites the Government to indicate in its next report the measures taken to review, with the participation of the social partners, the impact of the employment measures adopted to address the jobs crisis (Articles 2 and 3 of the Convention). The Committee wishes to draw the Government’s attention to the fact that the Office could contribute, through technical assistance, to address the employment situation in the context of the Convention.

Measures to promote employment among vulnerable categories of workers. The Committee notes the high unemployment figures for young persons. The Government reports that the annual average youth unemployment rate in 2011 was 30.1 per cent (28.7 per cent for women and 31.7 per cent for men). In the first quarter of 2012, the rate increased to 36.2 per cent (36.6 per cent for women and 35.8 per cent for men). The Government indicates that the measures intended for the most vulnerable workers covered 156,911 individuals from January 2010 to April 2012. The Committee asks the Government to include in its next report indications that will enable it to examine the quality of employment provided for young people and the measures taken to reduce youth unemployment. Please
also include up-to-date information on the impact of the measures taken to facilitate the return to the labour market of those categories of workers most affected by the crisis.

**Creation of jobs in small and medium-sized enterprises (SMEs).** The Government reports that the Programme to Support Entrepreneurship and the Creation of Self-Employment (PAECPE) includes measures to support the creation of businesses. Support for the creation of self-employment by beneficiaries of unemployment benefits, which involves paying unemployment benefits in advance for the purpose of creating self-employment, covered 2,588 people in 2010 and 2,819 in 2011. **The Committee invites the Government to continue to provide information on the impact of the measures taken to improve the business environment in order to promote the development of SMEs and create employment opportunities for the unemployed.**

**Education and training policies.** The Government indicates that it has adopted several measures for linking programmes between the New Opportunity Centres, a network run by the National Agency for Qualification and Vocational Education Training (ANQEP), and the Employment and Vocational Training Institute (IEFP). Moreover, mechanisms were also defined to ensure the coordination of training policies with employment policies as follows: (i) implement mechanisms to adequately link the vocational training centres, the employment centres, companies and corporate associations and other economic development agents for the purpose of better matching the supply of vocational training with present and future job market requirements; and (ii) introduce indicators on the requirements of the labour market and the employability of trainees using the weighting criteria for financing the participating management centres. **The Committee asks the Government to include in its next report up to date information on the measures taken to improve qualification standards and coordinate education and training policies with potential employment opportunities. The Committee hopes that the information sent by the Government will enable it to examine the manner in which efforts have been intensified, with the cooperation of the social partners, to ensure that vocational guidance and training systems meet the learning and vocational training needs of the most vulnerable groups in the country.**
C138 - Minimum Age Convention, 1973 (No. 138)

Niger

(Ratification: 1978)

Article 2(1) of the Convention. Scope of application. In its previous comments, the Committee noted that the Labour Code did not apply to types of employment or work performed by children outside an enterprise, such as work performed by children on their own account. It noted the Government's indication that the broadening of the scope of application of the labour legislation to children engaged in an economic activity on their own account would require formal collaboration between the Ministries of the Public Service, Labour, Mines, the Interior, Justice and Child Protection. The Committee also noted the Government's indications that a national survey of the informal economy would be organized by the National Statistical Institute (INS) in 2012, which would make it possible to measure the extent of the phenomenon of children working on their own account and would enable the labour administration to intervene more effectively in this field.

The Committee observes that the Government has not provided any further information concerning child labour in the informal economy in Niger. The Committee once again requests the Government to provide information on the implementation of the INS survey in the informal economy, and on the impact of the survey on the action taken by the labour administration for children working on their own account in Niger.

Article 2(3). Compulsory schooling. In its previous comments, the Committee noted that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 66), the Committee on the Rights of the Child expressed concern at the poor quality of the education system, the high drop-out rate and the weak gender equity in education. The Committee noted that, according to the National Survey on Child Labour in Niger (ENTE) of 2009, 43.2 per cent of children between the ages of 5 and 11 years and 62.5 per cent of children between the ages of 12 and 13 years in Niger were engaged in types of child labour that were to be abolished at an age when they are supposed to be in school, as school attendance is compulsory up to 14 years. Despite the efforts made by the Government, the Committee expressed concern at the persistence of low rates of school attendance.

The Committee notes the Government's indication that Niger has initiated a policy to encourage school attendance by children and an action plan intended, among other objectives, to raise the awareness of the population concerning the consequences of child labour and the benefits of schooling. The Committee also notes that, according to the UNESCO 2012 Education For All Global Monitoring Report, the gross primary school enrolment rate rose to 71 per cent in 2010 (64 per cent for girls and 77 per cent for boys), in contrast with 67.8 per cent (58.6 per cent for girls and 77 per cent for boys) in 2008–09. Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee strongly encourages the Government to pursue its efforts and to take measures to enable children to attend compulsory basic education. It also requests the Government to continue taking measures to increase the school attendance rate and to reduce the school drop-out rate, particularly for girls, with a view to preventing children under 14 years from age from working. The Committee once again asks the Government to provide information in its next report on the results achieved.

Article 3(3). Authorization to employ children in hazardous work from the age of 16 years. In its previous comments, the Committee noted that, in certain types of hazardous work, Decree No. 67-126/MFP/T of 7 September 1967 authorizes the employment of young persons over 16 years of age. It also noted that health and safety committees are established in enterprises and that they are responsible for training and awareness-raising on safety. The Committee observed that these committees do not appear to provide adequate specific instruction or vocational training in the relevant branch of activity. In this respect, the Government indicated that a distinction needed to be made between three categories of young persons, including those who are trained under the traditional system for learning a trade and whose superior/trainer has also been trained under this system of transmission of practical knowledge. With regard to this category, the Committee requested the Government to provide information on the manner in which the health and safety committees ensure that the work performed by young persons does not jeopardize their health and safety.

The Committee once again notes the absence of information in the Government’s report. Observing that this matter has been raised on many occasions, the Committee once again urges the Government to take the necessary measures to ensure that enterprise health and safety committees ascertain that the conditions of work of young persons aged between 16 and 18 years do not jeopardize their health and safety, in accordance with Article 3(3) of the Convention. It urges the Government to provide information on this subject in its next report.

Part V of the report form. Application of the Convention in practice. In its previous comments, the Committee noted that, according to the findings of the ENTE of 2009, economically active children account for 50.4 per cent of children between 5 and 17 years (i.e. about 1,922,637 children in absolute terms) and that the phenomenon of child labour is more significant in rural than in urban areas. It also shows that in Niger girls are much more engaged in work than boys. Furthermore 83.4 per cent of children between 5 and 17 years who are economically active, that is, 1,604,236 children, are engaged in types of work that are to be abolished (that is, all the types of work prohibited by the Convention). Of these children, 1,187,840 are involved in hazardous types of work. In other words, nearly two out of three children (61.8 per cent) between 5 and 17 years of age who are economically active perform their work under hazardous conditions, with the figures being 63.6 per cent for children aged between 5 and 11 years and 57.9 per cent for children between 12 and 13 years.

Noting the absence of information on this subject in the Government’s report, the Committee once again expresses its deep concern at the high number of children engaged in work in Niger who are below the minimum age for admission to employment or work, and at the significant proportion of these children who work under hazardous conditions. The Committee once again strongly encourages the Government to intensify its efforts to combat and progressively eliminate child labour in the country and requests it again to provide information in its next report on the application of the Convention in practice, including extracts from the reports of the labour inspection services indicating the number and nature of the contraventions reported and the penalties applied.

[The Government is asked to supply full particulars to the Conference at its 103rd Session and to reply in detail to the present comments in 2014.]
Central African Republic
(Ratification: 2010)

The Committee notes the Government’s first report on the application of the Convention received in June 2013. It recalls that the Central African Republic had been the first country in Africa to ratify the Convention in 2010, and it notes the extremely worrying situation prevailing in the country since March 2013 (United Nations Security Council resolution 2121 (2013), adopted on 10 October 2013 and resolution 2127 (2013), adopted on 5 December 2013). In the same way as the Security Council, the Committee expresses its particular concern at reports of the targeted violence against members of ethnic groups protected by the Convention and increasing tensions between communities. The Committee urges all stakeholders, and specifically the governmental authorities, to ensure full respect of the human rights of indigenous peoples, especially of children and women of the Aka and Mbororo ethnic groups (Article 3 of the Convention). The Committee hopes that law and order will be restored in the country and invites the governmental authorities to fully implement the Convention.

[The Government is asked to reply in detail to the present comments in 2015.]
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

United States
(Ratification: 1999)

Articles 3(d) and 4(1) of the Convention. Hazardous work and determination of types of hazardous work. Hazardous work in agriculture from 16 years of age...
measures to ensure that young persons between 16 and 18 years of age working in agriculture are only permitted to perform work in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that their health and safety is protected and that they receive adequate specific instruction or vocational training. It requests the Government to provide information on the concrete measures taken in this regard and on the results achieved in its next report.

The Committee also strongly encourages the Government to reconsider the withdrawal of the proposals contained in the Notice of Proposed Rulemaking of 2 September 2011, which would have increased the parity between agricultural and non-agricultural child labour prohibitions by prohibiting some tasks associated with agricultural work to children under 18 years and strengthening the protection provided to children under 16 years working in agriculture.

Articles 5 and 7, Monitoring mechanisms and penalties. Hazardous work in agriculture. The Committee previously noted that the WHD hired more than 300 new investigators since the summer of 2009. The Government indicated that with these added resources, WHD investigators were able to conduct agricultural investigations on evenings and weekends, when children were most likely to be working in the fields. The Committee also noted with interest that the Final Rule on child labour provisions of 2010 amended the child labour civil money penalty to provide for up to US$50,000 for each violation that causes the death or serious injury of an employee under 18 years of age (which can be doubled if the violation is repeated or willful).

The Committee notes the Government’s information that, since 2011, the WHD has hired more new investigators, bringing the total of investigators to more than 1,000. The WHD has also opened 14 new offices and upgraded 18 across the country, making its services more readily accessible to the nation’s workforce and regulated sectors. The Government also indicates that the WHD continues to use the full range of penalties and sanctions at its disposal, including the “hot goods” provision of the FLSA, which prohibits employers from shipping in interstate commerce any goods produced in violation of the Act’s minimum wage, overtime or child labour requirements. For example, this provision was used in 2011, when the WHD fined three berry farms in Southwest Washington a total of US$73,050 in penalties for violating the FLSA, including employing children as young as 6 years old as farm labourers. Moreover, the Government indicates that, in 2012, there were 749 concluded cases in which child labour violations were detected, involving 1,614 minors found working in violation of the FLSA, and child labour civil monetary penalties of more than US$2 million were assessed. The Government indicates that the two most common violations were failures to comply with the hours standards for 14–15 year-olds in non-agricultural industries, constituting approximately 42 per cent of the child labour violation cases, and failure to comply with Hazardous Orders in non-agricultural industries for 16–17 year-olds, constituting approximately 40 per cent of the child labour violation cases. Taking due note of the measures taken, the Committee once again urges the Government to pursue its efforts to strengthen the capacity of the institutions responsible for the monitoring of child labour in agriculture, to protect child agricultural workers from hazardous work. It requests the Government to continue to provide information on measures taken in this regard, and on the results achieved, including data disaggregated by age and gender.

Yemen
(Ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Compulsory recruitment of children and forced or compulsory labour. The Committee previously noted that the Compulsory National Service Act No. 22 of 1990 and the General Reserve Act No. 23 of 1990 set the minimum age for military service at 18 years.

The Committee notes that section 149 of the Child Rights Act provides that the State shall comply with applicable international law norms for the protection of children in armed conflict by prohibiting children from bearing arms, protecting children from the effects of hostilities, ensuring that children are not involved directly in hostilities, and ensuring that no person below the age of 18 years is enlisted. The Committee notes from the Report of the United Nations Secretary-General to the Security Council that in 2012, the United Nations verified 53 reports of the recruitment and use of children between 13 and 17 years of age of which 25 boys were recruited by the government forces (A/67/845-S/2013/245, issued on 15 May 2013). The report of the Secretary-General also indicated that in 2012, 50 children (45 boys and five girls) were reportedly killed and 165 (140 boys and 25 girls) maimed.

The Committee notes, however, the Government’s statement in its initial report of 24 January 2013, to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC on the OPAC, 2013) that the current legislation does not prescribe explicit, clear and specific penalties for involving children in armed conflict or conscripting children who are under the age of 18 years as well as for inciting children to commit weapon offences (CRC/C/OPAC/YEM/1, paragraph 116). The Committee also notes from the Government’s report to the CRC on the OPAC that in a comprehensive child protection assessment conducted by the Child Protection Sub Cluster and UNICEF in August 2010, 67.5 per cent of parents or caregivers in conflict-affected governorates of North Yemen reported that the recruitment of children had become an issue of serious and ongoing concern, while some 16.9 per cent of the caregivers interviewed reported that their sons had been forced to participate one way or the other in the armed conflict. Moreover, many internally displaced persons reported that armed groups in conflict zones systematically recruited children below 18 years of age. Lastly, community leaders in the Sa’dah governorate estimated that more than 20 per cent of Al-Huthi fighters and at least 15 per cent of the fighters in the Government-affiliated tribal militia were children under the age of 18 years.

The Committee expresses its deep concern at the persistence of this practice, especially as it leads to other grave violations of the rights of children, such as murder, sexual violence and abduction. The Committee, therefore, urges the Government to take immediate and effective measures to put an end, in practice, to the forced or compulsory recruitment of children for use in armed conflict and proceed with the full and immediate demobilization of all children. It also requests the Government to take the necessary measures to establish sufficiently effective and dissuasive penalties for the offences related to the use of children in armed conflict and to ensure that persons who forcibly recruit children under 18 years for use in armed conflict are prosecuted and punished.
Article 5. Monitoring mechanisms. The Committee previously noted with concern the findings of the first national Child Labour Survey carried out in 2010, that 50.7 per cent of child labourers were engaged in hazardous work of which the overwhelming majority (95.6 per cent) were employed in hazardous occupations and the rest in hazardous economic activities (that is, mining and construction). The Committee notes that the Government has not provided any information on the measures taken by the labour inspectorate with a view to securing the enforcement of the legal provisions relating to the employment of children and young persons. **The Committee, therefore, once again urges the Government to take the necessary measures to adapt and strengthen the capacity of labour inspectors, including through the provision of sufficient financial resources, to detect cases of the worst forms of child labour, in particular, hazardous work.**

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. Children in armed conflict. The Committee notes from the Report of the United Nations Secretary-General to the Security Council (S/2013/383, paragraph 67) that on 18 April 2012, the Minister of the Interior sent a letter to the police and the relevant authorities in which he ordered the full implementation of the Police Commission Law No. 15 of 2000, which stipulated 18 years as the minimum age for recruitment and the release of any children within the government security forces. The Committee further notes from the report of the Secretary-General that the President has issued a decree to prohibit under age recruitment and immediately thereafter an inter-ministerial committee was established to serve as liaison for the development of an action plan to end the recruitment and use of children for armed conflict. **The Committee urges the Government to ensure that the necessary measures are taken to comply with the instructions directed to the armed and security forces by the Ministry of the Interior regarding the release of children under the age of 18 years from the armed forces. The Committee further urges the Government to take effective and time-bound measures to ensure that children removed from armed groups and forces receive appropriate assistance for their rehabilitation and social integration, including reintegration into the school system or into vocational training.**

The Committee is raising other points in a request addressed directly to the Government. **[The Government is asked to supply full particulars to the Conference at its 103rd Session and to reply in detail to the present comments in 2014.]**
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. Observations and information concerning reports on ratified Conventions (articles 22 and 35 of the Constitution) ................................................................. 5
   A. Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations ......................................................... 5
      (a) Failure to supply reports for the past two years or more on the application of ratified Conventions ................................................................. 5
      (b) Failure to supply first reports on the application of ratified Conventions ...................................................................................................................... 5
      (c) Failure to supply information in reply to comments made by the Committee of Experts .................................................................................................. 5
      (d) Written information received up to the end of the meeting of the Committee on the Application of Standards ........................................................................ 6
   B. Observations and information on the application of Conventions .......................................................................................................................... 7
      Convention No. 26
      Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) .......................................................................................................................... 7
      UGANDA (ratification: 1963) .................................................................................................................. 7
      BOLIVARIAN REPUBLIC OF VENEZUELA (ratification: 1944) ...................................................... 9
      Convention No. 29
      Forced Labour Convention, 1930 (No. 29) ..................................................................................... 14
      DEMOCRATIC REPUBLIC OF THE CONGO (ratification: 1960) ...................................................... 14
      MALAYSIA (ratification: 1957) ........................................................................................................ 17
      SAUDI ARABIA (ratification: 1978) ................................................................................................ 22
II. Submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

(a) Failure to submit instruments to the competent authorities

(b) Information received
III. Reports on unratiﬁed Conventions and Recommendations (article 19 of the Constitution) ........................................... 122
(a) Failure to supply reports for the past ﬁve years on unratiﬁed Conventions and Recommendations .................................................. 122
(b) Information received ........................................................................................................................................... 122
(c) Reports received on unratiﬁed Convention No. 131 and Recommendation No. 135 ............................................................. 122

Appendix I. Table of reports received on ratiﬁed Conventions (articles 22 and 35 of the Constitution) as of 12 June 2014 ................................................................. 126

Appendix II. Statistical table of reports received on ratiﬁed Conventions (article 22 of the Constitution) as of 12 June 2014 ...................................................................... 126
Index by countries to observations and information contained in the report ................................................................. 129

Index by countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALGERIA</td>
<td>46</td>
</tr>
<tr>
<td>BANGLADESH</td>
<td>23</td>
</tr>
<tr>
<td>BELARUS</td>
<td>50</td>
</tr>
<tr>
<td>BOLIVARIAN REPUBLIC OF VENEZUELA</td>
<td>7</td>
</tr>
<tr>
<td>CAMBODIA</td>
<td>57</td>
</tr>
<tr>
<td>CENTRAL AFRICAN REPUBLIC</td>
<td>109</td>
</tr>
<tr>
<td>COLOMBIA</td>
<td>31</td>
</tr>
<tr>
<td>CROATIA</td>
<td>68</td>
</tr>
<tr>
<td>DEMOCRATIC REPUBLIC OF THE CONGO</td>
<td>12</td>
</tr>
<tr>
<td>DOMINICAN REPUBLIC</td>
<td>84</td>
</tr>
<tr>
<td>ECUADOR</td>
<td>72</td>
</tr>
<tr>
<td>GREECE</td>
<td>78</td>
</tr>
<tr>
<td>KAZAKHSTAN</td>
<td>90</td>
</tr>
<tr>
<td>MALAYSIA</td>
<td>15</td>
</tr>
<tr>
<td>MAURITANIA</td>
<td>98</td>
</tr>
<tr>
<td>NIGER</td>
<td>105</td>
</tr>
<tr>
<td>PAKISTAN</td>
<td>36</td>
</tr>
<tr>
<td>PORTUGAL</td>
<td>101</td>
</tr>
<tr>
<td>QATAR</td>
<td>41</td>
</tr>
<tr>
<td>REPUBLIC OF KOREA</td>
<td>93</td>
</tr>
<tr>
<td>SAUDI ARABIA</td>
<td>20</td>
</tr>
<tr>
<td>SWAZILAND</td>
<td>61</td>
</tr>
<tr>
<td>UGANDA</td>
<td>5</td>
</tr>
<tr>
<td>UNITED STATES</td>
<td>110</td>
</tr>
<tr>
<td>YEMEN</td>
<td>113</td>
</tr>
</tbody>
</table>
I. OBSERVATIONS AND INFORMATION CONCERNING REPORTS ON RATIFIED CONVENTIONS (ARTICLES 22 AND 35 OF THE CONSTITUTION)

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

The Employer members noted a general improvement in terms of compliance with reporting obligations, with an increase of around 6 per cent as compared to last year. They noted in particular the efforts made by eight countries with persistent difficulties in previous years (Grenada, Ireland, Kiribati, Kyrgyzstan, Libya, São Tome and Príncipe, Seychelles and Sierra Leone), which had now complied with their constitutional obligations vis-à-vis ratified Conventions. Despite this progress, the Employer members believed that the reporting situation was still not satisfactory given that more than a quarter of all due reports on the application of ratified Conventions were not received by the time of the meeting of the Committee of Experts (only 34.1 per cent were received on time). Further steps were therefore needed to address the problem at its roots. As far as ratifying countries were concerned, the Employer members stressed that these countries should not just rely on the offer of technical assistance but take their responsibility for reporting seriously. Even before ratifying an ILO Convention, countries needed to consider whether they would be able to discharge their reporting obligation and, if need be, reinforce their reporting capacities. From a wider perspective, there was a need to consolidate and simplify ILO Conventions and thus focus reporting on the essential. Identifying ways to do so would be a task for the standards review mechanism. The Employer members trusted that it would soon be operational.

The Worker members stated that although some countries had made an effort, an effective supervisory system implied that each State had to meet its obligations. Submitting instruments to the competent authorities was therefore part and parcel of the process. Unless that was done, the competent authorities could have no knowledge of the ILO’s instruments and of the action taken by the Organization. As to the failure of some countries to respond to the Committee of Experts’ comments, the latter had to be able to analyze government reports on the subject. It was essential that there be fewer and fewer cases each year of countries failing to meet their standards-related obligations.

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

The Committee took note of the information provided. 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 of transmitting the reports; not only the transmission itself but also with regard to the scheduled deadline. In this respect, the Committee recalled that the ILO could provide technical assistance in helping to achieve compliance with this obligation.

In these circumstances, the Committee expressed the firm hope that the Governments of Burundi, Comoros, Equatorial Guinea, Gambia, San Marino, Somalia, Tajikistan and Vanuatu 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 member of Kazakhstan recalled that cooperation between the ILO and Kazakhstan was an important aspect of his country’s foreign policy and that Kazakhstan systematically complied with its obligations as a Member of the ILO. Its first report on the Safety and Health in Construction Convention, 1988 (No. 167), would be submitted to the Office before the end of the Conference and the report for 2014 would be sent within the deadline.

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

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

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

- Afghanistan
  - since 2012: Conventions Nos 138, 144, 159, 182;
- Equatorial Guinea
  - since 1998: Conventions Nos 68, 92;
- São Tome and Príncipe
  - since 2007: Convention No. 184;
- 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 Ghana stated that his country’s report supplying information in reply to comments made by the Committee of Experts would be finalized in the course of the Conference and submitted to the Office.

A Government representative of Afghanistan noted the comments made by the Committee of Experts concerning his country’s failure to supply first reports on the application of four ratified Conventions. He indicated that work was currently being undertaken with a view to providing the first reports but problems were being experienced in consolidating the information received from different government entities. To address this issue, consideration was given to establishing a unit working exclusively on reporting under ILO Conventions. He requested ILO technical assistance to help in such an endeavour and to build the capacity of the members of such a unit so as to be able to provide the reports due on time.

A Government representative of Cambodia recognized that his Government was late in supplying information in reply to comments made by the Committee of Experts on Conventions Nos 87 and 98, although the reporting obligation concerning many other Conventions had been discharged on time. The technical assistance of the ILO had been requested to strengthen the capacity of the members of the Inter-Ministerial Committee that had been set up to collect and provide information and draft comments on these matters. On 29 April 2014, ILO technical assistance on reporting obligations had been provided as the starting point of a capacity-strengthening process. He hoped that
this fruitful cooperation would allow fulfilling the reporting obligation in the near future.

A Government representative of Mauritania recalled that Mauritania, member State of the ILO since 1961, had ratified around 40 Conventions and was strongly attached to the values of social justice and peace. Between 2008 and 2012, the reports had always been submitted within the deadlines. The delays in sending reports in 2013 had been due to problems relating to human resources. ILO technical assistance from the ILO Country Office in Dakar had been requested in that regard.

A Government representative of Thailand said that her Government had taken measures with regard to reporting on ratified Conventions in response to the comments made by the Committee of Experts. According to the General Report, there were five reports pending. However, prior to the publication of this report, the Government had submitted its reports on Convention Nos 14 and 105. She confirmed that the remaining reports on Conventions Nos 19, 122 and 182, along with the reports due this year, would be submitted by August 2014.

A Government representative of Angola indicated that the Ministry of Public Administration, Work and Social Security was concerned about the issue of submission. The problem had been that submissions could not be made since the instruments had not been translated into Portuguese. The above Ministry, supported by the Ministry of Foreign Affairs, had undertaken to translate those instruments. In that respect, he reiterated the request for technical assistance. It was envisaged that the process would be completed by the end of the year and that the Office would be informed of any action carried out.

A Government representative of Eritrea indicated that in 2012, his Government had sent the required reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) on time. It was unfortunate that they had not been received, and he apologized for the inconvenience caused. However, his Government had prepared a new detailed report based on the comments made by the Committee of Experts on the two Conventions, as well as on other Conventions for which it was due to report on this year, which would be submitted on 1 June 2014. Moreover, the Labour Proclamation had been amended in light of the Committee of Experts’ comments. Regarding the allegation made by the International Trade Union Confederation that in practice there was no collective bargaining in Eritrea, he stated that the Labour Proclamation declared trade unions to be legal entities with the right to elect their representatives according to their constitutions and without the interference of public authorities. To date, there were more than 230 workers’ associations, and the Government had registered more than 110 collective agreements, figures which indicated that trade unions were in fact exercising their rights freely. The ILO’s technical assistance was of paramount importance to improving the implementation of standards.

A Government representative of Guyana said that in 2012, the Government had been severely behind with regard to the discharge of its reporting obligation and had explained at the time some of the constraints it was facing. He reiterated his commitment to corrective measures. His Government had since submitted 16 of the reports that were outstanding and was working to complete the rest by the deadline of 1 September 2014. Part of the reason for not submitting reports was however a lack of capacity, and the Ministry of Labour had addressed the issue by employing additional staff who would assist in preparing the reports. Also since 2012, Guyana had ratified the Occupational Safety and Health Convention, 1981 (No. 155) and the Domestic Workers Convention, 2011 (No. 189). The Government was dedicated to fulfilling its reporting commitment, and in that regard it was working with the ILO Regional Office in Trinidad and Tobago to train young officers to be able to produce reports.

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

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

The Committee urged the Governments of Burundi, Cambodia, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Eritrea, Gambia, Ghana, Guinea, Guyana, Haiti, Malaysia – Peninsular, Malaysia – Sarawak, Malta, Mauritania, Rwanda, San Marino, Sierra Leone, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkmenistan and Vanuatu, to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph of the General Report.

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

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

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

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

Dominican Republic. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee’s comments.

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

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

Kazakhstan. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 167.

Lao People’s Democratic Republic. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee’s comments.

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

Mali. Since the meeting of the Committee of Experts, the Government has sent all reports due on the application of ratified Conventions and replies to all 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.

Slovakia. Since the meeting of the Committee of Experts, the Government has sent replies to the majority 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.

1 The list of the reports received is in Appendix I.
Minimum Wage-Fixing Machinery Convention, 1928
(No. 26)

UGANDA (ratification: 1963)

A Government representative emphasized that before a new minimum wage was fixed, there was a need for a comprehensive study on wage trends in different economic sectors, which should include an analysis of employment trends, the cost of living and wage trends by profession and geographical region. Without fixing a minimum wage without regard to those factors could destabilize Uganda’s macroeconomic framework and affect employment trends. The Government had prepared a paper to reactivate the Minimum Wages Advisory Board for submission to Cabinet; Cabinet was expected to have approved the new Wages Board by September 2014. Once approved, the Wages Board should complete its work within six months and submit its recommendation to Cabinet by the end of April 2015. Cabinet was expected to have considered the recommendation by June 2015, and the new minimum wage was to be implemented by July 2015. His Government was ready to follow the recommendation of the Committee of Experts, and looked forward to receiving financial and technical assistance from the ILO in order to complete the wage-fixing process in a manner beneficial to workers, employers and the Government.

The Worker members stated that the Committee of Experts had been highlighting for years several serious shortcomings mainly related to the freezing of the minimum wage since 1984, a situation justified by the “non-reactivation of the Minimum Wages Board”. In this connection, the Committee of Experts had recalled that “the fundamental objective of the Convention, which is to ensure to workers a minimum wage that guarantees a decent standard of living for them and their families, cannot be meaningfully attained unless minimum wages are periodically reviewed to take account of changes in the cost of living and other economic conditions. … When minimum rates of pay are left to lose most of their value so that they ultimately bear no relationship with the real needs of the workers, minimum wage fixing is reduced to a mere formality void of any substance.” Each year, the Committee of Experts observed that the Government did not respond to its repeated requests. The Worker members regretted that, while the Government had announced in June 2013 the initiation of a process of identification of persons that could be appointed to the Minimum Wages Board and the continuation of a study, no information on new developments had been received since. It appeared that the Government did not intend to adjust wages as long as the exploitation of oil and gas did not benefit the country. In the workers’ view, the question of the composition of the Minimum Wages Board was only an unacceptable pretext. They also referred to the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), according to which the wage-fixing body should take account of the necessity of enabling workers to maintain a suitable standard of living; provision should be made for the review of the minimum rates of wages fixed when requested by the workers or employers who are members of such a body; and provision should be made for the inclusion in the wage-fixing body of one or more independent persons and, as far as possible, of women among the workers’ representatives and the independent persons. The Worker members denounced that the Government sought to evade its obligations under the Convention by simply taking no action to ensure that the body referred to in Recommendation No. 30 was functional. Furthermore, the Worker members recalled that the Convention also required to consult the social partners and suggested that consultations could be arranged in a less formal but nonetheless effective manner. Referring to the examples of good practices cited in the 2014 General Survey as regards the publication of minimum wages in the Official Journal (Gambia, Guatemala, Kenya, Slovakia, United Republic of Tanzania and Tunisia), the Worker members highlighted that publication constituted a substantial formality. The objective of the Convention, which had given birth to other Conventions, such as the Minimum Wage Fixing Convention, 1970 (No. 131), was that all categories of workers would be covered by a minimum wage. For the majority of Ugandan workers, the current salary was not enough to live decently. Compliance with the provisions of the Convention and the introduction of a minimum wage, reviewed according to appropriate mechanisms, would enable those workers, including women (especially those in the informal sector), to live better. The Worker members therefore requested the Government to comply with the provisions of the Conventions and refrain from using inappropriate arguments to evade its obligations. Emphasizing the link between human rights and human dignity, the Worker members stressed that this was the only way to promote economic growth and stimulate the local economy.

The Employer members recalled the history of the Committee of Experts’ examination of the case between 2006 and 2013. In the course of that examination, the Committee of Experts had been concerned about the inactivity of the Minimum Wages Board. That inactivity had not resulted in a national minimum wage rate which had remained unadjusted since 1984, and the Committee of Experts had repeatedly requested the Government to take action to reactivate the Board. The Committee of Experts, however, had expressed its regret due to the absence of a follow-up action taken by the Government, apart from its indication that a process of identifying the persons to be appointed to the Board had commenced, which had not been followed up. The Employer members expressed their concern about the lack of government action on minimum wage fixing and urged the Government to take prompt action in order to ensure the reinstitution and proper functioning of the minimum wage fixing machinery in accordance with the Convention, without further delay. They encouraged the Government to avail itself of the technical assistance of the Office and to carry out its work for reactivating the minimum wage fixing machinery in full consultation with the social partners.

The Worker member of Uganda stated that the minimum wage fixing machinery, established under the 1964 Minimum Wages Advisory Board and Wages Councils Act, had reviewed the minimum wage until 1984, when it had adopted a rate of 6,000 Uganda shillings (UGX) per month (approximately US$23). Since then, it had not made any further review. While the Government and Employer members argued that a minimum wage would deter investors, the neighbouring countries with higher minimum wage rates had attracted more investors. The Minimum Wages Advisory Board was established under the General Notice No. 176 in 1995. In 1998, upon the urging of the workers in the country, a study had been conducted and the Minimum Wages Advisory Council had recommended an inter-industry rate of UGX58,000 (approximatly US$25), but that was rejected. Since then, that machinery was no longer in place. The absence of minimum wage fixing machinery meant the weak implementation of the spirit and letter of the National Constitution and development policies, and the abuse of human rights and the worsening of the plight of women. The Ugandan National Constitution provided that all Ugandans had a right to a life in dignity. The National Development Plan of Uganda identified the maintenance of a minimum wage
as a critical step to increase access to gainful employment, tackle inequality and stimulate growth. The minimum wage was also a human rights issue, as affirmed in article 23 of the Universal Declaration of Human Rights. The current stagnant minimum wage of UGX6,000 presented a clear violation of workers’ rights. Similarly, the absence of minimum wage fixing machinery had increased exploitation and discrimination against workers, especially those in the informal economy. Reports indicated that 50 per cent of employed women worked in the three lowest-paying economic sectors: agriculture; household; and mining and quarrying. The workers in the country had petitioned the Speaker of Parliament in 2000 for an intervention on this matter. A bill on the re-adjustment of the minimum wage rate had been tabled, debated and subsequently passed, but had never become law because the President had refused to assent to it. Uganda was one of the poorest countries in the world with a large part of its population living below the poverty threshold of US$1.2 a day. Social protection provisions were limited only to some sections of formal employment. Therefore, for most persons, labour was their main asset and income source. The lack of a process to set minimum wages had left workers vulnerable to exploitation; a minimum wage would protect the most vulnerable workers.

The Employer member of Uganda expressed appreciation for the comments made by the Government and the Worker member from Uganda. The Government’s attempts to revise the minimum wage in 1995 had been unsuccessful. Since then, the Government had attempted to reconstitute the Minimum Wages Board and had asked the social partners to submit nominations to that effect, but unfortunately the Board had not been re-established. Uganda had experienced economic challenges, especially when the interim Government had come into power, but many of those challenges had been overcome and the country was now realizing a growth in GDP. She expressed her hope that the Government would follow through on the commitments it had made before the Committee concerning its renewed efforts and that it would report on the positive results.

The Worker member of Kenya compared the situation of Uganda to that of Kenya, where minimum wages assisted workers in both the formal and informal economies. In Uganda, 24.5 per cent of people lived below the national poverty line, 56 per cent of people worked in the informal economy and 36 per cent of the labour force reportedly constituted the working poor. Cane cutters, for example, earned UGX120,000 (approximately US$46.9), while others were paid less. Some had to work overtime or take on additional responsibilities at the expense of their health and family time. In contrast, plantations earned an excess of US$100 million per year and had assets of US$375 million. The income of the cane cutters, as well as other workers such as home and business cleaners, domestic workers, food vendors, construction site porters and radio journalists, usually did not amount to US$3 per day and was not liveable. Families continued to disintegrate owing to the mobilization of children to support family earnings, and clearly, the absence of a minimum wage exacerbated the practice of child labour and the worst forms of child labour. She echoed the request of the Committee of Experts that the Government move without delay to put into motion the process to establish the appropriate minimum wage fixing machinery.

The Worker member of Congo expressed his concern over the level of the minimum wage in Uganda. The Committee of Experts had repeatedly noted that, to play its part in social policy, the minimum wage should not be allowed to fall below a socially acceptable level and should retain its purchasing power in terms of a basket of basic consumer goods. However, the cost of living had increased significantly in Uganda, which continued to be one of the poorest countries in the world, without the Government doing anything during the past 30 years to remedy such an unjust situation. The Government should revive the Minimum Wages Board without further delay.

The Worker member of Brazil recalled that, as indicated in the report of the Committee of Experts, the minimum wage rate had not been readjusted since 1984. In its report, the Government had indicated that it had only just initiated the process of identifying the social partner members to be appointed to the Minimum Wages Board, and that a paper, the subject of which was unknown, had been prepared for submission to the competent authority. Apparently, after 30 years without a readjustment, even the social partners to be appointed had not yet been identified. The report of the Government was a clear demonstration of its profound lack of interest in fulfilling its obligations under the Convention. The minimum wage was a significant tool for combating poverty, distributing income and creating employment and, consequently, for boosting the economy, especially in southern countries. In all countries in which an effective policy on revaluation of the minimum wage was implemented, its effectiveness could be seen not only as a driver for economic development but also as a key instrument for decent job creation. The way in which the Government had dealt with the matter was concerning. The Committee should therefore urge the Government to afford the necessary importance to the matter, follow up on the consultative process as a matter of urgency, and take effective measures to fix a national minimum wage which was adjusted to the needs of Uganda.

The Worker member of Nigeria recalled that, since Uganda’s Minimum Wage Order had been enacted in 1950, real efforts to advance wage regulations had failed. Previous efforts to put minimum wage fixing machinery in place had been well over 20 years ago, in 1984. The Government had continued to ignore the spirit and letter of the Convention, leaving workers without the protection of wage regulation mechanisms. The national economic situation showed that there was an urgency to assist those who were working and living in poverty from further hardship. According to the current GDP, consumer price index statistics and food inflation rate statistics, the economy was doing well, and yet many workers were not able to buy food for themselves or their family members. A 2013 ILO study showed that, in 2005, slightly over 50 per cent of waged and salaried workers in Uganda were poor, while the extreme poverty rate for workers was 13 per cent. The situation had worsened owing to the effects of the financial and economic crises. A 2009–10 Labour Market Survey indicated that of the 24.4 per cent of the population who were living below the poverty line, 21 per cent were classified as “working poor” who earned a median monthly income of UGX50,000 (approximately US$20). The Government had reportedly refused the demands of the organized labour community to establish, without further delay, the necessary minimum wage fixing machinery, had deliberately stalled a 2012 attempt by the workers to place a minimum wage bill in Parliament and had even arrested workers’ leaders for demanding to be included in the composition of the Minimum Wages Board. That situation should not continue, and the Committee should extract a firm and time-bound commitment from the Government on the constitution of a minimum wage fixing machinery.

The Government representative reaffirmed that the Government was taking steps to ensure that it complied with the requirements of the Convention, although there remained problems with a lack of technical and financial support. The process would go ahead, with or without ILO technical assistance. That previous year, the Gov-
The minimum wage had always been critically considered. The Committee on the Application of Standards had been cautious owing to the level of unemployment. Efforts had been made to address the issue of unemployment by formulating policies and instruments that had ensured increased numbers of jobs, including, for example, youth employment programmes which aimed to reduce youth unemployment. It was also not true that some workers had been arrested for raising issues concerning minimum wages, nor was it accurate that the population was living below the poverty line as a result of not having a minimum wage. On the contrary, the situation had been improving, with the GDP increasing since the 1990s. The Government expressed its commitment that, by July 2015, the process of having minimum wage fixing machinery in place would be concluded.

The Worker members noted that the Government was again planning to delay re-establishing the wage-fixing machinery until September 2015, but it needed to stop providing excuses to avoid fulfilling its obligation to set a minimum wage. It should live up to the commitments it had made to the Conference Committee and, without further delay, arrange for the Minimum Wages Board to progress with its work. The Government should therefore request ILO assistance and then submit a progress report to the Committee of Experts in 2015.

The Worker members expressed their appreciation for the Government’s commitment to re-instituting the minimum wage fixing machinery by July 2015. The Committee’s conclusions should reflect the Government’s commitment, indicate its concern about the lack of government action up to now, recommend that the Government’s action be in accordance with the Convention and in full consultation with the social partners, and refer to the use of the technical assistance of the Office.

The Employer members noted that the Government was again planning to delay re-establishing the wage-fixing machinery until September 2015, but it needed to stop providing excuses to avoid fulfilling its obligation to set a minimum wage. It should live up to the commitments it had made to the Conference Committee and, without further delay, arrange for the Minimum Wages Board to progress with its work. The Government should therefore request ILO assistance and then submit a progress report to the Committee of Experts in 2015.

**BOLIVARIAN REPUBLIC OF VENEZUELA**

(ratification: 1944)

A Government representative recalled that the Convention had been ratified in 1944 and it had only been 35 years later that the minimum salary had been fixed for the first time, without any governments being invited during that period to the Committee on the Application of Standards. He indicated that the 1991 Labour Act had established a tripartite committee, with the legal mandate to adjust the minimum wage annually, consisting solely of the Confederation of Workers of Venezuela (CTV) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS). He noted that in the committee, the employers’ position had prevailed and the minimum wage had been adjusted only on four occasions. He added that the latest of those adjustments had been in 1997, in exchange for eliminating the system of calculation of social benefits and compensation for unfair dismissal. Therefore, in 1998, an increase had been decided outside the framework of the committee, since it had not taken any decisions itself. The process of drafting a new Constitution had begun in 1999 and had entailed 17,346 assemblies, bringing together over 5 million workers. In over 90 per cent of those assemblies the request had been put forward for a mandatory annual adjustment of the minimum wage and the abolition of the tripartite committee. The Constitution established the obligation to guarantee workers a minimum living wage which had to be revised and adjusted each year. Within five years, the minimum wage had been standardized at the national level, removing differences in regions and activities, and extending coverage to the informal economy. All the above appeared in the General Survey on minimum wage systems. He added that there were collective agreements that included provisions to adjust the agreed salary scale once the minimum wage had been adjusted. Over 15 years of the application of the constitutional obligation in question, 26 adjustments had been made, with an average year-on-year growth rate of the minimum wage of 26.4 per cent, which was 3.5 percentage points above inflation for that period. In addition, the unemployment rate had fallen from 15.2 to 7.2 per cent and the gross domestic product had continued to grow at a steady rate. He observed that the current system of minimum wage fixing surpassed the requirements set out in Convention No. 26, making it strange that now that an effective and efficient system was in place the Government had been called before the Committee on the Application of Standards. He firmly rejected the repeated observations which amounted to alleging that in the Bolivarian Republic of Venezuela there was an absence of social dialogue on the fixing of the minimum wage. He indicated that for the purpose of minimum wage fixing, technical and not political criteria were taken into account, such as the cost of a basic basket of goods. Additionally, he mentioned the intrinsic connection between the minimum living wage and the amount of pensions, the adjustment of which benefited over 2.5 million people.

Every 1 May the trade union with the largest worker representation, which was currently the Bolivarian Socialist Workers’ Confederation, and the workers’ federations of the principal economic sectors were consulted. That consultation was sent in written form to other trade unions, despite their scant representativity, in order to express their opinion in that regard. In respect of the employers’ organizations, consultations were held with the Venezuelan Federation of Small, Medium and Artisanal Industries (FEDEINDUSTRIA), an organization which grouped the sectors most affected by minimum wage fixing, and the Farmers’ Confederation (CONFAGAN). The same report was sent, without fail, to FEDECAMARAS so that it could express its opinion. He emphasized that the consultation on the minimum wage had always been conducted in equal conditions, of which there was proof. With reference to the comments of the Committee of Experts, he stated that there was no mention of non-compliance, but rather of a request for clarification of methods of consultation. In his view the Committee on the Application of Standards should not be politicized. He noted that in the past it had been FEDECAMARAS which had been absent from the dialogue, as it had shown little interest in the minimum wage. He recalled that when, in the framework of the reform of the Basic Labour Act, the methods of consultation on the fixing of minimum wages were revised in the National Assembly, not only did FEDECAMARAS not participate, but it also promoted a national strike and an oil boycott to demand the stepping down of President Chávez. Only recently had the current leaders of FEDECAMARAS expressed interest and requested that consultations on the minimum wage should take place with more advance notice. He stated that there were standing working groups with many employers’ chambers in which representatives of FEDECAMARAS were included, and concluded that the above organization should decide if it would continue to engage in dialogue or would prefer to nurture such inconsistency.

The Employer members recalled that the list of cases adopted in the Committee on the Application of Standards was initially the subject of bipartite negotiations, with subsequent tripartite approval from all the ILO’s constitu...
ents. It was on this basis that they were commenting on the non-compliance of the Bolivarian Republic of Venezuela with Convention No. 26, which was the result of a lack of tripartite consultation on fixing the minimum wage. They observed that, since 2008, five observations of the Committee of Experts had dealt with application of the above-mentioned Convention to the Bolivarian Republic of Venezuela. A new Labour Act, promulgated in May 2012, had abolished the tripartite committee comprising representatives of the Government, the employers and the workers, and had replaced it with “broad consultation of social organizations and institutions in socio-economic matters”. The reform had given even more discretionary powers to the Government to choose the parties consulted, without expressly providing for the inclusion of the most representative employers’ and workers’ organizations in the broad consultation. In 2014, the minimum wage had been increased twice, on 6 January and 29 April, respectively, without due or effective consultation of the most representative employers’ organization in the country, which included some 300 chambers representing the 14 main economic sectors. They referred to the call made by the Committee of Experts in its 2014 report to carry out real and effective consultation of employers’ and workers’ organizations, with their participation in equal numbers and on equal terms. They recalled that the Committee on the Application of Standards had already indicated the fundamental importance that it attached to real consultations in good faith with the social partners in minimum wage fixing, and they emphasized that “consultation” had a different connotation from mere “information”, as well as from “co-determination”.

They also recalled that the fixing of increases in the minimum wage without due consultation had been considered in the report of the high-level mission which had visited the country at the end of January 2014. The report, which had subsequently been approved by the Governing Body at its 320th Session (March 2014), recommended that dialogue with the participation of the tripartite bodies should be restored. That was fully consistent with the broad consultation required by Venezuelan law. Despite this, with respect to the increase in the minimum wage carried out in April 2014, the Government had sent a communication to FEDECAMARAS requesting that it adopt a position within 15 days. That communication had been received on 21 April 2014, at the end of the Easter week, leaving only six working days until the deadline. In spite of the limited time, FEDECAMARAS had replied to the communication on the final day of the allotted period. That day, on 21 April 2014, before the expiry of the deadline, the Government had announced a 30 per cent increase in the minimum wage, published in the Official Gazette on that date. They understood that real and effective tripartite consultations with the most representative employers’ and workers’ organizations were essential for the application of both Convention No. 26 and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). They therefore proposed that the Committee should urge the Government to give full effect to the tripartite consultations prescribed by Convention No. 26 and take steps to secure full observance of the obligation to consult employers’ and workers’ organizations on an equal footing in decision-making on minimum wages.

The Worker members considered that the involvement of all the social partners, in the form of a consultation, was a vital component of minimum wage fixing, the adjustment of minimum wages and their enforcement. The discussion on the Minimum Wage Fixing Convention, 1970 (No. 131), in the context of the General Survey, had demonstrated that the participation of the social partners was also an important issue in the context of that Convention. They therefore reminded the Government that consultation, or the offer of participation to the social partners, was not to be confused with mere information, or with negotiation. Neither did the concept of full consultation necessarily imply that an agreement would be reached. The convention had not ratified Convention No. 131, but the wage-fixing machinery had been guaranteed by the Constitution since 2000. According to the explanations given by the Government, it intended, by means of the mechanism it had put in place, to resolve one of the issues brought up by the Worker members in their intervention on the General Survey when they had referred to the Declaration of Philadelphia. The minimum wage did not represent a balancing price between the supply and demand for labour; but it was the level of income that allowed a person to live in dignity in a specific country. They added that, in view of the fact that the rules for minimum wage fixing in the Bolivarian Republic of Venezuela were in line with the most important principles of ILO standards, the Worker members considered that the Government should ensure widespread consultations on wages, their increases and adjustments on equal terms with all the social partners without exception. Indeed, this specific issue, in relation to the minimum wage, had been raised during the tripartite high-level mission to the Bolivarian Republic of Venezuela, which had visited Caracas from 27 to 31 January 2014. While it had emerged following the mission that the concept of an inclusive consultation should only be understood in this respect if FEDECAMARAS was granted a right to be consulted every time the interests of its members were at stake, and they emphasized that this should also apply to trade union organizations and other existing independent employers’ organizations. The Worker members said that the Government could easily establish the conditions for broad and inclusive consultation procedures. Finally, they reminded the Government that it had undertaken to find a solution to the 30 cases of violations of workers’ rights submitted by the unions to the high-level mission.

The Employer member of the Bolivarian Republic of Venezuela recalled that the Act adopted in 2012 provided for broad consultations with social organizations and socio-economic institutions, but did not expressly include the most representative organizations of workers and employers. The Government was creating an alternative mechanism which did not comply with the Convention. The lack of consultation emphasized that the tripartite mission that had visited the country in January 2014. Nevertheless, the Government had once again failed to send consultation letters at the appropriate time, and the organizations had not had the effective opportunity to give their opinions. The Government had consulted the Bolivarian Socialist Workers’ Federation, FEDEINDUSTRIA and CONFAGAN, but had not properly consulted FEDECAMARAS, because it had adopted the decision on the new minimum wage and published it in the official gazette prior to the expiry of the deadline for responding. Consultation on minimum wages was carried out in a discretionary manner. In 15 years, FEDECAMARAS had not been convened to discuss on the issue of minimum wages. The current difficult economic situation in the country meant that discussion on minimum wages was even more necessary. FEDECAMARAS had raised several questions with the Government, but had not been heeded. The high inflation rate (59 per cent annually), the exponential rise in consumer basics (more than four minimum wages) and the increase in the poverty index (27.3 per cent) showed that the purchasing power of the Venezuelan people had been seriously affected. FEDECAMARAS had also indicated
to the Government the need to adopt measures to adjust economic and monetary policies so that the minimum wage would provide a basis for establishing fair remuneration. Sincere, in-depth, effective and constructive dialogue was necessary to find solutions. Without appropriate government policies, employment and businesses were at risk.

The Worker member of the Bolivarian Republic of Venezuela recalled that since 1999 the minimum wage had been increased on 26 occasions and collective bargaining had been widely promoted in various sectors. The minimum wage also covered workers in the informal sector and in agriculture. He expressed his surprise at the discussion of non-observance of the Convention by his country and at the methods used for the selection of cases. Since the adoption of the national Constitution in 1999, consultation and social dialogue had had constitutional status. With respect to the preparation of the Basic Labour Act (LOTTT), the workers had held 2,500 assemblies. The minimum wage had been adopted taking account of the cost of the basic consumer basket, the consumer price index and inflation. Since 1999 there had been broad social dialogue in the country with the participation of all sections of society, resulting in improved tripartite dialogue. Owing to the participation of the workers, the social wage had been complemented with, among other things, the monthly food bonus, the food purchase subsidy, the provision of books and computers for students, workers’ housing, low-cost recreation facilities and free health care. He condemned the violent assaults on workers, as a result of which 42 persons had died, and also the attack on public and educational institutions. He called the Committee to give its views on that subject.

The Government member of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), referred to the information provided by the Government on the development of the minimum wage in the country and actions it had carried out in accordance with the Constitution. He also noted the labour law provisions regarding the obligation of the executive authorities to revise and annually adjust the national minimum wage, following broad consultation and the gathering of opinions from different social and institutional organizations on socio-economic matters. Noting also the 2014 General Survey of the Committee of Experts which reported the positive progress made by the country on this issue, he expressed GRULAC’s hope that the Government would fulfill the recommendation by the Committee of Experts contained in paragraph 9 of the 2014 General Survey of the Committee of Experts (Decision No. 26), which granted States parties the freedom to decide the nature and form of the minimum wage fixing machinery, and the methods to be followed for its application.

The Employer member of Colombia, speaking also in his capacity as a member of the Committee on Freedom of Association, expressed the concern of the Employer members at the Government’s disregard for social dialogue, which was the heart of the tripartite system. Social dialogue should be encouraged by workers, employers and governments. The Bolivarian Republic of Venezuela was a member of the ILO and as such should respect its obligations. The LOTTT had modified the consultative mechanism and excluded FEDECAMARAS from social dialogue, even though it was the most representative employers’ organization. The high-level tripartite mission, which had taken place in January 2014, had recognized the most representative nature of FEDECAMARAS. However that organization could not participate in the Labour Advisory Council. The issue was also examined by the Committee on Freedom of Association in Case No. 2254. The Committee on Freedom of Association, in its Digest of decisions and principles, emphasized that the process of consultation on legislation and minimum wages helped to give laws, programmes or measures adopted or applied by public authorities a firmer justification and helped to ensure that they were well respected and successfully applied.

The Worker member of Brazil recalled the experience of his country with regard to minimum wage fixing. As a result of the efforts of the labour movement and social pressures for the revaluation of the minimum wage, a public policy was developed after 2000 for the regular and progressive increase of the minimum wage. This policy contributed to increasing domestic consumption and helped the country recover from the recession. This positive result was not due only to the Government, but to the joint work of the social partners, and reinforced the importance of Convention No. 26. The creation of fixation methods for the minimum wage was the responsibility of governments, pursuant to Article 1 of the Convention. Article 91 of the Constitution established the procedure to fix the minimum wage, in line with Article 1 of the Convention. Article 3 of the Convention provides that Members are free to decide the nature and form of the minimum wage fixing machinery in consultation with the workers’ and employers’ organizations. However, it still had not been demonstrated that such consultations had not taken place. During the discussion, there had been only rhetorical assertions that the Government was not complying with the Convention as by setting the minimum wage unilaterally, with no facts demonstrating this to be the case. Without such facts, it was difficult for this Committee to effectively examine breaches of the Convention, unless it was the intention of the Employer members to stress the utility of minimum wages or of setting a higher minimum wage through the selection of this case. Should that not be the case, the Government, employers and workers of the Bolivarian Republic of Venezuela should strengthen social dialogue in order to find a solution.

The Government member of Algeria noted with interest the statement made by the Government representative. Since 2000, the Government of the Bolivarian Republic of Venezuela had been committed to genuine consultations with the social partners in good faith regarding the issue of setting the minimum wage. Referring to paragraph 202 of the 2014 General Survey of the Committee of Experts, he recalled that the consultation required under the Convention was not negotiation to reach an agreement, but a process to assist the competent authority in taking a decision. On the basis of the information provided by the Government, it was evident that it had been acting in conformity with the Convention, guided by a willingness to provide decent jobs to the workers in the country. The conclusions of the Committee should therefore only refer to issues relating to the Convention.

The Employer member of Mexico emphasized the importance of the discussion, which dealt not only with the violation of a Convention, but also with the ILO standards system as a whole. The Government recognized that it had not complied with the Convention with regard to the obligation of consultation. That also implied a violation of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which had been ratified by the Bolivarian Republic of Venezuela in 1983. The Committee should not merely recognize obligations on the way in which compliance was ensured with the obligation to consult workers’ and employers’ organizations regarding minimum wage fixing, but it should demand full compliance with that obligation. The tripartite system was at stake. In its observation of 2012, the Committee of Experts had already referred to existing deficiencies in social dialogue on the part of the Government
and to the lack of consultation, particularly with regard to the adoption of labour and social legislation. That demonstrated the Government’s constant lack of compliance with the provisions of the Convention, which prescribed consultation of the representative organizations of workers and employers. In conclusion, the speaker called for the seriousness of the circumstances to be reflected in the Committee’s conclusions.

The Worker member of Uruguay stated that it was undeniable that social dialogue existed in the Bolivarian Republic of Venezuela. Each country had the right to establish the system of social dialogue that best suited it. The Government had increased the minimum wage on 26 occasions since 1999, taking account of the consumer price index and inflation. Discussion of the present case went beyond compliance with the Convention. The Employer members who were calling for compliance with this Convention, were the same who were jeopardizing the whole ILO standards system.

The Government member of the Plurinational State of Bolivia stated that his country endorsed the statement made on behalf of the GRULAC countries and that the minimum wage was set by the Government with increasing minimum wage should be duly noted, each country being free to determine its own minimum wage fixing methods. The efforts made by the Government in favour of tripartite dialogue, despite the divergent interests of the social partners, should also be noted.

The Employer member of Guatemala observed that there were two aspects to the case: the lack of legal conformity and problems of implementation in practice. The lack of legal conformity had been highlighted through the enactment of the 2012 Act, the wording of which referred to social and institutional organizations dealing with socioeconomic matters, instead of the most representative organizations of employers and workers. This wording confirmed the Government’s lack of interest in dialogue. It had not sought the opinion of the most representative employers’ organization in the country (FEDECAMARAS), and had only consulted it once formally after the decision had been taken to increase the amount of wages. He emphasized that the concern of the employers’ was for the absence of effective social dialogue in the country, which was one of the pillars of democracy. The ILO supervisory bodies therefore needed to ensure that the ILO’s fundamental principles, and particularly social dialogue, as guaranteed by Convention No. 144, were fully respected in the event.

The Worker member of Cuba indicated that the discussion had allowed him to understand the real situation faced by Venezuelan workers. In a context of crisis and its adverse impact on the workers, it would be strange to criticize a Government for taking protection measures in line with the Convention in response to the demands of the workers. It was rare to see so many measures taken in favour of workers. The regrouping of different existing minimum wages and extending the minimum wage level to the minimum pension had made for greater equality among the workers and had benefited approximately 2.5 million retirees. Since 2000, the periodic revision of the minimum wage had been driven by the objective of social justice, and had resulted in the replacement of a situation where 65 per cent of workers had not received the minimum wage, to one of total coverage in 2014. In addition, extensive tripartite social dialogue demonstrated the Government’s commitment to finding solutions and strengthening social cohesion and the rule of law, in accordance with international labour standards. The selection of political cases would damage the Committee’s credibility.

The Government member of the Islamic Republic of Iran thanked the Government for the information indicating how it intended to secure the full observance of the obligation to consult workers’ and employers’ organizations on an equal footing with regard to minimum wage fixing. Since 2000, the minimum wage had been reviewed and fixed annually on the basis of recommendations made by the social and economic organizations, as well as workers’ and employers’ organizations, without affecting the other rights of workers. This revision demonstrated a willingness to engage in constructive consultations on minimum wage fixing with the social partners. It was positive that the Government was enhancing consultations with workers’ and employers’ organizations, after which it would fix a minimum wage that could cover the basic needs of workers. He called the Government to continue its efforts.

The Worker member of Nicaragua regretted that FEDECAMARAS did not want to accept the social, economic and political changes which had taken place in the country. The employers of the country did not have arguments to counter the Government’s efforts to distribute wealth. The Government had increased minimum wages to reverse the delay in the evolution of wages. Those same employers who called for compliance with the Convention, viewed workers as “collaborators” so as not to pay them, evaded payment of social benefits by out-sourcing and threatened to reinterpret international labour standards with new rules. The statistics and the policies carried out by the Government and the development of social dialogue demonstrated that the Government was in compliance with the Convention.

The Government member of Cuba indicated that the information provided by the Government reflected its continuous concern to ensure the social protection of workers and their families, and the particular attention given to the minimum wage fixing policy. For over 14 years, the Government had steadily increased the minimum wage to benefit workers and guarantee decent levels of remuneration that adequately covered basic needs. The General Survey reflected progress achieved by various Latin American countries regar...
employers were trying to sabotage the country’s revolutionary process by engaging in violent attacks that had caused 42 deaths and wounded 800 people. In the country social dialogue existed and had the support of most of the governments and workers’ federations in Latin America. She paid tribute to the efforts of the Bolivarian Socialist Confederation.

The Government member of Myanmar commended the efforts made by the Government to resolve the issue, particularly the fact that annual consultations were held with the employers’ and workers’ organizations, in accordance with the Convention. He further praised the Government for the measures taken to provide workers with a sufficient minimum wage, which enabled them to live with dignity and to cover their social, intellectual and material needs and those of their families. The efforts made by the Government should be recognized by the Conference Committee. In conclusion, he indicated that the case should not have been brought before the Conference Committee and expected that it would be resolved sooner rather than later.

The Government member of Nicaragua endorsed in full GRULAC’s statement on this issue. His Government was concerned at the fact that the Bolivarian Republic of Venezuela had unjustifiably and for political reasons once again been brought before the Conference Committee. He drew attention to the Venezuelan Government’s cooperation, dialogue and commitment in its dealing with the ILO, and its efforts to review and fix a minimum wage in line with the recommendations of social and economic organizations and of workers’ and employers’ organizations, without undermining their rights in any way. In an appeal to countries that had shown their willingness to speak up in defence of the rights of their citizens, he reiterated his Government’s support for the Venezuelan Government in the hope that the Conference Committee would cease its age-old practice of politicizing the debate.

An observer representing the International Trade Union Confederation (ITUC), speaking on behalf of the workers’ organizations affiliated to the Trade Union Action Unit of Venezuela, regretted that the Government of the Bolivarian Republic of Venezuela was failing to comply with Articles 1 and 3 of the Convention, which emphasized consultation of the social partners. Wages and salaries included all gross remuneration including bonuses, holidays and sick leave. Consultation should be broad and participative. Wages and salaries in the Bolivarian Republic of Venezuela and the constitutional minimum wage must not be imposed unilaterally. The minimum wage should at least cover the cost of a basic basket of goods, as required by article 91 of the Constitution. Despite the conclusions of the report of the high-level tripartite mission that took place in January 2014, there was no social dialogue in the country. He was prepared to enter into a dialogue on a vital adjustable minimum wage that was sufficient to meet the cost of food, housing, transport, health and leisure. Inflation in January 2014 was running at 59.24 per cent and it was expected to reach 73 per cent for 2014 as a whole. What was needed was for the country’s production system to be strengthened and for the workers and their organizations, on an equal footing with the employers and the Government, to be guaranteed full participation in any decisions taken with regard to the minimum wage.

The Government member of Uzbekistan believed that the Government of the Bolivarian Republic of Venezuela was fulfilling its obligations under the Convention, in so far as there was a minimum wage fixing machinery in place, the minimum wage was being established in consultation with workers and employers and the workers’ interests were protected. The existing system allowed the Government, after consultation, to establish a minimum wage, notwithstanding inevitable disagreements on certain issues, such as inflation. He concluded that his Government would like to see the case successfully resolved.

The Government member of China welcomed the efforts made by the Government of the Bolivarian Republic of Venezuela since 2000 to establish a system for the consultation of the social partners on minimum wages. The Government of China hoped that cooperation between the Government of the Bolivarian Republic of Venezuela and the Office would be strengthened with a view to consolidating this system.

The Government member of Ecuador aligned himself with the statement by GRULAC and welcomed the explanations provided by the Venezuelan Government and the measures adopted. He indicated that, together with GRULAC, the Government of Ecuador trusted that the Bolivarian Republic of Venezuela would continue to comply with the Convention, and in particular with Article 3, which provided that representatives of the employers and workers concerned should be consulted, and that it would continue to take into account the opinions of the social stakeholders. He noted and encouraged the commitment of the Government to provide all workers with an adequate minimum wage to meet the basic needs of themselves and their families regarding health, work, housing and education, and to live a life in dignity.

The Government member of Argentina commended the attention given to a Convention with so much social significance and noted the interventions by the representatives of the social partners. She emphasized that the Convention required consultation, but did not specify the machinery to be adopted, leaving that to be determined by national legislation, provided that it ensured that the opinions of workers and employers were taken into account (Article 3). It was important to emphasize that minimum wage fixation had been incorporated into the Venezuelan Constitution and that, even during times of crisis, the rates had continued to be increased in line with the needs of workers. That had not been the case in other countries faced with economic problems. Based on the interventions of the social partners, it had to be concluded that the Government of the Bolivarian Republic of Venezuela promoted effectively the consultation machinery set out in the Convention. The main question concerned the opportunities granted to employers’ representatives who had nevertheless been able to express their views and agree with the increase that had been approved, according to the CONCARAS criteria. She hoped that the Government would continue to ensure the effective maintenance of the minimum living wage, which was fundamental for workers in all countries, and which was the objective of the Convention.

The Government representative said that he would restrict his comments to Convention No. 26, even though other speakers, in view of the lack of substance, had raised other issues. The Convention allowed total freedom in fixing the guaranteed minimum wage, which was guaranteed in his country, where over 52 per cent of the members of a workers’ confederation had been consulted. If the other workers consulted were included, over 80 per cent of the total workforce had been consulted. He acknowledged that, due to its roots, it was easier for his Government to talk to workers, but it was also restor-
FEDECAMARAS had considered it moderate and reasonable on the day it was announced, and the next day it had declared that consultations had been held sufficiently in advance. He therefore considered that what FEDECAMARAS said in the Bolivarian Republic of Venezuela was quite different from what was said by the Employer members in the Conference Committee. If the employers wanted to increase the minimum wage further, that could be considered. For the past 15 years, the minimum wage had increased every 1 May in the country. Knowing that, the employers should not have waited until April, but should have acted much earlier. The tripartite commission had ceased functioning in 1998, and the Constitution of 1999 had introduced the minimum wage system. He wondered what issue exactly was being raised, and whether the effectiveness of the minimum wage in the Bolivarian Republic of Venezuela was being challenged. The Convention provided that the minimum wage had to provide a decent remuneration that was as nondiscriminatory as possible, and that was what his Government was doing. Turning to Articles 1 and 3 of Convention No. 26, he emphasized that, in accordance with Article 1, the Member ratifying the Convention was free to decide the nature and form of the minimum wage fixing machinery and that the representatives of the employers and workers concerned were to be consulted. He emphasized the word “concerned” and the need for them to have a direct interest in the fixing of the minimum wage. He read out a press release relating to the increase in the minimum wage on 1 May 2014 entitled “FEDECAMARAS considers the wage increase responsible”, and indicated that the President of FEDECAMARAS had said that this year they had been consulted sufficiently in advance and had sent a communication to the Ministry of Labour. The Government was working with FEDECAMARAS, with which it had no problem. It held weekly meetings with most of the chambers of employers, and he indicated that the week before he had left for Geneva, he had held a meeting with many of the chambers represented in FEDECAMARAS, at which the subject of the minimum wage had not even been raised. In other words, the employers spoke with one voice in the Conference Committee and another in the Bolivarian Republic of Venezuela. However, the Government was prepared to give them more time and to listen to them, just as it listened to everybody. He concluded that the Convention was fully implemented, and it was to be hoped that this would be reflected in the Conference Committee’s conclusions.

The Employer members deplored the unparliamentary language used in certain statements and thanked the Government of the Bolivarian Republic of Venezuela for the information provided. They reiterated that the shortlist of individual cases was negotiated by the Employer and Worker members, and was then adopted on a tripartite basis by the Conference Committee. Convention No. 26 was a technical Convention that had been ratified by the Bolivarian Republic of Venezuela in 1944, and this was the fifth observation that had been made in relation to it since 2008. They considered that it had been demonstrated that the Bolivarian Republic of Venezuela was not in full compliance with the Convention and had not held real and effective consultations, which required good faith and no move information. The social partners should be given ample opportunity to express their views, which should be given in-depth consideration, even if the final decision-making power lay with the Government. There was a failure to give effect to Article 2 of the Convention, under which the Government could decide to whom the minimum wage would be applied and what method would be used to fix it, although that always had to be done in prior consultation of the social partners, which had not been the case. Article 3 established the freedom to fix the minimum wage, but also required consultation with the employers’ and workers’ organizations concerned. Article 5 required governments to communicate to the Office on an annual basis a list of the trades and parts of trades in which the minimum wage fixing machinery was applied, indicating the methods as well as the results of the application of the machinery. The Committee’s conclusions should call on the Government to comply with the terms of Article 5 and to send the required information to the Office. The Employer members recalled the 368th Report (June 2013) of the Committee on Freedom of Association (CFA), and particularly the conclusions of Case No. 2254 (paragraph 985(g)), in which the CFA stated that it expected that social dialogue would be held and once again requested the Government to convene the tripartite commission provided for in the Basic Labour Act. That conclusion was perfectly applicable to the present case. They also referred to paragraph 52 of the report of the high-level mission that had visited the country in January 2014, which had called for respect for freedom of association, consultations and inclusive and democratic dialogue. In light of the above, the Employer members called for the Government to be urged to ensure full compliance with Convention No. 26, particularly with regard to real and effective consultation of employers’ and workers’ organizations; and for the Government to be requested to comply with Article 5 of the Convention by supplying annual reports to the Office on the methods adopted and consultation. To ensure closer follow up, they urged the parties to continue requesting specific technical assistance on the Convention and on consultation.

The Worker members thanked the Government and the other speakers for the valuable information they had provided. The report of the high-level tripartite mission that had visited the Bolivarian Republic of Venezuela had been submitted to the Governing Body in March 2014 and contained a series of conclusions constituting guidelines on ways to resolve the case. The aim must therefore be to implement these guidelines. Social dialogue included consultation with representative organizations, negotiations and, depending on the country concerned, the establishment of bodies to resolve disputes that might arise between the social partners. In the Bolivarian Republic of Venezuela, it was important to create the necessary conditions to be able to engage in the inclusive dialogue called for by its National Constitution, which should also be fully compatible with the existence of functional tripartite bodies. The Government should accept ILO technical assistance to establish effective social dialogue and a legal framework that defined the role of the respective parties through objective and democratic procedures. During the high-level mission, the Government had stated its willingness to have recourse to technical cooperation programmes. It should give effect to that as soon as possible.

The Government representative noted that the observation of the Committee of Experts referred to massive violations of human rights violations and inculcated by armed groups in the Orientale Province, North and South Kivu and North Katanga. The Government was the first to condemn the violations which had occurred when those territories were under the control of armed groups. Since then, with the support of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo
(MONUSCO), the regular army had taken back those territories, and the Government had initiated judicial proceedings and organized trials resulting in severe convictions of the perpetrators of those crimes. As regards compensation for the victims, the criminals convicted did not have the necessary resources to pay that compensation. The Government called for the cooperation of the international community to grant compensation to the victims, provided that they lodged a complaint and instigated legal proceedings. The Government reaffirmed its commitment to prosecute those who had violated human rights and to put an end to the impunity. In that context, a bill repealing earlier legislation authorizing recourse to forced labour for purposes of national development was before the Parliament. The text would be sent to the Committee of Experts as soon as it had been adopted.

**The Worker members** recalled that this was the second time that the Committee had been called upon to examine the case and that, in 2011, no Government representative had come forward. The Committee of Experts once again noted massive violations of the Convention in the region, which was rich in natural resources, especially in the mining sectors in the regions of North Kivu, the Orientale Province of Katanga and East Kasai. Forced labour was on the increase in the eastern part of the country, which was in the grip of war, and the Government’s attempts to curb it were too limited to be credible. As highlighted by various United Nations Special Rapporteurs, both illegal armed groups and the regular armed forces resorted to forced labour and sexual slavery. Rape, in particular, had become a weapon of war. Men and women from 10 to 40 years of age were subjected to forced labour in quarries, in flagrant violation of the provisions of Convention No. 29, especially Article 25, which required that the exaction of forced labour be effectively punishable as a penal offence. Women, girls and boys were abducted and forced to engage in timber cutting, gold mining and agricultural production for armed groups, which also forcefully recruited porters, domestic workers and bodyguards as combatants. Those actions could particularly be attributed to the Lord’s Resistance Army (LRA) and the Democratic Forces of the Liberation of Rwanda (FDLR), as well as to M23 rebels. The Committee of Experts had also referred to the need to repeal legislation allowing the exaction of labour for national development purposes as a means of collecting unpaid taxes and by persons in preventive detention. The Government had indicated that those texts were outdated and had been repealed de facto, but, in order to guarantee legal certainty, they should be officially repealed by law. In the same way as the Committee of Experts, the Worker members considered that the Government should take measures as a matter of urgency to bring an end to the practices of forced labour and sexual slavery involving civilians, and should ensure that the perpetrators of those violations were brought to justice and the victims compensated.

**The Employer members** recalled that the Conference Committee had addressed the case in 2011 and that the Committee of Experts had addressed it 19 times since 1991. The Committee of Experts had noted with great concern the plight of men and women who were being used in forced labour situations and, as the Government had confirmed, as sex slaves, particularly in areas of armed conflict. The Committee of Experts had also noted the inadequacy of legal provisions establishing sufficiently dissuasive criminal sanctions against perpetrators of forced labour. While the Employer members did not always agree with the comments made by the Committee of Experts on the Convention, they did agree in the present case, which dealt with serious violations of human rights. Women and children were being forced to work in mines and fields and to transport ammunition and other supplies on behalf of various armed groups. Women were also being forced to become sex slaves and domestic workers. Reports suggested that those violations were being perpetrated by rebel groups and rogue elements of regular forces. While the nature of the conflict was complex, legal security was a right of all citizens and more was expected of the Government. Violators should be apprehended and punished. The Employer members commended the Government for its recent information concerning the prosecution of members of the regular forces for cases of rape in conflict areas. However, more could and should be done to protect the human rights of vulnerable members of society. The Government should have sufficient labour inspectors to inspect zones, such as mining areas, where children and women were reportedly used in forced labour situations, particularly in view of its ratification of the Labour Inspection Convention, 1947 (No. 81) in 1968. The Committee of Experts had also noted the inadequacy of criminal sanctions, which contravened Article 25 of Convention No. 29. Although the Labour Code established sanctions of imprisonment or fines, it only provided for imprisonment up to six months in the case of forced labour, which was inadequate and not dissuasive. They noted with some degree of cautious optimism the Government’s report that the law was being amended to provide for sanctions in line with the Convention, and the information provided to the Conference that a bill was currently being prepared and would be put before the Parliament in the near future. Nevertheless, that information had already been provided by the Government in 2011 and a sense of urgency was needed. The Committee of Experts had also noted concerns in the legislation which required minimum personal contributions related to national development programmes, as well as legislation which authorized persons in preventive detention to be subjected to compulsory labour. The Employer members commended the Government for addressing those provisions in the amendments, which it had conceded were contrary to the Convention. Further, while the issue of human rights abuses was central, and protection for victims was needed, the Employer members also noted the concern that some businesses operating in the country could be subjected to trade sanctions or reluctant trade partners because, in supply chains, businesses had to demonstrate that their operations were conducted in areas which observed international labour standards. They firmly urged the Government to avoid the impression of indifference, to repay the mistrust of ILO assistance, technical or otherwise, in order to address all contraventions of Convention No. 29.

**The Worker member of the Democratic Republic of the Congo** stated that the incidence of forced labour was increasing, particularly in the east of the country, which was in the grip of violent conflict, but the Government was not taking sufficient steps to combat the violations perpetrated by both rebel and government forces. The resurgence of sexual slavery and rape was a source of particular concern. The forced recruitment of child soldiers by armed groups was persisting, but the Government was not imposing any effective penalties to stop it. Moreover, the victims of forced labour were also being trafficked for domestic slavery, prostitution or work in agriculture, both within the country as well as to Angola, South Africa, eastern Africa, the Middle East and Europe. All of those occurrences were made worse by the impunity enjoyed by the perpetrators. Existing laws had not been reinforced by the incorporation of effective penalties. The Government should show more determination to investigate, prosecute and penalize the imposition of forced labour. Apart from restoring public safety with the support of MONUSCO, the Government also had to strengthen programmes for
the rehabilitation of victims, build sufficient numbers of schools, recruit teachers and provide essential medical assistance. It was well known that the profits from the exploitation of mineral resources – which were used, for example, in the manufacture of mobile phones – helped to fuel the conflict and that criminal gangs made use of forced labour to exploit those resources. It was up to enterprises, as part of corporate social responsibility, to take action against forced labour or child labour in their production chains.

The Employer member of the Democratic Republic of the Congo confirmed the statements which had been made by the Government. With the support of MONUSCO, the Government had taken effective action since 2013 in order to stop the aforementioned atrocities in the eastern part of the country. With respect to the legislation questioned by the Committee of Experts, the law to repeal it was before Parliament and it should be adopted before the end of the year. The Government’s appeal for the solidarity of the international community for the compensation for victims must be heard.

An observer representing Education International expressed the organization’s grave concern for the fate of the children who were deprived of schooling and who were victims of forced labour and sexual exploitation. Schools were destroyed or used for military purposes. Children recruited by armed groups were both witnesses and perpetrators of the worst abuses. Massive population displacements had increased the number of children who were living in the street and at risk of becoming victims of exploitation. The fundamental right to children’s safety education in the Democratic Republic of the Congo must be restored. To that end, the Government must be urged to ensure the protection of students and teachers, to end impunity for the perpetrators, to ensure the reintegration of children in the education system and to create orphanages for children who had lost their families. The Government should receive technical assistance from the Office to establish an appropriate normative framework which would effectively prohibit the recruitment and exploitation of children, in particular that by the armed forces.

The Government member of Canada indicated that, despite a slight improvement in the country’s security since the defeat of the M23 rebels at the end of 2013, the human rights situation remained a concern. Abundant natural resources attracted militias and armed groups – and sometimes units of the Government’s armed forces – who were forcibly recruiting children, as well as adults. The forced recruitment of adults and children to work in mines or sexual slavery and other forms of forced labour contrary not only to Convention No. 29 but also to the Worst Forms of Child Labour Convention, 1999 (No. 182). Canada echoed the Committee of Experts’ request to the Government of the Democratic Republic of the Congo to take action to end forced labour by improving access to justice and by ensuring that perpetrators were prosecuted and punished and that victims were compensated. The Committee of Experts had also requested the Government to amend its legislation to bring it into line with the requirements of the Convention.

The Worker member of Italy, speaking also on behalf of the Worker members from Switzerland, indicated that almost half a million workers were exposed to forced labour or slavery in the Democratic Republic of the Congo, one of the most common forms of which was debt bondage in the mining sector. There was also an alarming level of violence, especially sexual violence against women and children in the context of forcible recruitment or armed conflicts. One of the root causes of those forced labour practices was lack of accountability and impunity. Law enforcement was weak in the mining areas of the eastern part of the country, especially in cases in which military or security officers protected their staff against investigations or court proceedings. The military justice system remained weak and susceptible to interference by military or political decision makers. The victims were rarely compensated, even when the State was ordered to do so for violations by state agents. Judges, prosecutors and investigators often lacked adequate training and resources. Although articles 16 and 61 of the Constitution prohibited forced labour and slavery, including imprisonment for debt, neither the Penal Code nor the Labour Code provided for sufficiently dissuasive sanctions. Those dissuasive sanctions must be imposed in order to overcome the culture of impunity that perpetuated the country’s humanitarian crisis, which had continued over the past two decades, particularly in the eastern part of the country, resulting in the deaths of an estimated 5 million people. That impunity must be ended and justice must be ensured for those crimes against humanity.

The Worker member of Cameroon, while agreeing with the previous speakers that forced labour of women and children could not be tolerated, wished to place the facts in the security context. As had already been noted, it was often rebel factions who were responsible for forced recruitment and sexual violence. Despite its limited military resources, the Government of the Democratic Republic of the Congo had long been committed to responding to that security challenge. For its part, the Government of Cameroon, which had organized a summit on safety in the Gulf of Guinea at the beginning of 2014, considered that action against forced labour was inseparable from the fight against terrorism, since the former was a manifestation of the latter. Moreover, certain proposed measures were dubious. The speaker queried whether more criminal penalties should be imposed when that might lead to overpopulation of the prisons, or whether labour inspectors should be assigned to conflict zones. The top priority had to lie in restoring peace and safety for the population and combating terrorism with the support of the international community, including technical assistance from the Office.

The Worker member of Uganda stated that the Government’s effort to eradicate forced labour had not been sufficiently broad or pragmatic. The incidence of forced labour had been, and continued to be, exacerbated by avoidable conflict, and women, children and migrants constituted 70 per cent of the victims. Many children were forcibly recruited into forced labour by armed groups in mines and domestic help and protectors and about 2,500 children had reportedly been forcefully recruited as child soldiers. About 6,000 women had reportedly been forced into bonded labour to work in farms, turned into sex slaves and trafficked into other countries to work as prostitutes or domestic workers. Approximately 400 women were reportedly raped daily, with 85 per cent occurring in the conflict areas. The Government needed to pursue well-articulated and broad rescue, rehabilitation and empowerment programmes, and should commit to using education policy to rehabilitate children from all forms of forced labour practices. Social and economic empowerment of women victims would go a long way to improve their chances of recovery and a new future. The Government should commit to that.

The Government member of Switzerland stated that his country, the Demos, was aware of the complexity of the situation in the Democratic Republic of the Congo and was extremely concerned by the serious violations of human rights that persisted there. The sexual slavery of women and children, as well as the violence against civilians to force them to work, were among the worst violations of the Convention. Switzerland was also deeply worried about the incidence of child labour in the mining sector. It there-
fore supported the recommendations of the Committee of Experts and reiterated its recommendations made recently at the 19th Session of the Human Rights Council Universal Periodic Review Working Group, in which it urged the Government to take measures as a matter of urgency to bring an end to physical and sexual violence, including violence perpetrated to coerce civilians into forced labour, and to strengthen the judiciary. Switzerland acknowledged the progress made in that area, such as the creation of the National Human Rights Commission, the adoption of texts regulating the Court of Cassation, the Council of State and Constitutional Court, and the bill providing for the establishment of specialized chambers to penalize human rights violations that had been committed during the past 20 years. It encouraged the Government to continue on that course.

The Government representative expressed his appreciation to all speakers for their contribution to the discussion on the application of Convention No. 29 in his country. As the Government had restored its authority over the territories formerly controlled by armed groups, the facts which had been mentioned were largely in the past. The protection of civilians was part of that process of restoration of the State’s authority and the Government had deployed, for that purpose, brigades of specialized police, such as local brigades, with the cooperation of the Belgium Government. Child soldiers were demobilized and reintegrated into the school system. The construction of 1,000 new schools was expected by the end of 2016. It was also planned to recruit and train 1,000 new labour inspectors and to radically reform the judiciary. Despite the complexity of the situation, the Government was sparing no efforts to end human rights violations.

The Worker members thanked the Government and the other speakers for the information provided. The Worker member of the Democratic Republic of the Congo had emphasized that there were economic interests behind that highly alarming situation. While forced labour continued to prevail, and had even increased in the east of the country, the Government’s efforts to counter it were too weak to be credible. The conflicts which affected the country and its neighbours were not an excuse for inaction. The Government should commit to taking measures on: prevention in consultation with the social partners; the involvement of the Labour Inspectorate, especially in mines in the regions of North Kivu, Orientale Province, Katanga and East Kasai; and identification, protection and rehabilitation of victims, particularly women and children. Measures taken should be matter of urgency to strengthen the Labour Inspectorate and ensure its close cooperation with police and the judiciary system. Genuinely dissuasive penalties should be introduced into the Labour Code and the provisions that contravened the Convention should be repealed. The Government should request an Office technical assistance mission to provide the necessary support.

The Employer members expressed their appreciation concerning the difficulties of policing a troubled zone of conflict. Nevertheless, that did not provide an excuse for failing to take measures to protect the vulnerable members of the population. The Government was urged to finalize its new bill in order to harmonize national law with Article 25 of the Convention by providing sufficiently dissuasive criminal sanctions. Referring to the Government’s comment that the victims of forced labour and sex slavery needed to identify themselves for retribution, the Employer members noted that it might be difficult for the victims to do so, partly for fear of reprisals and fear of stigmatization. The Government was urged to put measures in place to protect victims and make access to justice possible. The regular forces should be specially trained to be deployed to areas to assist victims in coming forward. In addition, education on victims’ rights should be provided. The Employer members urged the Government to request all forms of ILO assistance that would help remedy the situation.

MALAYSIA (ratification: 1957)

The Government provided the following written information.

The Anti-Trafficking Act 2007 was amended in 2010. The Act came into force on 15 November 2010. It is now known as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. The amendment was made so as to strengthen the regulatory framework to deal more effectively with the issues of human trafficking and smuggling of migrants in Malaysia. Interpretation of trafficking in persons and smuggling of migrants in accordance with the Act is as follows: “Trafficking in persons” is defined as all actions involved in acquiring or maintaining the labour or services of a person through coercion, for the purpose of exploitation. The profit in trafficking comes not from the movement of persons but from the sale of a trafficked person’s services or labour in the country of destination. “Smuggling of migrants” means arranging, facilitating or organizing, directly or indirectly, a person’s unlawful entry into or unlawful exit from any country of which the person is not a citizen or permanent resident. Virtually every country in the world is affected by this crime, whether as an origin, transit or destination country for smuggled migrants by profit-seeking criminals.

The amended Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 extends its coverage to the following: Section 15(a), to provide for a new offence. This amendment seeks to provide that a person who brings in transit a trafficked person through land, sea or air, or otherwise arranges or facilitates such act commits an offence. Section 17(a), to provide that the prosecution need not prove the movement or conveyance of the trafficked person to prove that the offence of trafficking in persons had occurred. The prosecution needs only to prove that the trafficked person was subject to exploitation. Part III(a). This new Part III(a) contains ten new sections, namely sections 26(a) to 26(j). The new Part III(a) addresses concerns that have arisen about the smuggling of migrants as a criminal activity distinct from legal or illegal activity on the part of the migrants themselves. The sections specifically criminalize the exploitation of migrants and the generation of illicit profits from the procurement of illegal entry or illegal residence of migrants. Section 41(a), to clarify that a smuggled migrant is only entitled to be protected under that Part if he was a trafficked person. Section 61(a), to provide for the admissibility of a deposition made by a trafficked person or a smuggled migrant who cannot be found during a proceeding in court. The deposition must have been made upon an oath before a session’s court judge or a magistrate if in Malaysia or a consular officer or a judicial officer if outside Malaysia.

The Council for Anti-Trafficking in Persons (MAPO) was established under the Anti-Trafficking in Persons Act 2007. As far as the amended Act is concerned, MAPO is now known as the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants. The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants is headed by the Ministry of Home Affairs Secretary-General. Five taskforces were established to support the council’s function. MAPO’s objective is to make Malaysia internationally accredited as being free of illegal activities in connection with human trafficking and smuggling of migrants. Hence, MAPO’s main function is to prevent and eradicate human trafficking and migrant smuggling crimes through comprehensive enforcement of the Act.

Forced Labour Convention, 1930 (No. 29)
Malaysia (ratification: 1957)
MAPO’s other roles are as follows: Formulate and oversee the implementation of a national action plan on the prevention and suppression of trafficking in persons including the support and protection of trafficked persons. Make recommendations to the minister on all aspects of prevention and suppression of trafficking in persons. Monitor the immigration and emigration patterns in Malaysia for evidence of trafficking and to secure the prompt response of the relevant government agencies or bodies, and non-governmental organizations to problems on trafficking in persons brought to their attention. Coordinate in the formulation of policies and monitor its implementation on issues of trafficking in persons with relevant government agencies or bodies and non-governmental organizations. Formulate and coordinate measures to inform and educate the public, including potential trafficked persons, on the causes and consequences of trafficking in persons. Cooperate and coordinate with international bodies and other similar regional bodies or committees in relation to the problems and issues of trafficking in persons including support and protection of trafficked persons. Advise the government on the issues of trafficking in persons including developments at the international level and the recommendations of international organizations. Collect and collate the data and information, and authorize research, in relation to the prevention and suppression of trafficking in persons. Perform any other functions as directed by the minister for the proper implementation of the Act.

Apart from the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Malaysia has a comprehensive framework of laws and regulations to protect labourers, irrespective of whether local or foreign. In addition, there are nine laws and regulations, specifically, to address the issue of forced labour as follows: Employment Act 1955 which provides minimum protection to employees with regard to their terms and conditions of service consisting of working hours, wages, holidays, retrenchment benefits, etc. Workers Minimum Housing Standards and Amenities Act 1990 (Act 446) which prescribes the minimum standards of housing, to require employers to provide medical and social amenities for workers. Workmen’s Compensation Act 1952 (Act 273) which provides payment of compensation for injuries sustained in accidents during employment. Children and Young Persons (Employment) Act 1966 which provides regulations to protect children and young persons who are engaged in employment in terms of working hours, type of work, abuse, etc. Occupational Safety and Health 1994 which provides regulations to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work and providing industrial codes of practice to maintain or improve the standards of safety and health. Factories and Machinery Act 1967 (Act 139) which provides the control of factories with respect to matters relating to the safety, health and welfare of persons therein, the registration and inspection of machinery and for matters connected therewith. National Wages Consultative Council Act 2011 which aims to set up a council to recommend the minimum wage for various sectors, regions and jobs. Labour Ordinance (Sabah Cap. 67) which provides minimum protection to employees with regard to their terms and conditions of service consisting of working hours, wages, holidays, retrenchment benefits, etc. in Sabah. Labour Ordinance (Sarawak Cap. 76) which provides minimum protection to employees with regard to their terms and conditions of service consisting of working hours, wages, holidays, retrenchment benefits, etc. in Sarawak.

In addition, before the Committee, a Government representative outlined the various measures taken to monitor, prevent and suppress the problem of forced labour and human trafficking. The Government had ratified several international instruments and adopted several pieces of domestic legislation in this regard. These included the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act. This Act required the establishment of a Council for Anti-Trafficking Persons, which included Government representatives and civil society groups, and had been established in 2008. The Government had also adopted the National Action Plan on Trafficking in Persons (2010–15) which outlined the national efforts to combat trafficking in persons in the areas of prevention, rehabilitation, protection and prosecution. The Plan complemented the existing legislation and aimed to provide direction and focus to efforts in order to prevent and suppress trafficking in persons. With regard to cases of trafficking, there had been an increase in the number of cases brought to court. Out of the 128 cases brought in 2013, 114 were still pending before the courts. There had also been five convictions in such cases, and the penalties of imprisonment imposed in these cases would act as a deterrent to prospective perpetrators of this crime. In addition, 128 operations related to trafficking in persons had been conducted in 2013, resulting in 89 investigations, 140 arrests and 650 victims rescued. For the purpose of uniformity, Standard Operating Procedures had been launched in November 2013 for enforcement agencies to ensure a commitment to the process of identification, referral, assistance and social inclusion of presumed or identified victims of trafficking in persons. In addition, 911 protection orders and interim protection orders had been granted. Based on complaints, as well as regular inspections, 1,663 investigations had been conducted at workplaces, while a total of 33,185 inspections had been conducted by the Department of Labour of Peninsular Malaysia. The Government was conducting awareness raising nationwide regarding the new Minimum Wages Order 2012, in order to deter labour exploitation of foreign workers. As of 2014, all employers were mandated to implement this Order, including for foreign workers. Additionally, initiatives to prevent forced labour and better protect victims of trafficking were being undertaken, including steps to: amend the Private Employment Agency Act, 1981; draft a Regulation for Domestic Workers; allow those victims of trafficking who did not require further protection and care to engage in work; and implement a pilot project for a shelter run by a non-governmental organization. In addition, the anti-trafficking legislation, supplemented by the Employment Act, 1955, and other pieces of labour legislation, addressed the issue of irregular workers. In order to regulate the recruitment of foreign workers, the Government had signed Memoranda of Understanding with eight source countries covering the formal sectors, as well as with the Government of Indonesia regarding the recruitment and placement of domestic workers. Moreover, the Government was currently negotiating with four other governments with the intention of concluding such agreements. The entirety of these measures indicated that the Government was committed to combating trafficking in persons and smuggling of migrants in Malaysia.

The Worker members indicated that Malaysia was a destination country for trafficking in men, women and children for purposes of prostitution and forced labour. Despite the written information supplied by the Government on the amendments to the 2007 Anti-Trafficking in Persons Act and Anti-Smuggling of Migrants Act, it was a cause for some concern that the victims of trafficking were nowadays looked upon as irregular workers. More than half of the 120 court cases that had been brought for trafficking in 2012–13 had still not been settled, and no information was available on any sanctions imposed. The vulnerability of migrant workers to forced labour, notably in the textile, plantation and construction sectors, as well
as in domestic work, was also worrying. With 2.2 million registered migrant workers and 1.3 million who were not registered, migrants made up a third of the country’s workforce. Some 40 per cent of undocumented migrant workers were thought to be women. Upon their arrival in the country, migrant workers’ passports were confiscated. Moreover, in many cases they were deceived concerning their wages and working conditions, were underpaid or had their pay withheld. From a legal standpoint, migrant workers were dependent on the placement agencies to which, since 2013, they had had to pay a commission that ought to be paid by their employer. In cases of physical or sexual abuse, they could not appeal to the courts for fear of having their contracts cancelled, whereupon they would become undocumented migrants and were liable to expulsion. Domestic workers were not protected under Malaysia’s labour legislation, were not entitled to the minimum wage and could not join trade unions. No employer had ever been charged with violating the rights of domestic workers. Although there were sometimes bilateral agreements with the country of origin, neither these agreements nor Malaysia showed any concern for the situation of migrant workers. In conclusion, while laws on this issue did exist in Malaysia, they were not applied and no sanctions had ever been imposed.

The Employer members emphasized that the Committee’s duty was of a technical nature, for it had to examine the application of a Convention on the grounds of its provisions. Hence, there was no room for political considerations on what should be the content of the Convention. Turning to the case, they observed that the Committee had examined, for the second consecutive year, the application of the Convention by Malaysia, which was surprising since the Committee of Experts had not received new concerning facts. In that sense, for the Employer members, it was a real case of follow-up. On the grounds of the indications of the Government representative, there was some progress to be noted in what was indeed a difficult regional issue. The case concerned the problem of forced labour and trafficking of persons arising from labour migration. In this regard, they emphasized that, while the Convention imposed on States direct and serious responsibilities, the problem of exaction of forced labour of migrant workers was more a regional issue than a national issue. While the Committee of Experts was limited to examining compliance at the national level when examining the application of a Convention by a specific member State, they considered that the Committee’s duty would be enriched if it was held on the basis of a collection of national responses of all countries concerned in South-East Asia. Due to the regional character of the issue, they welcomed the bilateral and multilateral agreements that had been concluded to tackle this issue. It was also encouraging to note that the Government indeed had undertaken a comprehensive process of labour inspection which showed that it assumed its responsibilities and was acting in good faith. This was even more noteworthy as the exaction of forced labour and the trafficking of migrant workers always occurred in the margins and shadows away from a standard process of labour inspection carried out to ensure the enforcement of law. In conclusion, and in spite of the fact that there was some progress, the Employer members stressed the need to reinforce the efforts to combat trafficking and the exaction of forced labour of migrant workers. To this end, the Government should avail itself of the technical assistance of the ILO.

The Worker member of Malaysia indicated that despite the serious issues raised during the Committee’s session in 2013, there had been no initiatives taken for dialogue between the Government and the various stakeholders. There were 2.4 million authorized migrant workers in Malaysia as well as an additional 2.2 million undocumented workers. The Employment Act, 1955, had been amended to legalize the outsourcing of workers through third-party companies, which contributed to conditions amounting to forced labour. Migrant workers were at the mercy of the labour contractors and were deprived of security of tenure, social security benefits and occupational safety and health protection, and were unable to join unions. The amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act undermined efforts to combat human trafficking by narrowing the legal definition of human trafficking, and by increasing the likelihood that victims of trafficking would be treated as undocumented migrant workers subject to immediate deportation. However, the Government should be praised for establishing shelters for victims of trafficking. Nonetheless, the National Action Plan (2010–15) was only a general document, and contained few concrete steps. The Ministry of Human Resources did not have sufficient officers to address trafficking for labour exploitation, and these officers were not equipped to identify victims of trafficking. Migrant workers lacked access to justice, as those who filed cases against their employers had their work permits cancelled, unilaterally, leaving them in an irregular status. Irregular migrant workers were subject to arrest and punishment, and deportation procedures were often lengthy resulting in indefinite detention under poor conditions, which had resulted in the deaths of several workers. Moreover, domestic workers were not accorded the minimum standards contained in the national law. With reference to examples of abuse of domestic workers, it was underlined that there had been no consultations regarding the proposed regulations on domestic workers. Moreover, while the Minimum Wages Order, 2012, was welcomed, this Order did not apply to domestic workers, and further measures were necessary for its enforcement. The Government was urged to take steps to: welcome an ILO mission to Malaysia to meet the various stakeholders to jointly develop constructive proposals; accept ILO technical assistance without delay; establish national joint councils composed of tripartite partners and non-governmental organizations concerned with migrant workers’ issues; establish regional joint councils; ensure that employers, recruiting agents and officers who contribute to trafficking in person were effectively punished; and ensure that the travel documents of migrant workers were not kept by unauthorized personnel including employers.

The Employer member of Malaysia strongly supported the statement of the Malaysian Government. The observations of the International Trade Union Confederation (ITUC) of August 2013 were not supported by any evidence concerning the alleged trafficking or forced labour of foreign workers. It was clear from the information provided, that the Government had taken and implemented the necessary initiatives to combat and eliminate any practice of human trafficking or forced labour, through various ministries and agencies, such as the Council for Anti-Trafficking in Persons, which was tasked with the enforcement of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007. The Government had also established a comprehensive framework of laws and regulations to protect foreign workers, particularly those subject to forced labour. Furthermore, a Committee established at the Ministry of the Interior allowed to coordinate the anti-trafficking policy of the Government. In the federal state of Selangor, an anti-trafficking council had even envisaged independent anti-trafficking efforts. The Government had continued its public-awareness campaigns on anti-trafficking in the print media, on radio and television, including over 600 public-service-awareness programmes on trafficking in national and fed-
eral state radio stations. Training on anti-trafficking had continuously been provided to officers with responsibilities in this regard, including to Malaysian troops prior to their deployment in international peacekeeping missions. The information submitted by the Government had indicated that there had been 120 prosecutions under the Anti-Trafficking in Persons Act, 2007, resulting in 23 convictions out of seven cases still pending. The Department of Labour had carried out 41,452 inspections in 2012 and 15,370 inspections in the first nine months of 2013 relating to forced or compulsory labour practices. It should be noted that no forced or compulsory labour practices were recorded in the first nine months of 2013. All the initiatives taken showed that the Government had taken the necessary and adequate measures within its capacity and means. They also showed the commitment of the Government and refuted any statements according to which it had failed to take any action since the last discussion of the case in the Conference Committee.

The Government member of Singapore welcomed the concrete efforts and measures taken by the Government to eliminate trafficking in persons, including: the adoption of relevant laws, such as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007; a National Action Plan for 2010–15 focusing on prevention, rehabilitation, protection and prosecution; and the prosecution and conviction of a number of perpetrators by the national courts, including information on the specific penalties imposed in 2012 and 2013. The speaker also noted that additional initiatives were envisaged for the better protection of victims of trafficking, including allowing those who did not require protection and care, to work instead of being placed in shelter homes. Furthermore, he noted the pilot project for an NGO to run a shelter home providing assistance to victims, with support from the Government. The Government had been taking proactive and resolute steps to address the challenges in tackling and combatting trafficking in persons. These efforts should be encouraged and further assistance provided to help the country to fulfill its obligations under the Convention.

The Worker member of Indonesia indicated that Malaysia remained the leading destination for the majority of Indonesia’s migrant workers and that of the 1.2 million registered Indonesian workers in Malaysia, 70 per cent were female domestic workers. There were several reasons why trafficking originated from Indonesia. Firstly, many undocumented workers, which were at a higher risk of becoming trafficking victims, could easily pass into Malaysia by sea or land borders, workers became victims of organized crime syndicates that recruited a significant number of young women by promising work in restaurants and hotels, or by the use of “Guest Relations Officer” visas and false documents, but were subsequently coerced into Malaysia’s commercial sex trade. Reports alleged that collusion between individual police officers and trafficking offenders led to the worsening of the situation. Others became trafficking victims through accumulated debts with labour recruiters, both licensed and unlicensed companies, which used debt bondage to hold documents and threats of violence to keep migrants in forced labour. These were the reasons why the Indonesian Government stopped sending migrant workers to Malaysia between June 2009 and December 2011, and only reauthorized it after an amended Memorandum of Understanding was signed by both countries. The Memorandum of Understanding guaranteed that Indonesian workers would enjoy basic rights such as minimum wages and keeping their own passport, and agreeing to improve the practice of recruitment agencies regarding placement fees, dispute settlement and tightening the process of issuing visas. Great hope initially rested on this Memorandum of Understanding, but it had not been fully implemented and it was important that non-state actors, namely unions, be involved in the monitoring of its implementation. The Malaysian Trade Union Congress had been willing to support and recruit migrant workers as part of their union, but the immigration law prohibited migrant workers from joining trade union activities. Domestic workers were also being categorized as informal workers, leaving them without adequate protection when they needed help. National laws and the Memorandum of Understanding could be more effective if trade unions were able to represent the interests of migrant workers. There was no clear policy acknowledging migrant workers as having the right to enjoy the same legal protection as national workers. Malaysia and Indonesia needed to quickly ratify the Domestic Workers Convention, 2011 (No. 189), so that all domestic workers could be recognized by the law and spared from abuse. Since the Government publicly acknowledged the human trafficking problem, he called upon the Government to show a greater commitment to addressing the issue, including through increased investigations and prosecutions of offences and identification of victims, increased efforts to prosecute trafficking-related corruption by government officials, and greater collaboration with NGOs and international organizations to improve victim services in government shelters.

The Government member of Brunei Darussalam stated his Government’s support for the response of the Government to the observations made by the Conference Committee regarding its compliance with the Convention. He recalled that Brunei Darussalam and Malaysia had shared special relations and cooperation for decades. His Government acknowledged and appreciated the concerns raised by the Conference Committee, but also wished to highlight the positive initiatives and efforts that had been conducted and strategically implemented, namely: the establishment of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007; the efforts toward combating trafficking in persons; and the improvement of the protection and rehabilitation of victims, with resources allocated to combating trafficking in labour through systematic inspections and investigations.

The Worker member of the Philippines expressed the view that the situation of migrant workers had not improved since the discussion in the Conference Committee in 2013, and required more appropriate and bold actions and initiatives. He indicated that Malaysia was a country of destination and, to a lesser extent, a source and transit country for trafficking in persons. Secondly, the majority of trafficking victims voluntarily immigrated to Malaysia in search of a better life, and while many offenders were individual business people, large organized crime syndicates with connections to high government officials were also involved. Many young women were recruited for work in Malaysian restaurants or hotels, some of whom migrated through the use of “Guest Relations Officer” visas, but were subsequently coerced into Malaysia’s commercial sex trade. There were about 2 million documented workers, and about the same amount of undocumented workers in the country. Many migrant workers faced restrictions on movement, deceit and fraud in wages, passport confiscation or debt bondage. While the Government had passed the 2007 Anti-Trafficking and Anti-Smuggling of Migrants Act, victims were more likely to be treated as undocumented migrants than as victims, and were therefore subject to immediate deportation. Only a few prosecutions or arrests for forced labour had been reported. On the contrary, the speaker referred to a case where an Indonesian girl identified as a victim of trafficking by the authorities had been prosecuted for theft, with her employer being left unpunished. The country should therefore intensify its efforts to identify victims of traf-
ficking and investigate and prosecute the crime. It should also increase its efforts to prosecute corruption by government officials in relation to trafficking and enhance collaboration with trade unions, NGOs and international organizations to assist victims in government shelters. Bilateral agreements with neighbouring countries should also be encouraged and closely monitored to ensure effective enforcement.

The Government member of Myanmar welcomed the various efforts and measures of the Government with regard to the elimination of trafficking in persons, not only at the national, but also at the regional and international levels. These measures had included the adoption of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007, and the establishment of the National Action Plan (2010–15). It was positive to learn that the initiatives were also in accordance with regional and international instruments, such as the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. The additional initiatives to provide better protection for victims of trafficking in persons were also welcomed. Furthermore, the memoranda of understanding with at least 13 countries on the recruitment and placement of domestic workers and the current negotiations with other countries to this effect, including Myanmar, were also positive developments.

The Worker member of France noted that workers’ rights in Malaysia were gradually being diminished by a Government which afforded more importance to the welfare of enterprises than the welfare of workers. The increasingly common practice of using recruitment agencies was an illustration of that. In fact, migrant workers had no direct contact with their employers as the agency served as their employer. In addition, those agencies profited from migrants’ work by levying almost half of the wages earned, including for overtime and work on weekends and public holidays. Moreover, until 2013, employers using those recruitment agencies had to pay a placement fee. A government decision of 30 January 2013, however, currently authorized employers to recover the sum paid to the agencies by deducting it from workers’ wages. The Government indicated that the measure was intended to reduce labour costs. The fee should simply have been scrapped since it in fact fell on the employers as the agency served as their employer. In addition, those agencies profited from migrants’ work by levying almost half of the wages earned, including for overtime and work on weekends and public holidays. The recruitment agency that they no longer needed the worker, and to communicate with the ministry responsible for immigration so that the migrant would be returned to the country of origin. Many employers preferred to utilize that workforce rather than a local workforce so as to avoid employment relations. The recruitment agencies thus became “labour service providers”. However, under Malaysian legislation, those practices were illegal. The employment of workers through recruitment agencies was authorized, however such agencies were not supposed to take the place of employers. The Government had recalled in 2010, that outsourcing companies were responsible only for organizing the entry of workers into the country and that the employers were bound to ensure that all the rights of workers were recognized and respected, and to meet all their legal obligations. Employers therefore could not escape employment relations with their workers by claiming that the responsibility fell on the recruitment agency. Furthermore, employers had additional obligations to those workers, beyond the workplace and working time, since they should usually provide accommodation and ensure social security coverage. The law should prevent employers from disregarding existing regulations and engaging migrant workers in conditions of forced labour, as such a situation was unacceptable.

The Government member of Switzerland expressed concern about the allegations of trafficking in persons and the absence of adequate court proceedings in that area. Additionally, the Committee of Experts had reported a deterioration of the situation and treatment of migrant workers, as it appeared they were criminalized rather than protected from abuse. The Swiss Government commended the Government’s efforts to address those issues, but invited it to intensify them. To that end, the Government should formulate regulations on domestic workers and legislation on migrant workers in general, as recommended to it by other United Nations bodies.

The Government member of the Russian Federation considered that the current debate was the last stage in the examination of the case. Malaysian legislation was in conformity with the Convention and provided for heavy sanctions in cases of trafficking in persons. Additionally, the Government had concluded bilateral agreements and agreements with the countries of origin of migrant workers, which were of particular importance. It was taking subsequent action in the framework of the legislation and bilateral agreements. He concluded that the Government had to strengthen its efforts, and in particular to protect the rights of migrant workers. The Government should provide information to the ILO, which in turn should continue to provide technical assistance to the Government.

The Government representative expressed his Government’s respect and heartfelt appreciation for the many views and complimentary comments submitted by the tripartite members with regard to the pertinent issues raised in relation to the application of the Convention. Having regard to the policy of securing a well-balanced growth between social and economic development and the demand for social equity, preservation of dignity, respect, and care for the well-being of people, he reiterated that the Government had undertaken to regularize and heighten its collaborative engagement with the domestic tripartite constituents, in addition to regulating and promulgating policies to solicit and bind common cooperation with governments and the international community so as to minimize, if not eliminate, the possibility of human trafficking across boundaries. The launch by the Government of the National Action Plan against Trafficking in Persons (2010–15), on 30 March 2010, reflected its commitment and aspiration to combating the crime of trafficking in persons, to intensify the implementation of the socio-economic measures, strategic goals and programmes undertaken by the Government which guided the nation in its mission to deal with this heinous crime. The Government’s firm and persistent policy was to secure the continued and constructive execution of principles that had been identified as fundamental in guiding and ensuring the smooth implementation of the Government’s National Action Plan. It was also pertinent to establish clear cooperation and coordination, as well as implementing integrated actions, with respect to information sharing, entry point control, delimitation, prevention, investigation and prosecution, among enforcement agencies, relevant ministries and agencies, including state governments and local authorities, so as to ensure that victims were given timely protection and that perpetrators were punished. The Government strongly believed that the establishment of tripartite cooperation agreement for overcoming irregular practices with regard to human trafficking. The speaker urged the employers and workers to work hand in hand with the Government in order to achieve this common goal. Such commitment would certainly take into consideration the very subject matter addressed in the Conference Committee’s discussion in this regard. He reiterated that the Government,
through the Council of Anti-Trafficking in Persons and Anti-Smuggling of Migrants, had had regular engagement with several relevant government ministries and departments over the years, with a view to innovating new ways of tackling and managing issues associated with trafficking in persons and smuggling of migrants, this amidst challenges in the labour market. The Government needed collaborative networking and the unwavering support by all concerned in order to ensure the smooth implementation of its policy. The complex and challenging issues relating to trafficking in persons and the mobilization of persons across regions needed to be regulated effectively.

The Worker members recalled that in 2013, the Conference Committee had requested the Government to take immediate and effective steps, but that it had not done so and had followed none of the Committee’s recommendations. According to the Malaysian trade unions, there had been no social dialogue either, with the Government merely organizing public-awareness workshops and training a special team of 43 officials. In spite of the large number of workplace inspection visits that had been carried out (more than 15,000 in the first nine months of 2013), the labour inspectorate had failed to uncover a single instance of forced labour. In the document the Government had submitted to the Office, it cited nine laws and regulations that dealt with forced labour, but the Worker members wondered what purpose such a judicial arsenal of provisions could serve if the number of migrant workers engaged in forced labour in Malaysia continued to rise. The Government should adopt effective measures that afforded migrant workers full protection and allowed them to exercise their rights, especially their right to compensation in cases of abuse. Victims of forced labour should no longer be treated as delinquents. As to domestic workers, the Government should enforce the Minimum Standards Act and ratify Convention No. 189. More than anything, the Government should ensure compliance with all legislation that prohibited the confiscation of passports, provided for compulsory insurance against occupational accidents and banned placement recruitment agencies from acting as employers. Purveyors of forced labour should be taken to court and sentenced to fines that were genuinely dissuasive. The Worker members called on the Government to: establish a national migration board composed of representatives of all the parties concerned, including the social partners and NGOs in order to monitor migration policy; set up regional boards to work with the source countries of migrant workers and with social workers and NGOs in order to monitor the compliance of bilateral agreements with Convention No. 29 and other fundamental Conventions; and to accept a direct contacts mission to assess the entire situation.

The Employer members stated that the discussion had overlapped with issues of labour migration and practices of recruitment agencies, and asserted that the Conference Committee should only supervise issues within the scope of the Convention. They indicated that while differences had emerged during the discussion, there was also a strong determination that this Convention should be robustly supervised for all countries, including Malaysia, and that forced labour needed to be eradicated. The difference was that while the Worker members considered that no substantial progress had been achieved, the Employer members saw this as a case of progress, considering that the Government had presented a series of steps which provided a solid response to the Conference Committee’s June 2013 discussion. In addition, they were encouraged by the Government’s acknowledgment of the issue in this case and of the fact that its journey was incomplete and that it required the support of external actors. They encouraged the Government to use the capacities of the ILO and those existing within the country, and pointed out that multiple tools were available to help it resolve its forced labour issues. They finished by stating that further progress could be made, but that strong national determination was necessary in order to achieve this.

**SAUDI ARABIA (ratification: 1978)**

A Government representative expressed his disappointment that his country was on the list of the Conference Committee for the second consecutive year, contrary to progress that had been made in law and practice, for which he had expected appreciation after the direct contacts mission visited the country at the beginning of 2014. The observations of the Committee of Experts were a repetition of previous observations, to which the Ministry had replied in detail. The Committee of Experts should have examined the situation in the light of the new regulations, including Order of the Council of Ministers No. 166 of 2000, which abolished the sponsorship system. There was now a contractual relationship between domestic workers and employers which specified the rights and duties of both parties. There were also bilateral agreements signed between the Kingdom of Saudi Arabia and some countries of origin, which included the formulation of a certified model labour contract. Recruitment agencies which were found to be in violation of this new regulation were penalized. The Ministry of Labour had adopted an integrated plan defining the rights of both employers and domestic workers. Furthermore, a wage protection programme had been established. A free hotline service had been set up in eight languages to inform foreign workers of their rights and obligations, and so that they could notify infringements. Dispute settlement committees between domestic workers and employers had been set up in the different labour offices across the country. The Ministry was also following up on the implementation of regulations governed the activities of private recruitment agencies. Regarding the transfer of domestic workers from one employer to another, and with respect to termination of service, the context of a highly complex developed labour market which encompassed workers with over 50 nationalities, and varying cultures, should be borne in mind. Many ministerial regulations had been adopted, including the Standards Act and ratify Convention No. 29, were in conformity with Article 25 of the Convention, in accordance with Ministerial Council Decision No. 244 of 2009 on the prevention of human trafficking, which was in conformity with international standards on human trafficking. Effective criminal penalties, including imprisonment, were in conformity with Article 25 of the Convention. The regulation prohibiting employers from requiring domestic work which jeopardized the health of domestic workers, demeaning work or types of work which were not specified in the labour contract. The Ministry would communicate any information on penalties imposed on employers.
who subjected foreign workers, including domestic workers, to forced labour. He concluded by reiterating that due account should be taken of the Government’s will to comply fully with its constitutional obligations and its commitment to ensuring decent work for all residents on its territory, in close collaboration with the social partners.

The Employer members noted that this was the seventh time this case had been discussed since 1994 and that it raised issues relating to the labour conditions of domestic workers. The Domestic Workers Convention, 2011 (No. 189), had however not been ratified by Saudi Arabia. A number of concerns had previously been raised by the Committee, in particular the exclusion of domestic workers from the provisions of the Labour Code; the information obtained by the United Nations Special Rapporteur on violence against women in 2009; and the informal sponsorship system, sometimes called kafala, which limited the freedom of movement of migrant workers. However, important changes had been introduced and the Government had made significant progress, as indicated by its statement concerning the increased awareness of the seriousness of the situation of domestic migrant workers. The Council of Ministers had introduced a new regulation by virtue of Order No. 310 of 7 September 2013, which aimed to regulate the relationship between employers and domestic workers in a more equitable manner. A bilateral agreement between Saudi Arabia and Indonesia also provided better protection for hundreds of thousands of Indonesian domestic workers, and was an important step forward towards resolving the many concerns expressed by the Committee of Experts over the years. Some issues however were not addressed by the new regulation, in particular the freedom of movement of migrant workers without the written consent of their employer, and recourse to a competent authority for non-financial complaints. The Government was urged to take additional measures in this respect. This also applied to measures to combat trafficking in persons, in relation to which progress had also been made, in particular through the adoption of Order No. 244 of 2009. This had resulted in better mechanisms for monitoring and enforcement of the anti-trafficking legislation and expanded the protection, rehabilitation and repatriation of victims of trafficking in a coordinated manner by the various public bodies. These efforts were commendable and the Employer members urged the Government to complete the process and to identify and eliminate all cases of forced labour in the country once and for all.

The Employer members emphasized that the Committee of Experts had already raised the issue on several occasions the vulnerability of worker migrants, and in particular of domestic workers, in Saudi Arabia. Those workers were subject to a visa sponsorship system (kafala) and their passports and residence permits were taken away upon arrival in the country. They could not hand in their notice, change employer or leave the country without written authorization from their employer. The system as a whole resulted in those workers being in a situation akin to situation similar to slavery. Domestic workers often found themselves in even more serious situations. The Labour Code did not apply to them. They were sometimes locked up in the house where they worked without being able to make or receive telephone calls, and they were often subject to working conditions that amounted to exploitation. The observation of the Committee of Experts mentioned the adoption of a new regulation which specified the rights and obligations of domestic workers and their employers. The new regulation specified the tasks, the hours of work and rest, the wages and the bodies which could be addressed in the case of non-payment. In return, domestic workers had to respect the teachings of Islam, the rules in place and the culture of Saudi society. They could not refuse work or leave their service without a legitimate reason. Those who violated the provisions would be subject to a fine, be prohibited from working in the country and required to pay the costs of the return journey. The Committee of Experts had identified a series of shortcomings in the regulation. First, domestic workers could still not change jobs or leave the country without the permission of their employer. In this regard, the Committee of Experts had requested information from the Government in 2013 on the application of section 48 of the Labour Code, which provided that an employer may require an apprentice to continue to work after apprenticeship for a period of twice the length of the apprenticeship and at least one year. If the Government had so far replied that no case of apprentices has been brought before the competent courts, it should instead inform the Committee of the cases in which apprentices were forced to continue working after their apprenticeships. Whatever the number, the Government could have simply removed section 48 of the Labour Code. Secondly, the regulation had not ended the withholding of passports, or in other words the so-called sponsorship system had not changed. The Government indicated that these practices were informal and not recognized by law. It would be desirable for the Government to provide clear information concerning the texts which prohibit these practices. Thirdly, domestic workers were not always able to appeal to an independent authority to resolve non-financial issues. Finally, the new regulation still did not establish for criminal penalties and there was still no general prohibition of forced labour in the Labour Code. The new regulation could nevertheless have been welcomed as a first step towards the total abolition of forced labour, had the protection and expedited deportation of thousands of migrant workers from Ethiopia, India, Philippines and Yemen not occurred a few months earlier. This operation contradicted all the efforts and all the measures that the Government has just listed and the Committee had the right to demand explanations from the Government on this issue.

The Employer member of Saudi Arabia expressed support for this fundamental Convention, which ensured the well-being of migrant and domestic workers. Two years ago, she had participated in the adoption of the ILO instruments on domestic work. She emphasized that women, both as employers and workers, had been able to use and help each other to move upward economically beyond the traditional function of caregivers. In this manner, 2 million migrant domestic workers had sent remittances of US$7 billion annually. That did not diminish the need to improve and speed up the protection of migrant workers. The Employer members stressed the substantial progress Saudi Arabia had made in the media which had pressed for better laws and more protective mechanisms for monitoring and enforcement of the anti-trafficking legislation, and expanded the protection, rehabilitation and repatriation of victims of trafficking in a coordinated manner. The Employer member of Somalia reaffirmed that migrant workers and migrant women domestic workers, in particular, remained vulnerable to labour exploitation and abuses by their employers in Saudi Arabia. Migrant workers faced a long list of typical labour abuses which emanated from the sponsorship system governing the employment of foreign nationals. Migrant workers comprised about one third of the population, but were not covered by labour laws and had few or no remedies against labour violations. Moreover, migrant workers who were able to bring their employers to court became em-
The Working conditions of migrant workers in the light of the sponsorship system (kafala), the mortality rate of migrant workers was increasing. Since 2000, around 7,500 Nepalese migrant workers between 20 and 40 years of age had died due to industrial and road accidents, suicides and “heart attack” due to long working hours and the lack of rest. The Government acknowledged the mortality of these deaths were due to natural causes. However, when the underlying causes of this high death rate were examined the increase was due to the forced labour practices that existed in the country. Under the sponsorship system, without the permission of the employer, workers could neither change employment nor return to their own country, even if they were not able to perform the work. When examined the sponsorship system in the light of Article 2 of the Convention, the only option for foreign workers appeared to be to work with the same employer, even if they did not wish to do so. Due to this system, workers committed suicide and could be easily exploited by employers. Workers were hired to work for more than 12 hours without drinking water at construction sites and with long exposure to heat and the sun. These were not isolated deaths, but the result of slavery conditions that existed in the country, and he urged the Government to abolish the so-called kafala system and to respect and enforce the Convention.

The Government member of the Russian Federation said that the Committee of Experts had rightly expressed its concern with regard to the working conditions of migrant workers in Saudi Arabia, whose rights were limited. They could not change employers, leave the country or terminate their employment contract. However, he welcomed the measures adopted recently by the Government, such as a regulation that set out the rights and obligations of employers and workers, and that they were taking measures to strengthen the duties of employers. It was essential to combat the non-payment of wages and to implement the necessary conditions to ensure that migrant workers could assert their rights. The Government, which was on the right path, needed to pursue its efforts and continue to provide information on the application of the Convention.

The Working conditions of migrant workers in the light of the sponsorship system (kafala), he emphasized that there was no ideal State and that every country had positive and negative sides. He expressed surprise that Saudi Arabia was on the list before the Conference Committee for the second consecutive year, despite the numerous achievements made with respect to the formulation of laws in a country which provided more than 2 million job opportunities for migrant workers at a time of unemployment in many countries. He believed that the initiatives taken by Saudi Arabia for the protection of foreign workers, such as stopping the retention of workers’ passports and granting rectification delays for undocumented workers, needed to be acknowledged by the Committee. He also recalled the information provided by the Government representative with respect to the establishment of a free hotline service in eight languages to inform migrant workers about the measures being taken to address the situation of domestic workers. Not all problems had been resolved and problems existed at the individual level, but measures were being taken, such as the introduction of penalties against employers who had confiscated the passports of domestic workers, and the establishment of a hotline. These initiatives illustrated the Government’s satisfactory response to the Convention.

An observer representing the International Domestic Workers Federation (IDWF) said that it was necessary to combat violence against domestic workers in Saudi Arabia. Domestic workers there were trapped under the kafala system, which prevented them from leaving their employment, even if they were abused. Many domestic workers in Saudi Arabia worked for 90 hours a week or more, lacked adequate food and were not entitled to overtime pay or compensation in the case of work-related injuries. Common complaints included unpaid wages, employers withholding passports to prevent them from leaving and confinement to the house. Living in employers’ houses made domestic workers extremely isolated, and vulnerable to exploitation and abuse. According to a non-governmental organization (NGO), between 30 and 50 domestic workers reported abuse and exploitation at the centre for housemaid affairs in Riyadh. Domestic workers who dared to submit official complaints for mistreatment ran the risk of their employers filing counter claims of witchcraft or adultery, which were severely punished in Saudi Arabia. Forty Indonesian domestic workers convicted of witchcraft, sorcery or murdering their employers currently faced potential death sentences, but an Indonesian NGO following their cases reported that most of them had acted in self-defence against physical or sexual abuse. A 2013 decree entitled domestic workers to nine hours of rest a day – but they could still be made to work for the remaining 15. The current proposed unified contract for domestic workers, while an improvement on the 2012 version, continued to lack enforcement mechanisms and was not fully in line with Convention No. 189, which needed to be implemented to free all domestic workers from slavery.

The Working conditions of migrant workers in the light of the sponsorship system (kafala), he said that the Committee of Experts had rightly expressed its concern with regard to the working conditions of migrant workers in Saudi Arabia, whose rights were limited. They could not change employers, leave the country or terminate their employment contract. However, he welcomed the measures adopted recently by the Government, such as a regulation that set out the rights and obligations of employers and workers, and that they were taking measures to strengthen the duties of employers. It was essential to combat the non-payment of wages and to implement the necessary conditions to ensure that migrant workers could assert their rights. The Government, which was on the right path, needed to pursue its efforts and continue to provide information on the application of the Convention.
of their rights and obligations and to report infringements. He also emphasized the importance of the requirement of certified employment contracts between workers and employers, which specified the rights and obligations of each party and granted the right to workers to institute legal proceedings against employers considered to be in violation of contracts.

The Government member of Lebanon acknowledged the Government of Saudi Arabia’s commitment to complying with Convention No. 29, reforming the kafala system and giving effect to the principles of Convention No. 189. In his view, the Saudi Government was doing all it could and its efforts deserved the Committee’s support. There were many Lebanese migrant workers currently working in Saudi Arabia, and the only criticism his Government was aware of related to the high summer temperatures. Change needed to be progressive, otherwise it would meet with resistance and negative reactions. Furthermore, it should not be forgotten that Islamic radicalism sometimes led to heightened concerns for governments, which resulted in the adoption of harsh security measures. The Committee should not focus on a few unrepresentative cases that did not correspond to the reality on the ground.

The Government representative thanked the previous speakers for their support and constructive criticism, and said that the Government would pursue its efforts. Its aims were to continue developing and regulating the Saudi labour market, which was stable and provided numerous employment opportunities and a working environment exempt from discrimination, and to provide all workers with decent working conditions. The Government had been working with an international consultancy firm, from which it had ordered a labour market survey. This survey had taken into consideration more than 35 institutions and identified the major problems encountered by foreign workers throughout their journey from their country of origin to their country of destination, and upon their return. A number of initiatives had already been taken, such as the e-registration of labour contracts and the signing of bilateral agreements with countries of origin, which clearly set out the rights and obligations of each party. Many cooperation projects were under way with the ILO, including a labour inspection evaluation project and a project to strengthen national capacities; and a training agreement would be signed in the near future. The Government was also cooperating with the International Labour Standards Department following the recent visit of a direct contacts mission to the country. He reiterated the Government’s commitment to pursuing its cooperation with the ILO to deal with the challenges ahead, while taking into account the characteristics of the national labour market.

The Employer members, while acknowledging the serious circumstances that had ultimately brought this case before the Committee, believed that sometimes incidents needed to be put into perspective. Given the high number of domestic workers in Saudi Arabia (2 million), it was not surprising to observe that occasionally terrible incidents occurred, and there were not only cases of employers treating their employees badly, but also instances in which domestic workers committed terrible crimes against their employers or their employers’ families. The Committee should not become so attached to those exceptional incidents as to lose sight of the whole picture. The concerns relating to aspects of the migrant work system in Saudi Arabia had been acknowledged by the Government. Regulations had been, and were being undertaken on the ground, and bilateral relationships had been established, for instance with Indonesia and several other countries. The Government had started to tackle a very difficult problem, and it would take years to resolve it. Changing rules was easier than changing a culture and the informal but prevalent kafala system was a cultural phenomenon. Although aware of the difficulties encountered by the Government, the Employer members indicated that the prosecution of wrong-doers would send the right message, and the ability of migrant workers to report infringements, as well as the requirement to pay wages and grant holidays, would eventually help. All these measures would impact on practical everyday realities, thus contributing to a more open, transparent, fair and decent domestic work culture. They acknowledged that Saudi Arabia was working towards the common goal of the non-existence of forced labour. The Government should be commended for its efforts, but strongly encouraged to continue in the right direction.

The Worker members emphasized that giving work to women from the Philippines and other distant countries was not a favour bestowed upon them. It involved showing respect to these workers because they provided benefits to their employers. For many years, the migrant workers in Saudi Arabia, and especially domestic workers, had found themselves in conditions similar to slavery because of the system of sponsorship. Their passports were confiscated, they could not leave the country without their employer’s authorization, and they had no possibility of exercising their rights or of obtaining compensation for the abuse they had suffered. Furthermore, the Labour Code did not apply to them. In 2013, following the examination by the Committee of the application of Convention No. 111 by Saudi Arabia, the Government had undertaken to speed up the adoption of legal texts, in particular those pertaining to the working conditions of domestic workers. New regulations had in fact been approved on the rights and obligations of these workers and their employers. However, they only covered working conditions (duties, wages, working hours and time of rest), and did not cover the issue of sponsorship. All provisions which allowed forced labour by migrant workers should be immediately repealed. The Worker members called upon the Government to introduce a ban on forced labour into the Labour Code and to include penalties in the new regulations. They also reiterated the request they had made in 2013 for a direct contacts mission to gather information on the situation in the field and improve the application of Convention No. 29, and called for the submission of a detailed report on the application of the Convention for examination by the Committee of Experts at its next meeting.

Labour Inspection Convention, 1974 (No. 81)
Labour Inspection Convention, 1974 (No. 81)  
Bangladesh (ratification: 1972)

all relevant stakeholders. Consultations were under way with the relevant stakeholders.

With respect to the restructuring of the labour inspection system, the Government had completed, in an accelerated process, the restructuring of the Directorate of Inspection, which had become a department in mid-January 2013. The Directorate of Inspection had previously only had 314 staff members. After restructuring, the staff of the newly formed department had increased by more than threefold to 993 members. In the first phase, 679 new posts had already been approved for the department. Significantly, among these posts, 392 were exclusively for inspectors. Since May 2013, 67 inspectors had been appointed to fill the existing vacant posts complying with the existing procedures. The recruitment of additional inspectors was in progress. After restructuring, additional resources and logistics were being provided for the department. Regarding export processing zones (EPZs) and the Workers’ Welfare Association and Industrial Relations Act 2010, a high-level committee was actively working to prepare a separate and comprehensive EPZ Labour Act. A preliminary draft had been prepared and consultation on the draft with the relevant stakeholders was underway. The Bangladesh Export Processing Zones Authority (BEPZA) was responsible for ensuring the rights and privileges of the workers of enterprises operating in EPZs through constant supervision and monitoring by BEPZA officials and counsellors. All members of the elected Executive Committee of the Workers Welfare Associations (WWA) were actively performing their activities as Collective Bargaining Agents (CBAs). With respect to the measures to ensure effective inspection of the construction sector under the Bangladesh National Building Code (BNBC), responsibility for the enforcement of building codes lay with different administrative authorities all over the country. Those authorities were in the process of increasing their staff and providing modern equipment to ensure enforcement of the BNBC. Regular training was provided to building inspectors, fire inspectors and factory inspectors. Regarding labour inspection visits in Bangladesh, he stated that labour inspections were essentially carried out by labour inspectors and by special inspection teams. The labour inspectors also carried out confidential inspections. In case of non-compliance, appropriate measures were taken based on the observations from inspection under the Labour Act. Regarding occupational accidents and diseases, according to the Bangladesh Labour Act, registers were maintained by factories for this purpose. All programmes were conducted for employers and directives were given to employers on a regular basis. In the recent restructuring process, the number of posts of inspectors had been increased to ensure occupational health and safety. He particularly wished to mention that the Government had already adopted a National Occupational Health and Safety Policy in 2013 to address issues related to the health and safety of workers.

He extended his sincere thanks to the ILO and other development partners for their technical support and assistance in improving working conditions in Bangladesh. The assessment of fire and electrical safety and the structural integrity of ready-made garment (RMG) factories was being carried out with the technical assistance of the ILO and other development partners, including brands and buyers. With the assistance of the ILO, a publicly accessible database system for labour inspection related issues had been launched recently. The development of another database system on trade union issues was under way with the Department of Labour. The ILO was also providing training and logistics for inspectors. Finally, a US$24.2 million project was being implemented to improve the working conditions in the RMG sector of Bangladesh. His Government deeply appreciated the constructive engagement of the ILO and other development partners for ensuring better working conditions in Bangladesh. In the past year, Bangladesh had done its best to mobilize its systems, resources and capacities to ensure labour rights, safety and security. Bangladesh would however need more time, understanding and support from all to achieve its objectives.

The Employer members noted that this case had been double footnoted by the Committee of Experts, which had requested the Government to supply full particulars to the Committee on the Application of Standards. The context of this case was important for the Employer members. The shocking loss of life in the world’s second biggest clothing exporter had quite correctly forced private sector businesses around the globe to ask important questions about their supply chains and take more social and ethical responsibility. Given the context, the Employer members noted that the Bangladeshi employers, trade unions and the Government had quickly agreed on the steps that needed to be taken, including factory health and safety standards and details on how the reforms would be financed. This was not a case in which there was a problem with cooperation with the ILO or requesting technical assistance. On 24 March 2013, the ILO had accepted a formal request to assist in the implementation and coordination of the National Tripartite Plan of Action on Fire Safety (NTPA). From 1 to 4 May 2013, a high-level ILO mission had visited Bangladesh to identify key areas for action which had resulted in the signing of a joint statement by the tripartite partners, which built on the NTPA. The Joint Statement identified key areas for action such as strengthening labour inspection, worker and management training and awareness of occupational safety and health (OSH) and workers’ rights, rehabilitation and skills training of workers with disabilities. On 13 May 2013, two global unions (IndustriALL and UNI Global) and more than 150 international brands and retailers had signed the Accord on Fire and Building Safety in Bangladesh. This was a five-year programme under which companies committed to ensuring the implementation of health and safety measures. On 8 July 2013, the European Union (EU), the Government of Bangladesh and the ILO had issued the Global Sustainability Compact to promote improved labour standards, the structural integrity of buildings and OSH, and responsible business conduct in the RMG sector and knitwear industry in Bangladesh. The Compact built upon the Accord and aimed at creating a coordination and monitoring role to the ILO. On 10 July 2013, the Alliance for Bangladesh Worker Safety had launched by 26 North American retailers and brands. It was a five-year programme under which the companies committed to ensuring the implementation of health and safety measures. On 15 July 2013, the Government had adopted amendments to the Labour Act to bolster OSH. The amendments gave special attention to the requirements of Articles 1, 4 and 23 of the Convention in order to enforce labour inspection with regard to health, safety and the protection of workers in the workplace. On 25 July 2013, the NTPA had been merged with the Joint Statement to form the National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh. On 22 October 2013, the ILO had launched a $24 million programme aimed at making the Bangladeshi garment industry safer. The three-and-a-half year initiative focused on minimizing the threat of fire and building collapse in RMG factories and on ensuring the rights and safety of workers. On 22 November 2013, assessments of the structural integrity and fire safety of RMG factory buildings had officially commenced. On 15 January 2014, the Government of Bangla-
Bangladesh had upgraded the Chief Inspector of Factories and Establishments Office to a department, sanctioning 679 new staff positions in the Directorate, including 392 new inspectors. On 22 January 2014, training of the first batch of the newly recruited labour inspectors had started in Dhaka, focusing on capacity building.

The Employer members understood that steps had been taken to reorganize the Department of Inspection under a project, “Modernization and strengthening of the Department of Inspection for Factories and Establishments” (DIFE). Under the project, the Department had been enlarged, more inspectors had been appointed and the system of inspection improved. As required by Articles 9 and 14 of the Convention, they understood that the Government had appointed three categories of inspectors, namely medical, engineering and general. These inspectors provided technical expert services not only for the purpose of labour inspection, but also for the enforcement of legislation. The Employer members also understood that the Government had plans to work with the ILO to find ways of bringing EPZ areas under the purview of national labour law. More information in this regard would be welcomed. In supervising this case, it was necessary to consider the self-evident coordination problems that existed on the ground. The ILO had been working to achieve co-ordination between the National Tripartite Committee (Bangladesh University of Engineering and Technology – BUET), Accord and Alliance in order to harmonize standards and methodologies and to avoid duplication of assessments. Indeed, when considering the request by the Committee of Experts for more information, it had been noted that, at the technical meeting of 15 May 2014 organized by the ILO, technical experts from the BUET, Accord and Alliance had agreed on a format for summary reports to be used by all three initiatives for publication of the reports to be published on the website of the Inspector General. The Employer members urged the Government to provide the requested full particulars, especially with regard to the technical assistance received from the ILO to date.

The Worker members recalled the unimaginable horror of the Rana Plaza disaster, which had claimed the lives of over 1,000 garment workers. This disaster had followed the Tazreen Fashions factory fire of 2012, in which more than 100 workers had been trapped inside the factory and had died in the fire or as they leapt from the windows in an attempt to escape. These preventable tragedies provoked soul-searching in government offices and corporate boardrooms around the world, as it became obvious that neither the Directorate of Labour nor the Department of Inspection for Factories and Establishments had legal staff, and factories often hired experienced lawyers to fight charges, quickly overwhelming the under-resourced inspectors and investigators and causing violations not to be pursued. With respect to coordination, Article 5 of the Convention called for effective cooperation between the inspection services and other government services engaged in similar activities. Despite plans regarding building and fire safety, there appeared to remain a serious lack of coordination and cooperation among relevant government agencies and private institutions on this issue, or indeed any issues related to the matters subject to labour inspection. Officials of the labour inspectorate were supposed to collaborate with both employers’ and workers’ organizations. In this regard, the Worker members did not see the same dedication to collaborating with trade unions as with employers.

With respect to EPZs, Convention No. 81 should apply to all workplaces, with limited exceptions. However, the EPZs, in which over 400,000 workers worked, remained outside the purview of the Ministry of Labour. Thus, the Ministry did not carry out any inspections in the zones. Instead, BEPZA relied on roughly 60 “counsellors” which they claimed were akin to labour inspectors. Instead, BEPZA relied on roughly 60 “counsellors” which they claimed were akin to labour inspectors. However, workers had reported that these “counsellors” did not carry out inspections and at best handled grievances. Workers also found that they were not independent and were primarily concerned with protecting investors. Though the Government had promised to bring the EPZs under the Labour Act, rather than the much criticized EPZ Workers’ Welfare Association and Industrial Relations Act, it had failed to do so to date. The Government must immediately work to ensure that EPZs were covered by the Labour Act and that the Ministry of Labour could conduct inspections in the EPZs. This was particularly important given the ban on trade unions in EPZs and would empower workers to monitor and enforce the application of the labour law. With regard to enforcement, the inspectors did not have the power to penalize violators; they only could report the case to the courts. The fines available under the Labour Act were negligible, for example fines for obstructing a labour inspector from carrying out his or her duties had risen from 5,000 to 25,000 taka (BDT), a mere $325. Penal sanctions were available in some cases, including for obstruction of inspectors, which was now up to six months of imprisonment. Fines for labour law violations generally still remained far too low to be dissuasive. Moreover, due to
Labour Inspection Convention, 1974 (No. 81)
Bangladesh (ratification: 1972)

lengthy legal processes and corruption at all levels, the penalties for violations of the Labour Act were not adequately enforced. With the exception of the Rana Plaza case, the Worker members were unaware of any criminal proceedings pending for any violation of the Labour Act. The extent to which any penalties were imposed and collected was unknown, as the data was not available. The Inspection Department did not currently have any procedure to investigate complaints by workers or unions concerning violations by employers. Mandatory procedures for the Inspection Department should therefore be included in the Labour Act or proposed rules, with specific time frames. Investigations should be open and workers or unions be allowed to participate and to present evidence in support of their complaints.

Of particular concern to the Worker members was the wave of anti-union dismissals perpetrated by employers in the RMG sector which the inspectorate had failed to address. There had been much attention given to the fact that many new trade unions had been registered in the RMG sector after the Government reversed its policy of keeping the RMG sector free of independent trade unions. However, what had received less attention was the wave of dismissals. The leaders of many of these newly registered unions had suffered retribution, sometimes violent, by management or their agents. Some union leaders had been brutally beaten and hospitalized as a result. Entire executive boards had been sacked and up to now there had been no adequate response from the labour inspectorate.

With respect to transparency, Articles 20 and 21 of the Convention provided that the Government must issue public reports, at least annually, on the results of their inspection activities. However, reporting on inspection was infrequent and incomplete. In the RMG sector, where factories were being inspected by a combination of public and private initiatives, transparency on factory inspections left much to be desired. To date, the BUET, under the supervision of the National Tripartite Committee, had failed to publicly disclose any inspection reports. DIFE had established an RMG sector database which included factory names, addresses, owner names, number of workers, and the number of inspections completed. However, the database included no more substantive content, such as violations identified, fines and sanctions administered, factories closed or relocated or violations remediated. Only the private initiatives had published factory reports, and only the Accord had published them in English and Bengali. The Implementing Committee members and factory owners were threatening lawsuits against the Accord for doing the job that the Government should be doing. Finally, with regard to health and safety, it was noted that, while the amended Labour Act provided for the creation of occupational health and safety committees, the rules and regulations had not been adopted. There was no further time for delay. While modest steps had been made, the Concerned Member of Bangladesh must act with a much greater sense of urgency and purpose than had been seen to date. Systemic reforms were necessary. If it did not commit itself to the construction of an effective labour inspection system now and take the steps to realize that commitment, labour violations of all kinds would continue. It would be only a matter of time before the next disaster claimed the lives of more Bangladeshi workers.

The Worker member of Bangladesh recalled that the focus of the 2013 amendment to the Bangladesh Labour Act, 2006, was to ensure workers’ welfare and safety, industrial safety as well as transparency in trade union registration and wage payment systems. In concrete terms, following the amendments: workers no longer needed to submit to employers the lists of workers intending to form a trade union; workers were entitled to form a participation committee through direct elections; employers and workers had the possibility of referring to external expert support in collective bargaining matters at the enterprise level; employers had the possibility to opt for the payment of wages through an electronic payment system; and mandatory safety committees were introduced in enterprises with more than 50 workers. It was also expected that the amendment would improve working conditions at the enterprise level through social dialogue. In this respect, there had been over 100 per cent growth in trade union registration in the first five months of 2014. Regarding the restructuring of the labour inspection system, the Office of the Chief Inspector of Factories and Establishments had been upgraded to a Department with offices in 23 districts and 575 inspectors. The post of the Chief Inspector had been upgraded to Inspector General. A total of 39 inspectors had since been recruited and the Public Service Commission had recommended the recruitment of 25 more inspectors. In addition, after the tragedy of Rana Plaza, and in response to technical assistance requested by the Government, the social partners, global buyers and development partners in Bangladesh, the Ready-Made Garment Programme had been developed with the objective of achieving immediate results through rapid action on building and fire capacity, as well as support to survivors. Long-term results were expected through the implementation of improved legislation on working conditions. The Programme was also designed to support interventions identified by the National Tripartite Plan of Action on Fire Safety and Structural Integrity of Buildings in the Ready-Made Garment Industry, as updated in July 2013, as well as to support the commitments of the Government formulated in the Global Compact for Continuous Improvements in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry, which had been signed on 23 July 2013 with the EU and the ILO. The Programme, as well as the Better Work Programme had five components: (i) building and fire safety assessment to complete a fire and building safety assessment of all RMG factories; (ii) strengthen labour inspection and support fire and building inspection, which included the improvement of legislative and policy frameworks, the improvement of the structure and processes of both services; (iii) awareness raising on OSH through training of employers’ and workers’ organizations, as well as multimedia and education campaigns; (iv) rehabilitation and skills training for survivors of the Rana Plaza and the Tazreen tragedies without discrimination; and (v) the Better Work Programme focused on building and fire capacity, as well as mandatory safety committees. Actions were planned to fully commit the Rana Plaza, and in response to technical assistance requested by national technical committees and review panels, whose reports were published on the Internet, and the difficulties encountered with regard to communication. In light of the action described, statements indicating that very little had been done were incorrect. However, a lot of work still needed to be done. In particular, capacity building was a complex issue that required time, resources and good coordination.

The Worker member of Bangladesh indicated that labour inspection had been neglected. DIFFE and the Bangladesh Fire Service and Civil Defence had been operating with inadequate staff and logistics. Moreover, the lack of effective coordination between the concerned departments prevented efforts to ensure industrial safety and the recent disasters could have been avoided if an effective labour inspection system had been in place. However, the Government’s immediate response and rehabilitation programme following these incidents was appreciated. While the Government had upgraded the Department of Inspection with additional staff, it needed to take measures
without delay to complete the process of recruiting new inspectors. Without sufficient resources, logistics and proper training, the new inspectors would not be able to perform their duties effectively. The Global Compact for Continuous Improvements in Labour Rights should also provide inspectors with logistical support. The initiatives by the ILO as well as international buyers were welcome, and the Government would be taking pre-action based on the safety risks identified. It was necessary for the Government to ensure the establishment of factory-level safety committees, with the participation of workers and factory management. The new minimum wage in the RMG sector needed effective monitoring. While the revised Labour Act no longer required workers intending to form a trade union to inform the factory owner, this required further implementation. In addition, there remained provisions in the revised Labour Act that were not in line with ILO Conventions, and the Government needed to initiate consultations for further amendments. Effective measures should also be taken to bring work performed in the informal economy under the purview of the Labour Act, in consultation with the tripartite constituents. She expressed concern regarding labour rights in EPZs. While the Government had allowed the Labour Courts and Labour Appellate Tribunal to resolve grievances in EPZs, the Labour Act was not applicable in these zones. The Government should finalize the draft EPZs labour act without delay. Moreover, the online trade union registration process, the workers’ complaint hotline and the publicly accessible database should be made functional as soon as possible. In addition, the proper implementation of the Better Work Programme would assist in establishing a unique inspection modality in the RMG sector, and its implementation should be expedited. Lastly, it was essential for the Government to identify any violations of the national legislation and ensure that adequate sanctions were applied.

The Government member of Greece, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Iceland, Montenegro, Norway, Serbia, The former Yugoslav Republic of Macedonia, Turkey and Ukraine, said that the Global Compact launched by the EU, the Government of Bangladesh and the ILO in July 2013 outlined commitments mainly related to the issues discussed by the Committee, including with regard to the Convention. The progress of Bangladesh in implementing several commitments under the Compact was to be welcomed, while sustained efforts were needed to ensure its full implementation. Amendment of the Labour Act was also to be welcomed and it was now important to implement legislation to follow suit. The Government needed to continue the modernization and strengthening of DIFE by restructuring and expanding it, increasing its staff and the training for labour inspectors. The Government should be encouraged to keep the ILO informed of any further implementation of the Revised Labour Act 2014 for EPZs. The Government needed to address the remaining shortcomings identified by the Committee of Experts regarding the labour law reform, and to continue implementing the remaining outstanding commitments under the Compact. Commitments made to support and protect trade unions were also important as they had a positive impact on the work of the labour inspectorate. It was necessary to continue to support the Government in improving labour rights and factory safety, and to meet international labour standards, in collaboration with all stakeholders involved in the supply chain, including initiatives of global buyers. The decisive efforts of the Office to bring together the various relevant stakeholders to promote labour rights and safe workplaces should be welcomed and the Government was encouraged to avail itself of ILO technical assistance.

The Worker member of Canada referred to the campaign of the Canadian Labour Congress to push Canadian companies to join the Bangladesh Accord on Fire and Building Safety. He considered that a robust national inspection system was essential to prevent events like Rana Plaza. However, according to the statement from a trade unionist from the Bangladesh Free Trade Union Congress (BFTUC), limited progress had been achieved in labour legislation since the Rana Plaza tragedy. There was a wide gap between the promises made by the Government and the reality on the ground, in particular with respect to labour inspections. Although promises had been made concerning the appointment of 200 new inspectors, only 50 posts had already been filled. Besides, even if promises were fulfilled, the additional 200 inspectors would not be enough to cover adequately the high number of existing factories and the wide range of safety and health issues. It was urgent to increase the labour inspectorate’s human, material and financial capacity and to improve labour inspection reporting. Moreover, labour inspectors should be able to perform their work free from any pressure from employers. The labour inspectorate should also take adequate measures to compile independent data, evaluate violations and address complaints in factories. She emphasized that in order to fully address the existing problems, it was essential for the workforce to be adequately informed, for trade unions to participate in capacity building and for labour inspectors to guide workers and employers in the implementation of the Convention. Furthermore, the recent establishment of the Tripartite National Health and Safety Council, as well as health and safety committees in factories, should help to inform workers and allow them to participate actively in the construction of a strong labour inspectorate. Workers and inspectors who reported violations should also be ensured adequate protection. The Government should give the highest priority to workers’ safety and health, which would enable the ILO to provide adequate technical assistance.

The Government member of Switzerland stated that his country endorsed the statement made by the EU, with the exception of the specific reference to the Compact between the EU, the ILO and Bangladesh. Switzerland supported the ILO’s action in Bangladesh, in particular its work under the Better Work Programme, and encouraged the Government to continue working towards strengthening labour inspection, OSH and the effective implementation of legislation with the support of all the partners to improve working conditions, particularly in the garment sector.

The Government member of the United States observed that the Rana Plaza disaster, which had occurred in April 2013, had highlighted the human costs of poor safety and unacceptable working conditions in Bangladesh’s RMG sector. In this respect, the Committee had stressed in 2013 that a climate of full respect for freedom of association could make a significant contribution to the Government’s objective of improving the protection of workers’ safety. Indeed, at the Committee’s request, the Director-General of the ILO had submitted a detailed report to the Governing Body on the situation of trade union rights in Bangladesh which the Governing Body had discussed at its March 2014 session. The Committee was now considering the critical role of high-quality labour inspection in ensuring the effective implementation and enforcement of labour laws in making all workplaces safer in Bangladesh. To that end, a core element of the engagement of her Government and of the ILO with the Government of Bangladesh had been on the specific steps needed to strengthen the labour inspection system. She added that her Government had also provided funds to support workers’ ability to advocate for their rights and safety. She underlined the long-standing and
serious concerns of the United States with respect to workers’ rights and working conditions in Bangladesh. To this effect and within the framework of the June 2013 Action Plan for the reinstatement of the Generalized System of Preferences (GSP) benefits and the July 2013 Global Compact for Continuous Improvements in Labour Rights between the EU, the ILO and the Government of Bangladesh, with which the United States was associated, her Government was engaged in ongoing dialogue with the Government of Bangladesh. In the discussions, which were focused on the RMG sector and EPZs, emphasis was put on the need to increase the number of labour inspectors, the improvement of the training of the inspectors, the establishment of clear procedures for independent and credible inspections, the increase of the resources at the disposal of inspectors to conduct effective inspections and the transparent publication online of inspection results. Furthermore, her Government had provided resources to the ILO technical assistance activities aiming to strengthen the labour inspection system in Bangladesh and supported programmes on workers’ awareness raising and training to improve their ability to organize and hence to provide input into safety and inspection processes. While also welcoming the Government’s commitment to improving compliance with international labour standards and welcoming the significant increase in the Government’s budget for labour law enforcement and its continued recruitment of additional inspectors, she considered that more action needed to be taken to ensure that the newly recruited inspectors received training, resources and full support from senior government officials. To this effect, it was also important that the private sector fulfilled its critical responsibility. In conclusion, the Government needed to continue to work with the ILO in the implementation of its commitments to comply with its obligations under the Convention, as well as to implement the reforms to the Labour Act. Moreover, it was also important to extend the authority of the Ministry of Labour and Employment to EPZs in order to secure improvements with regard to workers’ safety and the respect for their labour rights, particularly in the RMG sector.

The Worker member of Germany emphasized the importance of the implementation of the Convention by the Government. Despite initial progress, there was still an urgent need for action, and international enterprises, consumers and governments had to assume their responsibility. Many German enterprises produced in Bangladesh and had benefited from an underpaid labour force and poor working conditions. German enterprises producing in Bangladesh should be reminded of their corporate responsibility. Referring to the transparency requirement for carrying out labour inspections, he emphasized that labour inspections were not to be carried out for their own sake and that it was important that the results of the inspections were published and followed by appropriate steps, which was currently not the case in Bangladesh. Information and statistics had to be published with regard to the inspectors, the number of workers and enterprises, the inspections carried out, the violations reported and the sanctions imposed, and the number of accidents and occupational diseases. Finally, the transparency requirement was also important in the context of corruption as inspectors were accused of being open to bribery. Turning to the responsibility for labour inspections, he stated that the Convention clearly laid the responsibility on the Government. While welcoming complementary inspections carried out in the framework of the Bangladesh Accord on Fire and Building Safety by actors other than the Government, it was important for the Government to fulfill its obligation to carry out inspections and not to shift its responsibility for carrying out inspections on a permanent basis. Finally, he considered that the Government should involve trade unions in its actions, as strong trade unions could make a significant contribution to effective and successful labour inspections and to preventing accidents in the workplace.

The Government member of Cuba expressed her appreciation for the information provided by the Government regarding the adoption of additional legislative provisions to enhance the protection of workers in the workplace and the improved efficacy of the labour inspection system, including by increasing the number of labour inspectors and inspections. The acceptance of ILO technical assistance and the express wish to work with the ILO, other international organizations and other countries to improve OSH demonstrated the Government’s will to prevent a repetition of serious accidents like those which had occurred in the past. She called for technical assistance to be continued, in particular to improve data management systems and training of labour inspectors.

The Government member of Sri Lanka stressed the importance of labour inspection to improve working conditions. With a view to strengthening labour inspection, the Government had to amend the labour legislation, restructure the labour inspection system and reinforce its human resources, enact separate legislation on EPZs, effectively implement the National Building Code and raise employers’ awareness on OSH issues. The Government had already taken certain measures in those respects with ILO technical assistance and needed to pursue its efforts in the future.

The Worker member of Japan, reiterating the important relationship between safe workplaces and respect for workers’ rights, recalled that the disasters of Rana Plaza and Tazreen demonstrated the vulnerability of those workers without the protection of strong unions. Some progress had been made in the country, including factory inspections under the Bangladesh Accord on Fire and Building Safety, but more needed to be done. Many new unions had been registered in the garment industry, but the Government was failing in its duty to protect the right of freedom of association and collective bargaining through efficient labour inspection. Therefore, many employers were refusing to sit at the bargaining table to negotiate with registered trade unions. Moreover, the minor improvements to the labour legislation had fallen well short of international standards. Hundreds of thousands of workers, the majority of whom were women, were still prohibited from establishing trade unions. For example, workers in a factory seeking to register their union in February 2014, had faced a strong anti-union campaign by the management. These workers, including trade union leaders, had been subject to intimidation and physical assault. He concluded by emphasizing that, without the protection of workers’ rights, there would be no guarantee of a safer workplace.

The Government member of Canada indicated that as a result of the tragedies which had occurred in late 2012 and early 2013, many efforts had been made in the area of labour inspection. Canada remained concerned at the dangerous working conditions in the garment sector, and expected that trading partners would ensure safe working conditions consistent with international standards. He noted the adoption of additional legislative provisions related to OSH, as well as the different initiatives undertaken, many of which were coordinated by the ILO. The Government was encouraged to continue to implement its National Tripartite Action Plan in a timely manner. While welcoming the recruitment and appropriate training of additional labour inspectors, he encouraged the Government to increase its efforts in this regard. Canada was committed to working with all stakeholders and was pleased to be one of the three principal supporters of “improving working conditions in the Bangladesh RMG sector”, an ILO project which stood ready to provide tech-
The labour inspection process of the initiative meant to address the causes of workplace violations. Nonetheless, the Government also welcomed the upgrading of the Bangladesh Labour Inspectorate, which constituted a milestone in addressing working conditions and workers’ rights and safety. She valued the role of the ILO in providing extensive assistance to the Government of Bangladesh, and to employers’ and workers’ organizations in addressing issues related to workers’ rights and safety. She underlined the obligation of all member States to respect workers’ rights and to create a climate of trust for carrying out constructive consultations on these matters. She recalled that it was a privilege of member States to formulate and promulgate policies on these subjects which were implemented with technical assistance provided by the ILO. In conclusion, her Government supported the actions taken by the Government of Bangladesh to ensure better rights for workers and welcomed any tripartite agreement in this regard.

The Worker member of the United States, also speaking on behalf of the Worker members of France and Italy, said that Bangladesh suffered from a governance gap with regard to labour inspections, as the Government had failed to exercise political will, develop technical capacity and dedicate the necessary resources. Article 6 of the Convention provided that labour inspection was a state obligation, and nascent efforts to create such a labour inspectorate should be supported. This would take time to build, especially if labour inspections were not prioritized. While a force of 3,000 “industrial police” had been established in 2010 to investigate security and maintain law and order in industrial zones, there had not been a similar investment in labour inspection. Multinational brands and retailers had knowingly chosen to extend their supply chains into places where inexpensive labour, weak regulation and few workplace-based unions were central to the business model. In this regard, the United Nations Guiding Principles on Business and Human Rights provided that corporate responsibility to respect human rights existed independently of a State’s ability or willingness to fulfil its own human rights obligations. Labour inspection was the duty of the State, but where it did not fulfil that role, corporations and others might temporarily fill that governance gap. In Bangladesh, such monitoring was primarily carried out by private, voluntary, confidential and non-binding systems with little state presence, and the country had experienced workplace disasters resulting in the deaths of hundreds of workers. The multi-stakeholder initiatives being implemented would help in a transition towards a governmental labour inspection system that was tripartite, mandatory and binding, instead of unilateral, voluntary and unenforceable. Such private and voluntary inspection schemes weakened efforts to build a culture of mandatory government inspection and compliance. Nevertheless, the Government needed to claim leadership of the regulatory system. It could not outsource regulatory functions to corporations and others indefinitely.

The Government member of India noted with satisfaction the 2013 amendments to the Labour Act of 2006, which focused on workers’ dignity, well-being, rights and safety, as well as the wage payment system, and on transparency in trade union registration, thereby promoting trade unionism and collective bargaining. Her Government also welcomed the adoption of a policy on OSH. He finally supported the measures to be taken to further improve the labour inspection system. In this regard, the continued technical assistance of the ILO was important.
the post of labour inspector had been classified as a Class I gazetted post. The recruitment for these positions was the responsibility of a public service commission, which was working very seriously on filling the vacant posts for inspectors. With the technical assistance of the ILO, basic training had been provided to the newly recruited inspectors. Moreover, the Government was organizing on a regular basis, four-week training course under the Department of Labour, and 143 tripartite training courses had been conducted. Labour inspectors had also received training on joint problem-solving techniques, compliance with fire safety and OSH standards, and the prevention of occupational diseases. Twenty-three special inspection teams had been formed to ensure safe working conditions in factories, and a publicly accessible database had been established. Through effective social dialogue, at both the national and international levels, efforts to improve working conditions for workers in Bangladesh would continue. In conclusion, he expressed appreciation of the constructive engagement of the ILO and development partners with regard to awareness raising, capacity building and the improvement of working conditions.

The Worker members indicated that there remained serious gaps with regard to labour inspection and the enforcement of labour law in Bangladesh. Workers still had little confidence that their rights at work would be fully respected and that an effective, independent labour inspectorate would work to effectively remedy violations of these rights. Bangladesh now received substantial donor funds and benefited from technical assistance programmes, and it appeared that one of the biggest obstacles to progress remained the lack of political will to address fundamental issues, as evidenced by the failure of the Government to address most of the points of the EU Sustainability Compact or the United States roadmap. In light of the numerous problems still remaining with regard to labour inspection and of the overall environment in which workers’ rights were violated with impunity, the Worker members called on the ILO to urge the Government to meet its short-term target immediately of 200 additional inspectors and to hire and train a labour inspection force of sufficient size in relation to the workforce. The ILO should also urge the Government to: amend immediately the law governing EPZs and provide any additional technical assistance if necessary; to amend immediately the Bangladesh Labour Act in conformity with the Convention, including enhancing the enforcement powers of inspectors and increasing fines for violations; issue the regulations for implementing the revised Labour Act; and issue the regulations for implementing the revised Labour Act; and ensure that inspectors had the resources necessary to carry out their work effectively. The Worker members also asked the ILO to provide technical assistance to improve the functioning of the judiciary, so that alleged labour law violations could be addressed fairly and quickly, and to send a direct contacts mission, undertaken in time to report to the Committee of Experts in 2014, to verify that the issues raised by the Worker members and the Committee of Experts were fully addressed.

The Employer members observed that the rich discussion showed that this was an important and serious case. The discussion had emphasized the importance of labour inspection, and particularly the need to improve the capacity of labour inspection services, as well as the importance of reporting. The case was of great significance for validating the supply chains in the RMG sector. It was important to note that much progress had been made, although much remained to be done. The Employer members emphasized that the establishment of a high-level committee to develop legislation for EPZs should be a priority and that the Government should avail itself of ILO technical assistance for this purpose. They noted that the staff of the labour inspection services had been increased with the appointment of additional inspectors. However, in view of the measures that were still needed, they urged the Government to continue availing itself of ILO technical assistance, and called on the Office to provide such assistance. It was also important to acknowledge that the Government had had to ask for more time, which was perfectly understandable in the context. The Employer members acknowledge that the Government was moving in the right direction with outside help. They urged the Government to continue to request technical and financial assistance to address the many capacity and political issues to improve the application of the Convention.

Conclusions

The Committee noted the oral information provided by the Government representative and the discussion that followed concerning the need to strengthen the labour inspection system, particularly taking into account recent serious events, such as the Rana Plaza building collapse.

The Committee observed that the outstanding issues in this case concerned: the strengthening of the human capital and resources available to the labour inspectorate, including transport facilities; sufficiently dissuasive sanctions and effective enforcement mechanisms; the adoption of regulations implementing the revised Labour Act; the protection of workers in export processing zones (EPZs); the promulgation of additional amendments to the Labour Act; and the publication and communication to the ILO of an annual labour inspection report.

The Committee noted the information provided by the Government on the progress made with respect to the strengthening and restructuring of the labour inspection system, including the approval of 392 additional labour inspection posts, the recruitment of 67 additional labour inspectors, and the conduct of a number of training activities. It also noted the Government’s reference to amendments to the Labour Act in 2013, following ILO technical assistance and tripartite consultation. The Government indicated that the regulations for implementing these amendments were currently being discussed and would soon be issued. The Committee further noted the Government’s indications that a separate and comprehensive Labour Act for EPZs was currently under preparation. Furthermore, a publicly accessible database for labour inspection had recently been launched with ILO assistance.

The Committee noted the reference to the various activities and programmes being undertaken by the Government and the social partners with ILO support, as well as those being implemented with other actors, such as: a major ILO initiative (including a Better Work Programme) aimed at improving working conditions in the ready-made garment (RMG) sector; the European Union Global Sustainability Compact for Continuous Improvements in Labour Rights; the National Tripartite Plan of Action on Fire Safety and Structural Integrity; the National Technical Committee; the Accord on Fire and Building Safety; and the Alliance for Bangladeshi Worker Safety.

The Committee observed that while progress had been made, much remained to be done to strengthen the implementation mechanisms for ensuring the protection of workers. It urged the Government to recruit and train, without delay, a sufficient number of labour inspectors in relation to the workforce in the country, and to proceed without further delay to the recruitment of the 200 labour inspectors as the Government had undertaken to do in 2013. It also requested the Government to: provide for necessary resources for labour inspection; bring national legislation into compliance with the requirements of the Convention, in particular with regard to labour inspection powers and dissuasive sanctions for labour law violations; and improve the relevant enforcement mechanisms.
It expressed the firm hope that the regulations implementing the Labour Act would soon be issued so as to give effect to the amendments to the Act. The Government should prioritize the amendments to the legislation governing EPZs, so as to bring the EPZs within the purview of the labour inspectorate. The Committee also emphasized the need to coordinate with ILO support for the various activities and programmes undertaken by the Government, the social partners, and those being implemented with other actors.

Highlighting the need for the availability of comprehensive inspection data, the Committee requested the Government to continue its efforts to collect such data, and to ensure that annual reports on the work of labour inspection services were published and regularly communicated to the ILO. These reports should include information on all the items listed in Article 21 of the Convention, in particular on workplaces liable to inspection, the number of workers employed therein, statistics on inspection visits, industrial accidents and diseases, violations recorded and penalties imposed.

The Committee urged the Government to continue to avail itself of ILO technical assistance for the purpose of implementing the above measures and expressed the hope that this assistance would strengthen the labour inspection system and enable the Government to give full effect to the Convention in the near future. In addition, it called on the Government to take urgent measures to ensure the effective implementation, in law and in practice, of labour inspection, with emphasis on EPZs. In this regard, the Committee invited the Government to accept a direct contacts mission that should report in time for the next meeting of the Committee of Experts. The Committee further requested the Government to report to the Committee of Experts at its next meeting on the measures taken to comply with the Convention.

**COLOMBIA (ratification: 1967)**

The Government provided the following written information.

The Government notes the Committee’s request to guarantee the protection of workers against possible reprisals by employers. It issued Resolution No. 1867 on 13 May 2014 guaranteeing the confidentiality of all complaints. The public service would need to take steps to guarantee that confidentiality. The Committee also questioned a section of Act No. 1610 of 2013 to the effect that certain isolated areas, for example in the mining and petroleum sector, can only be reached by using transport made available by the company or trade union. Although the Act is designed for the labour inspectors’ safety, it was only invoked on rare occasions and commonly agreed between the employers and workers. The Government believes that appropriate regulations under the Act can respond to this concern. An appropriate decree has therefore been drafted that is still under discussion; it can be found on the Ministry of Labour’s website. The new decree would allow state enterprises to enter into inter-institutional agreements to facilitate the transport of labour inspectors and ensure that they did not have to rely on either employers or workers. If such regulations prove inadequate, the Government is prepared to take additional steps, such as appealing against the Act before the Constitutional Court or submitting a Bill to repeal it. With regard to the preventive approach to labour inspection, and the powers of inspectors in relation to occupational safety and health, Resolution No. 2143 of 2014 was issued under Act No. 1610 of 2013 setting out the kind of guidance, advice and assistance that labour inspectors can give; specific groups of inspectors were assigned to each function. The Committee requested the Government to adopt measures to empower inspectors to deal with occupational safety and health issues, particularly in the event of imminent danger, and to ensure that they were notified of industrial accidents and cases of occupational disease. Although such powers are expressly set out in Act No. 1562 of 2012 and Act No. 1610 of 2013, they have now been specifically included among the general functions of the territorial directorates and in the mandate of labour inspectors in the abovementioned resolution.

With reference to the impact of the ILO’s technical cooperation project on international labour standards in Colombia, labour inspectors have been trained and technical manuals and instruments have been developed for them. An April 2014 ILO report on the project noted that, in just six months, between 89 and 91 per cent of labour inspectors had learned to use the tools and knowledge acquired thanks to this technical cooperation. The training of inspectors and affiliated professionals has had a qualitative impact in several areas; it has improved the way inspectors examine the cases, and this has gradually given them more confidence and increased their credibility based on the quality of their work and their decisions; the criteria used in investigating cases and imposing penalties have been harmonized; social dialogue forums have been established for producers’ and workers’ organizations together with the Ministry; there have been marked improvements in the detection and registration of activities, such as the conduct of preventive visits and the signing of compliance and improvement agreements; inspectors have been provided with tools for identifying forms of labour intermediation prohibited by law, so as to promote formalization agreements; instruments have been adopted for identifying anti-freedom of association practices. This has allowed inspectors to conduct their administrative investigations much more carefully and, where appropriate, to initiate penal proceedings. Regarding the project’s impact on the prosecution of infringements and the effective application of penalties, the following points should be noted: improved knowledge of investigating illegal practices and imposing the respective penalties, including the appropriate level of penalties; labour formalization is encouraged by the deterrent effect of the penalties on enterprises; inspections are carried out in high-risk enterprises; decisions are based on the correct application of legal provisions and labour inspection is more efficient, and this has a corresponding positive social impact.

In terms of improving labour inspection, the following rules and regulations have been introduced: Resolution No. 1021 of 2014 updating the instruction manual for labour inspectors; Resolution No. 2143 of 2014 setting out the mandate of territorial directorates and labour inspectorates; Resolution No. 2123 of 2013 on penalties adopted by the National Apprenticeship Service (SENÁ). The resolution provides for the payment of fines irrespective of any appeal that may be lodged with the administrative disputes body and establishes a committee to strengthen the procedure for the collection of fines; Act No. 1610 of 2013 setting out labour inspection rules and regulations and promoting formalization agreements; Act No. 1562 of 2012 on occupational hazards and on occupational safety and health; Act No. 1437 of 2011 (in force since July 2013) containing a new Administrative Disputes and Procedure Code. The Code redefines the various stages of the procedure and reduces the deadline for handing down decisions from three or four years to under nine months; the Ministry of Labour has submitted a Bill to Congress aimed at reforming the Labour Department of the Labour Appeals Chamber of the Supreme Court of Justice; the Standing Committee on the Negotiation of Wages and Labour Policies has set up a tripartite subcommittee to examine the rules and regulations set out in Act No. 1610 with a view to the effective implementation of the three aspects of labour inspection; prevention, penalties and services to citizens. At the institutional level a Special
Investigations Unit has been established in the Territorial Inspection, Monitoring and Management Directorate to speed up inspection and monitoring. So far the Unit has dealt with 98 cases (conciliation, administrative investigation, submission of evidence), 47 of which have been resolved. There is a clearly defined formalization programme that has so far brought 18,000 workers into the formal sector. Progress is continuing on the design of standard formalization programmes, by sector, in which representatives of the ILO are systematically involved.

In 2013 and up to April 2014 some 1,759 labour administration inspections were carried out in enterprises, cooperatives and pre-cooperatives, temporary service enterprises, simplified economy companies, high-risk enterprises and occupational hazard and occupational invalidity assessment boards. Over the same period 1,782 penalties were imposed and fines collected to a total value of 58,139,772,821 pesos (approximately US$30.6 million). Prevention activities included 4,130 instances of preventive assistance and 1,275 upgrading agreements in commerce, mining, transport, hotels and restaurants and manufacturing. Some 568 public awareness campaigns were organized, along with 609 training courses and 1,693 preventive administrative visits. The Ministry of Labour’s integrated information system (iMTegra) is currently being developed. It comprises seven subsystems, in which labour inspection has priority. A total of 900 tablets have been purchased for labour inspectors with applications to assist them in their fieldwork. The system will function online by means of an information web page on the Ministry’s website. The system should be up and running by October 2014 after which the Government will be able to provide the ILO with an annual report containing the statistics and information called for under subparagraphs (a)–(g) of Article 21 of the Convention. Some 29,000,000,000 pesos (approximately $15 million) have been invested in upgrading, financing and modernizing the labour inspectorate’s physical infrastructure. Regarding the use of penalties Act No. 1453 of 2011 increased the fines for infringing the right to freedom of association and introduced fines for concluding collective agreements which, overall, offer non-unionized workers better conditions. Decree No. 2025 of 2011 contains rules and regulations aimed at promoting formalization and combating associated labour cooperatives and increased fines to enforce compliance. Act No. 1610 of 2013 raised the level of fines from the previous 1 to 100 minimum wage equivalents to 1 to 5,000 minimum wage equivalents, irrespective of the number of workers, which may be imposed and, if appropriate, in addition to further penalties for repeat offences and refusal to comply.

The number of labour inspectors was increased from 424 in 2012 to 904 in 2014 and constitutes a global workforce that can be assigned to units as required. Some 684 new labour inspectors have been recruited in the country as a whole. All in all, 633 labour inspectors specialize in legal matters and 271 in medicine, engineering, company administration and economics, and the Government expects all of them to be operational by the end of 2014, thus meeting the goal that was set for 2010–14. Colombia’s labour inspectorate covers 8,475,437 workers; since the number of inspectors was raised to 904, the ratio of inspectors to the working population has risen from 5 to 10.66. Until they become permanent civil servants, labour inspectors have a 271-month status, though this does not modify their situation in terms of job stability. The Constitutional Court has determined that such temporary officials are entitled to a degree of protection; i.e., they cannot be dismissed other than for disciplinary reasons, for failure to carry out their functions properly, for reasons directly related to the service or when another person has been awarded the post following a competition (Ruling T-007 of 2008). Regarding the establishments that are subject to labour inspection and the number of workers employed, 613,614 employers are registered under the occupational hazards system, which covers 8,475,437 workers from all economic sectors (including 600,000 independent workers).

In addition, before the Committee, a Government representative explained the replies to the comments of the Committee of Experts were intended to indicate the progress that had been made in the area of labour inspection, rather than to justify non-compliance. The results of the ILO project entitled “Promoting compliance with international labour standards in Colombia”, which sought to strengthen institutional capacities in labour inspection and stimulate social dialogue, and which was due to end in 2016, were satisfactory. The observations of the Committee of Experts did not refer to non-compliance, but contained requests for information. With the support of the ILO, the Government was making progress in the area of inspection and consequently there was no reason why the country should be included in the list of countries invited to supply information on specific Conventions, usually in connection with non-compliance.

The Worker members recalled that the Committee had already examined the case of Colombia on several occasions, most recently in 2009, and since then any hope of an improvement in trade union rights had been disappointed. The weakness of the labour inspectorate aggravated this situation. In its observation, the Committee of Experts requested information on the results of a technical cooperation project and the practice of “preventive” visits, which the trade unions criticized as being inefficient. The observation dealt mainly with the underlying challenges facing the inspectorate, starting with the shortage of staff. Disregarding the confusion in the figures given, even an assumed workforce of 900 inspectors would still fall short of the country’s needs. The information on the inspectors’ status and functions was also contradictory. It was reported that 85 per cent of them were temporary staff, and not officials who could not just receive complaints but also take the initiative to investigate or impose sanctions. Another weakness related to the means of operation. Inspectors did not seem to have access to official vehicles for access to all workplaces. Finally, the legal framework of labour inspection was inadequate, especially from the perspective of confidentiality regarding the source of complaints, as required by the Convention. Additional problems included voluntary transactions without consulting the workers, or the failure to collect the fines provided for by law. By and large, the way the labour inspectorate operated seemed designed to maximize quantity rather than quality, which would explain why the results were so poor. There was no public report on the activities of the inspectorate, and the social partners were not associated with the design and implementation of labour inspection strategies.

The Employer members thanked the Government for its submissions in the present case. At the outset, the Government had indicated its willingness to cooperate with the Office, to organize special training workshops on issues related to labour inspection and to ensure compliance with the Convention. The Committee of Experts had noted in its observation a number of positive developments, such as reports from the Government concerning new handbooks and teaching materials regarding the graduation of penalties, the administrative sanction procedure, administrative sanctions concerning the improper use of labour mediation and other infringements of the rights of workers. The observation noted that special training programmes had been implemented for labour inspection and that standards had been updated and an analysis of labour risks conducted. The most recent observation noted with
interest that the Minister of Labour, in cooperation with the Office, had organized special training workshops on a number of international labour standards. The Employer members welcomed the information provided by the Government, both before the Committee and in its written submissions, which addressed a number of issues that the Worker members had raised including issues concerning the confidentiality of complaints, training of inspectors, and the need for professionalization of labour inspectors and technical manuals. It had also provided updates on the impact of the Office’s technical cooperation programme on international labour standards, including: its impact on infringements and effective application of penalties; the steps taken over the previous year to improve labour inspections; and new rules and regulations. The Government had also provided information on the number of labour inspectors, the number of labour inspections undertaken, as well as on the Minister of Labour’s integrated information system, which was currently being developed. The Government had made progress and should be urged to continue its efforts to ensure compliance with the Convention in law and in practice. The Employer members encouraged the Government to continue accepting the Office’s assistance in that regard and to continue providing reports to the Committee of Experts so that it could assess the positive progress in the case.

A Worker member of Colombia said that even though progress had been made, the country was still some way from having a labour inspection system that guaranteed due respect for workers’ rights. Labour inspection was a key instrument for decent work. It was essential to ensure the suitability, independence and transparency of labour inspectors, while providing them with proper remuneration and the necessary facilities for the performance of their duties. Preventive inspections should target workplaces where the most violations were presumed to exist, whether those concerned freedom of association or other workers’ rights. In addition, the number of inspectors should be increased to ensure better coverage of the country, taking into account gender equality, variations in occupational profile and experience in specific matters, such as occupational safety and health or labour issues. Taking account of precarious employment, job placement, anti-union action and violations of the ILO’s recommendations, the Government should establish a better labour inspection system in full consultation with the social partners. Labour inspection should contribute towards preventing disputes. The recommendations of the 2012 high-level mission in the country should be taken into consideration.

Another Worker member of Colombia said that there were 685 labour inspectors in the country, 85 per cent of whom were on temporary appointments, with no job stability or performance rewards. The number of labour inspectors was low and their pay was very low. They received half the salary of labour judges and had no facilities for performing their duties. Moreover, such facilities were provided by enterprises, which affected inspectors’ independence. Furthermore, penalties had no deterrent effect since fines were derisory and were often not paid. The labour inspectorate did not examine the most serious violations of labour legislation, as some 6 million people were in illegal employment and 8 million were self-employed. Workers’ rights were being undermined as a result of subcontracting, cooperatives, foundations, temporary work agencies and trade union contracts, but the labour inspectorate took no action on such matters. Nor did the labour inspectorate investigate the situation of those employed in dock work, horticulture, palm oil production and mining. It did not ensure the protection of freedom of association or penalize the refusal of companies to engage in collective bargaining or their intentions to sign collective accords that affected workers’ organizations. Nor was action taken to penalize acts of anti-union discrimination. Moreover, the labour inspectorate had been used to undermine the exercise of the right to strike. In conclusion, he deplored the fact that complaints were not confidential, and that the Government had not ratified Part II of the Convention on labour inspection in commerce, which left more than 5 million workers without protection.

Another Worker member of Colombia indicated that in 2003 the Ministry of Labour had been closed by the previous Government, which transferred its functions to another Ministry, which had seriously undermined the labour inspectorate and rendered it practically inoperative. Henceforth, the Confederation of Workers of Colombia (CTC) and other trade unions had protested and a campaign had been started to re-establish that important public institution. That goal had been achieved with the change in Government. In February 2011, the Ministry of Labour had been re-established and plans had been developed to restore the labour inspectorate. Although it had been announced that there would be a significant increase in the number of labour inspectors and that other measures would be taken to provide inspection staff with the necessary means to carry out their functions, labour inspectors were recruited in an irregular manner, were not sufficiently remunerated and were not adequately equipped to perform their work independently and effectively. In addition, different tasks were assigned to them, which detracted from their essential functions. The Government should therefore adopt measures to overcome the obstacles which limited inspection, particularly with regard to: ensuring payment of the minimum wage; mechanisms to ensure respect of the right of association; monitoring observance of the right to collective bargaining in the private and public sectors; preventive monitoring of occupational safety and health conditions, with priority on mining, agricultural, transport, trade and services sectors; effective supervision of labour subcontracting in the private and public sectors; and the effectiveness of sanctions imposed on employers who contravened regulations. Labour inspection was a key function of the Ministry of Labour and its development should therefore correspond with the essential needs in employment relations, thereby giving effect to the recommendations of the Committee of Experts and the present Committee.

The Employer member of Colombia referred to the 2006 Tripartite Agreement on Freedom of Association and Democracy, which the ILO high-level mission had endorsed in 2011, and the 20/20 United Labour Action Plan, with particular emphasis on the strengthening of the Ministry of Labour and the labour inspectorate. Administrative and budget arrangements had been made in 2014 to create an additional 480 posts for labour inspectors, who had already been recruited. A total of 683 inspectors throughout the country were receiving training in the 35 territorial directorates. A hundred inspectors were assigned exclusively to monitoring priority sectors (palm oil, sugar, mining, ports and flower production). According to official figures, 394 administrative investigations had been conducted in 2013 and 233 cases had been referred to the Office of the Public Prosecutor. As a result of a successful campaign against illegal associated labour cooperatives, their number had decreased from 4,307 in 2010 to 2,895 in 2012, with the assistance of the supervisory office of the Ministry of Labour. The Ministry of Labour had successfully launched a campaign to promote labour rights and increase public awareness of freedom of association, gender equality, child labour, etc. The Occupational Guidance and Assistance Centre (COLABORA) had acquired new technological tools, such as virtual inspectors, the “línea 120” helpline, a service to guide people through the country’s main social
networks. There were also a number of training programmes for labour inspectors undertaken with ILO support. With regard to preventive inspections, the concept had been submitted to the Standing Committee for Dialogue on Wage and Labour Policies, which was a tripartite body. The objective of such inspections was prevention and the improvement of working conditions, and they focused on the formal sector and did not need any prior authorization from employers. Preventive inspections had been stepped up, in particular in relation to associated labour cooperatives, temporary placement agencies, employment agencies, priority sectors and enterprises that employed workers covered by trade union contracts and accords. He concluded by calling on the Committee to take note of the progress made in Colombia with ILO technical cooperation and urged Colombian employers to contribute to the training of labour inspectors by explaining how their enterprises were organized and how they met their commitments to their workers.

The Government member of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), highlighted the information supplied on the legislative measures adopted to respond to the recommendations of the Committee of Experts, including: the confidential handling of complaints made to the labour inspectorate; the establishment of a special group for preventive inspections; and the provision of the necessary logistical resources to enable inspectors to perform their duties properly. He also referred to the implementation of the ILO project entitled "Promoting compliance with international labour standards in Colombia", in conjunction with the Ministry of Labour, whose objectives included: the strengthening labour inspection. He observed that in only six months various tools had been adopted or updated and labour inspectors had received training, thereby enabling harmonization of the criteria for the performance of their duties. He emphasized the adoption and application of various laws and administrative provisions which had contributed to the definition and delimitation of inspection tasks, and also the significant increase in the number of labour inspectors (from 404 posts in 2012 to 904 posts in 2014). GRULAC welcomed the information indicating that inspection activities had resulted in 5,724 administrative inspections and 1,782 penalties for non-compliance, which corresponded to fines totalling US$31 million. In conclusion, he considered that the information supplied by the Government was satisfactory and he encouraged the Government to continue working with the social partners to strengthen labour inspections.

The Worker member of Brazil said that one of the issues that was of greatest concern to the Worker members of the Committee was the lack of any real protection from the lack of any real protection from the anti-union use of labour accords, or "fake" trade unions were just some of the methods to circumvent the law. He felt that the absence of any real inspection of illegal labour relations and the increase in the number of workers engaged through temporary service posting or a competitive and transparent process. In order to hire a civil servant, a line item had to be included in the national budget, which had not been the case. Moreover, there were ongoing problems with the collection of fines and their level was inadequate. There was insufficient monitoring of voluntary resolutions that had been signed by employers and the nearly complete failure to collect fines continued the cycle of impunity. In the evaluation of the Labour Action Plan, compliance with Convention No. 81, set standards that had not been met by Colombia. As Colombia and the United States moved towards ratification of their trade agreement, they needed to continue to evaluate the efforts made to comply with Convention No. 81 and the stated goals of the Labour Action Plan.

The Government member of Switzerland expressed his Government’s support for the Colombian Government and its social partners in their efforts to improve labour inspection, particularly with a view to improving occupational safety and health at the enterprise level. Switzerland would continue to support the ILO’s Sustaining Competitive and Responsible Enterprises (SCORE) programme in the textile and flower sectors and planned to expand its cooperation project to other sectors. The main beneficiaries of the programme were the workers and employers, but labour inspectors could also benefit from capacity building. He hoped that the Colombian Government would pursue its efforts to increase resources and strengthen the capacities of the labour inspectorate and to afford workers better protection against the threats of repressed workers.

The Worker member of the United States recalled that the Governments of Colombia and the United States had signed a labour action plan to improve the protection of workers’ rights in Colombia and to facilitate the ratification by the United States Congress of the trade agreement that had been negotiated five years earlier. In light of the variety of challenges faced by Colombia, both Governments had made the strengthening of labour inspection a central task and objective. The United States Congress had ratified the United States-Colombia Trade Agreement, which entered into force in 2012. Despite considerable support from the Government of the United States and the ILO, key commitments of the Action Plan relating to labour inspection remained unfulfilled, indicating some of the ways in which Colombia had failed to comply with the Convention. Under Article 10, the number of labour inspectors deemed sufficient was determined in relation to the scale, complexity and practical challenges of inspection. Colombia had an insufficient number of inspectors. As of February 2014, there were only 685 working inspectors in a country of more than 20 million economically active persons. The selection and hiring process of inspectors, and doubt as to the independence of inspectors were sources of concern. The procedural nature of their recruitment reduced the value of the training provided by the ILO. As of April 2014, none of the new inspectors had been recruited through a civil service posting or a competitive and transparent process. In order to hire a civil servant, a line item had to be included in the national budget, which had not been the case. Moreover, there were ongoing problems with the collection of fines and their level was inadequate. There was insufficient monitoring of voluntary resolutions that had been signed by employers, even though these agreements to seek remedies and remove fines. All such agreements had been negotiated between employers and the Government, with no input from workers. Waivers and the nearly complete failure to collect fines continued the cycle of impunity. In the evaluation of the Labour Action Plan, compliance with Convention No. 81, set standards that had not been met by Colombia. As Colombia and the United States moved towards ratification of their trade agreement, they needed to continue to evaluate the efforts made to comply with Convention No. 81 and the stated goals of the Labour Action Plan.
used to deny workers their labour rights. He regretted that employers did not pay the fines imposed as a result of labour inspection visits. He concluded by recalling that the observations of the Committee of Experts dealt with extremely important issues.

The Government member of the United States referred to the Colombian Labour Action Plan, which had been agreed in the context of the United States. The United States Trade Promotion Agreement, under which the Government of Colombia had committed, inter alia, to increased and enhanced labour inspections and doubling the size of the labour inspectorate. In support of these measures, her Government was financing the ILO technical cooperation project "Promoting compliance with international labour standards in Colombia", the largest component of which involved training of key labour inspectorate staff, including on new inspection tools and procedures, and following up to ensure the training was applied, in practice. The Government of the United States appreciated Colombia’s efforts and its ongoing cooperation with the ILO, in particular to improve labour inspection. However, enforcement of labour law remained a challenge. For example, there had been little progress on fine collection, particularly in cases of large fines applied for illegal contracting. Targeted inspections, especially in priority sectors, had also been insufficient to effectively uncover and punish illegal conduct. She trusted that, with the continued assistance of the ILO and through open and active dialogue with its social partners, the Government of Colombia would succeed in taking the necessary measures to implement fully its commitments related to labour law enforcement under the action plan related to labour rights and its obligations under Convention No. 81.

An observer representing Public Services International (PSI) noted that, following the creation, or rather the reconstitution, of the Ministry of Labour in 2011, the Government had undertaken to increase the staff of the labour inspectorate sufficiently to be able carry out its inspections, monitoring and supervision functions properly. It was essential for the Ministry to adopt a coherent institutional policy to overcome the weakness of the labour inspectorate and especially to reinforce the labour policing function of the Ministry with respect to collective bargaining in the public service. Following the 2014 amendment of Decree No. 1092 of 2012, collective bargaining in the public administration was becoming increasingly common, and that meant that disputes were liable to arise in an environment that by and large was anti-union. Unless the Workplace Mediation Services, its labour inspection problems were likely to increase.

The Government representative indicated that the information provided by the employers and workers was important and would be taken into account. He reminded those present that the Ministry of Labour had been established in November 2011, 30 months ago. He recalled that efforts had been made to institutionalize the Ministry of Labour, and develop the legal framework and mechanisms for its effective operation. With regard to the increase in staff, he noted that resources were available to guarantee that those positions were permanent. In respect of existing vacancies, he explained that the regulations provided that staff could not be appointed or removed while the electoral process was under way. He guaranteed that by December 2014 all the vacancies would be filled. He disagreed with the statement regarding the importance given to the recruitment process, explaining that the best candidates were selected and appointed, maintaining a fairly stable workforce. Since November 2011, no employee had been dismissed without just cause. There were no competitions owing to the fact that the procedure was slow, since meeting administrative requirements could take up to a year and places needed to be filled quickly.

Competitions were planned for the future. He indicated that the requests of the Committee of Experts, regarding confidentiality and the transport of labour inspectors had been addressed and resolved. An order establishing that logistical support for inspectors could only be received by means of inter-institutional agreements by public enterprises was pending the President’s signature. It could not be said that over the last 11 years there had been no changes. There was now a Ministry of Labour, an institutional organization and a body of inspectors organized into three main areas: monitoring, preventive management and assistance to citizens.

The Worker members indicated that following the discussions, and while acknowledging the progress made over the last few years, they wanted to support the following claims made by their Colombian colleagues. Firstly, the Colombian Government should be encouraged to ratify Part II of Convention No. 81, as well as the Safety and Health in Mines Convention, 1995 (No. 176). The Colombian Government should also repeal the current decree on labour intermediation. The Worker members believed that the new decree should be preceded by a consultation process in the Standing Committee for Dialogue on Wages and Labour Policies, and that it should contain efficient mechanisms with regard to the inspection and prevention of all forms of illegal labour intermediation. The Colombian Government, in cooperation with the social partners, should also draft a bill to reform legislation on labour inspection, in line with the observations of the Committee of Experts contained in its 2011 and 2014 reports. This bill should set out the principles of complete confidentiality regarding the source of complaints; dissuasive penalties in the event of freedom of association being violated; the collection of fines by the Directorate of Customs and Taxes; the participation of trade unions in inspection operations; and the allocation of resources to strengthen the capacity of the labour inspectorate. Following consultations and dialogue with the social partners, a public policy on labour inspection should be implemented with sufficient resources, clear results and strong commitment to increase the number of inspectors to at least 2,000; a statutory commitment of all inspectors; and a wage increase for inspectors to bring them up to the level of labour judges. In order to carry out those proposals, it was hoped that the Government would discuss and agree upon those measures within the Standing Committee for Dialogue on Wage and Labour Policies. They also hoped that a six months follow-up would be carried out on the status of information provided by the Ministry of Labour in each departmental subcommittee and the National Social Dialogue Committee. In conclusion, they requested the Government to accept a direct contacts mission to ensure that these principles were given effect.

The Employer members welcomed the submissions made by the Government and the information provided. Additional information would help to better understand the measures taken to give effect to the recommendations and in practice. They expressed appreciation of the Government’s responses to the interventions that had been made. They noted the progress made regarding compliance with Convention No. 81. The concrete measures should be taken. They encouraged the Government to work with the ILO to strengthen its labour inspection system. The action that was taken should be the subject of full consultation with the social partners. They emphasized the positive measures taken to date and encouraged the Government to continue its work. They noted the existence at the national level of a tripartite body in which the issues raised in this case could be addressed and considered that the case did not appear to require a direct contacts mission.
The Government communicated the following written information:

Following the 18th amendment to the Constitution of Pakistan, the subject of labour had been devolved to the provincial governments, who had now assumed full responsibility for labour legislation and administration. There was ongoing litigation regarding the future legal structure of labour administration in Pakistan. In a recent judgment, the Honourable Supreme Court of Pakistan had concluded that through a combined reading of the new labour laws, one federal and four provincial, two parallel forums had been created: one on the federal level and the other on the federal level, having jurisdiction to deal with industrial disputes and unfair labour practices. This judgment had provided a clear demarcation line of jurisdiction between the labour courts in the provinces and the National Industrial Relations Commission at the federal level. The issue, which had been preventing a faster pace for new structural legal adjustments in the legal system, had not been resolved.

Article 270 AAA of the Constitution of Pakistan protected the existing legislation on labour matters until the development of either a new legal framework by the provinces or the formal adoption of the earlier laws. The Government of the province of Khyber Pakhtunkhwa had promulgated the Khyber Pakhtunkhwa Factories Act, 2013, repealing the Factories Act, 1934. The Government of Punjab had amended laws to be adopted by the provinces as government. The Governments of Sindh and Balochistan had sent draft laws for vetting to their law departments.

The provinces were now solely responsible for the implementation of labour laws in industrial and commercial establishments in their respective areas of jurisdiction. The Provincial Directorate of Labour Welfare through their field formations carried out inspections in establishments under various labour laws. The field formations were comprised of labour inspectors, labour officers, assistant directors, deputy directors, joint directors and directors. In Punjab Province there was also the position of Director-General. There was no legal or administrative bar on the undertaking of any inspection. Inspectors carried out inspections in shops and establishments, while labour officers were responsible for conducting inspections in industrial units under the various labour laws applicable. In case of violations of labour laws, those responsible were prosecuted in the relevant courts by the concerned inspectors. Official transport had been provided to the supervisory officers throughout the country. There were regular and sufficient budgetary provisions in the provincial budgets to pay the travelling allowance of labour inspectors and labour officers for funding their field visits. By empowering the provincial governments on the legislative and technical fronts, the inspection system would be strengthened. However, some teething problems were still being faced with regard to the effective implementation as a result of the devolution of powers to the provincial governments. A constructive dialogue had been sought for the strengthening of the tripartite dialogue in the backdrop of local empowerment with a view to protect and promote the rights of workers and employers. A major focus was on respect of international labour standards in the workplace.

The new mechanism for coordination between the federal Government and the provinces was now in place. The mechanism was resolving institutional problems, as the provincial governments were now addressing the issue of the capacity of inspectors by following a preventive approach rather than focusing on awarding fines and penalties. This had led to a gradual reaching out to the informal economy, and the provision of data for scrutiny by civil society and the social partners. The Government was initiating a project for the integration of the federal and provincial databases relating to welfare measures for workers and labour inspection systems for compliance with international labour standards. A request for a proposal had already been issued in this regard.

Following the tragic accident in Baldia Town, Karachi, Sindh, in September 2012, a statement of commitment was signed between the Sindh Labour Department, the Employers Federation of Pakistan and the Pakistan Workers Federation to jointly advocate for and promote international labour standards compliance with regard to health and safety at work. Moreover, beginning in December 2012, a joint action plan in Sindh was developed, following tripartite consultation and with ILO support. The main features of this joint action plan were: to develop an occupational safety and health (OSH) policy to clearly define parameters of safe and healthy workplaces; to amend OSH legislation that covers all workplaces and meets modern day requirements and technologies, and will be developed in line with the international labour standards; to establish a tripartite OSH Council in Sindh; to develop information and training material for stakeholders on OSH; to develop a comprehensive centralized electronic database of factories, workplaces and workers in the private sector; to establish a rapid response mechanism to promote a sense of safety among citizens in general and among workers in particular; to upgrade the Sindh OSH Centre; to upgrade faculty and equipment at the National Institute of Labour Administration and Training to become more effective in developing the capacities of all stakeholders including government, employers, workers and civil society; to develop an OSH profile in Pakistan with a focus on the Province of Sindh to ascertain the current situation on legislation, systems in place and inspection and monitoring mechanisms in the country; to adopt, and periodically review, a labour inspection policy, which highlights the priorities of the Government to strengthen labour inspection in the province; to organize, in collaboration with the other concerned institutions and organizations, thematic training courses for all labour inspectors which will help them to properly understand their role in effective labour administration and will enable them to carry out labour inspection in an effective and efficient manner; and to develop and adopt a recruitment system in the Labour Department of Sindh that ensures staff attraction, staff retention and career growth of OSH staff. This model framework of OSH was being replicated by the other provinces to ensure the implementation of international standards in OSH.

Due to the devolution process, for a few years, there was no focal ministry in the federal Government responsible for reporting on international labour standards. Following 2010, due to an absence of vertical linkages between the federal and provincial governments for reporting on Conventions, representative reports were not made. At the request of the federal Government, the ILO Country Office in Pakistan had planned to provide technical assistance to all four provinces to make provincial policies and legislation which were compliant with international labour standards, and to build institutional and human resource capacities to empower implementation and enforcement of the targeted parameters. In May 2014, interdepartmental meetings had been held at the four provincial governments, for capacity building of the relevant provincial departments with respect to reporting on ILO Conventions, including Convention No. 81. Teams from the Ministry of Overseas Pakistanis and Human Resource Development participated in these meetings and deliberated on each of the Conventions. Special questionnaires were developed for multi-stakeholders on each Conven-
tion to facilitate their understanding of each Convention and to formulate the reports. A questionnaire was developed relating to the preparation of an out-of-cycle report on Convention No. 81. The respective provincial departments will finalize these reports in August 2014, which will be compiled and finalized by the Ministry of Overseas Pakistanis and Human Resource Development. Regarding the establishment of vertical linkages and federal level coordination, the Prime Minister of Pakistan had ordered the creation of a special treaty cell to coordinate timely reporting by various Ministries on the ratified Conventions. In addition, provincial focal persons had been nominated for similar action within the provincial departments. Regarding the observations of the Committee of Experts over the past three years, a detailed reply thereto would be submitted on the application of Convention No. 81. Similarly, the micro-level details and statistical data required therein were being compiled at the provincial level, and would be incorporated into this report. The Government of Pakistan was committed to an improved system of ILO standards oversight in the country and was willing to work with the ILO to achieve reforms of the system to allow an adaptation to the changes occurring in the system. The Government wanted to capitalize and incorporate best practices into their legislation and interpret more accurately the local realities to fully understand the complexities involved and to improve performance. The Government of Pakistan provided assurances that despite the challenges arising from the redistribution of legislative powers to provinces, the federal Government would remain seized of its responsibilities in terms of reporting on the relevant ILO Conventions and their implementation. However, the Government again requested ILO technical assistance to help improve the labour inspection system in Pakistan, to cope with the challenges being faced after the devolution of powers to the provincial governments.

In addition, before the Committee, a Government representative referred to the 18th Constitutional Amendment and the process of devolution of powers to the provinces, which had resulted in the dissolution of the Ministry of Labour and Manpower and the erosion of the institutional capacity developed for monitoring and reporting on international labour standards. He mentioned, however, that considerable and encouraging progress had recently been made with regard to the protection and promotion of rights of workers and employers, including respect of international labour standards. The Government, in collaboration with the provincial governments, was taking all the necessary measures for the enforcement of international labour standards. A two-pronged strategy had been adopted in which prevention and prosecution measures were implemented side by side. Moreover, a project had been initiated for the integration of the federal and provincial databases relating to the welfare measures for workers and the labour inspection system for compliance with international labour standards. This would lead to a gradual reaching out to those in the informal economy and provide data for scrutiny by civil society and the social partners for better engagement in social dialogue. Each province had an established labour inspection hierarchy which conducted inspections of the work carried out by labour inspectors and labour officials. In the case of violations of labour laws, those responsible were prosecuted in the relevant courts. There was no legal or administrative impediment to any inspection. There were regular and sufficient budgetary provisions in provincial budgets to pay the travel allowances of labour inspectors and labour officials for field visits. A detailed reply would be provided to the requests for information made by the Committee of Experts by the end of August.

The provinces of Punjab and Khyber Pakhtunkhwa had promulgated new laws while draft legislation was being prepared in Sindh and Balochistan provinces. He added that the Government attached great importance to the work of the Committee. The technical support being provided by the ILO was of great help to the Government in order to apply ILO Conventions in a more effective manner. The Government representative requested further ILO assistance on strengthening reporting on international labour standards in Pakistan.

The Employer members stated that this was the 15th observation made on the application of the Convention in Pakistan. The observation being discussed focused on the effectiveness of labour inspection and enforcement of legal provisions following the devolution of legislative powers in this area to the provinces; labour inspection and occupational safety and health; human and material resources of the labour inspectorate; actual or perceived restrictive policies for labour inspection; and regular publication and communication to the ILO of annual inspection reports. Through the delegation of powers to the provincial governments, the labour inspection regime would be strengthened. However, the process had been slow. The lack of coordination between the provinces in this process had led to the weak enforcement of labour laws in provinces that did not meet international labour standards. The Supreme Court had resolved a number of jurisdictional issues which had guided the coordination efforts between the federal Government and provincial governments. An effective system of labour inspection in all provinces was important and agreement as to the priorities of labour inspection was required. In addition, a strategic and flexible approach, in consultation with the social partners, needed to be adopted. Difficulties, in particular a lack of coordination between provinces, had arisen as a result of differences in each jurisdiction. The Ministry of Overseas Pakistanis and Human Resources Development was responsible for the coordination and supervision of labour legislation in the provinces. The coordination mechanism at the federal level included a coordination committee and a technical committee. The Government had indicated that the federal labour inspection policy of 2006 and 2010 provided a framework for the provinces. Work on implementing the policies had started but completion was required, as a lack of completion was the main reason for the continued problems. The Government was urged to provide information on the details of the measures and strategies adopted. The inspection regime would be strengthened as a result of the delegation of powers to the provincial governments. In this context, it was important and agreement as to the priorities of labour inspection were to be adopted efficiently by adopting a preventive approach. Due to the difficulties in resolving jurisdictional issues between the provincial and federal governments, there were still no adequate penalties for violations of labour laws and the obstruction of labour inspectors in their duties. Fines for the violation of labour legislation were extremely low and did not act as a deterrent. The Government was urged to indicate the number of instances in which inspections had refused access to company records by employers and the number of cases initiated concerning such obstruction. It was also urged to provide information on the measures taken and the relevant legal texts on planned legislative reform once they had been adopted. With regard to the factory fire in Karachi in 2012, the Government had announced that it would take measures and take steps to avoid such disasters in the future. The measures that had been taken should be commended, but they had not gone far enough. The carrying out of third-party inspections was concerning; the Karachi factory served as an example as, it had received a flawed certificate by a private auditing firm attesting compliance with international standards. Labour inspection services should not only be well directed and resourced, but also well respected. Accredita-
tion systems for permitting third parties to undertake inspections must include means of monitoring the integrity of inspections. In addition, there was a high number of deaths and injuries in coal mines operating in the province of Baluchistan, where workers were reported to work with almost no protective equipment and where few safety precautions were taken. The Government was urged to take measures to make the industry safer. Moreover, there was a lack of coordination and human and material resources for labour inspection. Inspectors were under-equipped and received only rudimentary training. The ability of inspectors to travel was constrained by costs, inhibiting them from carrying out their work. The Government was called to speed up its efforts to remedy the situation. Although there were no legislative obstacles for labour inspectors to enter work premises, the reality on the ground was reported as being quite the opposite. The Government was urged to ensure that labour inspectors could perform their duties. Progress was hampered by a lack of a central agency and the Government was urged to set up a body to compile and analyse information which could then be submitted to the ILO.

The Worker members thanked the Government for the information provided, but noted that the written information focused only on the process of delegation of legislative powers and jurisdiction in the area of labour law to the four provinces. The reporting requirements under Article 21 of the Convention, however, covered a much wider range of issues. The Government had provided data, although incomplete, on the number of inspections made between 2008 and 2010 in the provinces. However, without the other information requested under Article 21, it was impossible to assess if the number of inspections was adequate. The criteria set out in Article 10 of the Convention had to be taken into account when determining whether there was a sufficient number of inspectors. This did not seem to be the case as there were 138 inspectors in the Sindh province, and in Karachi alone, there were 10,000 industrial units and hundreds of thousands of workers. Pakistan’s labour force was estimated at around 51 million, of which 70 per cent was employed in the formal economy, where health and safety measures were usually weak. An increase in the labour inspectorate’s capacity was required in order to have an impact on the informal economy and small enterprises. Labour inspection covered not only labour legislation pertaining to occupational health and safety but also, child labour, discrimination, working times, the minimum wage and social security. Labour inspectors had a considerable task and their numbers were insufficient. Facilities and training of inspectors were inadequate. The Government was urged to provide more detailed information on those areas which could be used as the basis for an improvement plan. The fact that very few unexpected inspection visits could be carried out due to the limited number of inspectors was a concern. Cases of violation received but not attended before the courts to be dealt with. Fines were extremely low and did not act as a deterrent. Information on the obstacles faced by the inspectors in the course of duty was requested, as was information on the number of times inspectors were denied access to the workplace. Article 17(2) of the Convention afforded inspectors discretion with regard to the issuing of warnings and advice. There was no objection to this approach in principle, however, the issue of assessing the effectiveness of such an approach was raised, especially as there was no enforcement in this regard. Government policies for the prevention of occupational accidents and diseases were welcomed. However, developing policies without statistics on occupational accidents and diseases was potentially problematic. No labour inspection could be effective without the proper engagement of workers in occupational health and safety committees. In addition, the establishment of an independent and effective complaint mechanism was necessary to preserve the effectiveness and integrity of the system. After the factory fire in Karachi in 2012, the Sindh Labour Department, the Employers’ Federation of Pakistan and the Pakistan Workers’ Federation had made a statement of commitment to promote ILO standards on occupational safety and health (OSH). It set out a model framework but it did not include information on its implementation or the resources for such implementation. The issue of the source of funding – provincial or federal – was raised. Compliance with the Convention remained the Government’s responsibility and the Government was urged to cooperate with the provinces to establish an effective labour inspectorate. The serious nature and extent of the problems required action to be undertaken with a sense of urgency. Many work accidents were preventable. The labour inspectorate must make a strategic, systematic and concerted effort in order to improve OSH and working conditions in Pakistan. It would require speedy adoption and implementation of legislation on labour inspection, systematic inspections of factories, improved health and safety conditions, the establishment of OSH committees and cooperation with employers’ and workers’ organizations.

The Worker member of Pakistan referred to major workplace accidents which had occurred in Bangladesh, Pakistan and Turkey. Violations of safety standards were due to the negligence and inefficiency of inspection services. Employers had a legal obligation to ensure that workplace hazards were minimized, controlled and eliminated, but unfortunately commercial interests often gained at the cost of labour rights and safety. Performance data by the provinces on inspections, compliance, actions taken and sanctions imposed was not published or shared with the interested parties. Provincial governments in Pakistan should ensure labour inspection staff was properly trained to carry out inspections; provincial OSH laws should be promulgated in the remaining provinces covering all industrial, commercial and other establishments; strict inspections should be carried out without prior notice to the management of the factories and industrial establishments; and the operation should immediately be stopped in those establishments where unsafe working conditions were found. The Government was encouraged to ratify the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Trade unions had a major role to play in ensuring the lives of employers in undertaking safety measures in the context of developing safety plans in their establishment. A mechanism should be established for the undertaking of labour inspections closely supervised through a tripartite committee. He added that workers’ organizations should be able to establish a “shadow” inspection mechanism where trade unions in each district established their own inspection system and released a quarterly report on the status of compliance to standards in different industries. He added that there should be no hurdles in the establishment of independent trade unions in order to ensure a transparent mechanism of responsible work practices. Trade unions were helpful in creating a better understanding among workers and employers on critical issues, such as workplace safety. Employers must ensure that proper safety measures were in place such as equipment, exit plans, fire alarms, fire extinguishers and staff trained to deal with fires or hazards. He also called on employers to ensure that all business owners were fully aware of their responsibilities for ensuring safety in the workplace. The ILO was invited to launch a long-term programme on safe and better working conditions in Pakistan and a programme for capacity building of workers’ organizations.
on OSH, including on a “shadow” inspection system. The ILO was also encouraged to strengthen the OSH-related aspects of the recently launched Decent Work Country Programme.

The Employer member of Pakistan stated that, since the powers regarding labour issues had been devolved to the provinces, the provinces were now solely responsible for the development, promulgation and implementation of labour laws. Two out of the four provinces had almost completed the task, but progress in the remaining two was slow. The Employers’ Federation of Pakistan was involved in the review process of draft labour legislation in Sindh. However, it was essential that the Ministry of Overseas Pakistanis and Human Resource Development be given a central role in overseeing the development of labour legislation in the provinces. The ILO Country Office for Pakistan needed to coordinate with the provincial labour departments through the federal Ministry. Labour inspection should be carried out with the objective of providing guidance to employers. Enterprises that did not meet the criteria should be given the opportunity to improve weak areas; if there was no improvement, penal sanctions should be imposed. Capacity building of staff was urgently required and provincial labour departments should take steps in this regard and seek ILO technical assistance if necessary. The tragic Karachi factory fire in 2012 had highlighted the importance of OSH requirements. Although large and medium-sized industrial enterprises often had their own in-house OSH arrangements, smaller enterprises, such as the factory where the fire broke out in 2012, did not. A Memorandum of Understanding had been signed with the province of Sindh which had led to the development of the OSH plan of action, which was at the implementation stage. Similar memoranda were required in the other three provinces. The plan of action did not, however, provide for capacity building in the area of OSH. The number of inspection staff was insufficient. The provincial governments needed to provide inspectors with material resources necessary to carry out their tasks. The speaker indicated the need for prior notice of inspections in order to ensure that the employers concerned were present. Support was expressed concerning the regular publication and communication of annual labour inspection reports.

The Government member of China indicated that he had carefully read the written information submitted by the Government. Pakistan, he noted, had modified its Constitution, and the legislative authority to conduct labour inspections had been devolved to the provinces. The Industrial Relations Act, which was enacted in 2012, set out a framework for coordination and interaction between the federal Government and provincial labour departments, enabling better monitoring and reporting on international labour standards. In addition, a number of measures, including the establishment of the Ministry of Overseas Pakistanis and Human Resources Development, had been undertaken by the Government to enhance coordination in respect of the Industrial Relations Act. The Government had also elaborated a tripartite plan of action on OSH to ensure that the legal framework and OSH policy were in line with the relevant international standards. The speaker welcomed the progress made by Pakistan on the restructuring of the labour inspection system and stated that these measures should be duly recognized. In conclusion, he expressed appreciation to the ILO for its engagement with Pakistan in improving the labour inspection system and encouraged the ILO to pursue its technical assistance activities in Pakistan.

The Worker member of the Philippines stated that, despite the discussion that had taken place in the Committee in 2013, the situation of the workers in the country continued to be serious. Improvement was needed and the Government was called to develop a plan to avoid tragedies such as the fire that broke out in a garment factory in Karachi in 2012. The causes behind the deaths of hundreds of workers were the inadequate fire safety measures, the absence of emergency exits, the lack of fire drills, and the insufficient number of fire extinguishers. Effective labour inspection services were essential to ensure the protection of workers’ rights. Although employers had the legal obligation to reduce hazards in the workplace, they had no incentive to take the necessary measures as the Government would never hold them accountable. Moreover, different administrations in some provinces had actually barred labour inspectors from entering the factory premises without prior notice. Concerning the importance of reporting on labour inspections, there was no authority that collected the information and provided a national report on the matter. The number of workers killed and injured every year because the State had failed to enforce the law was intolerable. Labour inspection laws and procedures had to be adopted as a matter of urgency, in consultation with workers’ and employers’ organizations. Furthermore, the provincial governments had to provide training to the labour inspectors to carry out visits without prior notice. They had to be empowered to act immediately. The Government had to use its political and persuasive power to ensure that provincial governments adopted labour departmental measures for OSH safety and health. Laws had to be effectively applied and provide for dissuasive sanctions. The speaker reiterated his request for the adoption of a mechanism whereby labour inspections would be closely supervised by a tripartite committee.

The Government member of the Islamic Republic of Iran took note of the constitutional amendment adopted in 2010 which aimed at devolving labour matters to the provinces. The Industrial Relations Act, which was enacted in 2012, set out a framework for coordination and interaction between the federal Government and provincial labour departments, enabling better monitoring and reporting on international labour standards. In addition, a number of measures, including the establishment of the Ministry of Overseas Pakistanis and Human Resources Development, had been undertaken by the Government to enhance coordination in respect of the Industrial Relations Act. The Government had also elaborated a tripartite plan of action on OSH to ensure that the legal framework and OSH policy were in line with the relevant international standards. The speaker welcomed the progress made by Pakistan on the restructuring of the labour inspection system and stated that these measures should be duly recognized. In conclusion, he expressed appreciation to the ILO for its engagement with Pakistan in improving the labour inspection system and encouraged the ILO to pursue its technical assistance activities in Pakistan.

The Worker member of Singapore noted that under the Convention, the Government was bound to ensure the effectiveness of labour inspection through a sufficient number of well-trained inspectors who were provided with the necessary tools to carry out this task. The factory fire in Karachi in 2012 raised questions about safety standards and the authorities’ role. The lack of effective implementation of safety standards had led to flagrant violations of the Factories Act, 1934, and this tragedy demonstrated the ineffectiveness of labour inspection. Most inspectors were provided with rudimentary training and very few had specialised training for specific industries. This situation led to a high number of workers being killed or injured in coal mines in Balochistan. The speaker also pointed out that there was a critical shortage of inspectors in the country, with only 59 inspectors in Balochistan. With regard to the application of dissuasive sanctions as provided for in Article 18 of the Convention, this provision was not applied in Paki-
stan. While labour inspectors had a legal right to access company records, this rarely happened in practice. An inspector had the possibility to go to court to access those records, but the process was long and lead to non-consequential fines, as low as approximately US$50, which would not dissuade businesses of any size from violating the law. In conclusion, the level of social dialogue on the issue of labour inspection was very limited and should be encouraged in order to provide advice on the way forward to enhance the effectiveness and capacity of labour inspection services in Pakistan. The Government needed to comply with the Convention and ensure that the provincial governments adopted legislation on occupational safety and health.

The Government member of Egypt considered that despite the comments which had been formulated regarding the application of the Convention, the proposals made by the Government were aimed at carrying out the actions required under the Convention. He welcomed the progress made in that regard and expressed support for Pakistan’s request for technical assistance, which he deemed necessary in order to continue the projects already undertaken by the Government to align national legislation with the requirements of the Convention.

The Government member of Bangladesh noted with satisfaction that Pakistan had taken a number of positive measures to strengthen its inspection mechanism in line with the Convention, which included the amendment of the Constitution and decentralization of labour issues to the provincial governments as well as the enactment of the Industrial Relations Act in 2012 to carry out monitoring and reporting on international labour standards. The speaker pointed out that the provincial and federal governments had a functional coordination mechanism to ensure effective labour inspection services. He supported the launch of the tripartite plan of action on OSH and encouraged the Government to develop a comprehensive and viable framework on OSH. The speaker also encouraged the ILO to support the Government in the implementation of international labour standards.

The Government representative thanked the Employer and Worker members for their constructive advice and comments. He reiterated the Government’s full commitment and readiness to take as many measures as necessary to improve compliance with the Convention. The Government might not have achieved what had been expected of it but, nevertheless, it would be agreed that much progress had been made. Results and achievements were not uniform across all provinces but, even where the action taken had not been completed, there was concrete progress to report. An important feature of this progress was that it was based on tripartite dialogue and the Government was moving forward in close consultation with the social partners and the ILO. The reporting requirements under Article 21 of the Convention were acknowledged. A system-wide annual report would be generated in September 2014 containing the detailed statistics that had been requested. With respect to labour inspection activities carried out in the province of Punjab, he indicated that there had been 169,632 inspections and 1,547 prosecutions on child labour alone. Under the Factories Act, 9,198 inspections had been carried out, 4,848 warnings issued and 1,170 prosecutions made in the Punjab. Similarly, under legislation concerning shops and factories, 866 inspections had been carried out and 21,311 prosecutions made in the province in 2013. Similar momentum was being seen in other provinces which would be reported on in the future. The labour inspection system had been computerized in the province Punjab and it was hoped that by mid-2015 the other provinces would also have computerized systems. As a policy, provincial governments would provide means of transport (motorbikes) to all the labour officers and labour inspectors for effective inspection in the next budget. The resources allocated from the federal to provincial governments had increased. Other departments, such as labour welfare departments, old-age benefit institutions and mine welfare organizations had their own inspectorates and were enforcing international labour standards. An integrated national database of workers and employers had been developed for use by inspections in provinces and organizations engaged in labour welfare. Irrespective of whether a worker was in a registered or unregistered establishment, a tripartite committee headed by a district officer was in place in every district to accord compensation in cases of accidents, so that no accident went unreported.

Article 270 AAA of the Constitution provided protection for existing labour laws until laws were adopted at the provincial level, and there was hence no legal gap. The establishment of provincial OSH Councils was under way and the provinces of Punjab and Sindh had already established this oversight body. With ILO assistance, decent work country profiles had been completed for 21 selected thematic areas and the report would be published soon. The development of an OSH profile in Pakistan with a focus on the province of Sindh was under preparation and would look at the situation as to legislation, inspection and monitoring mechanisms in the country. In May 2014, the federal government convened a round of detailed consultations with the four provincial governments to raise their awareness concerning the importance of the enforcement of international labour standards and reporting thereon. The concerns of the Employer and Worker members had been carefully noted and the Government would incorporate their advice and comments into its work. The Government representative provided his assurances that more progress would be made in the upcoming months and he requested ILO technical assistance to assist the Government in its ongoing work concerning labour inspection.

The Employer members said that the process of devolving responsibility to the provinces was not an easy task and was a challenge in many countries. This process was challenging as it called for careful planning and organization so as to ensure that those to whom the powers were being devolved had a clear understanding of their new responsibilities. The Government had indicated that it understood why the labour inspection system had failed, but it was now required to take action. It was necessary to look at the entire system, its purpose, its management and its resources were ongoing. Some progress had been made, but the system was not as efficient as it could be. There was insufficient coordination concerning funding between provinces and the federal government. It was unclear what funding was available and who was responsible for it. There was an assumption that the provinces were free to provide additional funding. The Government was urged to clarify the funding infrastructure and ensure that it established and allocated a minimum level of funding to the provinces. It was also necessary to provide adequate training for labour inspectors and a national framework should be drawn up in this regard. Laws needed to be clear for those implementing them. The Government was urged to avail itself of ILO technical assistance.

The Worker members welcomed the Government’s indication that it intended to comply with the requests made by the Committee of Experts. However, a sense of urgency was lacking, given the importance of the issues at stake. Although the process of delegating power to the provinces would take time, insufficient practical progress had been made. The Government should ensure that all four provinces had legislation in place that was in conformity with the Convention, by the end of 2014. The
Labour inspectorate in the country remained weak. In this regard, a direct contacts mission should take place, to address the implementation measures that were required. The Joint Action Plan in the province of Sindh was not a strategic plan and it did not outline how the steps therein would be specifically accomplished. The Government should therefore accept a direct contacts mission to begin the process of developing a coherent strategic plan, including in mining, and the garment industry. The mission should include experts in occupational safety and health and labour inspection, as well as legal experts. The Government indicated that it was willing to accept further technical assistance with regard to establishing an effective labour inspection system, and this assistance should focus on effective implementation as a follow-up to the direct contacts mission. Noting the willingness expressed by the Government, the Worker members requested the Government to comply with all requests made relating to reporting obligations, prior to the end of 2014.

**QATAR (ratification: 1976)**

A Government representative indicated that his country had made progress with regard to the application of the Convention. The protection of the rights and living conditions of both national and migrant workers was an important part of the Government’s policies, particularly reflected in the recruitment programmes for migrant workers. He indicated that Qatar wished to continue its collaboration with the ILO in the areas of international labour standards and decent work, and recalled that the General Secretary of Amnesty International had recently commended the Government on the country’s receptiveness to work with human rights organizations and those engaged in the protection of migrant workers. In addition to government bodies, a number of national entities were monitoring the rights of migrant workers, for example, the National Human Rights Committee. Qatar’s economy had attracted an increasing numbers of migrant workers in numerous sectors. In 2014, the number of those workers living in Qatar had reached 1.7 million, that is, 85 per cent of the total population, which constituted a challenge for labour inspection. Qatar had therefore requested ILO technical assistance for the training of labour inspectors, both at the national level and at the Turin Centre. Furthermore, interpreters had been appointed to enable migrant workers to explain their needs to labour inspectors. The regular communication of annual labour inspection reports showed the developments that had been made in law and practice. Furthermore, the upgrading of the previous labour inspection body into a labour inspection department at the Ministry of Labour and Social Affairs, as noted by the Committee of Experts in its 2011 observation, had greatly enhanced the role of labour inspection. The geographical structure of labour inspection had been expanded, as shown in an organizational chart annexed to the Government’s last report to the Committee of Experts under article 22 of the ILO Constitution, and the number of its labour inspectors had been increased to 198. Such inspectors were granted several financial incentives in order to attract candidates to the post of labour inspectors and to respond to the growing need for human resources. Modern and mobile computer equipment had been provided to inspectors to enable them to enter data and immediately send inspection reports to the territorial directorates, which saved time and efforts and facilitated their work. Moreover, efforts were currently being made to connect the special national mapping system to a GPS system to facilitate access to undertakings liable to inspection. Such measures had led to an increase in the number of inspection visits from 46,624 in 2012 to 50,538 in 2013, that is, an increase of 8.4 per cent.

In relation to the request of the Committee of Experts concerning women inspectors, the Government represented in reference to the national legal framework prohibiting discrimination between men and women in employment, and providing for equality of all citizens before the law. Among other laws, he referred to Act No. 8 of 2009 governing public servants, which did not provide for any distinction with regard to wages or other conditions of service between men and women. The Regulations governing labour inspection provided for the same opportunities for the promotion and training of labour inspectors, without any distinction concerning their gender. Labour inspection posts were open to women without any restriction. Among the 198 labour inspectors at the Department of Labour, 16 were women, representing 8.1 per cent. Inspection visits were carried out in accordance with international standards, and included both regular and surprise inspection visits, as well as necessary measures to detect and enforce non-compliance with the law. Furthermore, labour inspections had become more efficient as a result of enhanced training at the Ministry of Labour and Social Affairs and the exchange of experiences with other countries, including the provision of occupational safety and health (OSH) training courses by the Regional Office for Arab States in Beirut, and the provision of training courses by the ILO Turin Centre. It was worth mentioning that the Committee of Experts had previously noted with satisfaction the progress made by Qatar concerning the subjects covered by the annual labour inspection reports. The Labour Inspection Department had carried out 10,500 labour inspection visits in the first quarter of 2014, 7,015 of which related to general conditions of work, covering 6,523 undertakings. In relation to OSH inspection, 3,485 visits had been carried out covering 920 undertakings. The results of these inspection visits were as follows: in 79.9 per cent of cases no violations were detected; in 12 per cent of the cases non-compliance reports were issued, in 3 per cent of cases, prohibition notices were issued and in 15.9 per cent of cases, warning notices were issued, aimed at remedying violations. Laws and regulations were continuously reviewed to provide for the protection of workers, while taking the characteristics of Qatar’s society, and its cultural, economic and religious background into account. Regulations were currently being developed to address the specific risks for workers in the construction sector. Amendments to the Labour Code, aimed at increasing penalties for non-compliance with OSH requirements were also currently being drafted. Both the Labour Code and Ministerial Decisions contained many OSH requirements, as well as compensation for occupational accidents and fatal accidents, and corresponding penalties for non-compliance. Ministerial Decision No. 16 of 2011 provided for the establishment of a National OSH Committee, composed by representatives of different governmental bodies and chaired by representatives of the Ministry of Labour and Social Affairs. This Committee was responsible for the following tasks: (1) propose a national OSH policy and programme; (2) examine the causes for occupational accidents, and propose prevention means to avoid their occurrence; (3) propose and review regulations and rules on occupational safety and health; (4) propose mechanisms for the implementation of OSH laws and regulations; (5) provide OSH advisory services; (6) review and provide for the development of the conditions for the follow-up of occupational diseases insurance, and compensation in accordance with the Labour Code; (7) review the occupational diseases schedule annexed to the aforementioned Labour Code, and propose its development in coordination with relevant bodies; (8) undertake studies and research in the area of OSH; and (9) examine and study international Conventions and Recommendations on OSH, as well as provide
its views and recommendations thereon. Hospitals and medical centres had been set up in all regions, and new ones were envisaged to meet the needs of migrant workers. The Labour Code required an employer to provide a health card at his or her expense to a migrant worker, in accordance with the regulations in force. The Ministry of Labour and Social Affairs, in collaboration with the Central Bank of Qatar, was in the process of providing a wage protection system, which would soon be finalized and would oblige all employers to transfer wages to bank accounts of workers. This system would enable labour inspectors to electronically monitor and follow up on the payment of salaries and quickly detect delays in the payment of wages. The Government concluded by indicating that it would submit a detailed report in reply to the observation of the Committee of Experts in the course of this year, and that it was determined to continue to work with the ILO to ensure workers safety and health.

The Worker members recalled that during the past year, the eyes of the world had been on the situation of some 1.5 million migrant workers in Qatar. The United Nations organizations, especially the ILO, human rights organizations, the media and researchers had all made the same observations: workers, 80 per cent of the total population of the country, were experiencing difficult conditions, exploited by their employers and caught up in a sponsorship system which, in practice, did not allow them to change their job or to leave it without the authorization of those infringing their rights. This system continued to exist partly because there was no effective labour inspection service or labour justice framework effectively protecting these workers. The international trade union movement had, on many occasions, called upon the Government to act on these specific cases of exploitation, through the Labour Inspectorate. However, it had never taken action but merely made promises. The Government should immediately adopt specific measures to protect the safety and health of migrant workers in construction and domestic workers, who were often subjected to brutality and rape on the part of their employers. Article 10 of the Convention stipulated that the number of labour inspectors should be sufficient to secure the effective discharge of the duties of the inspectorate. Yet in Qatar there were 150 labour inspectors to cover a foreign labour force estimated to be in the region of 1.5 million workers. This was totally inadequate. Moreover, questions could be raised as to the accuracy of the number of inspection visits reported by the Government. If it was true that it had given 1.5 million inspections, the inspectors had to carry out these inspections at a rapid pace, at the expense of quality. Complaints made by hundreds of workers questioned in the many labour camps focused on the confiscation of their passports, the non-payment of wages, the refusal to grant them identity papers and the squalor of their accommodation, all of which pointed to the shortcomings of a labour inspectorate that was described as being sound. All the accounts given by the workers in Qatar concurred that they had never seen a labour inspector inspect a work site. The training of labour inspectors was also an issue. The inspectors had not been adequately trained, especially from a linguistic point of view, and did not have the necessary resources to carry out their work successfully. Being unable to communicate with the vast majority of workers in the country, they were therefore incapable of conducting effective inspections. The Government presumed that workers brought problems to the attention of the competent authorities. The fact, however, was that the majority of workers did not submit complaints to the concerned authorities because they were afraid of reprisal, losing their job or being expelled from the country. A report published in June 2011 by the National Human Rights Commission of Qatar gave an account of this state of affairs.

Article 18 of the Convention provided for adequate penalties for violations of the legal provisions, the application of which was monitored by labour inspectors. Even if the work sites and work camps were inspected, the inspection services had limited powers to have their decisions applied or to monitor their application. Many violations of the labour legislation did not result in specific fines. Although penalties existed for forced labour and trafficking in persons, these were not correctly applied. All this information was stated in the conclusions of the tripartite committee set up to examine the representation against Qatar under article 24 of the ILO Constitution. Article 17 of the Convention stated that persons who violated or neglected to observe legal provisions enforceable by labour inspectors should be liable to legal proceedings. Nonetheless, there were serious obstacles preventing access to justice. Migrant workers found it difficult to have access to the Labour Court because they were obliged to pay a large sum, which they did not always have, (600 riyals) to lodge a complaint, and they often had to wait several months before a ruling was made. The tripartite committee had called upon the Government to guarantee access to justice without delay to the migrant workers, so that they might assert their rights effectively, including by means of strengthening the complaints mechanism and the labour inspection system. The Worker members requested the Government to take the measures required to establish an effective labour inspection system with a view to preventing or putting right any infringements of the labour legislation, which were prevalent and serious. The Government no doubt had the necessary resources, now needing the political will.

The Employer members stated that the first reason for the examination of this case by the Conference Committee was that the Government needed to provide better reports, as the Committee of Experts had observed that it was not providing the necessary information in the required form. The second reason, which was widely publicized in the media, regarded migrant workers engaged in building infrastructure for the 2022 Football World Cup. The Government had commissioned an investigative report, from an external corporate law firm, which contained ten pages on the subject of labour inspection. They were encouraged by the fact that few migrant workers had died on job sites, which meant that some labour inspection was occurring in a somewhat effective manner. They noted, with interest, from the observations of the Committee of Experts, that the 150 labour inspectors (number which subsequently increased to 200) had performed close to 47,000 inspections in 2012, up from 2,240 inspections in 2004. The low number of inspectors in relation to the high number of inspections meant that each inspector performed a large number of inspections on an annual basis, leading them to wonder how thorough and effective the inspections were in reality. The external report mentioned that each labour inspector had a quota of two inspections a day, leading to a lack of thoroughness of reports, and that additional responsibilities, such as the inspection of workers’ housing, increased inspector workloads and further compromised effectiveness. It was specified that the Government planned to add 100 inspectors, which would hopefully result in better inspections. The external report made a number of suggestions, namely: hiring more labour inspectors; bolstering the powers of inspectors, who were currently only able to issue recommendations and did not have the power to issue sanctions; improving coordination with the justice system to prosecute violations; reducing the minimum number of inspections per inspector; and taking steps for inspectors to receive comprehensive training to better assume their role.
They acknowledged that the Government was doing what it could and by hoping the situation would be effectively supervised.

The Employer member of Qatar stated that Qatari employers were firmly behind the need to ensure that OSH was guaranteed to all workers and that concrete measures were taken, in all sectors of the economy, to ensure that workers had good working conditions and that inspections were carried out. The country’s economic condition attracted large numbers of migrant workers and, considering development at the expense of human life was unacceptable, the creation of a solid labour inspection base was of paramount importance. In order to deal with the increased pressure resulting from the influx of workers, the number of inspectors had increased from 150 to 200 and legislation had been enacted, or was in the process of being enacted. The Government should make sure labour inspections proceeded in an effective manner, which would necessitate the implementation of numerous measures. It was pointed out that in the past years, Qatari employers had cooperated with the Government and had endeavoured to provide inputs in order to find solutions for the development of OSH and the improvement of worker awareness. With regard to statistics and data, the employers agreed with the Committee of Experts that the current system was not fully comprehensive, and therefore urged the Government to take every possible measure to comply with the requirements of the Convention. Qatari employers reiterated their willingness to cooperate with the Government in ensuring that labour inspection functioned properly.

The Government member of France noted that Qatar had ratified five of the eight fundamental ILO Conventions and one of four governance Conventions, and she encouraged the Government to continue its effort for ratification. She welcomed the progress that had been made in bringing the labour legislation into line with international standards implementing fundamental labour rights and principles. The migrant workers legislation must fully recognize workers’ freedom of association and of movement. However, the organization and functioning of the labour inspectorate did not, so far, make it possible for it to monitor the implementation of legislation effectively, or to identify and eradicate forced labour. The Government had chosen to support major international human rights causes and was set to host the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015. A quality, independent and efficient labour inspection system would be proof of the Government’s credibility.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries and of the Netherlands, recalled that the report of the tripartite committee of the Governing Body set up to examine the representation against Qatar under article 24 of the ILO Constitution had confirmed that migrant workers found themselves in situations prohibited by the Forced Labour Convention, 1930 (No. 29). Such situations were facilitated by contract substitution, inability to leave the employment relationship or country, non-payment of wages or threats of retaliation. Based on current trends, the International Trade Union Confederation (ITUC) had estimated that at least 4,000 workers would die by 2020, from accidents but also from heart attacks caused by heat, stress and poor living conditions. The available statistics indicated that the number of deaths in the workplace was three to four times higher than the European average. Despite some protections in the Labour Law, the violations demonstrated that this legislation was not properly enforced. Workers did not have access to effective mechanisms to remedy these violations. Migrants had difficulty accessing the available complaint mechanisms, partly because of lack of information, legal aid and interpreters, and partly because of fear of retaliation. Additionally, one such mechanism, the National Human Rights Committee, had limited means and powers. This body had downplayed the seriousness of the situation of migrant workers, undermining its independence and effectiveness. Additionally, statistics on workplace accidents were not published in Qatar and the existing statistics were very incomplete. The Government was therefore urged to take measures to ensure that workplaces were effectively inspected, that inspectors were properly trained and recruited, and to provide relevant statistical data regarding inspection visits, industrial accidents and cases of occupational diseases. The Government was also enjoined to ensure easy access to effective judiciary mechanisms for workers, as those currently available provided little, if any, remedy for migrant workers trapped in severe forms of exploitation.

The Government member of Morocco observed that the labour inspectorate had been reorganized and that efforts were being made to reinforce labour inspection in order to achieve conformity with the Convention. The experts had welcomed the progress made. There were some 200 labour inspectors, of whom 8.1 per cent were women, and who had been adequately trained for the performance of their duties, resulting in a considerable increase in the number of inspections conducted. In addition, the National Human Rights Commission of Qatar had observed progress in the observance of human rights. With an eye to the organization of the 2022 Football World Cup, the Government had adopted significant measures in areas such as OSH. There was no question that the authorities wished to reinforce labour inspection. In conclusion, everyone, including the ILO, needed to encourage the Government to continue improving conditions of work, including those of labour inspectors.

An observer representing the Building and Wood Workers’ International (BWI) indicated that the BWI had conducted two missions in Qatar, in October 2013 and March 2014, visiting construction sites and labour camps, interviewing workers in private and meetings with the ambassadors of different countries represented in Qatar, the Ministry of Labour and other entities. A large number of fatalities had been reported, causes of which included a gas explosion and heart failure presumably due to the life threatening effects of heat stroke, exhaustion, lack of proper nutrition, excessive working hours and miserable working conditions. Moreover, annually, over 1,000 construction workers were treated for falls, and 10 per cent of them were facing permanent disability. Of the 150 serious injuries were not reported or reported by the Ministry of Labour, their circumstances were not investigated, no cases were prosecuted and no fines or penalties were imposed. The number of recorded cases of occupational accidents and diseases, in relation to the country’s workforce, was clearly grossly underestimated. Of the 150 labour inspectors in post at the time of the BWI missions, only 33 were qualified in OSH and none specialized in construction. Labour laws were not properly enforced, illegal practices were endemic and prevention measures on the part of the labour inspectorate were wholly inadequate. Interviews with workers also revealed numerous cases of worksite accidents that had not been followed up by labour inspection, trade unions were banned and laws were regularly violated. Interviewed workers complained of the available of the kafala system, including illegal payments to employment agents, withholding of documents, non-payment of wages, poor nutrition and hygiene facilities, and restricted freedom of movement. It was likely that another million migrant workers would find their way to Qatar for construction work before 2022. Therefore, the BWI urged the Government to ratify relevant OSH Conventions, namely Occupational Safety and Health Convention, 1981 (No. 81) and the Rights to Liberty and Security Convention, 1994 (No. 143).
Health Convention, 1981 (No. 155) and Safety and Health in Construction Convention, 1988 (No. 167). Firm laws and their effective implementation were necessary. Without effective, independent labour inspection and enforcement, it was unlikely that the various new charters and standards, which were being published, but did not constitute law, would be effective. However, even an army of labour inspectors could not be the answer. Without trade union rights, rights to organize and to participate in the workplace, there could be no credible system to ensure human and labour rights, including OSH. This was a humanitarian crisis that required urgent attention and remedies. Therefore, the BWI called for all migrant workers in Qatar to have the right to form and join unions.

The Government member of Switzerland encouraged the Government to continue increasing the number of labour inspectors, particularly in the construction sector. At the time of recruitment of new inspectors, it should be ensured that the conditions of their recruitment and exercise of their functions were in line with the terms of the Convention. A special effort should be made in the area of training so as to ensure that inspections were carried out in accordance with high quality standards. Those inspectors should be recruited independently and regularly. The health and safety of workers should thereby be strengthened by the effective implementation of the Convention. While noting efforts underway to revise the right to work in Qatar, particularly in order to include new groups of workers, he indicated that it was equally important to implement the current legal provisions on the protection of workers. The Swiss Government would continue to offer its expertise and cooperation regarding labour migration by exchanging experiences and information on good practices. He welcomed the Qatari Government’s decision to abolish the sponsorship system: a practice which led to the excessive restriction of the exercise of fundamental rights and freedoms.

An observer representing the International Transport Workers’ Federation (ITF) stated that while construction and domestic workers faced the most serious workplace and industrial relations problems in Qatar, migrant workers in all sectors suffered from the lack of an adequate labour inspectorate. Despite several protections in the Labour Law relating to protection against dismissal on the grounds of having obtained maternity leave or due to marriage, a company in the country maintained policies that were in direct contradiction of these provisions of the Labour Law. If labour inspection in the country had been adequately effective, discriminatory provisions of the national law would have been uncovered. There were only six women employed by the labour inspection services, and addressing issues such as maternity discrimination and harassment would require more female labour inspectors. The Government was therefore encouraged to ensure that the labour inspectorate was adequately staffed with female inspectors, and that the inspectorate properly covered the construction sector, including road transport, as well as large state-owned companies.

The Government member of Sudan pointed out that Qatar witnessed a significant influx of migrant workers who wanted to work in order to benefit from the interesting wages offered in return for their participation in the economic development projects in the country. The authorities of Qatar had to meet a challenge arising from the increasing numbers of migrant workers, especially in the area of inspection, monitoring and ensuring the good application of labour regulations. To this end, the ILO had provided technical assistance and its help in raising the capacity building of inspectors. This in turn helped Qatar implement the fundamental rights and principles at work, which were all agreed upon in different ILO Conventions. The Government was set on promoting and developing the labour inspection system in law and in practice, as well as on concretely improving the working conditions of migrant workers. The Government deployed efforts to avoid any discrimination against women especially through the promulgation of laws and regulations which guaranteed equal opportunities between men and women, and subsequent monitoring by the competent Qatari authorities. Finally, he welcomed the measures implemented for the inspection of construction sites and for the establishment of the necessary health infrastructure, whose aim was to fulfill the needs of migrant workers in addition to the preparation of a wage protection system based on Qatari banks.

The Worker member of Tunisia welcomed the information that there had been an increase in the number of labour inspectors, particularly women inspectors, in the Labour Inspectorate. Nonetheless, information was still required on the impact of these achievements on migrant workers. The Government should be invited, at the next session of the International Labour Conference, to provide detailed information on: the way in which the Labour Inspectorate carried out its duties to protect workers, in particular the fundamental rights of migrant workers; the social security measures adopted for this category of workers; and the statistics on the number of accidents and occupational diseases registered. The Government should increase inspection on night work and women’s work. The inspection visits should cover all workers in the country. Finally, some workers were expelled from the country whereas others, like the Tunisian journalist, were prevented from leaving. The ILO should call upon the Government to put an end to these practices.

The Government member of Norway speaking on behalf of the Nordic countries shared the concerns raised about the working and living conditions of migrant workers who made up 95 per cent of the workforce in Qatar. Hundreds of thousands more migrant workers were expected to be recruited for the 2022 Football World Cup, while already a high number of fatal accidents had occurred on relevant construction sites. The disquieting number of work-related accidents and the insufficient activities of the labour inspection in the construction sector were alarming. Statistics provided by the Government about the number of inspectors and inspections carried out in 2012 were considered surprising when compared to the number of inspectors and inspection visits carried out in Norway. In Norway, 300 labour inspectors carried out 15,000 inspections per year, while in Qatar 150 inspectors carried out 46,000 inspections. This was hard to understand and she questioned the efficiency and effectiveness of labour inspections carried out in Qatar. The Government was strongly recommended to actively promote the improvement of working conditions of foreign workers and to provide them with the necessary legal protection by improving the labour inspection capacity in the construction sector. This should be guaranteed and demonstrated by the enforcement of relevant regulation and standards for which an effective labour inspection system was crucial.

The Worker member from Libya presented the case of a women worker who was dismissed from her job but subsequently unable to leave the country as she had not obtained an exit visa, a requirement for any worker to leave the country. Thousands of workers faced a similar situation. The exit visa was part of the sponsorship system (kafala) and constituted a serious obstacle especially to workers who had fallen ill or were dismissed. The Government was called upon to abolish the sponsorship system. Rights of workers were human rights, and the labour inspectorate was presumed to play an important role in protecting workers’ and human rights, and to end labour exploitation.
The Government representative raised a point of order, requesting that the Worker member of Libya not expand her intervention beyond the subjects raised by the Committee of Experts. Consequently, the Worker member of Libya was asked by the Chairperson to limit her observations to the issue under discussion.

The Worker members raised a point of order against the Government representative, requesting him to refrain from making accusations against the support of an official to the Worker member of Libya. Subsequently, the Chairperson requested the Government representative to let the Worker member of Libya continue her intervention, and recalled that the Government representative could make use of his right to reply at the appropriate moment.

The Government member of the Russian Federation was somewhat intrigued by the very high increase in the number of labour inspections carried out during the past years and wished to congratulate the Government for these brilliant statistical results. Some members of the Committee had nevertheless expressed doubts on the statistics submitted and stated that it would not be an easy task to keep them up in the future. It was also vital to ensure the quality of the inspections carried out, to improve the training of inspectors and to increase the number of women labour inspectors. Moreover, it was expected that the number of migrant workers, which was already very high, would increase considerably to take up the Herculean task of building the necessary infrastructure for the 2022 football World Cup, which would represent an enormous challenge for the labour inspection services. The Government should therefore continue to keep the Committee of Experts informed in detail of the measures taken to apply the Convention.

The Government member of Lebanon acknowledged the efforts made by the Government to comply with the provisions of the Convention. Already measures were taken to better protect workers such as reduced or suspended working hours during the hottest period of the day. Large resources in the country allowed the Government to appoint more inspectors and to increase the quality of inspection reports which included information on payment of wages. In the preparation for the Football World Cup of 2022, 1.5 million expatriate workers had been hired, and the Government was providing them with adequate housing facilities and access to health services, which was in itself a tremendous accomplishment. The Government was doing everything possible to comply with the Convention, both in law and in practice. He asked the President of the Committee to call upon those speakers who had questioned some of the information that had been provided regarding the application of the Convention to recognize that the Government was aware of the magnitude of the problem and the related challenges, and was dealing with them. All who came to Qatar were considered to be partners in development. Regarding statements related to the media, he considered that these were their personal views, and that the media were politicized and biased. He emphasized that all migrant workers had the right to litigate, that litigation costs were free, and that workers could use the existing arbitration mechanisms before referral to the courts. In 2013, the courts had dealt with about 10,000 cases. Regarding fatal accidents, Qatar valued the life of every individual working on its territory. Although shortcomings existed, it should be taken into account that the Government was working on new legislation imposing sanctions on employers who violated the occupational safety and health legislation. Moreover, the Government was also considering the review of the sponsorship system (kafala) and was looking at several proposals in this regard. He reiterated the Government’s commitment to international labour standards and cooperation with the ILO on matters relating to occupational safety and health and labour inspection. Qatar was working at both national and international levels and intended to continue sending labour inspectors to the International Training Centre in Turin for training. His Government would send a detailed annual report on the Convention in time for its examination by the Committee of Experts.

The Worker members first of all indicated their emphatic rejection of the Government’s remarks against an official of the Bureau of Workers’ Activities. They also deeply deplored the fact that the workers of Qatar had not been represented in the Conference Committee by a genuine trade union member but by an official from the human resources directorate of a major enterprise in the country. The discussions in the Committee concerning the application of Convention No. 81 were clearly based on the report of the Committee of Experts but they were also connected with the other work of the ILO, in particular the report of the tripartite committee set up to examine the representation against Qatar under article 24 of the ILO Constitution alleging non-observance of the Forced Labour Convention, 1930 (No. 29), which had been adopted by the Governing Body at its March 2014 session. Those conclusions could therefore be adopted, mutatis mutandis, by way of recapitulation. The Governing Body had invited Qatar to amend its legislation on the residence of foreigners without delay, which, inter alia, infringed in practice the right of workers to complain to the authorities in the event of failure by the employer to fulfill his obligations. The Governing Body had also invited Qatar to guarantee access for migrant workers to the labour inspectorate and to the labour courts. In that respect, the Government should be urged, with regard to labour justice, to ensure that complaints could be lodged free of charge, that there was easy access to the courts without fear of reprisals and that cases brought by migrant workers would be processed rapidly, while also ensuring that migrant workers had access to interpreters and legal assistance. Moreover, the testimonies heard during the discussions had shown that it was important that the Government was able to provide the Committee of Experts with reliable statistics on the work of the labour inspectorate, as had been requested by the Governing Body. The present case was concerned with serious violations of the rights of more than 1.5 million migrant workers who were in a situation of great vulnerability. The action taken by the Government was minimal and had had no impact. To put an end to the persistent crisis in human rights in Qatar, exceptional measures were now called for. Apart from the conclusions of the Governing Body, which had already been referred to, the Worker members urged the Government to increase considerably the number of labour inspectors and to ensure that the latter could communicate effectively with the workers. Furthermore, the Government was invited not only to accept technical assistance from the Office but also to receive a high-level tripartite mission early enough in the current year for the mission’s report to be available for examination by the Governing Body and the Committee of Experts at its 2014 meeting. In conclusion, concerned at the seriousness of the situation, the Worker members asked that the conclusions relating to the present case be inserted in a special paragraph in the Conference Committee’s report.

The Employer members supported the statement of the Government member of the Russian Federation and echoed the comments made by the Worker members regarding the services provided by the Bureau for Workers’ Activities and the Bureau for Employers’ Activities to the Workers’ and Employers’ groups respectively. There was general agreement that Qatar was performing an increasing number of labour inspections and the Government deserved praise for the efforts it had made in this regard. However, there was also consensus that far more labour
inspectors were needed to carry out the number of required inspections, with each inspector having to perform fewer inspections. The number of labour inspectors, including women inspectors and inspectors who spoke the language of the migrant workers concerned, should be substantially increased. The Employer members agreed with all of the points made by the Worker members in their concluding statement, except for the inclusion of a special paragraph in the conclusions of this case in the Committee’s report.

As to the acts of intimidation and the death threats that had allegedly been made against union leaders and members, which was punishable under the Penal Code in Algeria, the Government observed that no complaints had been lodged with the competent courts, and that the allegations were not backed by any concrete evidence. Concerning the implementation of section 6 of Act No. 90-14 on the exercise of freedom of association, the Government had already stated that foreign workers were free to join trade unions. A worker’s nationality was therefore no obstacle to union membership, and foreign workers enjoyed the same rights and the same protection as Algerian workers. However, the question of the nationality of persons seeking to establish a trade union was currently being examined for inclusion in the final draft of the new Labour Code. With regard to the application of section 4 of Act No. 90-14, the new Labour Code would also spell out the criteria governing the right of workers’ organizations to establish federations and confederations of their own choosing, irrespective of the sector. Finally, regarding the implementation of section 43 of Act No. 90-02 on the prevention and settlement of collective labour disputes and the exercise of the right to strike, the Government observed that the Convention did not deal with the right to strike. That said, the right to strike was embodied in the Algerian Constitution, and as such it was set out in the legislation and governed by legal procedures of prevention, conciliation, mediation and arbitration. The number of strikes recorded each year showed that the right to strike existed for trade unions in the country. The latest strike had been called by trade unions in the national education sector, and had been resolved to the workers’ satisfaction following negotiations with the public authorities. Algeria had ratified 59 ILO Conventions, including the eight fundamental Conventions and three governance Conventions, and was among the countries that had ratified the highest number of international labour Conventions. The world of work was constantly evolving in order to adapt to new economic and social circumstances, and the Government welcomed any recommendations or observations that might help it improve the country’s labour legislation and foster a more peaceful social climate.

The Worker members noted that the issues raised in the present case mostly concerned the public sector, i.e., workers employed by the State. That did not exclude the private sector, which encountered the same problems. In its reply, the Government had not replied to accusations of intimidation and threats, including death threats, received by the International Trade Union Confederation (ITUC) and a number of Algerian trade unions in the public sector. Speakers would take the floor to bear witness to the alleged occurrences. The Government had also not replied to the observations of the Committee of Experts on the observance of the ILO standards. In that regard, it should be recalled that Algerian law reserved the right to establish trade unions for persons who had acquired Algerian nationality at birth or at least ten years ago, and that the trade unions had limited possibilities of establishing federations or confederations of their choice. While it could be accepted that national legislation might require founders of a trade union to respect certain clauses concerning publicity and other similar provisions, these provisions should not be tantamount to prior authorization or be applied in such a way as to prohibit the establishment of organizations. In a case examined by the Committee on Freedom of Association in March 2013 (Case No. 2944), the Committee had asked the Government to indicate whether the two trade union complainants, the Higher Education Teachers Union (SESS) and the National Autonomous Union of Postal Workers (SNATP) had obtained registration. The Worker members understood that those organizations had still not been registered.
Trade unions were subject to various limitations on their right to organize their activities and to formulate their programmes in full freedom. It was not a question of the mere problem of the right to strike. According to Algerian law, strikes were prohibited when there was likely to provoke a “serious economic crisis”. The Government stated that the notion was substantially the same as the phrase “acute national crisis” commonly employed by the Committee of Experts and the Committee on Freedom of Association. Nevertheless, the latter had asked the Government to clarify that notion and to provide examples. In reality, all notices of strike action submitted over recent years in the public sector had been subject to interim proceedings before an administrative court and, in all cases, the strike had been declared illegal. That procedure was unilateral, as the trade unions concerned were not invited to present their views. The orders were not reasoned and could only be appealed before the State Council, which issued its decisions within an average of two years. The Worker members recalled that, according to jurisprudence of the Committee on Freedom of Association, the decision to declare a strike illegal should not come from the Government, but from a body independent of and entrusted by both parties. However, when such an excessive number of strikes was declared illegal, at the simple request of the public authorities party to the conflict, without any grounds and without the opportunity for the parties involved to set out their view, there was grounds for questioning the independence of the judiciary and the confidence that the parties could have in it. The Committee of Experts also mentioned the National Arbitration Commission, to which the Government could refer in order to intervene in collective disputes. The Worker members questioned the composition of that body in the absence of trade union elections or of an independent membership count in Algeria. The independence of the National Arbitration Commission and the confidence that the parties could have in it was once again open to question. In reality, trade union activity, like the organization of assemblies or training meetings, was dependent on authorization from the Ministry for the Interior and the procedure almost systematically gave rise to intimidation, delays and harassment.

The Employer members thanked the Government for the very constructive submission and its clear receptivity to the constructive feedback from the Committee of Experts on how to improve its labour relations and legislation. The Employer members appreciated that the Government recognized the need to have an effective dispute resolution mechanism, which were however restricted to sectoral trade unions. There appeared to be two broad themes observed by the Committee of Experts with regard to the application of the Convention. The first issue, raised in past observations of the Committee of Experts, concerned section 6 of Act No. 90-14 of 1990 that restricted the right to establish trade unions to persons who were Algerian by birth or had been of Algerian nationality for at least ten years. The Committee of Experts had noted that the right to organize had to be provided to workers and employers without distinction concerning their nationality. Also in its prior observations, the Committee of Experts had repeatedly called on the Government to ensure legislative reforms to deal with this issue and to provide information on the action taken. In addition, in its past observations, the Committee of Experts had repeatedly called on the Government to amend its legislation to remove all obstacles preventing workers from establishing federations of their own choosing. The Employer member had heard the Government’s explanations that nationality was not a barrier to registration. However, it was a factor in the ability to establish trade unions. They understood that the comments of the Committee of Experts would be taken into account in the context of the current revision of the Labour Code and encouraged the Government to provide more information in this regard. The second issue was of concern to the Employer members. The Committee of Experts, in its observations for the past few years had referred to section 43 of Act No. 90-02, under which strikes were forbidden in essential services when they were liable to give rise to a serious economic crisis. The Committee of Experts had not only requested the Government to amend the language of its legislation, but had also proposed draft language in this respect. Moreover, the Committee of Experts had requested specific examples of cases where, in light of this language, strikes had been prohibited because of their possible effects. In the view of the Employer members, this was problematic, as the Committee of Experts had exceeded its mandate in this regard. It was important that the right to strike not be addressed in the conclusions of the Conference Committee because there was no tripartite consensus that it was dealt with in the Convention. In its submissions, the Government also considered that the Convention did not deal with the right to strike. In conclusion, the Employer members expressed confidence that the Government would act constructively and encouraged it to provide the information that the Committee of Experts had requested. The Government should be commended for its openness in accepting constructive feedback from the Conference Committee to improve labour relations in the country, as well as the efforts it had already made and would continue to make.

The Worker member of Algeria observed that, despite the specific situation that the country had been facing for a number of years, this had not hindered the development of trade union pluralism, at least in certain sectors. The major trade union federations had had to face, in the past years, new political choices which had been brought about by the economic and social situations. He expressed solidarity with the unions of his country facing difficulties. While these difficulties were undeniable, they could be resolved within the framework of social dialogue at the national level. Describing the situation of workers and trade unionism in the region, he emphasized that the situation required understanding, conciliation and the adoption of certain measures.

An observer representing the International Trade Union Confederation (ITUC) recalled that, following the events of October 1989, the ruling party, under force by popular revolts, had ended the regime on trade unions, which were however restricted to sectoral trade unions. As such, the SNAPAP had been registered in 1990. However, 90 per cent of sectoral trade unions registered during this period of revolt had been dissolved following the halting of the electoral process in 1992. The trade unions that had been spared remained the constant target of a power which sought to control or neutralize them. Algeria had ratified Convention No. 87 in 1962, but trade pluralism had not been written into the national Constitution until 1989. Even though article 132 of that Constitution provided that ratified Conventions prevailed over national laws, the content of the Convention could not be cited in the courts in relation to the free exercise of trade union rights. With regard to the suspension and dismissal of trade unionists, in September 2013 nine members of the federal bureau of the public service trade union, which had suspended for one month following a strike. Today 137 trade unionists, mostly women, were still suspended following a general strike which had started in April 2012. In reference to the ban on demonstrations and physical and judicial repression, hundreds of protesters and strikers had been assaulted and arrested in 2012, in particular Mr Abdel Khader Kherba and Mr Tahar Bel Abes, of the
SNAPAP Committee for the Unemployed, and Mr Yacine Zaid, a representative from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF). In February 2013, police forces had surrounded the trade union premises to prevent the Maghréb forum for unemployed graduates from taking place, and had then detained and deported the delegations of Morocco, Mauritania and Tunisia who were due to participate. In March 2013, the border police prevented a delegation of 100 people from SNAPAP from travelling to Tunisia for the World Social Forum. With regard to interference in the internal affairs of trade unions and the “cloning” of unions, which was common practice by the authorities, a “clone” trade union of SNAPAP had been created by the authorities in 2001 which was under the leadership of a retired member of Parliament. The objective of this “clone” union was to discredit SNAPAP with the ILO. The regional or national trade union congresses were held under court order, and yet it was surprising that the Ministry of Labour refused to consider the records relating to SNAPAP resulting from the congresses. Moreover, the general intelligence services had summoned the founders of the solidarity trade union education higher education teachers organization, putting pressure on the workers and at the same time attempting to identify people likely to help the administration in creating a “clone” organization. With regard to the refusal to register autonomous trade unions or umbrella organizations, the refusal to register trade unions or federations was a discretionary decision not based on any regulatory text. Years later, the registration requests of new trade unions were still pending, with the aim of discrediting SNAPAP with the ILO. In conclusion, SNAPAP had already lodged several complaints with the Committee on Freedom of Association, which had made recommendations that had been ignored by the Government. The repression against SNAPAP members had even increased. ILO technical assistance had not produced any results. The severity of the situation meant that other possible options set out in the ILO Constitution invited consideration.

The Government member of Egypt commended the efforts of the Government to draw up the draft Labour Code, which took account of the comments of the Committee of Experts, particularly with regard to the possibility of creating trade unions, federations and confederations freely in all sectors of activity and the recognition of the trade union rights of foreign workers. Moreover, measures taken to strengthen dialogue with the social partners and consultations were being held on all aspects of trade union activity. Furthermore, the right to strike was recognized by the national Constitution, and strikes were not therefore prohibited, but simply regulated. The justice system took account of ILO Conventions and its operation deserved respect. The far-reaching reforms undertaken in Algeria were ongoing and were not without their problems and challenges. The population was fully involved in that process and Algeria was thus a guardian of fundamental human rights, good governance and trade union pluralism.

An observer representing Education International denounced the use of precarious employment contracts in education, which made it impossible to foster a social climate that was conducive to unionization advocated in the Convention. Since 2006 the Algerian Federation of Education of SNAPAP had been demanding permanent contracts for tens of thousands of teachers on precarious contracts. Their movement had been met with repression. Over 7,000 protesting teachers on precarious contracts had been arrested, 5,000 had been fined like common criminals and dismissed, sometimes after teaching for more than ten years. Most of them were women who now had no source of income, and many reported that they had suffered brutality by the forces of order. The advent of the Arab spring and the fear that the protests might get out of hand had created an opening, and 35,000 teachers had been given permanent contracts by Presidential decree. But the regularization of their situation had not been negotiated with the trade unions, and 30,000 other teachers were still on precarious contracts. With SNAPAP’s support they had, since 2011, maintained their demand for permanent contracts. The struggle between the two sides was still continuous, as were harassment, arrests and termination of contracts. At the start of the 2013–14 school year the temporary contracts of over 1,000 teachers had not been renewed. All of them were union members.

The Government member of the Bolivarian Republic of Venezuela emphasized that the Committee of Experts had noted with satisfaction the progress made in relation to freedom of association, particularly with regard to the registration of trade unions. The progress made by the Government through social dialogue should be highlighted. Evidence of this was the signing of many collective agreements and the renewal of a National Economic and Social Pact in February 2014. The Government demonstrated goodwill by considering the recommendations made by the Committee of Experts in the framework of the draft Labour Code. The Government denied any alleged acts of intimidation or threats against trade union delegates and trade unionists, and emphasized no complaints had been made in this regard to the competent bodies, nor was there any evidence of such acts. There was no doubt that the Government would continue its efforts and progress in this regard, guaranteeing freedom of association and protection of the right to organize. As a result, the conclusions of the Committee needed to recognize and draw attention to the progress made by the Government, as well its commitments and good faith in relation to the application of the Convention.

The Worker member of the United States, also speaking on behalf of the Worker members of Canada, Spain and Switzerland, pointed to the various forms of intimidation to which Algerian trade unionists had been subjected over many years. These included the Government practice of “cloning” unions, dismissal, physical violence and threats, imprisonment based on false charges and restrictions on the freedom of trade unionists to travel. The attempts to intimidate trade union leaders and activists were blatant and unrelenting, and she particularly referred in this regard to: the death threats received by the President of SNAPAP, and the arbitrary decision to revoke his union leave of absence granted to him over a decade earlier. Most troubling was the murder of Professor Ahmed Kerroumi, an activist for the National Council for Democratic Change, an organization which SNAPAP had helped to form, after his meeting with the United Nations Special Rapporteur on the right to freedom of expression in April 2011. The Government had not undertaken any official investigation into this killing. She provided further examples of false charges against and prison sentences of trade union activists, including for organizing a strike, participating in meetings or in hunger strikes or, recently in April 2014, for distributing leaflets likely to
undermine national interest. Regarding restrictions on the freedom of trade unionists to travel, the President of SNAPAP had been arbitrarily deprived of his passport while attempting to travel to France in 2009 and had been banned from travelling for one month. Another union activist had been arrested in 2012 and imprisoned while attempting to travel for the purpose of organizing workers, and had been detained recently when he had tried to board a flight to attend the Dublin Platform for Human Rights Defenders. In July 2013, the authorities had not allowed the delegation of SNAPAP to travel to attend the World Social Forum in Tunisia. In addition, workers had faced serious repercussions for participating in peaceful protest action, strikes or demonstrations, including in February 2014. These had included arrest, physical assault, non-payment of wages and the stopping of social security and health benefits. The right of unions to function freely was also restricted, as illustrated by the repeated attacks and harassment against the “House of Labour” of SNAPAP over the past five years. All of these examples, which were only a few of many, illustrated that the acts of repression faced by trade unionists of Algeria were severe and widespread. The Government therefore needed to undertake serious reforms in order to meet its obligation to ensure freedom of association, as required by the Convention.

The Government member of Angola expressed support for the statement by the Government, which had made substantial progress in the implementation of ratified Conventions. Freedom of association was respected in the country as trade unions were formed and collective agreements were signed, and particularly the National Economic and Social Pact. The right to strike was also respected and it appeared that the Government had answered the questions asked regarding the application of the Convention in the country.

An observer representing Public Services International (PSI) noted that, although Algeria had ratified 53 ILO Conventions, including Convention No 87, freedom of association was constantly undermined by the administration’s abusive practices. Trade union delegates in various sectors of activity had had their rights infringed; they had been banned from taking part in trade union activities and been refused to allow their members to hold general assemblies. “Cloned” trade unions had been set up, trade union members and delegates had been suspended and struck off lists, and the secondment of trade unionists, even with a national mandate, had been prohibited. According to the observer, these measures should be considered as an attempt to undermine the role played by Arab trade union organizations. The Autonomous General Confederation of Algerian Workers (CGATA) had the status of a trade union which had received the same registration as a parallel union. Numerous international labour conventions had not been published in the Official Gazette, which denied workers the opportunity to use these Conventions in legal proceedings. Teacher trade union members faced harassment, intimidation, non-payment of wages and arbitrary arrest, and under these circumstances members of teachers’ unions had had no choice but to call a strike in 2012, which had been followed by 95 per cent of the workers in the sector. Some members who had participated in the strike continued to face the same kind of reprisals, but the Government had not undertaken any proper investigations. He also accused the Government of having attempted to assassinate the president of one union, but the alleged perpetrator of this criminal act had not been subject to any action by the justice system. The silence of the judiciary in these cases was sufficient in itself to understand that it currently had no power. The Government suppressed trade unionists and eliminated independent unions. There was no other option than to turn to its henchmen for justice.

The Worker member of Bahrain noted the statement by the observer representing the ITUC, which showed that Algeria was currently facing economic difficulties which required the collaboration of all the social partners to reach agreed solutions. Under the current circumstances, the trade union situation in Algeria did not require any intervention by the Committee and he considered that the ITUC had taken an extreme position in this case. Certain parties appeared to be exploiting the ILO to undermine the role played by Arab trade union federations. The situation in Algeria should be examined in an equitable manner based on the evidence.

The Government representative indicated that he intended to respond calmly and confidently to the accusations levelled against his country. Algeria had made enormous sacrifices to recover and preserve its stability, was now a days a safe haven where there were no restrictions, no death threats, and no curbs on the organization of national or international events so long as the country’s laws and regulations and its procedures were respected. Testimony to that was the recent holding in Algiers of the Conference of Ministers of Foreign Affairs of Non-Aligned Countries. Some of those who claimed to have been
threatened were actually present in the room where the Committee was meeting. If they were really under threat, it should be asked how they had managed to leave the country to take part in an international Conference. The discussion of the case before the Committee was based on completely false premises and on baseless accusations that could prejudice the ILO and have unforeseeable harmful consequences. Algeria respected human rights and the ILO’s international standards, as was obvious from the number of Conventions it had ratified. As had been explained in detail in his Government’s statement at the start of the discussion, Algeria fully respected trade union rights. Considering the number of trade unions that were active in the country, it was inconceivable that Algeria should be accused of impeding freedom of association, just as it was inconceivable that it should be accused of impeding the right to strike when one knew just how many strikes were called each year. Every country needed laws that everybody respected to avoid anarchy. Employers could not therefore be blamed for taking legal action when strikes were called in total violation of established procedures. No diktat from the employers or from the workers could be tolerated, and that was why the country’s_entire legislation was built on dialogue and negotiation when any disputes arose between parties. Regarding the allegation that a Maghreb forum had not been allowed to take place, should be recalled that no country in the world could tolerate the organization of an international meeting on its territory that violated its laws and regulations. The ITUC had been informed of the meeting via the ILO in a report issued on 8 May 2013. As for the allegation that restrictions had been placed in the way of the CGATA’s constitution, for over a year it had still not responded to the Government’s observations based on the legislation in force concerning the CGATA’s by-laws and its administrative files. As to the cloning of trade unions as alleged by the ITUC, it should be noted that trade unionists in Algeria had never heard of any such practice, if it existed. If some trade unions did not take part in tripartite meetings, that was simply because the most representative organizations were recognized as having certain prerogatives, in accordance with relevant international standards. Sectoral trade unions participated fully in discussions concerned their area of activity and they were consulted on all matters related to the material and moral interests of the workers concerned. Finally, with respect to trade unionists whose dismissal had been allegedly unjustified, they enjoyed the full protection of the law and were entitled to defend their rights in court. It was everybody’s duty to maintain the Committee’s credibility by making sure that the complaints brought before it were based on facts. Algeria reaffirmed its absolute readiness to collaborate with the Committee in order to improve its legislation, which was inevitably a long-term process.

The Worker members indicated that the organizations concerning which the Committee on Freedom of Association had issued a decision in 2013 had still not been registered one year later. Workers’ organizations faced a variety of obstacles on their activities that went beyond mere restrictions on their right to strike, for reasons which were not legally plausible and which were not in conformity with ILO standards. Moreover, the bodies that were called upon to rule on the legality of union action did not meet the requirements of the standards either. Their independence was highly questionable, they were not trusted by the parties concerned and the procedures they applied did not meet the criteria of a fair trial. For all those reasons, the Government should be asked to accept a visit from a direct contacts mission in order to verify with the interested parties the conformity of the laws and regulations and administrative practices with international standards.

The Employer members welcomed the readiness of the Government to cooperate with the Committee and the ILO with a view to improving its national law and practice on freedom of association. There was apparently consensus that the Government should be encouraged to report on the measures it was taking relating to freedom of association, including information on the reform of the Labour Code and the establishment of the rights of trade unions, their registration and social dialogue in general. This information needed to be reflected in the conclusions to the present discussion. In light of the discussions and the submissions of the Worker and the Employer members, as well as those of the Government representative regarding the scope of the Convention, the conclusions should also include reference to the fact that the Committee did not address the right to strike in this case, as the Employers did not agree that there was a right to strike recognized in Convention No. 87. It should be noted that there was no consensus between the groups in the Committee on the right to strike as being part of Convention No. 87. Proposed conclusions which called upon the Government to bring its national law and practice into line with the principles of the right to strike set out by the Committee of Experts were to be avoided.

The Government provided the following written information.

With regard to the measures taken to implement the recommendations of the Commission of Inquiry concerning the registration of trade unions, as of 1 January 2014, 37 trade unions had been registered in the Republic of Belarus, including 33 national trade unions, one local trade union and three plant-level trade union organizations. Some 23,193 primary trade union organizations were registered. In the past few years, only isolated instances have been noted of refusal to register trade unions. Only four such refusals occurred over the period 2010–13. On several occasions, the Government of the Republic of Belarus has considered improving the law on the registration of trade unions. Together with the social partners, the Government will continue working to secure the rights of citizens to free association in trade unions.

With reference to the development of collective labour relations and tripartite cooperation, as of 1 January 2014, 556 agreements were in force in the Republic (one general agreement, 46 sectoral wage agreements and 509 local agreements), and 18,119 collective agreements. The law of the Republic of Belarus does not restrict the rights of trade unions (irrespective of their membership) to take part in collective bargaining. By way of example, there are large enterprises in our country, such as “Belaruskali” or the “Mozirsky Oil Refinery”, in which the parties to a collective agreement include both trade unions belonging to the Federation of Trade Unions of Belarus (FPB) and trade unions belonging to the Belarus Congress of Democratic Trade Unions (BKDP). One of the most important elements of cooperation in the social partnership system is the shared preparation of general agreements between the Government of the Republic of Belarus, the national employers’ associations and the trade unions. A general agreement regulates the most significant aspects of economic and social policy: the criteria for the living standards of workers and their families, and the policy on wages, employment, pensions and benefits. In addition, a general agreement contains provisions for the development of social partnership and for contributing to the collective bargaining process. Beginning with the general agreement that was concluded for 2006–08, it is specified that such an agreement applies to all employers (and employers’ associations), trade unions (and their federations) and workers in the Republic of Belarus. Accordingly, both
trade union federations (the FPB and the BKDP), regardless of their representative character, can enjoy the guarantees provided in the general agreement. In line with a decision by the National Council on Labour and Social Issues (NCLSI), work was in progress in Belarus in the second half of 2013 on drafting the new General Agreement for 2014–15. All the trade union federations and employers’ associations took part in its drafting. The General Agreement between the Government of the Republic of Belarus and the national employers’ associations and trade union federations for the period 2014–15 was signed on 30 December 2013.

With regard to the application of the law governing the receipt of foreign assistance, the arrangements for receiving and using foreign assistance in the Republic of Belarus were laid down in Decree No. 24 of 28 November 2003 of the President of the Republic, “on receiving and using foreign assistance”. This Decree does not prohibit the receipt by trade unions of foreign assistance, including assistance from international trade unions. The Decree defines the conditions (purposes) of using such assistance, and also provides that it must be registered in the established manner. However, the procedure for registering foreign assistance granted free of charge is not complicated, and does not take long to carry out. From 2010 until the end of the first half of 2013, the receipt of foreign assistance was registered in the Department for Humanitarian Affairs of the Office of the President of the Republic. It must be emphasized that for the whole of the period in which Decree No. 24 has been in force, there has not been one instance of trade unions being refused registration of foreign assistance.

On the basis of its consideration of the question of Belarus in June 2013, during the 102nd Session of the International Labour Conference, the Committee on the Application of Standards invited the Government of the Republic of Belarus to accept a direct contacts mission “with a view to obtaining a full picture of the trade union rights situation in the country, and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry”. The Government of the Republic of Belarus accepted the Committee’s proposal and took the necessary steps to enable the direct contacts mission to carry out its tasks in full. The direct contacts mission visited the Republic of Belarus from 27 to 31 January 2014. The mission met with the Republic’s Council of Ministers, the Administration of the President of the Republic, the Office of the President, the Ministry of Foreign Affairs of the Republic of Belarus, the Ministry of Labour and Social Protection, Justice and Foreign Affairs. The views of the Government were supported by the social partners, who also showed considerable interest and held their own constructive and fruitful meetings with the mission. The direct contacts mission paid special attention to the work of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere. The mission held a meeting with the members of the Council, during which all the parties represented on it emphasized its importance as a necessary forum to enable all those involved to express their opinion and make proposals for resolving current problems. None of those on the Council expressed any doubt of the usefulness and necessity of this tripartite body. As the outcome of the work in Minsk, the direct contacts mission suggested pursuing a number of future options which, in its view, should enable the recommendations of the Commission of Inquiry to be implemented. The Government of the Republic of Belarus, together with the social partners, is conducting an active dialogue with the International Labour Office on the organization of measures to implement the proposals of the mission. It has now been agreed to hold a seminar on 10–11 July 2014 to study international experience of the work of tripartite bodies (with a view to increasing the potential of the Council on the improvement of legislation in social and employment matters). In addition, the International Labour Office has prepared a “roadmap” for the accomplishment in 2014 of the remaining measure on: collective bargaining; dispute resolution and mediation; and instructing judges, prosecutors and lawyers in the application of international labour standards. All the measures will be carried out on a tripartite basis, with the participation of all those involved.

In addition, before the Committee, a Government representative said that the direct contacts mission had had a positive effect on the strengthening of constructive relationships between the Government and the social partners and had facilitated a number of steps to implement the recommendations of the Commission of Inquiry made in 2004. The Government was profoundly convinced that the development of social dialogue, tripartism and the right of freedom of association and collective bargaining was only possible with joint and constructive interactions between the Government, employers’ and workers’ organizations.

The implementation of many of the recommendations of the Commission of Inquiry required a complex approach and a longer period. For this reason, it was necessary to take into account the views of all interested parties, which was why the Government had proposed the establishment of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which had been supported by the social partners, both at the national and international levels, and by the ILO. The Council was composed of trade union representatives of both the FPB and the BKDP and provided a basic forum for carrying out mutually agreed steps and recommendations. In the Council, questions concerning registration, dismissals, collective bargaining and other issues had been discussed. However, the adoption of decisions was a complex process. Each party had their own vision of the problems and their solutions and, as a result, not all of the decisions adopted were understood as optimal solutions by everyone. Despite having made some criticisms, the trade unions had never been called into question and had been perceived positively. The Council permitted enhanced interactions between the interested parties and their active participation in discussions, in a spirit of social dialogue. Problems were discussed and participants had often adopted decisions on an agreed basis. This had also promoted constructive cooperation between the parties in other areas, such as the regular conclusion of general agreements between the Government and the trade unions concerning important issues, for instance in relation to standards of living, wages, pensions and other benefits. On 30 December 2013, a new general agreement for 2014–15 had been concluded with the participation of the FPB and the BKDP, which was applicable to all employers and workers, regardless of their level of representativity. The Council had a special role to play in the implementation of the recommendations of the Commission of Inquiry. During the direct contacts mission in January, the ILO experts had also held meetings with members of the Council. Discussions on further improvements of the activities of the Council had been held. The Council was of high importance, as it gave all interested parties the possibility to express their views and solve problems, and its usefulness had never been called into question. The good relations between the Government and the social partners was a direct result of a consistent policy of implementing trade union pluralism. As a result of the work of the direct contacts mission, there had been proposals concerning some promising outlets in the future, with a view to the further implementation of the recommendations made by the Commission of Inquiry, including for the improvement of legislation and
collective bargaining processes through the enhancement of the potential of the social partners, the training of judges, public prosecutors and other public representatives in the area of freedom of association. The proposals had been made in the course of the direct contacts mission in the Tripartite Council, and had been supported by the Government and the representatives of the social partners. The Ministry of Labour had received independent information from all the trade unions and employers an expression of their interest and readiness to implement the proposals. The Government was carrying out effective dialogue with the ILO to organize events aimed at improving and implementing these proposals, among others, to improve the potential of the Council in the future. The Government fully respected the principles of the ILO, and appreciated the cooperation with the ILO, including the work of the direct contacts mission in January to further improve the situation and implement the recommendations of the Commission of Inquiry. The Government was aware of the interest of the ILO in trying to help the Government and the social partners bring about a solution and for the further development of social dialogue and tripartism. The implementation of the proposals made during the direct contacts mission was of crucial importance to pave the way for further progress in the area of freedom of association.

The Worker members observed that the case, which was being examined because of the Committee of Experts’ double footnote, was still about the violation of the fundamental right of the workers of Belarus to organize and of their trade unions to conduct their affairs. Legal obstacles to the establishment of new organizations were still in force, in the form of provisions regarding their legal address, and of a requirement that their members comprise at least 10 per cent of the company’s workers. In 2013, the Government had indicated that those provisions were to be amended, but nothing had happened since then. On the contrary, it was no longer considered to be a priority. Meanwhile, the Government was making it more and more difficult for trade unions to register, with the result that newly constituted organizations were completely discouraged from registering. Moreover, in addition to the fact that unions not affiliated to the official trade union federation continued to encounter difficulties, the generalized system that had been introduced of resorting to fixed-term contracts, which served as a means of bringing pressure to bear on the members of independent trade unions, who ran the risk of not having their contracts renewed. In addition, independent unions were systematically denied the right to demonstrate and hold peaceful meetings in defence of the workers’ interests; and the 2004 recommendations governing the registration of trade unions and employers’ organizations not only required prior authorization, but was also greatly restricted. For years the Government had failed to send the Committee of Experts any information on amendments to the provisions governing the registration of trade unions, free international aid, mass collective action or the right of union to organize its activities freely. Nor had it provided any information on cases of the refusal of registration or authorization to demonstrate. The plan drawn up with the participation of the ILO and of the social partners in 2009 had not been implemented, and the country’s Tripartite Council served no real purpose at all. As a result, the Worker members were very suspicious of the announcement by the Government that it was seeking to bear the necessary costs to amend the law to allow for a participation of the social partners, public prosecutors and other public representatives in the area of freedom of association. The proposals had not yet been implemented, and the country’s Tripartite Council served no real purpose at all. As a result, the Worker members were very suspicious of the announcement by the Government that it was seeking to bear the necessary costs to amend the law to allow for a participation of the social partners, public prosecutors and other public representatives in the area of freedom of association.

The Employer members appreciated the positive and constructive tone of the Government. They were pleased that the Government had accepted a direct contacts mission and welcomed the explanation of the Government representative concerning some of the outcomes of the direct contacts mission and the follow-up measures that were to be adopted. The Employer members had not yet had the occasion to assess the information of the direct contacts mission, but looked forward to the assessment by the Committee of Experts. The majority of the information provided by the Government related to the Tripartite Council and the pleas of the workers and employers to the Government, as a result of this Council, cooperation between the Government and the social partners had improved. They also noted that promises had been made in relation to the direct contacts mission to further the implementation of the 2004 recommendations, which related to legislation, legislative processes and the training of judges on freedom of association principles. Convention No. 87 was a fundamental Convention, which had been ratified by the Government in 1956. The status of double footnote showed the seriousness that the Committee of Experts had attached to this case. The Employer members thought that it was important to note that a 2003 complaint made under article 26 of the Constitution had resulted in the 11 recommendations made by the 2004 Commission of Inquiry, which had called for free and independent trade unions to be able to play their proper role in the country’s social and economic development. In 2013, almost one decade later, the Committee of Experts had noted with regret that no new information with regard to the implementation of the recommendations of the Commission of Inquiry had been made. In 2013, the Government had indicated to the Conference Committee that no cases of registration had been refused and no trade
unions had been charged with criminal or administrative offences in 2012. The Government had expressed its commitment to bringing its legislation into conformity with the Convention and to social dialogue, and had emphasized the positive role of the Tripartite Council since its operation in 2009, where several issues including freedom of association rights had been discussed. The Government had further stated that the Tripartite Council was best suited to making progress on legislative matters and had committed to amending Presidential Decree No. 2 as part of the required amendments.

At the 2013 discussion of the Conference Committee, the Employer members had welcomed the indication by the Government that the Tripartite Council had been operating since 2009, that the relations between the Government and the social partners had stabilized and that a number of collective agreements had been concluded. However, the Employer members had requested the Government to intensify its cooperation with the social partners and to avail itself of the expert advice and assistance of the ILO, and had supported the request by the Worker members that the Government should accept a direct contacts mission. In 2013, this had resulted in a special paragraph of the Committee's report. In its conclusions, the Conference Committee had urged the Government to immediately take all the measures necessary to ensure that employers and workers could fully exercise their rights of freedom of expression and association. The Conference Committee expected detailed information on the proposed amendment to be provided to the Committee of Experts and had trusted that the Committee of Experts would be in a position to note significant progress in 2014. The 2013 observations of the Committee of Experts were a follow-up to these conclusions of the Conference Committee. In its latest observation, the Committee of Experts urged the Government to amend Presidential Decree No. 2 and to address the registration of trade unions in practice. The Committee of Experts noted with deep regret that no progress had been made with the implementation of the recommendations of the Commission of Inquiry and the application of the Convention in practice. The Employer members recalled that the case had been examined almost every year since 2001, and they had seemed to sense progress after 2007. They had appreciated the efforts made by the Government after that date. Now, however, the Employer members noted that, despite the opportunity to do so, it appeared that the Government had not provided information on the amendment to Presidential Decree No. 2 nor had it addressed the request of the Committee of Experts and there also seemed to be a lack of information on the Act on Mass Activities and how this Act related to freedom of association, among other concerns. Furthermore, no information relating to measures regarding the amendment to the relevant section of the Labour Code appeared to have been provided. The Employer members wished to emphasize the obligation of the Government to provide additional information to the Committee of Experts regarding all these issues. In light of the 2013 conclusions of the Conference Committee and the observation of the Committee of Experts, now was the time when progress had to be intensified beyond what had been seen up to the present. They encouraged the Government to commit itself to the full and effective implementation of the 2004 recommendations of the Commission of Inquiry without further delay, taking into account the full participation of the social partners. They took the opportunity to indicate that they would be disappointed if progress were not intensified in the short term.

The Worker member of Belarus emphasized that the recommendations adopted ten years ago by the Commission of Inquiry had considerably helped in promoting the trade union movement and encouraging social partnership in Belarus. He paid tribute to the direct contacts mission that had taken place in January 2014, which had met all the parties concerned, and particularly the trade unions, without encountering any obstacles. It might be considered that all the recommendations made by the Conference Committee in 2013 had continued to be implemented, with ILO assistance. With regard to the legal provisions concerning the 10 per cent minimum membership requirement, it should be recalled that the rule applied to all trade unions without exception. Nonetheless, the FPB was open to the idea of attempting to do away with this requirement, despite the fact that it did not cause any real problems in Belarus. With regard to the recommendation concerning foreign financial aid, the FTUB opposed its implementation because it could cause problems for workers in the country. The direct contacts mission of January 2014 had found that five recommendations had been implemented, but this matter had not been raised during the Committee’s discussion. The FPB had organized a large demonstration on 1 May and all trade unions had participated in the preparation of the general agreement with the Government, which proved that the trade unions could operate freely in Belarus. It was undeniable that progress had been made by the Government with regard to the allegations of forced labour, he said that they were not true and needed to be substantiated before they were made by any parties.

The Employer member of Belarus considered that the measures taken by the Government to give effect to the recommendations of the Commission of Inquiry had helped to alleviate the seriousness of the issues under discussion. The situation regarding the observance of trade union rights had improved, as had been noted by the direct contacts mission in January 2014. The platform for social dialogue had been extended, the BKDP and the FPB were now participating in the implementation of the general agreement with the Government and in collective bargaining in enterprises. Employers in Belarus supported the principle of equal treatment for all trade unions. Cases of dismissal were handled within an established legal framework. Most allegations of anti-union dismissal had been rejected, although cases had been brought before the ILO arguing that the decisions handed down were unjust.

Belarusian employers supported a discussion of these issues and of mutually beneficial solutions regarding objective criteria for the admissibility of complaints, but they recalled the proposal made in this regard by the Employer Vice-Chairperson to the November 2013 session of the Committee of Experts. The development of social dialogue depended on all the parties concerned, and it was undeniable that the authorities in Belarus, as well as the employers and trade unions, had endeavoured to give effect to the principles contained in the ILO Constitution, such as a guaranteed wage, decent living and working conditions, and combating unemployment. The meetings which had taken place with the direct contacts mission had paved the way for constructive dialogue. Belarusian employers were in favour of holding a seminar, with ILO assistance, to gather the experiences of other countries with regard to collective bargaining and trade union pluralism. Lastly, account should be taken of objective indicators to illustrate the positive dynamic in the development of labour and employment relations in Belarus and decisions should be taken in the interests of both workers and employers.

A representative of the European Union (EU), speaking on behalf of the EU and the Governments of Albania, Iceland, Montenegro, Norway, Serbia, the former Yugoslav Republic of Macedonia and Ukraine, said that the EU attached great importance to its relations with Belarus and remained gravely concerned about the lack of respect for human rights, democracy and the rule of law. He wel-
comed the fact that an ILO direct contacts mission had managed to visit Minsk and met with stakeholders from both governmental and non-governmental sides, but remained gravely concerned that the mission had shown that there had been no fundamental change or significant progress in the implementation of the recommendations of the 2004 Commission of Inquiry. In this context, he recalled that the failure of Belarus to implement the recommendations had led to its suspension in 2007 from the EU Generalized System of Preferences, which was still effective. He asserted that the development of bilateral relations under the Eastern Partnership was conditional on the progress of Belarus towards respecting the principles of human rights, democracy and the rule of law, and indicated the EU’s willingness to assist Belarus in meeting its obligations in this regard and that it would continue to closely monitor the situation in the country. He called on the Belarus authorities to eliminate the obstacles to trade union registration, which hindered the establishment and functioning of trade unions in practice, and particularly the requirements imposed by Decree No. 2 of January 1999 on the legal address and the minimum membership of 10 per cent of the workforce. He also urged the Government to intensify its efforts to implement the recommendations of the 2004 Commission of Inquiry, in cooperation with all concerned social partners. He also encouraged the Government to avail itself of the technical assistance of the ILO.

An observer representing the International Trade Union Confederation (ITUC), (President of the Belarusian BKDP), said that in the ten years since the Commission of Inquiry had formulated its recommendations, Belarus had become one of the worst places in the world for the rights of workers and the social partners, particularly due to dismissals and reprisals. Presidential Decree No. 2 had made it impossible for trade unions to develop, union activists were immediately dismissed and workers were threatened unless they returned to state-supporting unions. He emphasized that the State had huge legal and administrative resources which left no chance for worker and union rights. Union rights were violated and workers were threatened with dismissal or participation in 1 May demonstrations for many years. He asserted that the Presidential Decree had created a system of modern-day slavery and, as the direct contacts mission had been able to note, State efforts were all directed towards this. He maintained that since the recommendations of the Commission of Inquiry had been ignored, it was essential for the ILO to send a clear message to the Government in order to ensure the return to trade union rights and to put an end to discrimination and forced labour.

The Government member of Canada recalled that in 2013 Canada had expressed grave concerns at the overall situation of human rights, including labour rights, in Belarus. His Government was still disturbed by continued reports of numerous violations of the Convention, including interference by the authorities in the activities of trade unions and continued barriers to the registration of independent unions. Canada recognized that the Government of Belarus had improved its degree of cooperation with the ILO supervisory bodies by facilitating a direct contacts mission, which had reported to the last session of the Governing Body in March 2014, but which had been unable, in the same way as this year’s report by the Committee of Experts, to report significant progress on any follow-up to the recommendations of the 2004 Commission of Inquiry. His Government therefore urged the Government of Belarus to take the necessary measures to address these serious allegations and to make a real effort to eliminate violations of trade unions rights, including the right of workers to participate in peaceful protests to defend their occupational interests. The Canadian Government also called on the Belarus Government to follow-up on the 2004 Commission of Inquiry recommendations and to fully cooperate with the ILO, while respecting its obligations under the Convention.

The Worker member of the Russian Federation indicated that he was an adviser to his Government and had participated in efforts to form a customs union in the Urals. He noted the agreement between the Governments of Kazakhstan and the Russian Federation and the involvement of workers in those efforts. There were two trade unions representing the Russian Federation at the International Labour Conference, which had different histories and membership, among other things, but which had a shared perspective on what was happening in Belarus. He regretted the failure to make headway and that workers’ opportunities in the area of collective bargaining were diminishing. In the tripartite conference held under the auspices of the ILO and with the participation of the ITUC and the International Organisation of Employers (IOE), there had been hope of progress, but those expectations had come to nothing. He recalled that the case had been dealt with at the 2013 session of the International Labour Conference. The case concerned a common forum for workers in the Urals to discuss legislation on workers’ rights, etc. Workers in that forum had called on the Government of Belarus to end the violations of workers’ rights and, as a result of the direct contacts mission, certain measures had been adopted, but no further progress had been made. He considered that ILO assistance should be based on the steps taken by Belarus and requested the Conference Committee to take them into account. He concluded by referring to a recent statement by the President of Belarus in which he had considered plans to reintroduce a right of serfdom in agriculture.

The Government member of China noted the strengthened cooperation between Belarus and the ILO since June 2011, which had led to progress regarding the application of the recommendations of the Commission of Inquiry. Particular mention should be made to the easing of the minimum requirements with respect to the exercise of trade union rights and the recognition of the right to picket or participate in 1 May demonstrations for many years. He asserted that the Presidential Decree had created a system of modern-day slavery and, as the direct contacts mission had been able to note, State efforts were all directed towards this. He maintained that since the recommendations of the Commission of Inquiry had been ignored, it was essential for the ILO to send a clear message to the Government in order to ensure the return to trade union rights and to put an end to discrimination and forced labour.

The Worker member of Finland, speaking on behalf of the Worker members of the Nordic countries, recalled the tradition of trade union pluralism in the Nordic countries, where the trade unions represented 9 million workers, and the strategic partnership between the BKDP and the Baltic Sea Trade Union Network (BASTUN), which had existed since 2006. This network consisted of representatives of 22 democratic trade union confederations around the Baltic Sea region. The Government had only partially implemented the recommendations made by the Commission of Inquiry in 2004, without any significant progress being made. Belarussian workers faced obstacles to union registration, intimidation and pressure when they wanted to join unions. Workers were afraid to lose fixed-term contracts when joining unions. The other repressive legislation in force consisted of the Act on Mass Activities and the legislation concerning foreign gratuitous aid.
which were not in conformity with the Convention and could be used against independent trade union activities. She urged the Government to implement effectively all the recommendations of the Commission of Inquiry, as the right to organize freely went hand in hand with true democracy.

The Government member of the Bolivarian Republic of Venezuela indicated that the measures taken by Belarus represented considerable progress with respect to the discussions which had previously taken place within the Committee. She was convinced that dialogue would continue to be strengthened, and had already resulted in the full recognition of trade union rights, the improved registration of trade unions and the development of collective agreements and general agreements, in particular the general agreement for 2014–15, which was designed to encourage collective bargaining and dialogue. The acceptance of the direct contacts mission showed good faith on the part of the Government and dialogue had started with the social partners on the mission’s conclusions. The Committee’s conclusions should emphasize the progress and commitments of the Government in relation to compliance with the Convention.

The Worker member of Sudan recalled the various discussions concerning Belarus that had been held over previous years in the Committee and noted the many activities recently carried out by the country’s tripartite partners. The number of trade unions, which represented over 4 million members, was on the rise. Trade union pluralism was a reality, as demonstrated by the existence of trade union federations with different points of view, which allowed them to cooperate by means of social dialogue. Certain aspects of labour law had been revised, particularly relating to the minimum wage. The initiatives taken by the Government were encouraging and deserved to be supported in the future.

The Government member of the Russian Federation noted the significant progress made with regard to the measures taken to ensure full compliance with the Convention and the views expressed by the FPB regarding the effect of the Convention on trade union federations with different points of view, which allowed them to cooperate by means of social dialogue. The Government member of Belarus (ratification: 1956) indicated that the measures taken by Belarus represented considerable progress with respect to the discussions which had previously taken place within the Committee. She was convinced that dialogue would continue to be strengthened, and had already resulted in the full recognition of trade union rights, the improved registration of trade unions and the development of collective agreements and general agreements, in particular the general agreement for 2014–15, which was designed to encourage collective bargaining and dialogue. The acceptance of the direct contacts mission showed good faith on the part of the Government and dialogue had started with the social partners on the mission’s conclusions. The Committee’s conclusions should emphasize the progress and commitments of the Government in relation to compliance with the Convention.

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The Government member of Cuba considered it positive that the Government had accepted the visit of a direct contacts mission and assistance from the ILO with a view to the effective implementation of the recommendations of the Commission of Inquiry. Recognition should be given to the progress that had been made in developing constructive exchanges following the installation of Belarusian workers in his country and the training of Venezuelan workers in technology in Belarus. He therefore endorsed
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Belarus (ratification: 1956)

the position of the FPB and of other members of the Committee regarding the Government’s progress in applying the Convention. The participation of the social partners in the dialogue at the national level and with the ILO was a welcome development, and there was reason to hope that the situation would continue to improve.

The Worker member of Poland recalled the recommendations made by the Commission of Inquiry ten years ago and the hope raised by the acceptance by the Government of the direct contacts mission held in January 2014. She expressed her disappointment that the report of the direct contacts mission indicated that the Government did not intend to amend acts and decrees of crucial importance, and that obstacles to the registration of new workers’ organizations remained. Statements made by the Government indicating that the recommendations of the Commission of Inquiry were outdated and should be reviewed in the light of the country’s realities, showed its unwillingness to implement any recommendations whatsoever. Since the direct contacts mission, realities in the country had become worse. The Government was expected to fulfill its outstanding obligations if it wanted to be taken seriously and obtain respect. Under the current conditions, implementation by the Government of ILO technical assistance without a simultaneous commitment to produce results were inappropriate and not justified. The Government should therefore stop benefitting from ILO technical assistance unless it guaranteed full and immediate implementation of all the recommendations made by the Commission of Inquiry. If not, the possibility of applying other provisions of the ILO Constitution could be considered by the Committee. She also commented on a remark made by the Employer member of Belarus who had claimed that there was equal treatment of unions in Belarus. While employers negotiated with all trade unions, the final collective agreement was signed only by the most representative trade union, and thus in most cases only covered its members. This constituted an explicit example of anti-union discrimination and had nothing to do with equal treatment between trade unions.

The Government representative called for the discussion concerning the case in question to be carefully considered by the Committee and for its members to demonstrate greater objectivity with regard to the situation in his country. In that respect, the statement that respect for union rights continued to deteriorate was without grounds and the direct contacts mission had moreover indicated that the situation was improving. In addition, while there were developments that the interested parties were optimistic about, the number of recommendations of the Commission of Inquiry that had already been implemented, no one had disputed that some recommendations had been effectively applied. In all industrial relations systems, it was natural that tensions arose in certain enterprises and that regard Belarus was no exception. However, the Government was in no way the source of those disputes and the allegations of anti-union discrimination and harassment endured by the independent trade unions had never stopped and had become more sophisticated; and state policy continued to preserve trade union pluralism and independent trade unions were sidelined. New organizations were no longer registered, the pervasive use of fixed-term contracts (through which current and potential independent trade union members were denied employment) impeded trade union affiliation, and the official trade union federation was being used as a tool to prevent the participation of independent trade unions in social dialogue and collective bargaining. The Government, for its part, claimed that the recommendations of the Commission of Inquiry were no longer relevant, about which it would be interesting to ask the opinion of the Commission itself, and which reflected, above all, the lack of will by the Government to give them effect. Faced with that attitude, the Worker member on the ILO to stand by its recommendations and asked the Government to finally implement them through the following actions: adapting legislation and regulations in force concerning, in particular the Decree on trade union registration, the Decree on foreign gratuitous aid, the Act on Mass Activities and the provisions in the Labour Code affecting the rights of trade unions to organize their activities in full freedom; assigning concrete responsibilities to the Tripartite Council for the implementation of which it would take all the necessary measures.

The Worker members expressed their deep concern regarding the current case and shared the concerns of the BKDP on the following points: of the 12 recommendations made by the Commission of Inquiry ten years ago, only three, one of which was of minor importance, had been implemented; the harassment endured by the independent trade unions had never stopped and had become more sophisticated; and state policy continued to prevent trade union pluralism and independent trade unions were sidelined. New organizations were no longer registered, the pervasive use of fixed-term contracts (through which current and potential independent trade union members were denied employment) impeded trade union affiliation, and the official trade union federation was being used as a tool to prevent the participation of independent trade unions in social dialogue and collective bargaining. The Government, for its part, claimed that the recommendations of the Commission of Inquiry were no longer relevant, about which it would be interesting to ask the opinion of the Commission itself, and which reflected, above all, the lack of will by the Government to give them effect. Faced with that attitude, the Worker member on the ILO to stand by its recommendations and asked the Government to finally implement them through the following actions: adapting legislation and regulations in force concerning, in particular the Decree on trade union registration, the Decree on foreign gratuitous aid, the Act on Mass Activities and the provisions in the Labour Code affecting the rights of trade unions to organize their activities in full freedom; assigning concrete responsibilities to the Tripartite Council for the implementation of which it would take all the necessary measures.

The Employer members thanked the Government for its submissions, noted the diversity of views heard, and reaffirmed the seriousness of the case regarding the application of the Convention in Belarus. In 2013, the Employer members had been optimistic about the developments that had taken place since 2007, and by the desire expressed by the Government to move forward on the recommendations made by the Commission of Inquiry in 2004. The Employer members had hoped to remain optimistic after the acceptance by the Government of the direct contacts mission held in January 2014. Progress related to the recommendations of the Commission of Inquiry had been
noted, although it was very slow, despite the conclusions adopted by the Conference Committee in 2013 calling for progress in law and practice. They called on the Government to seize the opportunities following the direct contacts mission and to accelerate its efforts to achieve full compliance with the provisions of the Convention. They recalled the essential role of social dialogue, which should be continued in the framework of the Tripartite Council based on updated legislation. Full legislative compliance with the Convention should be complemented by intensified tripartite contacts and full participation of social partners, as well as ILO technical assistance. While looking forward to hearing from the Government on the efforts made to resolve the issues raised by the Commission of Inquiry, the Employer members did not oppose the inclusion of the Committee’s conclusions in a special paragraph of its report, as proposed by the Worker members.

Conclusions

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

The Committee took note of the comments of the Committee of Experts and of the report transmitted to the Governing Body in March 2014 of the direct contacts mission, which visited the country in January 2014 with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry.

The Committee noted that in the light of the findings and concrete proposals formulated by the direct contacts mission, the Government has accepted ILO technical assistance to conduct a series of activities aimed at improving social dialogue and cooperation between the tripartite constituents at all levels, as well as enhancing knowledge and awareness of freedom of association rights. The Committee took note of the Government’s statement that these activities would contribute to the effective implementation of the recommendations of the Commission of Inquiry. The Government considered, in particular, that: a seminar for the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere would improve its effectiveness and thus assist in addressing Recommendations Nos 5 and 7; training for judges, prosecutors and lawyers would assist in implementing Recommendations Nos 4 and 8; and an activity on collective bargaining would allow the elaboration of a set of guidelines on collective bargaining to ensure that trade union pluralism is respected in practice, thus addressing Recommendations Nos 6 and 12.

Noting the Government’s stated commitment to social dialogue and cooperation with the ILO, the Committee expressed the hope that these activities would give rise to concrete results. The Committee hoped, in particular, that the Tripartite Council would evolve into a forum where solutions could be found at the national level, including as regards cases of anti-union discrimination and issues relating to trade union registration. The Committee expected that amendments would be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid, the Law on Mass Activities and the Labour Code, in line with the provisions of the Convention. The Committee called upon the Government to continue engaging with the ILO, to intensify its cooperation with all the social partners in the country and to accelerate its efforts towards rapid and effective implementation of the outstanding recommendations of the Commission of Inquiry.

The Committee invited the Government to submit detailed information on the results of the abovementioned activities and all other measures taken to implement the outstanding recommendations of the ILO supervisory bodies to the Committee of Experts at its meeting this year and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.

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

CAMBODIA (ratification: 1999)

A Government representative emphasized that the Cambodian national Constitution and its labour law both provided for freedom of association. In accordance with the Constitution, the Government was currently drafting a Trade Union Act. The Ministry of the Interior had issued guidelines for the registration of associations and non-governmental organizations (NGOs) and had to date registered 4,003 such organizations. The Ministry of Labour and Vocational Training (MLVT) had to date registered 12 union federations, 80 union federations, 3,026 enterprise-level trade unions and seven employers’ associations. Associations and NGOs had participated in drafting the laws and regulations. The Government clearly respected the right of freedom of association. Concerning accusations by the international community that Cambodia was violating Convention No. 87, he provided updates on three important cases. First, Chhouk Bandith had been sentenced by the appeals court to 18 months in prison and required to pay 38 million Cambodian riels (KHR) in compensation to the three victims; the police were currently searching for him. Second, the two suspects accused of the murder of trade union leader Chea Vichea had been released and the case had been re-opened. Third, on Case No. 2655 of the Committee on Freedom of Association, the Vice-President of the Building and Woodworkers Trade Union of Cambodia (BWTUC) and three of its other leaders had met representatives of the MLVT twice in 2014. Due to the fact that the leaders of the BWTUC were in exile, the Vice-President had requested more time to review the allegation. The Committee would be kept informed of progress on the cases. The Trade Union Act was being reviewed with the assistance of the ILO, and the MLVT was committed to adopting it by the end of 2014 or early 2015. The National Assembly was currently preparing an additional three laws on the establishment of the judicial organization, the organizing and functioning of the judges’ council and the status of judges and prosecutors. Lastly, the MLVT was planning to amend the national labour law, including its provisions relating to fixed-term contracts.

The Employer members recalled that this case had been considered by the Committee the previous year and that, in its conclusions, the Committee had noted the grave issues of impunity and flawed judicial processes and had requested the Government to take measures to remedy the lack of independence and effective functioning of the judiciary, to provide information on the proposed law on the status of judges and prosecutors and to intensify efforts to ensure the rapid adoption of the draft trade union law by the end of 2013. They observed that the Committee of Experts had noted with regret that no information had been received from the Government. Noting that elections had taken place in July 2013, the Employer members felt encouraged by the information provided by the Government that three draft laws were pending adoption by the National Assembly, namely the law on the organization of the courts (establishing labour courts), the law on the supreme council of judges and the law on the status of judges and prosecutors. They further understood that an inter-ministerial council including employers and workers had been established to facilitate reporting to the ILO and encouraged the ILO to provide, and the Government to continue to accept technical assistance relating to the establishment and working of the Council. The Employer members also understood that the Government was
working together with the social partners on the draft trade union law to be reviewed by the ILO. They encouraged the Government to continue progress in that regard and to consult the social partners when preparing the draft legislation. There was a need to ensure that the legislation concerning trade unions was balanced in terms of the accountability of both the employer and the trade unions regarding unfair labour practices and in terms of a clear prohibition of violence. Certain national challenges should also be taken into account, such as a difficult economic environment, the multiplicity of trade unions in an enterprise and the occurrence of violence in trade union demonstrations. The Employer members also considered that the Committee should note the progress made by the Government in the promotion of freedom of association since the ratification of Convention No. 87. They encouraged the Government to report without further delay on the progress made to date and the measures that were being implemented, and to continue to request ILO technical assistance if it was considered helpful.

The Worker members expressed disappointment at the fact that the current case had been discussed four times in the past five years, and that the situation had steadily deteriorated by year. There was broad agreement that adopting and appropriating international laws and some of the world’s largest apparel brands had jointly forged a roadmap that urged the Government to take action on various issues. Sustainable industrial relations would only be possible in Cambodia if they were founded on respect for the right to freedom of association and collective bargaining. On 2 and 3 January 2014, the Government had used overwhelming violence to quash spontaneous demonstrations by garment workers, which had erupted after the Government had announced a new minimum wage rate that was far below the rate that its own research had indicated was adequate to meet basic needs. Heavily armed soldiers and police had mobilized and had been responsible for six deaths to date, and approximately 40 hospitalizations for bullet wounds. Rather than heeding the calls of the United Nations Special Rapporteur on the situation of human rights in Cambodia to establish an independent committee to investigate the violence, the Government had set up a hand-picked committee, and had publicly praised its security forces for their efforts. The Government had not provided any compensation to the victims or their families. Twenty-three workers had been arrested for participating in the demonstrations. They had been unfairly tried and had been sentenced to four or five years in prison. However, due to increasing pressures, they were granted many rights and their automatic registration, and of accountability for violations of an appropriate registration of trade unions, instead of enforcement of law and order, including the request of the Committee of Experts. She reiterated that this issue no longer be considered by the Conference Committee and acknowledged that capacity building of the judiciary would take time. The Government should be encouraged to further strengthen the judicial system, including commercial and labour arbitration. In terms of freedom of association, she denounced the inadequacy of the information supplied by the International Trade Union Confederation (ITUC). She reiterated that there had been an increase of 60 per cent in the number of trade unions in 2013, which brought their number to a total of 3,026 in 2013, of which 3,000 were in the garment sector (in 800 factories); an increase of 80 per cent in the number of federations (80) and an increase in the number of strikes by 255 per cent in 2012 and 21 per cent in 2013. These numbers illustrated that trade unions were not operating in a climate of fear and were granted many rights and trade practices. The ground was characterized by a proliferation of unrepresentative minority and violent trade unions which hindered harmonious industrial relations, which were a precondition for harmonious growth. The national legislation failed to establish a minimum membership requirement for the establishment of a trade union. She raised the question of how employers were supposed to negotiate collectively with 17 mostly unrepresentative trade unions in one and the same factory. She believed that, rather than tabling accusations that did not reflect reality, the Committee should recognize and discuss the real practical challenges. The freedoms granted by national legislation were misused. The violence in January 2014 had started in the trade union movement with trade unionists destroying hospitals that were currently being rebuilt, damaging workplaces and disabling public officials. Violence was detrimental to the rule of law and sustainable enterprises, and should be condemned by all parties. Furthermore, the enforcement of law and order, including the requirement of an appropriate registration of trade unions, instead of their automatic registration, and of accountability for violence and non-compliance with the law should not be considered as infringements of freedom of association. It
was essential for the new draft trade union law to address the needs of Cambodia, such as the need to attract investment and create jobs, as well as stability and peace. The law was currently in the drafting phase, being discussed and negotiated by the social partners, and it was inappropriate to examine specific provisions of a draft law in a direct request addressed to the Government. She called for the removal of the case of Cambodia from the list and for conclusions focusing on the issues at hand and which did not go beyond the remit outlined in the Committee of Experts’ observation.

The Government member of Greece, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Norway, Ukraine and Republic of Moldova, expressed commitment to promoting the universal ratification and implementation of the eight ILO core labour standards which were important international tools for ensuring democracy, the rule of law and respect for human rights. Their implementation supported the development of human potential and each country’s economic growth. In January 2014, the EU had voiced concern about the violent demonstrations in Cambodia and the excessive use of force to quell them, calling on all parties involved to use all possible means to find a peaceful solution. She welcomed the release on 30 May 2014 of the trade unionists and garment workers who had been charged in relation to the demonstrations, and hoped that it signalled a positive shift with regard to the situation of freedom of assembly in Phnom Penh, which had recently been deteriorating. The Government should accelerate the restoration of workers’ fundamental rights and should release the results of the investigation into the January killings. She called on all stakeholders to develop constructive dialogue on improving industrial relations. Regarding the issues raised in the Committee of Experts’ report, she urged the Government to provide the information requested on the outcomes of the investigations into the murders of trade union leaders. It should also ensure full respect for workers’ trade union rights and ensure that they were able to engage in their activities in a climate free from intimidation or risk. The Government should demonstrate how its planned legislative reform would promote the independence and effectiveness of the judicial system. It should intensify its efforts to adopt rapidly the Trade Union Act in full consultation with the social partners. Lastly, she called on the Government to avail itself of ILO technical assistance and to comply with its reporting obligations.

The Worker member of the Republic of Korea said that human and civil rights were easily infringed in the absence of freedom of association, as the bloody suppression of peaceful workers’ demonstrations in January 2014 had shown. On 2 January, in front of the headquarters of a Korean company, special forces had been deployed to suppress the protesting workers, ten of whom had been arrested by the military. Thirty-eight protesters had been seriously wounded, and some had been killed. In response to the violence, the Korean Confederation of Trade Unions (KCTU) and other Asian labour and civil organizations had sent a fact-finding mission to Cambodia. Interviews with workers who had participated in the protests or witnessed the arrests revealed that during the crackdown soldiers had been armed with rifles, slingshots, knives and iron pipes, although the workers were protesting peacefully. Soldiers had arrested ten protesters. Use of the military and the police against a country’s own citizens was never acceptable. The mobilization of the armed forces in response to the wage protests was manifestly excessive and had been condemned categorically by the United Nations. The Government should conduct a thorough and independent investigation into the bloody suppression of the protests and hold those responsible to account. It should also compensate the victims and their families. While the authorities had failed to arrest those responsible for the murder of workers, the Government had wasted no time in arresting and detaining 23 workers for five months without bail. Although they had been released on 30 May 2014, their convictions incurred heavy penalties, such as a prohibition on serving as union leaders. There had been no inquiry into whether the ten workers arrested had been involved in violence or the damage of property. Indeed, witnesses had stated that one of them, Vorn Pao, had been attempting to calm the situation by urging non-violence. The imprisonment without bail and subsequent convictions and suspended sentences were serious violations of civil rights and were politically motivated. They should therefore be quashed. Impunity for violence against trade union leaders prevailed in Cambodia, allowing the same crimes to be repeated. There needed to be justice, and the need for an independent judiciary was pressing.

The Worker member of the United States recalled that, despite the fact that the Government had long been called upon to adopt a new trade union law so as to comply with Convention No. 87, the trade union movement had stalled since the beginning of 2014.

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The Worker member of the United States recalled that, despite the fact that the Government had long been called upon to adopt a new trade union law so as to comply with Convention No. 87, the trade union movement had stalled since the beginning of 2014. The Government had been charged in relation to the demonstrations, and hoped that it signalled a positive shift with regard to the situation of freedom of assembly in Phnom Penh, which had recently been deteriorating. Although, after the circulation of the first draft law in 2011, the trade union movement had succeeded in removing certain restrictions on freedom of association from the proposed law, the enactment of the trade union law had stalled since the beginning of 2014. The Government had recently introduced a new draft which was much worse than the one developed in 2011 in consultation with the trade unions. The new draft had been criticised by the ILO for, inter alia, increasing the minimum number of workers required to register a union from 8 to 20 per cent of the workforce; giving the courts increased power to suspend or revoke union registrations for a wide range of infractions; using vague language in respect of penalties against trade unionists; requiring excessive qualifications for trade union leadership; including age and educational requirements and the absence of a criminal record; specifying the amounts of trade union dues; regulating details about strike ballots; limiting the term of elected trade union leaders, etc. In addition, the new draft only granted collective bargaining and representational rights to the union with the most representative status or the largest federation, thus restricting the rights of minority unions, in violation of Convention No. 98. The Government had failed to remedy the problems despite the concerns expressed by the Committee of Experts, as well as by reports in 2014 of excessive violence being used in response to labour demonstrations in Cambodia, and particularly reports of related deaths of striking garment workers. He recalled that trade unionists must be able to engage in their activities in a climate free from intimidation or risk to their personal safety or that of their families, and that workers had the right to participate in peaceful protests to defend their occupational interests. He called for peaceful demonstrations to be allowed to be held safely and without fear of intimidation, detention or excessive use of force by the Cambodian authorities. Noting the observation of the Committee of Experts that there was a prevailing situation of impunity, he called for the investigation of the mur-
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Cambodia (ratification: 1999)

The situation in Cambodia was a matter of concern. The Government had made it more difficult for unions to become registered. The Labour Advisory Committee set new labour policies and avoided unions loyal to the Government. Almost the entire garment industry refused to engage in collective bargaining with independent trade unions. The Government faced continued anti-trade discrimination and referred to cases examined by the Arbitration Council where, in spite of rulings favourable to the dismissed union leaders, employers never complied with the reinstatement orders. Finally, he expressed concern at the recurrent use of the judicial system to intimidate independent trade unionists when they stood up for workers’ rights.

The Government member of the Netherlands thanked the Committee of Experts for its excellent report and encouraged the Government to fully implement ILO Conventions and particularly Convention No. 87. Welcoming the agreement reached in establishing the list of 25 cases referred to the Arbitration Council where, in spite of rulings favourable to the dismissed union leaders, employers never complied with the reinstatement orders. Finally, he expressed concern at the recurrent use of the judicial system to intimidate independent trade unionists when they stood up for workers’ rights.

The Government member of the United States recalled that for many years the ILO supervisory bodies had consistently asked the Government to bring to an end the prevailing situation of impunity regarding violence against trade union leaders, to ensure the trade union rights of workers and the independence and effectiveness of the judicial system and to adopt a Trade Union Act, following full consultation with the social partners, which fully guaranteed the rights enshrined in Convention No. 87. However, over the past year, the situation in Cambodia had worsened and labour conditions had deteriorated significantly. Wages in the garment sector had continued to decline, leading to labour unrest, a lack of government restraint in dealing with the unrest and a general breakdown in industrial relations in the country. Despite the release of a number of labour activists under suspended sentences, she remained concerned by the fact of their detention in the first place, as well as by the reported irregularities in their trials, their convictions and the continued threat of imprisonment. She urged the Government to convene an independent inquiry into the deaths, assaults and arrests of workers during the January protests. She also expressed concern at the obvious concerted efforts by some employers to take legal action against the leaders of independent trade unions and by possible Government interference in trade union activity. Genuine freedom of association could only be exercised in a climate that was free from violence, pressure and threats of any kind. She firmly urged the Government to adopt and implement a trade union law that was fully consistent with international standards and based on transparent and meaningful dialogue with all of the social partners, as well as with the ILO. It seemed that the Government was disregarding ILO recommendations with respect to its draft Trade Union Act and was moving in the wrong direction with respect to several critical provisions. She urged the Government to make the draft public and to engage in a consultative process with the social partners before submitting it to the Parliament. Finally, she encouraged the Government to intensify its cooperation with the ILO supervisory bodies and technical assistance with a view to bringing the national law and practice in conformity with Convention No. 87. It would be critical for promoting industrial peace and addressing the root causes of the ongoing labour conflicts in Cambodia.

The Government representative indicated that he had taken note of all comments, which were constructive, made during the discussion. The Government would also take note of all recommendations made by the Committee on Freedom of Association. In close cooperation with all stakeholders concerned, and with ILO technical assistance, the Government would finalize the draft law on trade unions, which would guarantee the right to organize and freedom of association in compliance with the relevant international standards. Information on any progress made in this regard would be communicated to the Committee in a timely manner.

The Employer members appreciated the comments made by the Government, Worker and Employer members. The Government had taken measures to address the situation of the independence and effectiveness of the judicial system, including the adoption of draft laws by the national assembly: (1) laws on the organization of the courts; (2)
the law on the supreme council; and (3) the law on the status of judges and prosecutors. That was an important first step. The Government had also established an inter-ministerial coordination council, which included the participation of the social partners, to deal with issues related to the Government’s reporting requirements under Convention No. 87. Those were two areas in which the Conference Committee had asked the Government in 2013 to take immediate measures. The Government should provide a full report to the Office concerning those measures and the progress made in that regard. In addition, tripartite negotiations were ongoing concerning a draft trade union law and, while concerns had been expressed concerning the law, it was important for the tripartite consultative process to be completed before the Committee commented on the appropriateness of the legislation. The Government should provide a report to the Office once the negotiations had been completed. The Government also needed to work with the social partners to ensure that violence and harassment, which the Employer members condemned, were eradicated. They also continued to urge the Government to avail itself of ILO technical assistance to fulfill its reporting obligations so that the Committee of Experts would have a clearer picture of progress, or the lack thereof. The Conference Committee’s conclusions should also recognize those areas of progress and highlight where further progress and action were required. The conclusions should also reflect the fact that the Committee did not address the right to strike in that case because the Employer members did not agree that there was a right to strike in Convention No. 87.

The Worker members indicated that it was clear from the previous and present discussions on that case that very serious issues remained unaddress. Global unions and international brands were trying to address labour issues in the garment sector, which was the largest, but the denial of freedom of association and the right to bargain collectively was not unique to that sector, since most Cambodians worked in other sectors such as the agricultural products, sugar and rubber sectors. The ILO needed to play a much greater role in Cambodia to find solutions that would lead to sustainable jobs and a sustainable economy. While Cambodian workers wanted dialogue in good faith with the Government, they were met by deepening authoritarianism. The Worker members were very concerned about this. They called on the Government to: conduct independent investigations into the killing and wounding of protesters in January 2014 and the murder of trade unionists, and to prosecute the perpetrators; annul the sentences against the 25 persons issued on 30 May 2013; ensure that workers could register freely with trade unions without any prerequisites; ensure that workers who were dismissed for their lawful trade union activities were reinstated and compensated; guarantee freedom of assembly and expression; redraft the current trade union bill in consultation with independent trade unions and in the light of the comments of the ILO supervisory bodies; and consult civil society with respect to the proposed new legislation on the judicial system. They also called on the ILO to facilitate a discussion on fixed-term contracts and their impact in Cambodia on freedom of association, and to send a high-level tripartite mission as soon as possible in view of the seriousness of violations and the lack of progress in the situation. They finally requested that the conclusions of the Committee be placed in a special paragraph.

SWAZILAND (ratification: 1978)

The Government provided the following written information.

During the 102nd Session of the International Labour Conference, the Conference Committee welcomed the information provided by the Government on the publication of the Industrial Relations (Amendment) Bill No. 14 of 2013 and noted the report that all outstanding legislative amendments would be attended to and the Government’s commitment to observe and implement Convention No. 87. The Government made an undertaking with time lines to demonstrate its commitment to take the issue forward, in consultation with the social partners. With regard to progress made to date, the Committee will recall that the year 2013 was the national election year for the Kingdom of Swaziland. National elections are, by any standard, a very challenging task for any government. Peace, stability and socio-economic development are, to a greater extent, a function of a successful election process. Parliament was dissolved on 31 July 2013 and Cabinet was fully constituted on 4 November 2013. Parliament was officially opened on 7 February 2014. This effectively reduced parliamentary activity by seven months and left the Government with five months to comply with its undertakings. This situation rendered it difficult for the Government to take the necessary legislative steps as there was no legislative authority to ensure that the amendments to the Industrial Relations Act (IRA) are passed into law. The Industrial Relations Act (IRA) and the Industrial Relations (Amendment) Bill No. 14 of 2013, for instance, was one of over 27 bills, which were before Parliament when it dissolved. However, the Government has shown its commitment and prioritized the Bill and it was the first Bill to be tabled after the opening of Parliament. The progress to date is set out below. With regard to the amendment of the Industrial Relations Act to allow for registration of federations, the current problems related to freedom of association emanate from a lacuna in the law regarding registration of federations. The Government has now placed in Parliament an amendment bill which seeks to comprehensively provide for the registration of federations. Following the opening of Parliament on 7 February 2014, the Bill was prioritized and tabled as the first Bill (Industrial Relations (Amendment) Bill No. 1 of 2014). In terms of the Constitution of the Kingdom of Swaziland, 2005, bills are debated after the debates on the Appropriation Bill, which by its very nature is an urgent bill. However, in this case and in recognition of the urgency of the matter, the Bill was tabled before the Appropriation Bill. The Bill was quickly referred to the Parliamentary Portfolio Committee of the Ministry of Labour and Social Security. However, at the request of the Portfolio Committee the Bill was then withdrawn. According to the Committee, the withdrawal was necessitated by the recommendation of the ILO that the Industrial Relations Act of 1973 be modified to bring it in line with the Declaration of Principles of 1949 and the Recommendation of the 1969 Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the International Labour Organization (ILO). The Committee recommended that the amended Industrial Relations Act (IRA) be drafted and tabled as soon as possible. The Committee noted that the withdrawal of the Bill was in line with the recommendation of the ILO. With regard to the Bill, the Committee noted that the withdrawal was in line with the recommendation of the ILO. The Committee noted that the withdrawal was in line with the recommendation of the ILO. The Committee noted that the withdrawal was in line with the recommendation of the ILO. The Committee noted that the withdrawal was in line with the recommendation of the ILO. The Committee noted that the withdrawal was in line with the recommendation of the ILO.
Relations Act, employers and workers cannot agree. It is clear that broader consultation is required to unlock this deadlock. With regard to the operationalization of tripartite structures, following the undertaking to work together with social partners through General Notice No. 56 of 2013, the Government is pleased to report that, in all areas of action that require the involvement of social partners, especially legislative review activities, social partners were fully consulted and consultations went well and were held in full freedom. A lot of the progress achieved so far is credited to the smooth operation of all social dialogue structures. This is so, despite the fact that, on 28 March 2014, workers withdrew from all statutory bodies, citing dissatisfaction with the provisions of General Order No. 56 of 2013 and allegations of disruption of the Trade Union Congress of Swaziland (TUCOSWA) programmes and activities.

The Government accepted and hosted the high-level ILO fact-finding mission from 27 to 29 January 2014 (two months after the new administration came to office). The mission held consultations with the Government and its social partners to gather information on steps taken to assess progress made in all outstanding issues. In its report, the mission urged the Government to ensure the process of facilitating the adoption of the amendments into legislation, for the registration of the workers’ and employers’ federations by the end of April 2014 and to see their actual and immediate registration thereafter and in time for the ILC in June 2014; and (b) consult with the social partners and the ILO Pretoria Office to draw up a timetable by the end of April 2014 for the finalization of all other outstanding matters. With regard to progress made on other legislative amendments, as advised by the ILO, the Public Service Bill was indeed tabled before the National Social Dialogue Committee, which in turn referred it to the Labour Advisory Board for review. Since the Government’s report to the ILO, dated 28 October 2013 (stating that the Bill has been referred to the Labour Advisory Board) it has been reviewed by the Board and is now with the Ministry of Public Service for adoption. Thereafter it will be submitted to Cabinet for approval, publication and brought to Parliament for processing. By any standard of measure the Government has achieved tangible progress which should be noted and acknowledged as such. With respect to the determination of minimum services in sanitary services (to ensure that workers are not unduly denied their right to strike). This is so particularly in light of the fact that whereas the Government was requesting the Public Service Bill to ensure a minimum level of sanitary services, the Government agreed with the social partners that sanitary services be removed altogether from the list of essential services as per the Industrial Relations Act. The Government wishes to reiterate that the King’s Proclamation to the Nation of 12 April 1973 is superseded by the Constitution which is now the supreme law of the land. As such, the exercise of all executive, judicial and legislative powers is guided by the Constitution and not at all by the 1973 Proclamation. The continued presence of this issue on the agenda of outstanding issues for Swaziland is unfair to the Government. Progress is being made on the issues concerning the 1963 Public Order Act. Swaziland, because of shortage of Legislative Drafters and expertise, approached the ILO to assist and the request was accepted. The ILO requested terminological reference and these were given to the ILO Regional Office in Pretoria on 17 April 2014. As soon as the legislative drafter has been identified and made available, the drafting process will commence. The Labour Advisory Board has finished debating the draft Correctional Services (Prison) Bill which, among other things, deals with the right to organize for prison staff, and has compiled a report of its views on the Bill. The Board’s comments will be sent to the ministry responsible for correctional services. Progress so far is that the draft Code of Good Practice for protest and industrial actions has been considered by the social partners and the police and technical assistance to facilitate the process of finalization and implementation of the Code was requested from the ILO in June 2013 and again in April 2014. It is hoped that the consultation between the Government and the ILO will continue. The Suppression of Terrorism (Amendment) Bill has been considered by Cabinet, published in a Government Gazette as Bill No. 18 of 2013 and awaits Parliamentary debate for passage into law.

In addition, before the Committee, a Government representative, with reference to the Committee of Experts’ request to ensure the registration of employers’ and workers’ federations, explained why the amendment bill of the Industrial Relations Act (IRA) had still not been passed. The bill had been drafted with the social partners’ input and issued on 23 May 2013. In line with the commitment made by the Government, the bill had been tabled in Parliament in June 2013. Progress had then been stalled, however, because Parliament was involved in debating six key election bills at the time, and had not had time to include the IRA in its list of legislation. The Government had accepted the proposed high-level ILO fact-finding mission, which it had hosted from 27 to 29 January 2014. During the mission, the Government had requested the ILO’s technical assistance with regard to outstanding matters; the logistics of that assistance were being organized. In the context of the Committee of Experts’ request for concrete information on progress with regard to various legislative texts, she explained that, since the Government’s report to the ILO of 28 October 2013, it had begun reviewing several key election bills, which had subsequently been withdrawn at the request of the parliamentary committee due to concerns expressed by another country as well as by the Swazi social partners. When the bill had been withdrawn from Parliament on 10 April 2014, the Labour Advisory Board was no longer operational. Due to the importance and urgency of the bill, however, negotiations with the social partners were currently under way. As a result of the ongoing consultations, consensus had been reached on 19 May 2014 regarding part of the new bill, but employers and workers still did not agree on one amendment; broader consultation was required to resolve the matter. The Government had accepted the proposed high-level ILO fact-finding mission, which it had hosted from 27 to 29 January 2014.
The Employer members appreciated the information provided by the Government regarding efforts made to bring law and practice in compliance with the Convention, as well as the Government’s willingness to accept ILO technical assistance. They encouraged the Government to continue to cooperate with the ILO Office in Pretoria. In light of the seriousness of this longstanding case, they expressed their surprise at the Government’s and the ILO’s representative’s view that the case should no longer be examined by the Committee. During the discussion of the present case in 2013, the Employer members had pointed out, as regards the Committee of Experts’ request relating to the right to strike in sanitary services, that Convention No. 87 did not include the right to strike and that, in view of the lack of consensus, the Committee of Experts should refrain from requesting the Government to amend the IRA in this regard. In its 2013 conclusions, the Committee: (i) strongly urged the Government to immediately take the necessary steps to ensure that the social partners’ views were duly taken into account in the finalization of the IRA amendment bill and that it would be adopted without delay; (ii) expected that this action would enable all the social partners in the country to be recognized and registered under the law, in full compliance with the Convention; (iii) in the meantime, expected that the tripartite structures in the country would effectively function with the full participation of TUCOSWA, the Federation of Swaziland Employers and Chamber of Commerce (FSE&CC), and the Federation of the Swaziland Business Community (FESBC) and that the Government would guarantee that these organizations could exercise their rights under the Convention; (iv) urged the Government to conduct certain activities to ensure that progress was made within the framework of the social dialogue mechanisms in the country in relation to the other pending matters; (v) urged the Government to ensure full respect for freedom of association for all workers’ and employers’ organizations; and (vi) called on the Government to accept a high-level ILO fact-finding mission and requested that this information, as well as a detailed report, be transmitted to the Committee of Experts for examination at its next meeting.

In its 2013 observation, the Committee of Experts: (i) noted the Government’s indication that the tripartite structures in the country were functioning with the full participation of the federations of employers and workers (FSE&CC, FESBC and TUCOSWA); (ii) noted with regret the Government’s indication that the IRA amendment bill approved by the Cabinet, could not be tabled in Parliament due to other pressing parliamentary issues; (iii) observed with deep regret that TUCOSWA was still not registered and urged the Government to ensure that the necessary steps were taken for the registration without delay of TUCOSWA and the other workers’ and employers’ federations affected; and (iv) firmly trusted that the Government would report in the near future on concrete progress made on the Committee’s long-standing requests concerning amendments to several laws, such as the Public Service Bill, the Industrial Relations Act, the 1973 Proclamation and the 1963 Public Order Act. In light of the above, the Employer members: (i) looked forward to receiving the Committee of Experts’ review of the information collected during the 2014 high-level mission which would hopefully indicate that concrete and tangible measures had been taken; (ii) recommended that the Government follow a fast-track process to facilitate the adoption of amendments to the legislation concerning the registration of employers’ and workers’ federations by the end of 2014; and to ensure that they were registered immediately thereafter; (iii) noted that the present Committee would not deal in its conclusions with any issue related to the right to strike as there was no consensus that Convention No. 87 included the right to strike; and (iv) highlighted their concern about the lack of tangible progress to date and requested the Government to draw up, in consultation with the social partners, a timetable on the finalization of the outstanding matters, which would signal the Government’s commitment to compliance with the Convention.

The Worker members emphasized that the Committee had noted every year since 2009 that the Government was not complying with the Convention and still appeared not to realize that the ILO constituents expected results. In June 2013, in order to avoid having the present case included in a special paragraph of the Committee’s report, the Government had signed an agreement in which it undertook to adopt a number of time-bound measures. None of those commitments had been honoured, either with regard to legislative matters, such as the finalization of the bill amending the IRA, or with regard to the registration of TUCOSWA. Moreover, that lack of progress had been confirmed by the high-level ILO fact-finding mission which had visited the country in January 2014. The Government had continued to repress trade union activity, to arrest and imprison trade unionists and to prevent the registration of trade unions, and did not comply with the Convention and which it had undertaken to amend. TUCOSWA had been established in January 2012 and had received legal recognition from the Ministry of Labour. When TUCOSWA had announced in April 2012 that it would boycott the 2013 legislative elections, the Government had revoked its registration on the grounds that the IRA only applied to “organizations” and not to “federations”. Furthermore, the Amalgamated Trade Union of Swaziland (ATUSWA), which was affiliated to TUCOSWA, had applied for registration in September 2013 and was still awaiting a reply. TUCOSWA had filed an appeal with the High Court claiming that the refusal to register it as a federation was unconstitutional. But after the union’s lawyer (Mr Maseko) had been arrested by the authorities on 17 March 2014, the hearing initially scheduled for 19 March 2014 had been postponed. Mr Maseko had initially been released on the order of a judge, who had then been arrested in turn, and he had subsequently been re-arrested and imprisoned. At the present time he was still in prison, after being accused of obstructing the course of justice for questioning the independence of the national judiciary in a newspaper article. The Secretary-General of TUCOSWA (Mr Ncongwane), who had been wrongly accused of instigating an illegal demonstration, had also been arrested and placed under house arrest. The legal assistant of the Swaziland Transport and Allied Workers Union (Mr Thwala) had been imprisoned for a year, under the Road Traffic Act and the Public Order Act, for taking part in a strike. The police and security forces continued to disrupt trade union activities, especially those of TUCOSWA, by preventing or curtailing demonstrations, and had prevented an international delegation of trade unionists to the International Trade Union Confederation (ITUC), which had come to collect testimonies from Swazi workers, from doing its work by confronting its members and dispersing meetings.

With regard to the legislative issues, the Worker members emphasized that the current legislation placed severe restrictions on the right to freedom of association. The IRA, the interpretation of which formed the basis of legal arguments for refusing to register trade unions, included a provision prohibiting civil and criminal liability on trade unionists, which was still in force. Even though the amendment bill had been adopted in 2013, freedom of association was still limited since the draft conferred absolute power on the Labour Commissioner with respect to the registration of trade unions. The Public Order Act, which conferred extensive powers on the police, applied to trade unions in practice even
though they were excluded from its scope. In that respect, a 2011 ILO report had recommended replacing the Act with another law clearly establishing the procedure for requests to organize public gatherings. The unions had been clamouring for revision of that legislation. Regarding the Suppression of Terrorism Act, the amendments submitted to Parliament for consideration in February 2013 had, by not being examined by the Government also refused to repeal Decree No. 2 of the King’s Proclamation banning political parties and concentrating power in the hands of the King. The Correctional Services (Prison) Bill, which had been submitted to the Labour Advisory Board in 2012 and recognized employees’ right to establish associations – but not trade unions – provided for strict controls by the Commissioner of Correctional Services and, by already establishing the name of the association in question, suggested that a trade union monopoly was being established in the sector. Lastly, the Public Service Bill, which had been under discussion since 2005, contained restrictions on freedom of expression and on civil servants’ right to collective bargaining. The Worker members regretted that the Government had not followed up on any of the Committee of Experts’ observations or recommendations and that it had failed to carry out the written commitments it had given at the previous session of the Conference. Deploring the Government’s unacceptable conduct, they strongly condemned the serious and constant repression, in law and in practice, of the workers in Swaziland and expressed the hope that the Government would take the present opportunity to honour its obligations and international commitments.

The Worker member of Swaziland said that the violation of the Convention by the Government had reached deplorable levels. By refusing to register TUCOSWA, the only national federation of trade unions in the country, it had stalled the prospect of any meaningful and productive social dialogue. It had deliberately misled the Committee by setting unrealistic deadlines for the revision of various pieces of legislation, not one of which had been met. Although it had agreed before the Committee to allow TUCOSWA the full exercise of its rights under the Convention and the terms of the IRA, the Government continued to brutally prevent TUCOSWA from conducting its activities. With regard to the IRA, the Government had tabled an amendment bill in July 2013 that excluded proposals made by the social partners. TUCOSWA had been pushing for the speedy amendment of various acts, especially the IRA, when Parliament was dissolved before it had been able to consider the Bill. Although TUCOSWA had notified the Government in January 2014 that the bill was not the product of the Labour Advisory Board, the Government had tabled it again in February 2014, only to then unilaterally withdraw it, without any explanation to the social partners. This illustrated a complete absence of political will on the part of the Government to register TUCOSWA. It was also important to note that the so-called lacuna in the IRA, which necessitated its amendment in the first place, was a politically motivated concept: if the IRA was to be interpreted strictly in accordance with the Convention, it would necessarily guarantee the same rights to federations that it guaranteed to unions. TUCOSWA had made its contributions to the amendments of the following pieces of legislation by mid-February 2014: the Public Service Bill, the Code of Good Practice for industrial action and the Suppression of Terrorism Act. The social partners had not been given an opportunity to discuss the Public Order Bill, as the Government had alleged that its amendment was still being drafted by the Attorney-General’s Office, and that the person responsible for the drafting had died. In June 2013, the Government had reiterated its position with regard to the 1973 Proclamation, namely that it would not institute legal proceedings to obtain a definitive ruling from the highest court on the proclamation’s status. Thus, the practical effects of the Proclamation remained in force. Social dialogue structures, having been disrupted in April 2012, had later been restored by General Notice No. 36, which provided that “all processes and programmes whose progress was affected by the issue of registration of federations shall be continued in line with principles of tripartism and shall be recognized as legitimate and all decisions made or resolutions reached shall be binding on the tripartite partners as if they had been registered in terms of the Industrial Relations Act, 2000 ...”. However, the Government had continued to disrupt the activities of TUCOSWA, and a letter to the federation from the Attorney-General dated 4 September 2013 had stated that the General Notice did not, in fact, grant any rights that the IRA provided for. In light of this, TUCOSWA had requested clarification of the Government’s position regarding its participation in social dialogue tripartite structures. Receiving the promised response a month later, TUCOSWA decided to withdraw from all legislative tripartite forums. Its withdrawal had not obstructed any legislative process, however, as it had already submitted its proposals for amendments to the legislation long before. Following the 2013 ILC, the Government had continued to disrupt TUCOSWA’s activities as follows: among other incidents, on 22 July 2013, the Government had violently brought an end to a meeting of the Manzini shop stewards local council; and on 5 September 2013, security forces had arrested and detained ITUC panellists who were to meet with members of the government to discuss the implementation of the European Union’s Action Plan on freedom of association and collective bargaining. TUCOSWA decided to withdraw from all legislative tripartite structures. In this regard, the employers had met the ILO high-level mission which had visited the country to assess the progress achieved with respect to the commitments made at the 2013 ILC Conference. He recognized that his country had not been able to fully adhere to those commitments. In this regard, he stated that it was the employers’ view, in line with the recommendations of the high-level mission, that the registration of the workers’ and employers’ federations enabling full legal recognition by all stakeholders would ensure the legislators would consider the Bill. Although TUCOSWA, which had later been restored by General Notice No. 56, which provided for additional processes and programmes whose progress was affected by the issue of registration of federations shall be continued in line with principles of tripartism and shall be recognized as legitimate and all decisions made or resolutions reached shall be binding on the tripartite partners as if they had been registered in terms of the Convention for industrial and economic peace to prevail in Swaziland.

The Employer member of Swaziland indicated that in January 2014 the employers had met the ILO high-level mission which had visited the country to assess the progress achieved with respect to the commitments made at the 2013 ILC Conference. He recognized that his country had not been able to fully adhere to those commitments. In this regard, he stated that it was the employers’ view, in line with the recommendations of the high-level mission, that the registration of the workers’ and employers’ federations enabling full legal recognition by all stakeholders would ensure the legislators would consider the Bill. Although TUCOSWA, which had later been restored by General Notice No. 56, which provided for additional processes and programmes whose progress was affected by the issue of registration of federations shall be continued in line with principles of tripartism and shall be recognized as legitimate and all decisions made or resolutions reached shall be binding on the tripartite partners as if they had been registered in terms of the Convention for industrial and economic peace to prevail in Swaziland.

Recalling the employers’ concerns raised with the high-level mission that the bill did not actually reflect the agreement reached by the social partners, he indicated that they had been addressed in the meantime and trusted that, if the bill was introduced in Parliament in its current form, it would be compliant with the requirements of the Convention. The only issue on which the employers and workers were not able to agree related to criminal and civil liability during protest actions. The employers’ proposal had been that such liability be removed from individuals and be placed on the federations, as body corporates, which did not exclude the liability of employers’ federations. It was the employers’ view that once the liability on individuals had been removed, the Committee’s concerns would have been addressed. He pointed out however that the employers remained open to advice on best practices in this respect so as to reach consensus by the social partners and move forward. Finally, he stated that, while his country had not been able to meet the deadlines, there was tangible evidence and desire of the social partners, indicating that these issues could be finalized.
once and for all. He therefore urged the Committee to provide guidance, allow time and assist the country in moving towards full compliance with the Convention. This would ensure that Swaziland did not lose out on any of the trade privileges with its international partners, a loss that would entail a negative impact on business as well as job losses. He requested the Committee to consider allowing the completion of processes already under way to address the current compliance issues, and expressed the employers’ commitment to unlock bottlenecks wherever possible.

The Government member of Namibia took note of the information provided by the Government. Fully understanding the complexity of the matter at hand as well as the current circumstances in Swaziland, her Government encouraged the Government of Swaziland to take all measures to address the comments raised by the Committee of Experts. The Government of Namibia also requested that the Government of Swaziland be allowed more time to work on the outstanding issues, taking into account the circumstances that had prevailed during the period when it was required to comply with the issues raised by the Committee of Experts. Lastly, her Government called upon the ILO to consider the Government of Swaziland’s request for technical assistance.

The Worker member of South Africa, speaking also on behalf of the Worker members of Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Zambia and Zimbabwe, stated that the Swazi Ministry of Labour had described the formation of TUCOSWA in January 2012 as an “important milestone in the history of industrial relations”. However, when TUCOSWA had started to call for genuine democratic elections, it had been deregistered and its activities prohibited. The Government had considered, suddenly, that there was no law that allowed for the registration of union federations – a right guaranteed by the Convention. This decision had been confirmed by the industrial court on 26 February 2013. When TUCOSWA went to the High Court to challenge the decision, its lawyer had been arrested days before the scheduled hearing. The Government was clearly aware that it was in violation of the Convention, and its statements were no longer credible. Although it had issued General Notice No. 56, with the stated aim of ensuring that union federations were able to exercise their rights and participate in tripartite bodies, this had not yielded any results to date. The Government had indeed permit TUCOSWA to participate in tripartite bodies, but its opinion, such as the reform of the IRA, was largely ignored. Moreover, the Government had intensified its attacks on workers’ rights. Unions in numerous sectors had decided to merge in September 2013 to form ATUSWA. Prior to its launching congress, the union had requested registration, which had been denied up to the present, with the Government putting forward various reasons that were far removed from normal practice. Even during the era of apartheid in South Africa, trade unions and federations had been registered and free to operate. Trade union rights were human rights.

The Government member of Greece, speaking on behalf of the European Union (EU) and its Member States, as well as Turkey, The former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Norway and the Republic of Moldova, stated that the EU attached importance to the rights of freedom of expression, opinion, assembly and association, without which democracy could not exist. She wished to recall the commitment made by Swaziland under the Cotonou Agreement – the framework for Swaziland’s cooperation with the EU – to respect democracy, the rule of law and human rights principles which included freedom of association. Compliance with the Convention was essential in this respect. The case had been discussed by the Committee several times over the past decade. The EU was very concerned by recent developments in Swaziland that infringed on the rights of freedom of expression, opinion, assembly and association. Considering that the arrest of political activists and trade unionists on 1 May 2014, as well as the arrest and detention of human rights lawyer, Thulani Maseko and journalist Bheki Makhubu, constituted clear infringements, the EU called on the Government to respect these rights at all times. Noting that the Committee of Experts had requested the Government to take all necessary steps, including legislative measures, to proceed with the registration of TUCOSWA, the EU asked the Government to urgently amend the IRA so as to provide for that federation’s registration and to urgently take forward this legislation, ensuring that it was in line with the Convention. Noting also that the Committee of Experts had highlighted several legal acts for their non-conformity with the Convention, the EU urged the Government to make sure that its legislation was fully compliant with the Convention. While appreciating that a high-level ILO fact-finding mission had been able to visit Swaziland in 2014, the EU expressed the hope that its recommendations would be taken into consideration to produce tangible progress in all pending issues. It called on the Government to cooperate with the ILO and to respond to the requests of the Committee of Experts. The EU also urged the Government to avail itself of ILO technical assistance and expressed its continued readiness to cooperate with the Government to promote the implementation of fundamental rights.

The Worker member of Angola expressed grave concern that the Government had failed to meet its commitments made in 2013. In Swaziland, workers were harassed and intimidated with impunity. In March 2013, police had violently put an end to a meeting held on the anniversary of the founding of TUCOSWA, the only federation that brought together unions from all sectors in Swaziland. TUCOSWA remained unregistered, against workers’ wishes and against international legal instruments that promoted and protected freedom of association and the right to organize. On 6 September 2013, police had abruptly ended a Global Inquiry Panel that had been organized by TUCOSWA with the aim of hearing workers’ testimonies about conditions of work in Swaziland. While this was happening, the offices of TUCOSWA were raided by the armed police. On 5 September 2013, the Regional Police-General of TUCOSWA, Mr. Mncwengane, under house arrest, allegedly for taking charge of logistical arrangements for the Global Inquiry Panel. On the same day, trade union officials and other delegates arriving in Swaziland for the event had been detained by police upon their arrival and instructed to leave the country the following day. The Government had withdrawn the IRA amendment bill from Parliament. This action made it clear that the Government had no intention of recognizing or registering workers’ and employers’ federations in line with the commitment it had made to the Committee in June 2013. In light of the lack of progress it had made, she requested that the Committee include Swaziland in a special paragraph of its General Report.

The Government member of Morocco thanked the Government representative for the information supplied in response to the Committee of Experts’ comments on the exercise of freedom of association, the registration of workers’ organizations and a number of parliamentary bills. The Convention was difficult to implement because of constantly evolving industrial relations and required the adoption of regulations and institutional measures. According to the Government, considerable progress had
been made, particularly with regard to the IRA amendment bill, the Public Service Bill, amendments to the Suppression of Terrorism Act and the efforts to promote social dialogue and tripartite consultation. The adoption of those measures testified to the Government’s determination to bring national legislation and practice in line with the Convention. He therefore proposed that the Government efforts be endorsed and that it be given time to pursue those efforts and to address the issues that were still outstanding.

The Employer member of Zimbabwe expressed his solidarity with the Employer member of Swaziland. He acknowledged that the Government had not kept its word and still had to complete what it had undertaken to achieve. The Government representative had been very eloquent in presenting its accomplishments and the reasons for which other matters had not been addressed. The bottom line was, however, that the registration of workers’ and employers’ federations was critical – at present it was the workers’ federation that was denied registration, in the future it could be the employers’ federation. Moreover, the placing of criminal and civil liability on individuals had an intimidating effect. While acknowledging the uniqueness of Swaziland’s case made by the speaker that the Government had been aware of the requirements when joining the ILO and ratifying the Convention. According to an African saying, when two elephants fought, it was the grass that got hurt – this was to illustrate that the situation between the Government on the one side, and one or the other or both social partners on the other side, was negatively affecting the national economy and thus the well-being of the population. The conclusions of the Committee should therefore be unequivocal as to the need for the Government to honour its commitments and the Committee should expect no less.

The Government member of Zimbabwe urged the Government and its social partners to avail themselves of the ILO’s technical assistance in order to resolve the outstanding issues that had been raised by the Committee of Experts. It had been pleased to note that the Government of Swaziland was cooperating with the ILO supervisory bodies. The ILO was encouraged to continue supporting the efforts made by providing the much needed technical support. It was recalled that, if nurtured, social dialogue at the national level could provide a platform to collectively deal with socio-economic issues. Investing and strengthening social dialogue became one of the ILO’s entry points, in its endeavour to improve labour markets in member countries.

The Worker member of the United Kingdom said that Swaziland’s failure to respect the Convention was longstanding. Freedom of association and trade union activity had been restricted both in law and in practice, often with severe and violent consequences for trade unionists. The Public Order Act and the Suppression of Terrorism Act were used to silence dissidence and in recent months the number of those criticising the regime had increased. The King had proclaimed Swaziland a monarchical democracy. It was not, however, a democracy, as there was a ban on political parties, a restriction on political information and the people of Swaziland could not participate meaningfully in organized political activity. Legislative and judicial powers were all vested in the King which had been consolidated by the revised Constitution of 2005. The King encouraged all civil and political rights and freedoms. The fact that trade unionists were brought before the courts for breach of laws, such as the Public Order Act, was a breach of ILO standards. The judiciary was not independent. Two senior members of the justice system had been dismissed; the first for allegedly criticizing the King and the second for refusing to support the dismissal of his colleague. A high-level ILO mission had visited Swaziland but no changes to the law had been made. Trade and other agreements with partners, such as the European Union, required that respect for international commitments, including freedom of association and freedom of assembly and speech, were met.

The Government member of Botswana said that freedom of association and the right of workers and employers to organize were preconditions for meaningful social dialogue and collective bargaining. Countries voluntarily ratified Conventions that promoted these principles but, on occasion, circumstances arose that undermined intentions. Some progress had been made towards compliance with the Convention, including the drafting and tabling of the Industrial Relations (Amendment) Bill in Parliament. Although it had not been adopted, these efforts bore testimony to the Government’s commitment. Challenges had been encountered in the process of amending the Industrial Relations Act, which pointed to the need for capacity building to ensure effective social dialogue on a variety of matters, including the obligations arising from the Convention. It was hoped that collaboration with the ILO would assist Swaziland in overcoming the challenges it was facing in this regard. In the light of the meaningful reforms, the speaker requested that it be granted additional time to complete its work.

The Worker member of the United States referred to the previous comments made by the Committee urging the Government to amend its legislation and to the high-level ILO fact-finding mission which had visited Swaziland in January 2014 which reported that no measurable progress had been made toward amending the problematic legislation. The speaker also referred to the African Growth and Opportunity Act which provided for the “protection of internationally recognized worker rights, including the right of association and the right to organize and bargain collectively”. Swaziland’s laws had to be amended by 15 May 2014 to ensure continued eligibility for trade benefits under the Act; another deadline that had not been respected. The speaker referred to some of the legislative issues raised by the ILO supervisory bodies over the past decade that had not yet been resolved, including with regard to the Industrial Relations Act, the Public Order Act and the 1973 Proclamation. Prison staff were still legally excluded from the right to establish or join unions and a bill proposed in 2012 to address the issue was no longer being discussed. Moreover, the Government had recently reintroduced the Public Service Bill, prior to consultation with the social partners. If passed, this law would permit the termination of public sector workers’ collective bargaining agreements, thereby nullifying related legal statements, limit the subjects public sector workers could negotiate, and provide that these workers had no access to grievance processes. In conclusion, there was much work needed for the Government to bring its labour laws into compliance with the Convention. The speaker therefore urged the Government to cooperate with the ILO in order to complete those reforms.

The Government member of South Sudan stated that the Government had shown its strong political will towards ensuring compliance with the Convention. However, due to circumstances beyond its control, such as the dissolution of Parliament in July 2013 which was reinstated in February 2014, the whole process was delayed. The Committee of Experts was called upon to take note of the progress made so far. In addition, the ILO was requested to provide technical assistance to the Government, in order to speed up the legislative reform process undertaken. The speaker invited the Government to continue its negotiations with the social partners in order to prevent further delays.

The Worker member of Nigeria said that workers and citizens could not exercise their rights on freedom of association, assembly and participation in democratic pro-
cesses. The Government had continued to wilfully and arbitrarily circumvent the application of the Convention and other similar instruments, thus failing to deliver on the promises it had made. There were a number of areas of concern. TUCOSWA, a legitimate trade union, was banned. The police and other state security agencies continued to harass and intimidate union leaders. Four workers had been arrested and detained for wearing T-shirts that allegedly belonged to a political party. A student, who had joined his parents and co-workers to celebrate May Day, was detained. Associating with workers was considered a serious crime in Swaziland. Trade union activists had been forcefully prevented from participating in legitimate trade union activities and TUCOSWA’s lawyer had been in detention for having expressed an opinion on the arrest of a trade unionist from one of TUCOSWA’s affiliates. The treatment received by TUCOSWA was in breach of Swaziland’s Constitution.

The Government member of the United States stated that the situation of freedom of association and trade union rights in Swaziland was a matter of grave concern to the United States. The situation had been followed closely for several years, particularly in the context of Swaziland’s continued eligibility for trade preferences under the African Growth and Opportunity Act. The United States Government fully endorsed the recommendations of the ILO supervisory bodies regarding Swaziland’s application of the Convention, as well as the technical advice that the ILO had provided to the Government with a view to implementing those recommendations. Her Government was concerned by the lack of concrete, tangible progress to date; these issues had been pending for a very long time, some for over a decade. The speaker was pleased that the Government had accepted a high-level ILO fact-finding mission in January 2014. Nonetheless, she deeply regretted that TUCOSWA was still not registered. It was imperative that TUCOSWA be able to effectively exercise all of its trade union rights without interference or reprisal. It was equally important that employers’ organizations were registered and able to fully represent their members’ interests. Legislative omission that had resulted in the de-registration of workers’ and employers’ organizations, and the Government of Swaziland’s subsequent lack of meaningful recognition pursuant to its General Notice, had had serious consequences for genuine freedom of association and meaningful tripartite social dialogue in Swaziland. The speaker urged the Government to take the necessary measures to ensure that TUCOSWA and other work-related organizations were recognized and empowered without further delay. The Government was also urged to take all of the measures recommended by the ILO supervisory bodies with regard to legislative amendments and their effective implementation. Moreover, she urged the Government to implement a Code of Good Practice for managing industrial and protest actions. In this regard, she called on the Government to cooperate closely with the ILO.

An observer representing the International Transport Workers’ Federation (ITF) indicated that in 2014, the ITF had sent a fact-finding mission to Swaziland to investigate anti-union measures taken by the authorities against the Swaziland Transport and Allied Workers’ Union (STAWU). In addition to the Public Order Act used to target trade unionists, including the STAWU, another law had also been used to that end. Five STAWU union leaders, including the Secretary-General, had been served notice of prosecution under the Road Traffic Act of 2007 for holding a union gathering in the airport car park. Although this law was supposed to cover offences on public highways, it had been applied to the airport car park – another way in which statutory instruments were creatively used to suppress unions in Swaziland. Furthermore, in 2014, the Civil Aviation Authority had submitted an application to the Government’s Essential Services Committee requesting that a range of airport services be classified as essential services. This would bring airport staff under specific legislation restricting their employment and trade union rights, and would be a step backwards in the application of the Convention. The speaker also referred to their visit of STAWU’s legal officer, Basil Thwala, in prison. He had been arrested following a demonstration in July 2012 and had been charged and convicted for offences under both the Road Traffic Act and the Public Order Act. Although he was initially granted bail, it was later revoked by the High Court of Swaziland allegedly on the ground that he had breached his bail conditions. No witnesses were called before the court to verify this allegation and Mr Thwala himself had not been in court when his bail was revoked. Mr Thwala was then sentenced to two years of imprisonment. Even though he had lodged an appeal two months after being convicted, his appeal, filed on a certificate of urgency, was never dealt with. Mr Thwala was released in 2014 after serving his full sentence. ITF’s mission had questioned the independence of the judiciary in both Mr Thwala’s case and that of STAWU leaders. STAWU’s plight showed the Government’s non-compliance with the Convention. He urged the Government to amend the legal texts that had been subject to scrutiny. Moreover, the Government should be asked to report on the Road Traffic Act and its misuse aimed at targeting legitimate activities of the trade unionist.

The Government member of Egypt stated that the Government had taken a series of measures to fully implement the provisions of the Convention despite the difficulties the Government had faced, especially during the national elections which were held after the dissolution of Parliament in July 2013. These difficulties had delayed the adoption of legislative measures that would allow the provisions of the Convention to be implemented. The Government had demonstrated its full commitment to making the necessary amendments, particularly with regard to the registration of trade unions. In conclusion, the speaker asked the Committee to grant the Government additional time to enable it to take the necessary measures and bring national legislation in line with the requirements of the Convention. In this regard, he supported ILO technical assistance for the Government.

The Government representative thanked all the members of the Committee for their positive criticism and wished to reiterate that Swaziland had received and was tirelessly working on the pending issues. Given the required time and technical assistance, the Government would be able to report tangible results at the Committee’s next meeting. In response to the issues raised during the discussion, the Government representative stated that all the relevant information had been provided with respect to the 1973 Proclamation and clarified that it was only on this specific issue that further discussion and supervision did not appear to be required. With respect to the new allegations of non-compliance raised during the discussion, the Government representative asked that the normal process be used, namely that these complaints of non-compliance be channelled through the government structure in order to afford the Government the opportunity to provide information or a report on the new issue that further discussion and supervision did not appear to be required. The speaker added that TUCOSWA was not banned in Swaziland and enjoyed the right to organize and to meet and the right of freedom of expression. TUCOSWA celebrated May Day in 2014 and had invited representatives of the Government to attend the celebration. This was proof that their relationship was not as it had been portrayed. With respect to the Bill
amending the Industrial Relations Act (Bill No. 14 of 2013), it had not been the Government who had withdrawn the Bill from Parliament but a Parliamentary Committee. A bill could not be promulgated overnight and the Government therefore asked the Committee for some time in order to move forward with the process that had already started. The Government representative requested the ILO’s technical assistance to help resolve the pending issues and stated that the Government would report on solid results at the Committee’s next meeting.

The Employer members thanked the Government for the information submitted. Some measures had been taken but highlighted that there was a lack of concrete progress with regard to this case. They recalled that the Committee did not address the right to strike in this case as the employers did not agree that there was a right to strike recognized in the Convention. The Government was urged to implement in law and in practice real change that would see the Government’s legislation come into compliance with the Convention. Priority should be given to establishing a fast-track process to allow the immediate registration of workers’ and employers’ organizations and federations, including the immediate registration of the TUCOSWA, which had to be dealt with as a matter of urgency. Once organizations were registered, the Government could turn to consulting with the social partners in order to draw up a timetable to finalize the revision of the outstanding legal texts that had been discussed. Revision of legislation presented challenges but with the assistance of the ILO and in consultation with the social partners it would be possible to deal with those challenges.

The Employer members expected that the recommendations would be taken seriously and given priority.

The Worker members expressed the view that the evidence provided was irrefutable and proof enough of the systematic attacks on the workers’ right to establish and join trade unions freely. The Government was trying to prevent the creation of TUCOSWA and ATUSWA by refusing to register them and by prohibiting them from engaging in trade union activities. Freedom of movement and expression of the leaders and members of the unions was limited and they risked criminal charges and prison if they denounced the Government’s repressive tactics. The police and security forces had been watching the workers closely and, citing abusive legislation that the Government refused to change, had threatened to use force if they tried to assert their rights. On several occasions the Government had pledged to stick to a timetable of reform, but had failed to do so. The ILO mission that had recently visited the country had not been able to record any progress. The Worker members felt that they could not allow the Government any more time and reiterated their demands: the Government must register TUCOSWA and ATUSWA immediately and ensure the full exercise of their rights under the Convention and national legislation, with reference to the IRA. The Government must release Thulani Maseko immediately and abandon the legal proceedings regarding his freedom of expression and legitimate trade union activities, and take urgent steps to institute an independent judiciary; the Government must provide the police and security forces with relevant information and hold them responsible for any violent intervention in peaceful and legitimate trade union activities; the Government must immediately amend the IRA, the Correctional Services (Prison) Act, the Public Service Act, the Suppression of Terrorism Act and the Public Order Act so as to bring them into line with the Convention; the Government must initiate judiciary procedures conducive to a definitive Supreme Court ruling on the status of the provisions of the 1973 Proclamation. Given that the Government was persisting in its ways, the Worker members would use all the facilities available to them under the ILO Constitution. Considering the seriousness of the case, the Government’s systematic refusal to act for the past ten years and the complete absence of progress, the Worker members were in favour of the Committee’s conclusions being included in a special paragraph.

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of coming to an agreement, based on article 23 of the BCA, the Government, on 17 September 2013, took the decision to revoke the BCA for public service employees with a notice period of three months. The procedures for cancellation were therefore conducted legally. At the same time that the Government was expressing its intention to repeal the existing BCA, it was initiating negotiations on the conclusion of a new BCA, whose text would not change with respect to the text of the revoked BCA. Negotiations would only refer to the issue of the reimbursement of transport costs, whereas the issues of the Christmas bonus, holiday bonus and jubilee award would be settled in an annex to the BCA. The new BCA, with an Annex I, was signed on 12 December 2012, before the cancellation of the previous agreement had entered into force. Collective bargaining was conducted with the bargaining committee of the trade unions established in accordance with the Act on the criteria for participation in tripartite bodies and the representativeness for collective bargaining, which entered into force in the meantime (28 July 2012). It was signed by a total of six out of 11 representative trade unions.

Concerning the act on the suspension of payment of certain benefits to public service employees, despite the conclusion of the new BCA and Annex I (agreement to reduce or temporarily suspend some material benefits), pursuant to the principle in the Labour Code to apply the more favourable law, those rights continued to be applied according to the branch collective agreements, because they had been agreed in branch/sectoral collective agreements for each public service (health care, social welfare, primary and secondary education, science, higher education and culture). Civil servants had negotiated their collective agreement with the Government on 2 August 2012. In Annex I of the collective agreement, inter alia, they agreed that for civil servants, the Christmas bonus would not apply in 2012 and 2013; the holiday bonus and jubilee award would not apply in 2013; and travelling allowances would be reduced from HRK170 to HRK150 (the same was offered to the public service employees). Civil servants in this case were, in practice, discriminated against, since the material rights for both categories were ensured in the state budget. For that reason, the Government decided to regulate the rights contained in Annex I of the BCA equally for all, both civil servants and public service employees, under the Act on the suspension of payment of certain benefits to public service employees of 20 December 2012. On the basis of that Act, the right to a Christmas bonus in 2012 and 2013 and a holiday bonus in 2013, no longer applied. This decision was taken in order to urgently maintain the fiscal stability of the public service system under the deteriorating economic conditions and to achieve a balance in the rights of both categories of officials. In order to bring the branch collective agreements in line with the BCA, the Government entered into negotiations in 2013 with representative trade unions of each public service. In 2013, the collective agreement was concluded for the health-care sector. Collective agreements for the social welfare, culture and primary and secondary education sectors were all concluded in 2014. As yet, no branch collective agreement for science and higher education had been concluded.

With reference to the economic trends in 2013–14, the Government indicated that Croatia was facing a deep and prolonged recession for the sixth consecutive year. The share of the public debt in GDP had increased from 55.5 per cent in 2012 to 64 per cent at the end of 2013. Due to violations of both deficit and debt criteria, the excessive debt procedure within the framework of the European Union (EU) Stability and Growth Pact was initiated in 2014. It was another year of rising unemployment, especially youth unemployment. In the third quarter of 2013, the activity rate for the 15–64 year age group stood at 60.5 per cent, the lowest in the EU, while the employment rate was 50.2 per cent—the second lowest in the EU. The Act on the realization of the state budget of 1993 was no longer in force. With regard to the Act on the criteria for the participation in tripartite bodies and representativeness for collective bargaining, the Government indicated that it had initiated the drafting of the text of the new Act on representativeness in close cooperation with the social partners. After numerous consultations which took place with all representative social partners (representative trade union confederations and the Croatian Employers‘ Association), the Ministry of Labour and Pension System initiated the drafting of the new Act of 28 July 2012, which contained improvements. The drafting of this Act was in its final phase. The goal was to promote cooperation among trade unions and strengthen their bargaining positions.

Regarding the protection of workers against acts of anti-union discrimination (Article 1 of the Convention), a comprehensive process of judicial reform had been taking place in Croatia during the past few years, with a view to enhancing the efficiency of the judicial procedure in general and to reducing the backlog of cases. A new law had been amended; the courts had been restructured and their territorial distribution modified; and information technology had been advancing. Various projects (so-called e-documents) had been implemented to provide the legal protection of the rights of the parties in general, as well as workers. According to statistical data, the number of unresolved cases had dropped considerably in the period from December 2011 to September 2013—from 872,124 to 773,349—which demonstrated progress in this field. As regards the strengthening of the capacity of labour inspection, the Labour Inspectorate Act had been adopted and entered into force on 20 February 2014. This Act provided a legal framework for the functioning of inspection bodies in the field of labour. Moreover, the Inspectorate Unit had been established as a separate unit within the Ministry of Labour and Pension System since 1 January 2014. The Labour Inspectorate Act provided a legal basis for the efficient and improved functions of labour inspection bodies. Comments were made by the Trade Union of State and Local Government Employees to the effect that the Local and Regional Self-Government Wage Act of 19 February 2010 restricted the right to organize and bargain collectively over wage fixing, especially in the case of employees of the local and regional self-government units, whereas the Budget Act of 1976 and the local government units law of 1975 had granted the Local and Regional Self-Government Wage Act act to in respect to the trade unions. However, the legislation was regulated with respect to the collective agreements. The right to a jubilee award would not apply in 2013; and travelling expenditure would not apply in 2012 and 2013; employees were guaranteed protection equal (the same was offered to the public service employees).
right to organise and to collective bargaining, nor does it prevent collective bargaining on the wage-fixing basis. The intention of the legislator was that the wage-fixing basis is primarily determined by collective bargaining, and subsequently by the decisions of competent authorities, which is in accordance with the Convention.

In addition, before the Committee, a Government representative recalled the impact of the global economic and financial crisis and its negative impact on the economy of Croatia, which was reflected in a steady decline of the Gross Domestic Product (GDP), increased unemployment, reduced salaries and an increased public debt. Under these conditions, negotiations had been held with trade unions in the public service from 4 to 16 July 2012 with a view to amend the Basic Collective Agreement (BCA). Four trade unions had refused to sign the amendments, and had rejected the invitation by the Government to settle disputes through an arbitration procedure provided by the BCA, or through other means. The Government had subsequently cancelled the BCA for public service employees in September 2012, having taken into account all necessary procedures to ensure that the cancellation was legal. At the same time, the Government, however, expressed its intention to open negotiations for a new BCA. While removing certain rights and bonuses, the new BCA had settled most outstanding issues. The new BCA had been signed in December 2012 by six out of 11 representative trade unions. The abovementioned procedure had been motivated by the necessity to preserve fiscal stability of the public service system while respecting the equality of treatment between public servants on the one hand, and public sector employees on the other. In 2013, the Government had concluded collective agreements in all but one branch. Regarding the issue of representativeness, the Government had submitted a detailed report to the ILO affirming that the Act defined the criteria for establishing representativeness of trade unions for the purposes of collective bargaining. The Government had started drafting the text of a new Act on representativeness, in close collaboration with the social partners, to counter the perceived shortcomings of the current Act, and to promote cooperation among trade unions and strengthen their bargaining positions.

The Worker members recalled that this was the second discussion on Croatia’s application of the Convention and that a complaint was also being examined by the Committee on Freedom of Association. The Committee of Experts was satisfied with the Government’s reply to the four points it had raised in its observation. The first point concerned the protection of workers against acts of anti-union discrimination. There was an excessive delay in the courts dealing with these complaints and the labour inspectorate did not have the capacity to intervene effectively. Furthermore, the pilot mediation project that had been established had given good results but was not widely used, as the point referred to the process of wage fixing in a number of regional and local communities. When these communities received financial assistance corresponding to a percentage of their income, they had to align themselves with the agreements existing at national level. This legislation appeared contrary to the principle of the right to bargain freely on working conditions. The third critical point concerned the Government’s possibility to amend the substance of a collective agreement in the public service for financial reasons. This contravened the principle that an agreement may not be amended unilaterally. In addition, there was a large body of jurisprudence or the issue of whether an economic crisis or the need to balance public finances justified the amendment of collective agreements by the authorities. The Committee of Experts had already made an observation on this point in 2010, on the basis of this jurisprudence. The fourth and last point related to the application in the public sector of the Act on the criteria for participation in tripartite bodies and the representativeness for collective bargaining (Representativeness Act of 2012). This Act raised concern among the trade union organizations because the procedure to determine this representativeness was complex and confusing and it did not provide the necessary guarantees of impartiality and objectivity required under the Convention. The trade union organizations felt that the bill at present under discussion was even more complex. The Government should confirm its commitment to embark upon an authentic social dialogue, which would involve re-establishing an independent Office for Social Partnership, guaranteeing the effective running of the Social and Economic Council, and creating an independent labour inspectorate. Moreover, it should cease state intervention and the unilateral resiliation of collective agreements and bring the legislation into conformity with the Convention.

The Employer members recalled that the Government would have taken a number of measures when preparing for its recent membership of the European Union. A comprehensive anti-discrimination Act, which included anti-union discrimination had been adopted in 2008. The comments of the Committee of Experts indicated that a comprehensive process of reform had been initiated by the Government to enhance the efficiency of the judicial procedure and reduce the backlog of cases. Moreover, a pilot project on mediation in courts had shown positive results. With regard to local and regional self-government units, Article 6 of the Convention made it clear that the Convention was not intended to apply to, or prejudice, the right of public servants engaged in the administration of the State, distinguishing such public servants from other types of public servants to whom the provisions of the Convention did apply. The Committee of Experts had clarified this distinction in paragraphs 171 and 172 of its 2012 General Survey. In this regard, the Committee of Experts had drawn a distinction between public servants who by their functions were directly employed in the administration of the State, and all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. In this regard, it was important to note that the central Government had the power to limit collective bargaining for local and regional self-government units, which indicated that these units were not autonomous institutions from a legal or administrative point of view, but were instead an integral part of the administration of the State. Therefore, employees in these self-government units were indeed civil servants engaged in the authority of the State, and the Government was not required under Article 6 of the Convention to engage in collective bargaining in these units. While noting the non-binding character of the comments made by the Committee of Experts, they invited the Government to consider the above elements in its reply to the Committee of Experts. Regarding the Representativeness Act of 2012, the process of tripartite national discussion was under way.

The Worker member of Croatia underlined the violation of the Convention by the Act on representativeness of 2012, which was adopted without the agreement of the social partners, and which restricted collective agreements to trade unions denominated as “representative” by section 26 of the Act, and possibly restricted the right to strike of other unions. The Act also established derogations in a number of sections of the Labour Code thus restricting the utilization of machinery for voluntary negotiation by unions. The Act established special, different and unjustifiable distinctions between different unions which constituted discrimination. It increased fragmenta-
tion of unions and undermined the industrial relations system. Other provisions of the Act undermined union independence and put into question the objectivity of labour authorities, allowing interference into trade union matters which disrupted collective bargaining. These legislative changes had a profound and negative impact on the social dialogue system in the country. Moreover, the BCA had been cancelled, the independent Office for Social Partnership abolished, the tripartite Economic and Social Committee was not functioning, and the once independent labour inspectorate had broken down. Technical assistance by the ILO was required to strengthen social partnership, as well as to establish more labour courts, since the Government had failed to ratify the ILO’s principle institution for tripartite social dialogue. The Council of Europe had demonstrated that collective agreements, privatization of public services and welfare cuts across the board. There was an alternative to such measures: quality public services and social protection floors were conducive to democracy. Countries including Belgium, Iceland, Uruguay and Argentina had demonstrated that collective bargaining and income distribution policies led to both economic recovery and social inclusion. She agreed with the Committee of Experts that a legal provision allowing unilateral modification of the content of signed collective agreements was contrary to the principles of collective bargaining. The Government’s unilateral decision to withhold service bonuses from civil servants was a failure to comply with a relevant collective agreement, and with the agreed procedure for amending the agreement, as well as a contravention of Article 28 of the European Union’s Charter of Fundamental Rights and Article 6 of the Council of Europe’s European Social Charter. In addition, the 2013 General Survey, Collective bargaining in the public service: A way forward, underlined the importance of collective bargaining for maintaining effective, professional public services, and the need to respect existing collective agreements in times of crisis. PSI was also concerned by the difficult working conditions in the national health-care system (excessive overtime, staff shortage, reductions in wages). Health-care unions had tried to negotiate a new collective agreement without any result to date. The Government had also intervened in the social dialogue of an electricity company; this had not only made it difficult for
unions and management to establish a collective agreement, but was a violation of ILO principles, the European Social Charter and the European Union’s Charter of Fundamental Rights. She called on the Government to change direction and to build trust and dialogue, rather than exclusion and inequality.

The Government representative wished to draw the Committee’s attention to three points. Firstly, regarding the Representativeness Act, the preparation of draft legislation establishing criteria for participation in tripartite bodies and criteria for determining representativeness for collective bargaining purposes, had already begun in 2008. The Government’s attempts to create enabling conditions and encourage social partners to agree on the text of the Representativeness Act had been unsuccessful, for the following reasons. In June 2008, the trade union confederations had assumed the obligation to submit a proposed Act to the Government. In July 2009, in the absence of agreement on the content of the Act, the trade union confederations had proposed that the Government should itself prepare the draft Act, with any disagreements in connection with it to be settled by an arbitration body. However, after the Ministry had prepared two working documents, arbitration began. Since 2011, when the Draft Act was to be prepared in consultation with the social partners by a group of experts proposed by employers and workers, most trade union confederations had failed to submit their proposals to the experts. The outcome produced by the experts had not been considered acceptable. Following several meetings and consultations with the social partners, the Representativeness Act had been adopted on 29 July 2012. Secondly, she reminded the Committee that the Office for Social Partnership had in fact been a government office, and that, although the Government had indeed abolished it, it had for the first time established a new Ministry of Labour and Pension System – previously labour issues had been dealt with by the Ministry of Economy, Labour and Entrepreneurship. Thirdly, concerning the comments that the Local and Regional Self-Government Wage Act restricted the right to bargain collectively over wage fixing (especially in units where aid from the state budget exceeded 10 per cent of a unit’s income), she indicated that, according to the Act, the wage-fixing basis for the calculation of pay for the employees of all units was determined by collective agreement; only when this was not the case, was it established by the local authority official. However, there was a restriction prescribing that in units where aid from state budget exceeded 10 per cent, the wage-fixing basis did not have to be higher than that for the calculation of pay of civil servants. The purpose was to prevent salaries from increasing disproportionally in units with insufficient income that relied on state aid. In conclusion, the Government representative highlighted that Croatia was in its sixth consecutive year of recession. Unemployment, particularly youth unemployment, lack of investment and fiscal consolidation remained major challenges, and the Government had had to undertake a range of structural reforms. However, it was aware of its responsibility to implement reforms in a socially responsible manner. All measures taken had been aimed at reducing government spending, and rights had been suspended minimally and temporarily. The Government recognized the importance of social dialogue and prioritized collective bargaining as a means of determining the employment conditions of civil servants and other public service employees. Collective agreement coverage in the public sector remained high, and since 2012 the Government had been engaged in ongoing negotiations with civil and public service trade unions, to try and find a balance between necessary measures to address the crisis and protection of workers’ rights. To date, various collective agreements had been concluded: a collective agreement for civil servants, a BCA for public service employees and five agreements for the health care, primary and secondary education, social welfare and culture sectors. The Government would be open to negotiations on the extent of workers’ rights as soon as the fiscal and economic situation improved.

The Worker members were surprised by the Employer members’ renewed questioning of the established interpretations of Conventions in force and emphasized that the Committee of Experts had correctly applied the text of the Convention in the light of the General Survey to which the Employer members had been referring. It seemed that some distrust had developed between the Government and the representative organizations of public service employees and that there were major differences in their respective views. The question was therefore whether the economic and financial difficulties facing the country really justified the revision of granted benefits and, in particular, whether they justified an exemption from the principles laid down by international standards. The Worker members stated that they could only agree with the Government’s objectives. However, there were serious doubts as to whether the latter could be achieved through the existing legislation or the proposed legislation. In order to settle the matter, a thorough examination of the issue should be carried out in order to establish the following: the circumstances which had led to the Government’s withdrawal from the agreement; among other things, the real content and scope of the legislation on representativeness; and, in particular, the way to restore appropriate and substantial dialogue. Accordingly, the Worker members encouraged the Government to avail itself of the ILO’s technical assistance.

The Employer members appreciated the detailed information provided by the Government. They considered it important to highlight that the Committee was examining compliance with the provisions of Convention No. 98 only, and that the European Social Charter was not being discussed by the present Committee. As regards the promotion of collective bargaining in the public sector, they indicated that they had already expressed their concerns about Article 6 and the views of the Committee of Experts. The Employer members believed that, in view of the exemption contained in Article 6 of the Convention, neither the Government of Croatia nor any government was under the obligation to promote collective bargaining in local and regional self-government units. Any instruction applying to those groups of public servants was not within the remit of the Convention. They requested that their views be reflected in the conclusions, so that it was clear why they questioned the observations of the Committee of Experts. Nonetheless, they expected the Government to fully comply with the requirements of the Convention, albeit it was a matter for the Government to decide whether to utilize the exemption in Article 6 of the Convention.

**Ecuador (ratification: 1959)**

A Government representative said that Ecuador’s commitment to respect and observe international labour standards dated back to when it joined the ILO in 1934. It had ratified 61 ILO Conventions, including Convention No. 98 and, most recently, the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Domestic Workers Convention, 2011 (No. 189). She emphasized that, with the adoption of the Constitution in 2008 by a majority of the population, a new set of social policies had been established based on the ancestral Andean philosophy of *Sumak Kawsay*, or living well, which were geared to ensuring basic needs and life in harmony with nature. From that perspective,
economic growth should be achieved taking into consideration a fair distribution of wealth. As such, priority had been given, not to the payment of foreign debt, but to the payment of social debt, and the 8 per cent fall in poverty between 2007 and 2011 had been achieved on the basis of the implementation of a national system for inclusion and social equity which respected diversity, prohibited discrimination of any kind and facilitated the full enjoyment of human rights, particularly the rights to work, food, health, housing and education. The progress made had enabled her country to be a benchmark for achievements in terms of plans for people with disabilities, action against child labour, and in particular, by its worst forms, environmental protection, reduction of extreme poverty and improved wealth distribution. In order to attain these objectives, a socio-economic inequalities atlas had been published, with the support of 12 bodies related to the United Nations. She added that the Constitution established the right to decent work and rights such as the workers’ right to organize without prior authorization. Alongside the Constitution, specific measures had been adopted in the labour sphere, with the aim of overcoming disparities between workers who, although carrying out the same work for similar hours of work, were not entitled to the same remuneration or the same social benefits. A mandatory social security system had been introduced, as well as better wages with the change in the production model. Better training for workers had also been promoted with a view to enhancing their options for earning higher wages.

Efforts had been made to developing a new Labour Code that better reflected current realities and was more in line with the international Conventions ratified by Ecuador. The draft had been developed with the ILO’s participation and had been submitted to the National Assembly on 1 May 2014. The articles had been structured along the lines of Convention No. 98, with the emphasis on the organization of workers and the establishment of trade unions, in the context of freedom of association. Its provisions included the following: prohibition of any act that obstructed workers in the formation of trade unions; prohibition for employers to terminate a contract of employment while the worker was on leave; prohibition of any type of act aimed at restricting or undermining workers’ rights to organize, and also of interference in the establishment, administration or support of workers’ organizations; and guarantee of collective contracts as a way to improve, inter alia, conditions of work in terms of wages, occupational safety and health. The draft new Labour Code was progressive in establishing new types of unions and unionization by sector. Workers would be better represented and their rights would be more effectively guaranteed. Regarding the reinforcement of trade unionism, she said that the number of trade union registrations had significantly increased to 479, which represented a 300 per cent increase over the number established in the previous decade. The current Labour Code established the right to collective bargaining. However, collective bargaining agreements in certain public sector bodies contained clauses providing for excessive benefit, which created a privileged situation for the workers concerned amounting to a clearly unfair and discriminatory situation vis-à-vis other workers in similar conditions in the public sector. The magnitude of those benefits could be appreciated by referring to 363rd Report of the Committee on Freedom of Association on Case No. 2684, paragraph 555 of which indicated that one of the complainant organizations had alleged the unjustified dismissal of some 300 workers of a State enterprise, and paragraph 556 stated that those workers were claiming the compensation due to them (US$200 million), as well as compensation for the damages caused. She emphasized that with a view to overcoming such imbalances, the Constituent Assembly, responsible for the drafting of the Constitution in 2008, had promulgated Constituent Resolutions Nos 2, 4 and 8, which had absolute legitimacy, as they had been promulgated on the basis of the people’s will expressed by means of several popular votes. Ministerial Orders Nos 00080 and 00155 did not restrict either collective bargaining or freedom of association. On the contrary, they contained standards, regulations and parameters for negotiation and above all they sought the full application of universal human rights principles, the upholding of equity and equality in the enjoyment of rights, and the application of the constitutional principle of equal pay for work of equal value. Lastly, she invited the ILO to send a technical cooperation mission, similar to the one received from 15 to 18 February 2011, details and objectives of which would be defined in due course.

The Employer members said that the present case relating to a fundamental Convention had been examined in 1987 and 1999. In 2013, the Committee of Experts had made several observations. In relation to Article 1 of the Convention on protection against acts of anti-union discrimination, it called for a specific provision guaranteeing such protection in the private sector. Regarding the promotion of collective bargaining, there was a need to amend section 229 of the Labour Code so as to allow minority trade union organizations, on their own or jointly, to submit draft collective agreements. The systemic nature of the Labour Code meant that any reform needed to involve meetings with tripartite bodies so as to ensure that reform was comprehensive. In the public sector, the new legislation did not provide for penalties for acts of anti-union discrimination or interference, and classified as public servants the great majority of workers in that sector, thereby denying them the right to collective bargaining. They referred to Decree No. 225 of 2010, which enabled the Ministry of Industrial Relations to unilaterally revise collective contracts applicable to workers in the public sector; the Basic Act on Higher Education (LOES) of 2010; and the Basic Act on Intercultural Education (LOEI) of 2011, which did not recognize the right of public employees in the education sector to engage in collective bargaining. They called on the Government, in consultation with the employers and workers, to take into account those observations aimed at amending legislation and to send a report on developments on this matter. They added that the Committee on Freedom of Association had referred to the Committee of Experts the examination of the Case No. 2684 on the basis of the observations of many anti-union dismissals which were carried out in the public sector through the procedure known as the “compulsory purchase of redundancy”, established under Executive Decree No. 813. The Employer members endorsed the recommendations of the Committee on Freedom of Association in paragraph 391 of the 370th Report and reproduced below.

(a) Emphasizing that the principle of adequate protection against acts of anti-union discrimination is fully applicable to public employees and workers, the Committee requests the Government to carry out an independent investigation, without delay, into the alleged anti-union character of the various dismissals and terminations specified in the complaint. If these allegations are found to be accurate, the Committee requests the Government to take the necessary steps to rectify the anti-union discrimination and to re-employ the victims. The Committee requests the Government to keep it informed of the measures taken in this respect, and of their outcome.

(b) The Committee requests the Government to ensure that the trade unions are consulted on the implementation of Executive Decree No. 813 with the view,
inter alia, of avoiding any non-compliance with provisions of collective agreements and preventing any occurrence of anti-union discrimination. In this respect, the Committee requests the Government to ensure that such consultations provide for the need to take measures, including legislative and regulatory measures if necessary, to introduce effective sanctions in the event of anti-union terminations and dismissals in the public sector.

(c) As regards the various judicial proceedings initiated against the adoption and implementation of Executive Decree No. 813, the Committee requests the Government to keep it informed of their outcome, and expects that the courts will pay due heed to the principle of protection against anti-union discrimination.

The Worker members recalled that the Committee of Experts had been commenting on the present case for over 20 years, without any tangible result. The present Committee had also examined the case in 1985, 1987 and 1999 and, in particular, it had focused on the issue of conformity of national legislation with Convention No. 98 and on anti-union practices that went against the promotion and free cooperation of workers. Despite the 2008 amendment to the Constitution, certain questions remained in suspense. Many trade unions had been closed down, union leaders had been dismissed and the collective representation of workers had been abolished. Certain practices had led to the destruction of the free union movement. Instead of workers’ organizations, the Government had set up citizens’ associations, such as the Citizens’ Labour Council, which had replaced the National Labour Council (a tripartite body), thereby denying the representativeness of workers’ organizations and their specific competence regarding the defence of workers’ rights. The new Constitution guaranteed workers the right to join a trade union without prior authorization and the freedom to carry out union activities. However, in practice, the exercise of those rights was hindered by many obstacles: in the private sector, a minimum of 30 workers was required in order to establish a trade union, which deprived a million workers of the possibility of exercising their rights since 60 per cent of enterprises employed fewer than 30 workers; and a trade union was only recognized if it gathered 30 signatures of founding members and submitted them to the employer. With regard to the public sector, the Constitution limited the right to establish trade unions and to negotiate in full freedom, by providing a draft new Labour Code, which had made the organization of workers only, namely a single central committee composed of over 50 per cent of employees, which excluded minority unions. The Government had announced that the conditions of service of public sector employees would be standardized under one legal status under “administrative” law, which would indirectly put an end to the right to join a trade union or negotiate in the public sector. The majority of public sector workers would fall into the category of “public officials” and would thereby be denied the right to collective bargaining. It appeared that the new draft law had not been subject to consultation with the social partners. They recalled that since 2008 the main requests of the Committee of Experts covered: the amendments of several laws, of the chapter on labour of the Constitution and of certain ministerial agreements; the reinstatement of union leaders who had been removed from their functions; the need to conduct independent investigations into allegations of anti-union practices; and consultation with workers’ organizations.

Regarding the education sector, they referred to several serious cases of anti-union discrimination which had resulted in the imprisonment of the persons concerned: Mery Zamora, former President of the National Confederation of Education Workers of Ecuador had been sentenced to eight years in prison for sabotage and terrorism for the mere act of carrying out her mandate as President of the union; Luis Chancay had been removed from his post as a teacher for having carried out his functions as President of the National Union of Educators in the Province of Guayas; Carlos Figueroa from the Ecuadorian Medical Federation had been sentenced to six months in prison for having allegedly insulted the Government of the day; Clever Jimenez, Sisa Pacari, Mariana Pallasco and many others had been arrested and detained arbitrarily. They insisted on the need for the Government to bring its legislation into conformity with the Convention. The refusal of the Government to consider the urgent need to restore freedom of association and the right to collective bargaining of workers in the private and public sectors undermined the image of the country in other organizations, such as the World Trade Organization and the Human Rights Council.

A Worker member of Ecuador, referring to the decisive contribution of the workers’ movement in the history of Ecuador said that for the workers it was all about weakening an oppressive system and severing ties with those who undermined, exploited workers, created an oppressive system and severed ties with those who undermined social cohesion, exploited workers, encumbered unemployment and precarious employment and encouraged the unfair distribution of wealth. Ecuador had suffered repeated currency devaluations, constant increases in fuel prices and public utility rates, restrictions on public spending, wage adjustments, with their severe impact on the informal economy, the deterioration of the production system and the dismantling of the State and of the whole of the national regulations and control system.

That in turn had led to millions of Ecuadorians having to leave the country, the collapse of the national currency and ultimately the banking crisis and the adoption of a rescue package, which had provoked the biggest political crisis in the country’s history. He said that it was still difficult to speak of substantial changes in the country. However, the new Constitution continued to provide the workers with the means of establishing forums for dialogue in these uncertain times. While not a workers’ government, the present Government did at least enjoy national legitimacy, and there had been significant progress in education, health, housing, infrastructure, fuel policy and tax reform. In labour matters, however, there was no clear strategy for a national policy with the involvement of the workers, and workers were seriously threatened by dismissal and by administrative measures. He added that the Workers’ Council, which had been abolished by the National Assembly, did not correspond to the needs or interests of the workers, but rather to those of the employers. The Constitution and ILO Conventions emphasized that labour rights were irrevocable and intangible, but the present Government sought to eliminate such rights as collective bargaining, the right to strike and pensions financed by employers. The national trade union movement therefore called for the draft to be replaced by a text reflecting the workers’ aspirations. It was essential for the underemployment rate to be significantly reduced, and for productivity and land distribution to be improved. In short, what was needed was to combat poverty, to support regional governments in their efforts to find new ways of combating injustice, social inequality and the imbalance between peoples and countries, and to eradicate hunger and poverty. A combined effort was needed to devise a new financial system and wage policies designed to introduce a fair minimum wage for each region. That should prevent workers from being exploited and employed on precarious contracts. Measures were required to eliminate all forms of child labour and exploitation and to enable young people and women to join trade unions. Trade union action in defence of agricultural workers and Ecuador-
rian communities abroad needed to be strengthened. Finally, given the abusive dismissal of workers in the public sector and elsewhere, and the fact that a new Labour Code was currently being drafted, he emphasized the need for the ILO to follow up the situation and make its observations on the spot, so that the complaints raised in the present Committee could be verified impartially.

Another Worker member of Ecuador observed that Ecuador’s Constitution provided, among its fundamental precepts, that development should be based on the creation of dignified, and stable work. Development therefore needed to guarantee all workers employment, a fair wage, health and safety at work, stability and social security. Collective bargaining processes had suffered heavily since the fragmentation of the trade union movement. Eight trade union federations existed for fewer than half a million organized workers, and of the 4.5 million Ecuadorians who had the right to belong to trade unions, only 2 to 3 per cent were actually members, most of them in the public sector. Unionization hardly existed in the private sector, which meant that there was no collective bargaining. Various aspects of collective bargaining had been abolished by constituent resolutions and executive decrees. Collective contracts had been reviewed, and in the process the Government had proposed to treat public sector institutions in the same way, meaning that currently certain rights were no longer discussed individually, and wages were tied to inflation. Section 229(3), provided that “public sector workers shall be subject to the Labour Code”, from which it could be clearly inferred that workers whom the Ministry of Industrial Relations classified as career public servants and who worked in public enterprises, were not covered by collective agreements and enjoyed hardly any of the rights that the Constitution considered to be inalienable and intangible. That created inequality before the law and seriously jeopardized the future of trade unions, as at least 60 per cent of unionized workers were subject to that system. He called on the Committee to recommend in its conclusions that the Government should fully respect the right to organize and the right to collective bargaining. On 1 May 2014, a new draft Labour Code had been submitted, which sought to establish a single labour system in the public sector, as a result of which all public sector workers would be excluded from labour legislation, thereby definitively eliminating unionization, collective bargaining and the right to strike for that sector. Finally, he requested the ILO’s technical assistance to ensure that the new legislation would contain equal pay for equal work, and would provide for a new collective bargaining law which would introduce supervisory mechanisms to guarantee decent conditions of work, job stability and strict compliance with workers’ rights, without any kind of discrimination.

The Employer member of Ecuador said that the request of Committee of Experts to amend section 229 of the Labour Code dealing with the submission of draft collective bargaining texts so that minority trade unions whose membership did not comprise more than 50 per cent of the workers covered by the Labour Code could negotiate on behalf of their own members only addressed part of the problem. The objective of the provision was that employers’ and workers’ organizations needed to be genuinely representative, since the submission of draft agreements could result in a situation where it was a non-representative minority of workers which instigated a collective dispute. If the Legislative Assembly were to agree to the Committee’s suggestion, it would have to reform the whole system of collective bargaining so as to avoid trade unions competing against each other in public and private enterprises and discussing issues that were not of interest to the workers they represented. Neither Convention No. 87 nor Convention No. 98 specified a minimum number of workers for establishing trade unions, yet the ILO Constitution and other instruments referred to the “most representative organizations” as having a role to play in various situations. In its report, the Committee of Experts stated that Constituent Resolutions Nos 002 and 004 and Executive Decree No. 1406, by setting a ceiling on remuneration in the public sector and excluding a series of matters from collective bargaining, were incompatible with the Convention. The same argument applied to Resolution No. 8 and to other instruments, inasmuch as the prevention of certain abuses in the clauses of collective contracts signed by public bodies or enterprises was a matter not for the administrative authority, but for the judicial authority. Those who represented State institutions in negotiations on collective contracts had to be competent people who would handle the issue with the sense of responsibility and due care of those dealing with the money of others, especially when the resources belonged to the community as a whole. However, Employers agreed that the right way to go about things was to abide by the legislation in force, on a case-by-case basis. It was for the competent judicial authorities to prevent or correct excesses or to make sure that wage demands in public institutions that belonged to the nation as a whole were accepted. With regard to the new Code, and as expressed by the Committee, he stated that, in consultation with the most representative employers’ and workers’ organizations, the Government would amend the provisions in question, as well as revise the Labour Code as a whole, the employers agreed with the principle that legislative reforms should indeed be conducted in consultation with the most representative social partners, in accordance with the ILO Conventions that Ecuador had ratified. He therefore looked forward to the establishment of the institutions that the ILO had helped to design, such as the Labour Board, which had not yet been convened for its members to examine the draft Labour Code currently before the legislature. Employers were willing to join Workers and the Government in creating an environment in which they could reach solutions by consensus to provide the country with a set of modern standards for promoting employment.

The Government member of Costa Rica, speaking on behalf of Group of Latin American and Caribbean Countries (GRULAC), referred to the progress that had been made in several labour areas in Ecuador since the adoption of its Constitution in 2008, which as a whole, had benefited the workers and their families. The measures adopted were based on respect for human rights and the pursuit of equality and equity for citizens in the exercise their rights, including the right to justice and equality in the treatment of workers, and the application of Convention No. 98, through the Ministry of Industrial Relations, the Government had, since 2007, encouraged the development of a stronger trade union movement in both the public and private sectors. Some 479 labour organizations had been registered over the period, 300 per cent more than over the preceding decade. The Government had responded to the Committee of Experts’ comments and observations and, where the Committee of Experts had identified outstanding issues, those would be covered by the new Labour Code which, according to information supplied by the Government, was currently being drafted with the assistance of the ILO and of the social partners along the lines set out in Convention No. 98. She trusted that the Government would continue to pursue labour policies that satisfied domestic demands. The same applied to the principles embodied in the ILO Conventions in force.

An observer representing Public Services International (PSI) indicated that in 2009 a delegation of the National Coordinating Body of Public Trade Unions had lodged a complaint concerning repressive labour policies in the public sector. Five years had passed since then and the smear campaign of the public sector trade unions, their
leaders and their achievements was continuing. Evidence of that was in the statement made by the Ministry of Industrial Relations during an interview, indicating the fear that the corporate sector might have of the unionization of workers, which could be on account of the unions that existed previously. The trade union organizations of public sector workers no longer had much influence. Public sector workers were committed to the achievement of justice, equality, equity, democracy and the life of people. What had been considered in 2009 as “isolated facts”, today appeared as part of the steadily regressive State policy which had deepened and affected the right of the population to public services of quality. He called for a high-level tripartite mission to be sent to the country to verify in situ the situation of trade union rights in the public sector and the potential risk of further regression in labour matters in the private sector, and to establish institutional, permanent and representative dialogue with technical assistance from the ILO to comply with the observations and recommendations of the Committee on Freedom of Association.

The Employer member of Mexico endorsed the fundamental importance, emphasized by the Committee of Experts, of proceeding in the context of the Convention to adopt a Labour Code reform, with the real and effective consultations with the most representative organizations of workers and employers. However, he did not support other observations of the Committee of Experts. The request of the Committee relating to the amendment of section 229 of the Labour Code concerning the submission of draft collective agreements did not consider that, in Ecuador, there were two forms of organizations: (1) work councils, composed of workers of the company who could conclude corresponding collective agreements with the employer; and (2) unions formed by diverse workers, including those working in the company in which they intended to conclude a collective agreement. In the latter case, majority representation was required. The opposite would mean the possibility of destroying the representation of workers, which would have negative effects and would complicate the administration of collective labour relations. The legislation in question did not impede the participation of more than one union and one employer in the conclusion of a collective agreement, but rather imposed order and protected the will of the workers so that they could choose the form of organization best suited to their interests. The opinion of the Committee could lead to a situation in which all workers would be subject to an agreement concluded a posteriori and without the formation of organizations that did not necessarily serve the interests of workers, but had the right to negotiate collective agreements, which would be contrary to Article 2(2) of Convention No. 98 and the principle of non-interference. Under those conditions, the conclusions of the Conference Committee should not support the recommendations of the report of the Committee of Experts. He also referred to the principles set forth by the Committee on Freedom of Association and, in particular: the distinction between representative unions and other unions; the entity of the “exclusive bargaining agent” with responsibility for negotiating the collective agreement; and the rules on majority representation in collective bargaining.

An observer representing Education International indicated that teachers in Ecuador were covered by the Basic Act of the Public Service and the Basic Act of Intercultural Education, which did not include the right to organize and bargain collectively. Only 6.6 per cent of public employees were unionized and had the formal right to bargain collectively. Through new decrees, the Government was preventing unions from expressing their fundamental functions. The right to deduct union dues had been eliminated in August 2009 by ministerial decree. In September 2009, trade union leave had been abolished and the leaders were prohibited from admission into educational institutions. Executive Decree No. 16 of June 2013 intensified governmental interference in social and union organizations and imposed financial requirements which were impossible to attain. The Decree had been denounced as unconstitutional. In May 2014, the National Confederation of Education Workers (UNE) had been notified by the Ministry of Education that it would not continue to register the new union leadership until the requirements of the Decree were met. She referred to other cases of teachers sentenced to prison for their union activities and indicated that about 1,385 teachers had been dismissed.

The Employer member of the United Kingdom took note of the problems in the application of the Convention indicated in the observation of the Committee of Experts, including the list of public servants who were excluded from the right to collective bargaining which went beyond the exclusions allowed under Article 6 of the Convention. That Article, which needed clarification, provided that the Convention did not deal with the position of public servants engaged in the administration of the State or prejudice their right to freedom of association. The draft legislation was considered beneficial, the 2012 General Survey concerning the fundamental Conventions referred to the need to distinguish between public servants who might be excluded from the scope of the Convention, and all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. Examination of the observation of the Committee of Experts revealed that there were different views on that distinction. It was a matter for the Government to decide, as the employer of public servants, whether to bargain collectively with public servants engaged in the administration of the State. Concerning the need for clarification, the Standards Review Mechanism should be implemented as a matter of urgency.

An observer representing the Confederation of University Workers in the Americas (CONTUA) indicated that, according to official statistics, some 185,000 public sector workers had been dismissed between June 2008 and June 2012, and that the figure was still rising. The dismissed workers included hundreds of union leaders and militants who, under various pretexts, had been denied their right to represent the workers and to engage in trade union activities. In fact, they had been dismissed simply for carrying out their union duties. Freedom of association was being systematically violated and a threat to the existence of trade unions in the public sector. He cited specific examples of union leaders being dismissed, adding that, to do so, the Government had resorted to a legal device known as “compulsory resignation”, a euphemism for their arbitrary dismissal. The situation was liable to deteriorate even further in the months ahead because the Government was planning to adopt a new Labour Code that had not been discussed with the trade unions. Moreover, some of the acquired rights of public servants had been removed recently, even though they had been passed into law. He called for urgent action in the form of a direct contacts mission to promote social dialogue, resolve industrial disputes in accordance with the law, halt the dismissal of union leaders and create machinery for resolving current and future disputes.

The Government member of the Plurinational State of Bolivia supported the statement made on behalf of GRULAC and welcomed the Government’s efforts to support and strengthen the exercise of labour rights by workers and trade unions. The alignment of substantive labour standards with the new Constitution adopted in 2008 was a process which was accompanied by a series of social measures to benefit workers and society as a whole. It
was significant that the measures and actions carried out by the Government had contributed to the establishment of new trade unions in recent years. The request for ILO technical assistance regarding labour law reform was important in bringing national standards into line with workers’ fundamental rights and promoting measures of equality and equity in full cooperation with the social partners.

The Worker member of the United States said that the regressive labour reform, which had begun in 2007 concerning public sector workers, now risked extending into the private sector, as was evidenced by the proposed new Labour Code. That proposal incorporated regressive legislation that had greatly reduced the collective bargaining rights, practices and coverage in the public sector over the last seven years, directly contradicting the overall observations and recommendations of the Committee on Freedom of Association and the Committee of Experts. Compared to the terms of Convention No. 98, the provisions of the draft law: (1) did not adequately safeguard and protect the exercise of freedom of association, the right to organize, bargain collectively and take collective action, such as strikes, and did not provide for sanctions against employers to prevent repeat offences; (2) failed to provide protection against acts of anti-union discrimination and to extend the right to collective bargaining to different classes of workers; (3) failed to penalize employers or public authorities which practiced or promoted acts of anti-union interference, although it equipped those who sought to interfere with union organization; (4) reduced union autonomy by setting lengthy and excessive financial and bureaucratic requirements to create and register unions and denied due process in legal status procedures; (5) eliminated the right to strike in the public sector and declared sympathy strikes to be illegal, while expressly excluding the right to voluntary negotiation; and (6) did not include the workers’ input despite the Government’s claim to have consulted the social partners pursuant to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). He requested ILO assistance in ensuring that civil society had the requisite time and expertise to evaluate those proposals.

The Worker member of Brazil said that the case of Ecuador before the Committee provided the opportunity for an international tripartite discussion. The classification of public servants as workers engaged in the administration of the State was an old definition which, in the case of Ecuador, removed them from the scope of labour law and placed them under administrative law. The legislation that governed public servants did not recognize their right to organize or to engage in collective bargaining. According to the ILO General Survey of 2013 on labour relations (public service) and collective bargaining in Ecuador, public employment accounted for 10 per cent of the workforce (nearly 600,000 workers). Of those, 125,000 were manual workers and only 40,000 belonged to a trade union. The other 475,000 were career public servants, organized in employees’ associations, and public servants on casual service contracts and other forms of precarious employment, which implied that only career public servants were members of branch federations and confederations, and that most of those workers could not legally belong to another organization. The figures showed that barely 6.6 per cent of public workers to date were unionized and had a formal right to engage in collective bargaining. It also meant that already constituted organizations, whether unions or associations, had been prevented from fulfilling their mandate of defending the rights of their members. That policy was reflected in the adoption of provisions that ruled out the possibility in practice of establishing independent organizations, in arbitrary interference in the exercise of that right, in the promotion of the establishment of parallel workers’ organizations, in the compulsory dissolution of certain workers’ organizations, or in the indirect obstruction of organizations’ activities, for example through changing check-off criteria or refusing to provide premises or authorize the participation of workers in meetings and other union activities during working hours. Executive Decree No. 16 of June 2013 issuing the regulations for the operation of a consolidated information system for social and citizens’ organizations and Ministerial Order No. 130 of August 2013 issuing regulations for labour organizations denoted a tightening of government control in social organizations in general, and in workers’ organizations, in particular. Hence, there was a need for a direct contacts mission and for the establishment of a standing dialogue forum for dialogue to ensure a fairer future and the full participation of all Ecuadorian workers.

The Worker member of the Bolivarian Republic of Venezuela emphasized that he supported the claims of the Ecuadorian workers who had been unjustly dismissed. Similarly, he offered the support of the Venezuelan workers in drafting the new Labour Code, which should be an instrument arising from social dialogue that acknowledged the aspirations of the Latin American working class. Finally, he stressed the need to create bridges of communication with the Government.

The Government representative welcomed the support from Costa Rica as coordinator of the 34 countries that comprised GRULAC. She also thanked the delegations that had expressed their intention of sharing information on subjects related to Convention No. 98. The Government fully concurred with the Committee of Experts’ statement in paragraph 31 of the introduction to its 2014 report to the effect that “its opinions and recommendations are non-binding, being intended to guide the actions of national authorities” as they held a “persuasive” value, and it recognized that the Committee’s opinions did indeed provide valuable guidance even though they were non-binding. With regard to the comments she had heard, particularly from the Worker members, during the Constituent Assembly in charge of preparing the 2008 Constitution, the Ecuadorian people’s objective in issuing Constituent Resolutions Nos 002, 004 and 008, which were at the root of the complaints against Ecuador, was not concerned with the trade union movement or with collective bargaining in the public sector, but was rather intended to prevent the continuation of the abusive practices of certain minority higher-level workers’ organizations which were the source of inequality among the vast majority of Ecuadorian workers who were engaged in full discussion of the new Labour Code, the first draft of which had been submitted to the National Assembly on 1 May 2014 in commemoration of Labour Day. The purpose of the new Code, which had been drafted in cooperation with the ILO, was above all to introduce labour standards that corresponded with present-day realities and in greater conformity with the international standards ratified by Ecuador. The desire of employer and worker representatives was open to dialogue. The Government had responded to the appeal by the social partners with a readiness to listen to what they had to say and felt strengthened by the discussion in the Conference Committee. It therefore did not consider that it had been the object of criticism, but rather that it had been party to the democratic desire to be more directly involved in the discussion would be passed on to the country’s labour authorities, which were open to dialogue. The Government had responded to the appeal by the social partners with a readiness to listen to what they had to say and felt strengthened by the discussion in the Conference Committee. It therefore did not consider that it had been the object of criticism, but rather that it had been party to the democratic exercise of tripartite dialogue. In keeping with the transparent approach that the country had adopted in the process of reform and in its efforts to improve its social policies, in general, and its labour policies, in particular, she invited a new ILO technical cooperation mission to visit Ecuador, as it had in 2011.
The Worker members thanked the Government representative and other speakers. The case was long-standing and serious, as evidenced by the violence against trade unionists and by the growing trend to criminalize the exercise of trade union rights. This year again, the Committee of Experts had noted multiple cases of violations of trade union rights in Ecuador, in both the private and public sectors: many unions had been eliminated, union leaders dismissed, collective representation cancelled and measures were practiced which tended, in fact, to destroy the free and pluralistic trade union movement. It was urgent to oppose the new draft Labour Code which, if passed as it was, would eliminate trade union action and the right to collective bargaining. The Government needed to stop continuing on that path and engage in a constructive dialogue with those concerned, in particular with trade unions, whose rights and freedoms in training, operation and administration were re-established. It was essential that technical assistance from the Office, as it had requested it. In this regard, the Worker members agreed with the suggestion of the Employer members to propose a direct contacts mission. Time was pressing since the adoption of the new Labour Code was scheduled for the end of August 2014.

The Employer members made the following observations: (a) protection against acts of discrimination required specific legislation; (b) the legislation did not provide for penalties for acts of discrimination or interference in the public sector; (c) Decree No. 1406 established wage ceilings in the public sector and excluded certain issues, which went beyond the provisions of ILO Conventions; and (d) within the framework of Ministerial Order No. 0080 and Order No. 1551, the determination of the abusive nature of clauses in collective agreements in the public sector should be carried out by the judicial authorities. Those issues required legislative reforms, which should be undertaken adopting an integrated and systematic approach, on a tripartite basis, in consultation with the most representative workers’ and employers’ organizations and in compliance with ILO Conventions. The new Labour Code should specify the requirement to hold consultations with the most representative groups of employers and workers, especially for amendment of the legislation. Those consultations should be real and effective, and merely communicating the bill to the organizations was not enough. The Employer members did not share the Committee of Experts’ opinions with respect to the following points: (a) the restrictive interpretation of Article 6 of Convention No. 98 which, according to the Employer members, allowed governments to exempt specific public officials from the application of the Convention; and (b) section 229 of the Labour Code respecting the submission of draft collective agreements by minority trade unions should not be amended, as the provisions of Conventions Nos 87 and 98 did not set thresholds in that respect. They thanked the Government for accepting a direct contacts mission to address issues related to Convention No. 98 and emphasized the need to amend the corresponding legal provisions comprehensively and systematically in tripartite consultations with the most representative workers’ and employers’ organizations in order to respond to the observations of the Committee of Experts on compliance with Convention No. 98. The Government was also asked to provide information on progress made to the next meeting of the Committee.

A Government representative wished to clarify certain issues relating to social security minimum standards raised by the Committee of Experts, which should be seen in the context of the recession and austerity policies adopted in the last four years in order to ensure the sustainability of the economy in general, and of the social security system in particular. Recent policies and legislative reforms sought to achieve the latter goal by granting inadequate benefits for the insured, as well as maintaining the beneficiaries and their families “in health and decency”, as referred to by Article 67 of Convention No. 102 and the European Code of Social Security. While emphasizing the Government’s efforts to shield low-income pensioners from further reductions, it should be noted that the rate of social security benefits was determined according to a scale fixed by the competent public authorities with no conformity with the provisions prescribed in the Convention. Therefore, while there was no question of a lack of conformity from a legal point of view which would fall within the scope of competence of the Committee of Experts, he wished to share certain information on the social policy measures taken along with the austerity measures since 2010 in order to guarantee an adequate level of benefits in line with the Convention and the Greek Constitution. He recalled that the Greek social security system had been designed to provide social protection to all citizens, and especially to vulnerable groups. Over time, however, undeclared work and contribution evasion had negatively affected the sustainability of the social security system. Thus, having as a main objective the viability of the system, and in accordance with the terms of the economic adjustment programme set by the “Troika” (that is, the European Commission, the European Central Bank and the International Monetary Fund), the Government had decided to elaborate the necessary political measures and apply them aimed at the rationalization and sustainability of the system. It was absolutely necessary in the current economic environment for the system to remain sustainable and for the State to fulfill its obligations towards its citizens and its international obligations.

He observed that the pensions granted to all workers were above the rates provided for in Articles 65–67 of Convention No. 102. Since 1 January 2013, no further reductions had been imposed on pensions up to €1,000. Reductions had been imposed on higher pensions and the reduction was scalable, distributed according to the income of pensioners. Socially vulnerable groups, such as persons with disabilities, were excluded from these reductions. Furthermore, the viability of the system was ensured through actuarial studies conducted by the National Actuarial Authority every three years for the entire social security system. These studies were submitted to the Ageing Working Group of the European Commission of the Directorate General for Economic and Financial Affairs, when so required by national law or memoranda commitments. The National Actuarial Authority applied the models set by an ILO group of experts to conduct actuarial studies, with ILO technical assistance since 2008. Following the same model, the second actuarial study would be conducted in 2014. The Government had successfully cooperated with international organizations and received their assistance with a view to addressing critical situations, taking into account the possible financial implications of such cooperation. Furthermore, in order to preserve the viability and the long-term sustainability of the insurance system, the competent public authorities had developed and applied IT systems to avert abuses against
the social protection system, which was extremely important for the financial sustainability of the system without any further reduction of benefits. As a result of the establishment of IT systems such as "Ergani", "Arianne" and "Helios", the percentage of uninsured labour had fallen within a year from an estimated 38.50 per cent to 23.61 per cent; valid "snapshots" of demographic and personal changes in the status of beneficiaries were immediately updated; and control and monitoring of payments was secured, so that pensions and welfare benefits were safeguarded, while averting any abuse or fraud. At the same time, efforts were made to further improve the sustainability of the social security system by collecting contributions through a new unified mechanism, the Social Security Contributions Collection Centre (KEAO), as well as by establishing an Insurance Fund for Generations Solidarity (AKÁGE). Regarding the reference to the impoverishment of the population, he observed that, according to the Committee of Experts, the Government had included in its report data from a study by the Small Enterprises Institute of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE). However, this was not accurate, since the statistical data used by the competent authorities of Greece, and considered valid by the European Union (EU) and internationally, were only those produced by Eurostat, the National Statistics Authority and the National Actuarial Authority. The prevention of poverty was one of the top priorities for the Government, which was aware of the social consequences associated with the increasing rates of poverty in Greece. Special efforts had been made in the design and application of policies within the financial capabilities of the country aimed at the prevention of poverty. Firstly, the Ministry of Finance had taken the decision to dispose of a part of the primary surplus of the general government budget in 2013, equal to €450 million, for the payment of a "social dividend" as a support for families and individuals based on income criteria, which was paid as a lump sum, tax-free and subject to no deduction, confiscation, or offset by any debts to the State or credit institutions, and would not be included in the income criteria for the payment of the Social Solidarity Allowance (EKAS) or any other social or welfare benefit. Moreover, actions or policies associated with services for providing housing, food and social support for the homeless were funded through the same budget. In an effort to shield low-income pensioners from poverty, an exemption from monthly pension cuts for those receiving low monthly pensions as well as pensioners or family members, had also been provided for. In addition, income tax reductions for low incomes and for specific categories of disabled or war victims, as well as tax exemptions for certain categories of salaries, pensions and allowances, had been provided for. Secondly, a guaranteed minimum income had been established in collaboration with the World Bank. The programme was addressed to individuals and families living in conditions of extreme poverty, providing beneficiaries with income support in combination with social reintegration policies and policies to combat poverty and social exclusion when applied when necessary. It was a pilot programme applied in two regions of the country with social and financial criteria in 2014, the results of which would be taken into account so as to expand it throughout the country within the following year. To this end, a working group had been established with the participation of officials from the Ministry of Labour, the Ministry of Finance, the Council of Economic Advisers, the European Commission Task Force for Greece and the World Bank. The pilot implementation of the programme would be launched in the last quarter of 2014. The budget for the programme was set at €20 million. Thirdly, a long-term unemployment benefit had been established for persons aged between 45–66 years who had already exhausted their right to the regular unemployment benefit. In conclusion, he said that the Ministry of Labour, Social Security and Welfare had established three national targets in October 2010 which were incorporated in the National Reform Programme 2011–14: (i) reduction in the number of persons at risk of poverty and/or social exclusion by 450,000 by 2020, which meant a reduction of the relevant rate from 28 per cent in 2008 to 24 per cent in 2020; (ii) reduction in the number of children at risk of poverty by 100,000 by 2020, which meant a reduction of the relevant rate from 23 per cent in 2008 to 18 per cent in 2020; and (iii) development of a "social safety net" against social exclusion, including access to basic services, such as medical care, housing and education, which represented a non-quantified objective highlighting the need and willingness of the State to increase access to basic services in the framework of the third pillar of the active inclusion policy. He emphasized once again that, despite the dire economic crisis and the loan agreements commitments, the Government was taking every necessary action to maintain decent living standards for the entire Greek population. The Employer member said that the present case resembled the case concerning the Greek Government’s implementation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which had been examined by the Conference Committee in 2013, as both cases focused on the economic and social situation in the country and involved extensive discussions on austerity measures and the influence of the Troika. Although the observations under both Conventions should have addressed compliance with international labour standards, that was overshadowed by a discussion on the general economic and social situation of the country. The policy discussion was overwhelming and did not note the Convention’s provisions with which the Government had not complied. The Committee was not intended to deal with issues of political economy and the Employer members were concerned with the nature of the observation. The opinions of the Committee of Experts had a certain amount of authority as they were written by a neutral and impartial body of labour law experts and were generally very helpful to the Conference Committee. However, the present observation was persuasive rather than objective. Firstly, certain terminology, such as the term “austerity policy”, was not as objective as the term "fiscal consolidation", which had been used in the ILO’s 2013 tripartite Oslo Declaration on "The Case of "Human Growth". Secondly, the observation was unnecessarily exaggerated, such as referring to the term "programmed impoverishment of the population", which was not objective and not related to the Government’s compliance with Convention No. 102. Finally, the observation called on both the Government and the Troika to prevent the collapse of the social security system, but only governments were bound by ILO Conventions, and not the EU agencies and the Troika to deal with the observation seemed to be a fundamental misunderstanding of the process. The observation analysed three broad areas: (1) protection of the social security system against continuous austerity; (2) stopping the increasing impoverishment of the population; and (3) establishing a national social protection floor. Concerning the first area, the observation implied that, without the Troika’s involvement, which was not accurate. The Government was experiencing a tremendous economic crisis based on structural causes, which was not only an economic cycle. The Government had an enormous budget deficit which was not sustainable and required unprecedented fiscal measures. The observation failed to note that the social security system had been
facing pressure even before the crisis, as had been illustrated in the 2007 ILO actuarial study on the prospects for Greece’s main social security and pension funds which had demonstrated significant financial gaps at that time. Nevertheless, the Committee of Experts had not made an observation during the critical years from 2000 to 2010. Concerning the second area, the Committee of Experts had called for the reduction of monthly pensions. The Employer members understood that this was a temporary measure that affected only one-third of pensions, and the goal of that temporary reduction was to stabilize the system so that it did not collapse. That was not prohibited by Convention No. 102. The observation was also not clear when it called for the Government to prepare “the necessary policy corrections”, as the term was vague in that context. If the term meant that the Government should correct the pension system through structural reform, the Employer members could agree, since the Government seemed to be taking steps in that respect. If, however, it meant that the Government should return to the past, the Employer members did not agree. Concerning the third point, while the establishment of a social protection floor was generally desirable, the ratified parts of the Convention did not require that and the observation did not note any provisions with which the Government was not in compliance. The Government did have forms of social protection, including free health care, so it was unclear how that issue under Convention No. 102 deserved a double footnote. The Employer members were willing to consider discussion on the matter.

The Worker members considered that the case of Greece provided an opportunity for considering the principles and values that had to be respected when a country was in the grip of the economic crisis. That country was a member of the EU and the Eurozone. As a result, it was under the supervision of three institutions, the Troika, of which two, the European Commission and the Central European Bank, were EU institutions. As pointed out by the Committee of Experts, the issues raised did not fall uniquely under the responsibility of Greece, but also concerned the principles and methods of the EU. The observation of the Committee of Experts noted that drastic measures on pensions accounted for half of its budgetary savings in 2013. It also noted that because of the financial difficulties of enterprises, the collection of contributions had almost ceased, further compromising the viability of the system. It was clearly the principle of austerity itself that was at stake. According to the observation, some retirees now only had pensions well below the poverty threshold, and even the subsistence threshold, all in the absence of a minimum safety net to address the shortcomings of social security. The restrictions also affected the health sector, which was a significant item of expenditure for older members of the population. The supervisory bodies of the Council of Europe endorsed the criticisms of the Committee of Experts. In December 2012, the European Committee of Experts agreed that the Government had been guilty of violations of the European Social Charter following complaints from retirees’ associations. The Committee of Experts endorsed the recommendations of the Committee of Ministers of the Council of Europe on the application by Greece of the European Code of Social Security. The Committee of Ministers considered that those who were better off should bear a larger share of the burden, but that the opposite was happening in Greece. It noted that Greece gave greater importance to its financial responsibility to its creditors than to its social responsibility towards its people. The European Commission, which was a member of the Troika, seemed to have taken into account the calls from the Council of Europe and the ILO for socially responsible measures for structural adjustment. It was to be hoped that this would soon be reflected in practice, with the support of other institutions and the EU Member States.

The Worker members fully agreed with the three recommendations of the Committee of Experts. First, the Committee of Experts called on the Government to adopt instruments allowing it to assess the impact of the measures taken on the application of international standards and on the sustainability of the social security system. Second, it recommended the introduction, in a supplementary capacity, of a basic social security scheme for those who were no longer entitled to social security benefits. In supporting this recommendation, the Worker members were not proposing that social security be replaced by social assistance, which would be an unacceptable backwards step. However, as recalled by the Social Protection Floors Recommendation, 2012 (No. 202), social protection should be universal, with social security being supplemented, if necessary, by a social assistance component. Finally, the Committee of Experts recommended to the Troika and Greece’s partners within the EU to take these social security concerns into account more fully. In that respect, it should be recalled that, under the Oslo Declaration, the tripartite constituents had considered that the measures contained in the Global Jobs Pact were relevant and should be effectively implemented. They had also agreed to promote employment, as well as adequate and sustainable social security systems, and called upon the Office to promote synergies and policy coherence with international and regional organizations and institutions, particularly the IMF, OECD, the World Bank, and the EU, on macroeconomic, labour market, employment and social protection issues. The Oslo Declaration might inspire the conclusions of the Conference Committee.

The Worker member of Greece indicated that the report of the Committee of Experts had exposed the real circumstances of non-compliance of the Convention by the Government of Greece, which was paradoxical. When the crisis had dramatically increased the demand for social protection, the adjustment programme had not only reduced its supply, but also state resources for that purpose. While the Government assured that the social protection system was viable, that monthly pensions up to €1,000 were maintained, and that the pensions of persons with low incomes were shielded, the minimum standards of the Convention were not being observed. The regular and sustainable provision of benefits, the enhancement of confidence by the insured in the national social security administration and a socially responsible system, which were required under the Convention, did not exist in Greece. The country’s universal social protection system was rapidly being transformed into an individualized and privatized system through the identification of the social protection system as one of the targets for structural adjustment under the loan agreement, along with wages. The reduction in social protection expenditure was entrenched in the state budget and the Midterm Fiscal Strategy Framework (MTFS) 2015–18. The reduction included pension, maternity and child benefits. These measures would take effect in 2014. The Bank of Greece had indicated in its monetary policy report of 2013 that, based on an assumption that the State’s financial capacity would be reduced, the main benefits would be significantly reduced after 2020 by up to 50 per cent, leaving as the only certainty the basic pension of €360 a month, which was below subsistence level and contrary to the Convention.

The impact of the adjustment programme on the social protection system and on the economy was extreme. The Labour Institute of the General Confederation of Greek Workers (INE/GSEE) estimated that, after 2015, the social protection system would urgently require new resources due to falling contributions, rising unemployment
and the reduction in State funding for the system. It was estimated that it would take two decades for unemployment to revert to the 2009 level and for revenue to be generated for the social security system, provided that the economy grew at 3.5 to 4 per cent annually, which was not very likely. Some 1.1 million workers were suffering wage arrears ranging from three to 12 months. According to the labour inspectorate, one out of two unemployed people was not paying workers on time. Those workers were invisible to the social security system in terms of unemployment benefits and contributions, and were at risk of losing access to health care. Moreover, the so-called “zero deficit clause”, agreed between the Government and the Troika for social security funds, scheduled to take effect as from 1 July 2014, would affect some 4 million people with their auxiliary pensions being reduced by 25 per cent. The abolition of many taxes would deprive the social security system of €1.7 billion. In that connection, she noted that pensions constituted the main source of income for 48.6 per cent of households. One in two households were supported by pensions as retired parents increasingly supported their jobless children and their families, according to a study by the Small and Medium Sized Enterprises’ Institute of the IME GSEVEE. With regard to the guarantee of the social protection system, the Government had failed to address contribution evasion and the need to increase the resources of the system. The social security system owed the main public health-care provider €421.4 million in contributions which it had collected but had failed to distribute. Alternative anti-crisis measures could have allowed Greece to pursue difficult reforms, while preventing social devastation. There was no inherent contradiction between social and economic efficiency. Social security was not only a basic human right, but also an economic necessity that provided income security and enhanced productivity, employability and growth. It could effectively mitigate the economic and social impact of downturns, and speed up inclusive recovery. In conclusion, she called on the Committee to deliver a strong message that the rights and social objectives enshrined in the Convention were inextricably linked to economic objectives and were a requirement for effective recovery. The Committee should urge the Government to comply with the Convention in order to combat poverty, ensure effective recovery and guarantee the financial viability of the social security system, based on frank and effective social dialogue.

The Employers’ Federation of Greece recalled that the Federation of Greek Industries had stated, well before the crisis, that the Greek pension system was not viable, mainly owing to high levels of benefits and generous conditions for granting them, the ageing population and tax evasion fostered by the absence of computerized systems and an inefficient administration. Unfortunately, it had not been heeded and the crisis had taken the country by surprise. The measures taken, which were necessarily brutal, were aimed primarily at the organization of a viable system: computerization, elimination of fraud and undeclared work, adjustment of the age of retirement to life expectancy and strict actuarial oversight. Deferred for too long, those measures were not temporary, but aimed to guarantee the viability of the system and the Government should be congratulated for them. Furthermore, temporary measures responded to immediate budgetary priorities, such as the reduction in pensions above €1,000 which, as it did not affect the 67.5 per cent of pensions below that level, should not entail “impoverishment”. That amount was higher than the commitments made by the Government under both Convention No. 102 and Article 12, paragraph 2, of the European Social Charter. In that regard, the European Committee of Social Rights had rejected the appeal of the Federation of Employed Pensioners of Greece (IKA–ETAM) and had found that the reduction measures did not contravene the applicable provision in the Charter, while the European Court of Human Rights had ruled, in its decisions of 7 May 2013, that the reduction of pensions was not disproportional to the general interest objective. Those measures had not entailed “impoverishment” since, through the reductions or exemptions on the lowest incomes, it was principally high- or medium-level pensions which had been reduced. With regard to the consequences of austerity on the capacity of social assistance to protect the population from poverty (an issue which did not fall directly under Convention No. 102), it should be noted that, already before the crisis, the Greek social protection system was not efficient. With the prolonged recession and increasing unemployment, the demand for social benefits had risen as part of the population approached the poverty threshold. Although the level of spending appeared comparatively weak, the following facts should be taken into account: the guarantee by the national health system of access to hospital and outpatient care; the high proportion of home owners; a guaranteed pension of €360; unemployment insurance of 12 months combined with specific benefits for young people and long-term unemployed persons; the allocation of part of the 2013 primary surplus to social measures; and the replacement of various family allowances with a one-off allowance subject to family income. The above non-exhaustive list illustrated that, despite the absence of a guaranteed minimum income, poverty reduction measures had been strengthened, particularly through income-related benefits. Social protection was, nevertheless, related to economic development and prospects for recovery from the crisis, through support measures for enterprises and productivity. The solution to the issue of poverty could not be based solely on benefits. It also implied a development policy, reasonable taxation and a capacity to pay tax. Greece was depending on the technical assistance of the EU and the ILO to that end.

The Worker member of Spain said that the adjustment policies of Greece constituted a major attack on the country’s citizens and on Convention No. 102. The unfair and disproportionate reduction (30 per cent from 2009 to 2013) in the amounts of pensions had driven thousands of pensioners into poverty. The State had shirked its responsibility for the social security of its citizens and had confiscated resources designed for pensioners to reduce the public debt. Moreover, owing to the conditions of the Troika, which had imposed drastic cuts in pensions, the future viability of the public pension system had been seriously compromised. The cuts affected people who, because of their age or disability, were not in a position to remake their lives or return to the labour market. Nevertheless, the Government was unwilling to restore the standard of living which retirees had lost. On the contrary, from 2015, it would not even be guaranteeing an acceptable minimum level, and everything suggested that it was seeking to turn the system based on assistance into one increasingly dependent on assistance. The conditions imposed by the Troika in the areas of labour and pensions had increased unemployment, reduced wages and pensions and made precarious and undeclared employment more widespread. Together with the ageing population, such deplorable conditions were the real problem for the Greek pension system. In addition, the raising of the retirement age, when living and working conditions were worse for older workers, was reducing expectations of pensions. In 2012, the financial situation of the public pension system had worsened even further, since it had been decided that the cost of eliminating the Greek debt would basically be borne by the Greek pension funds. As a result, it was necessary, firstly, to guarantee a minimum pension to provide a decent stand-
ard of living. Secondly, the amounts of pensions that had been excessively reduced should be restored to the pensioners concerned. Thirdly, for pensions to be adequate, secure and predictable, they should not be subject to constant revision, and the pension system should not be used in connection with issues unrelated to its purpose.

The Government member of the Russian Federation recalled that the Declaration of Philadelphia provided that “Poverty anywhere constitutes a danger to prosperity everywhere”. In that respect, the situation in Greece could not be ignored. It was characterized by a contraction of GDP by 25 per cent, an unemployment rate of 27 per cent, more than 1 million people without jobs or income, lower pension levels, an increase in the retirement age, and the curtailment of social protection to meet the demands of international creditors. Similar circumstances in Spain and Portugal in recent years had led to a surge in the number of representations under article 24 of the ILO Constitution. The ILO paid great attention to the fate of the Eurozone because, as pointed out by the Director-General, massive youth unemployment created the risk of a lost generation who would never know decent work. The Government should be guided by the Oslo Declaration and Recommendation No. 202. It should take the concrete step of seeking technical assistance from the Office.

The Worker member of France wished to draw attention to the dramatic consequences of the structural adjustment policies in Greece. Poverty affected the middle class, homelessness was growing and crime was increasing. The suicide rate was following the level of long-term unemployment. Children were particularly affected by the withdrawal of the State from its social responsibilities. Infant and perinatal mortality was increasing. A recent UNICEF report indicated that one in three children in Greece was at risk of poverty and social exclusion. Malnutrition was now affecting school children. There was a resurgence of the abandonment of children by families who had fallen into extreme poverty. The abandonment of the fundamental right to social security was a result of the choice to give priority to economic freedoms over human rights. That choice was unacceptable.

The Worker member of the Netherlands considered, referring to the Declaration of Philadelphia, which set out the fundamental objective of the ILO and its responsibility to examine international policies in light of that objective, that it was appropriate for the Committee of Experts to assess the social impact of the economic and fiscal austerity policies in light of Convention No. 102, without expressing its view on the austerity measures as such. The result of this assessment revealed that the country was no longer in compliance with the Convention. For example, while the unemployment rate was very high, particularly among youth, the number and percentage of those receiving unemployment benefits had decreased to only 10 per cent of the registered unemployed due to the stricter eligibility criteria and to the short duration of protection. This situation amounted to non-conformity with Article 21 of the Convention concerning the composition of the persons who must be protected. Even persons who were seriously ill and pregnant women could no longer count on the health-care benefits provided for under Articles 8 and 10 of the Convention. For those reasons, the austerity measures had been implemented without sufficient consultation to their impact on the country’s social security system, which had been reduced to a level far below the protection required under the Convention. She therefore urged the Government and the Troika to assess the policies and to take measures with a view to preventing the collapse of the social security system and to bring it in line with the Convention.

The Worker member of the United Kingdom agreed with the concern of the Committee of Experts that the Greek social security system had been undermined and could not achieve the objectives set out in Convention No. 102. Social protection was at the heart of the ILO’s mission, was set out in the Preamble to the ILO Constitution, and was required under the international minimum standards set out in the Convention. In recent years, Greece had reduced and withdrawn its social security provision. Under the conditions imposed by the Economic Adjustment Programme of the Troika and the MTFS since 2010, the health service had suffered crippling cuts, benefits and pensions had been slashed, and many benefits had fallen below the poverty threshold. The statement by the Government representative seemed to indicate that the Troika’s requirements were given higher priority than the obligation to meet the social security needs of citizens. Further cuts under the MTFS were having the cumulative effect of increasing unemployment and a deepening recession. The number of people who had access to social security was falling as changes either removed protections wholesale, or made the conditions so stringent that few remained eligible to qualify for assistance. Citing the statistics concerning Greek small and medium-sized enterprises, as well as reports concerning the number of entrepreneurs and self-employed workers who claimed to have no hope of recovery, she indicated that a majority of small businesses expected that they would not be able to meet social security and tax obligations, and expected to dismiss staff and close down. Contrary to what some had indicated in the Conference Committee, the matter extended far beyond economic policy and was both properly and essentially before the Committee, because the requirements of the Convention were not being met. The social protection envisaged under Convention No. 102 was being transformed into a financial transaction of limited benefit to a narrowing range of individuals. There was an urgent necessity for provision for old age, protection of the young, protection against sickness and prevention of hardship. The Government was in breach of its obligations under Convention No. 102 and further urgent action was required.

An observer representing Public Services International indicated that so-called “rescue” packages were presented as an extreme remedy to save the Government from bankruptcy without taking into account critical issues of social cohesion and protection. Pensions were severely affected by those measures. Both the Committee of Experts and the European Committee of Social Rights had pointed to the Government’s repeated and continuous violations of core principles and binding obligations enshrined in the European Social Charter, the European Code of Social Security and Convention No. 102. As a result, the responsibility of the State, namely universal access to health-care services, was no longer met, social insertion or reinsertion was no longer provided and the principles of equality of treatment and solidarity were not being complied with. The Government was also in full violation of the right to social security enshrined in Article 22 of the Universal Declaration of Human Rights. Any changes to a social security system should maintain in place the pre-existing level and ensure growth towards a sufficiently extensive system of compulsory social security. Any such change should not exclude entire categories of workers from the social protection provided by this system, especially if those categories had been covered previously. Yet, the public health system had become increasingly inaccessible, in particular for poor citizens and marginalized groups, due to increased fees, co-payment and the closure of hospitals and health-care centres. An increasing number of people were losing public health insurance coverage, mainly due to unemployment. The Troika had
pressed the Government since February 2012 to cut 150,000 public sector jobs by 2015. Cuts in wages and pensions were pushing young medical staff out of Greece, which was likely to have an impact on the Greek health-care system for decades to come. In conclusion, in view of the upcoming measures and cuts stipulated in the MTFS 2015–18, measures should be adopted to: (a) effectively prevent and reverse the collapse of the social security system in Greece; (b) maintain the social functioning of the State to at least the level to ensure the population was “in health and decency”, in line with Article 67(c) of the Convention; and (c) establish a basic social income security scheme, in line with the Convention and Recommendation No. 202.

The Government representative expressed appreciation of the comments made and said that the Government would take serious note of all the remarks. There was no question of lack of conformity from a legal point of view, that would fall within the scope of competence of the Committee of Experts with regard to Convention No. 102 or the non-binding guidelines set out in Recommendation No. 202. Concerning the points that had been raised, times were extremely difficult and the Government had been repeatedly called upon to ensure necessary assistance between meeting the commitments assumed within the framework of loan agreements and taking measures that would drastically restructure the institutional framework of the national social security system, while at the same time ensuring social protection standards. The effectiveness and scope of the Government’s efforts had been limited due to the impact of the crisis and social budget limitations. Well-designed adequate income support schemes could be powerful tools to reduce poverty and increase labour market participation and, therefore contributed to achieving the European objective of reducing the number of people in poverty and social exclusion by at least 20 per cent by 2020. The Government, within the limits set by the implementation of the economic adjustment programme, was taking serious measures to relieve vulnerable population groups so that they were exempted from, or burdened as little as possible, by the current austerity measures. In addition, he placed emphasis on the following measures: (1) the granting of the EKAS to pensioners provided that they received a low pension and they fulfilled specific income criteria. The same applied to persons suffering 80 per cent invalidity regardless of their age and orphan children who were eligible to the pension of their deceased parents; (2) the granting of old-age pensions of €360 to uninsured persons (at the age of 67) who fulfilled certain criteria. That was a purely non-contributory benefit, granted to persons who did not receive any other pension, and was financed from the State budget. Beneficiaries were granted free medical coverage, and that was not related to the minimum pensions provided for in section 3(3), of Act No. 3863/2010; (3) the payment of family allowance; (4) the granting to families residing in mountainous or disadvantaged areas, including single-parent families, of an annual payment of up to €600 per family, depending on their annual income; (5) the granting to families with children in compulsory education, with an annual income of €3,000, including single-parent families, of an annual payment of €300 for each child; (6) favourable adjustments for the payment of the special property tax (reduction or exemption) for vulnerable groups, including people living in poverty or threatened by poverty, families with many children, disabled persons, the long-term unemployed and unemployed persons receiving regular subsidies; (7) reductions in income tax for persons with low incomes and a decrease of €200 of the amount of tax for specific categories of persons with disabilities or war victims; and (8) tax exemptions in specific cases for wages, pensions and benefits, such as pensions of persons with disabilities and war victims, salaries and pensions of totally blind persons, non-institutional allowances and the EKAS solidarity benefits, etc. Finally, concerning IKA, the main social security fund, he said that out of 1.2 million IKA pensioners, some 200,000 received pensions under €400, but the majority of the low pensions concerned persons receiving two pensions, or who were co-beneficiaries of the same survivors’ pension. That was in line with the European Code and Convention No. 102, as well as national law. The Government had reviewed, particularly since 2010, specific social assistance schemes to ensure that the established minimum amounts remained in all cases above the physical subsistence level for different age groups of the population.

The Worker members thanked the Government for its explanations. They recalled that governments had a duty to maintain their social security systems, including by adjusting it in the event of economic and financial crisis, provided that the measures taken for that purpose were proportionate and conformed to international standards. As had already been emphasized, those standards were not only the cornerstone of social justice, but also encouraged economic recovery. Unfortunately, the Government had not had refuted the conclusions of the Committee of Experts and other authorities regarding the Government’s disregard for its international commitments, particularly with respect to Convention No. 102. In her statement, which was rather ambiguous, the Employer member of Greece had stated that the Council of Europe had exonerated Greece from any shortcomings, which was not exactly true. The European Committee of Social Rights had made a similar statement to that of the Committee of Experts which, in turn, the Conference Committee should endorse. It should also support the call by the Committee of Experts for a statistical tool to measure the impact of policies in relation to the aims of the Convention. For the rest, effect should be given to the Oslo Declaration and the missions it had assigned to the Office. In particular, the Conference Committee should request the Government to make use of technical assistance from the Office to ensure the implementation of a social policy, taking into account the Convention and the observations of the Committee of Experts. It was also the responsibility of the Office to enter into contact with the IMF, the European Commission and the European Central Bank, as called for by the Oslo Declaration, on the issues of social policy and, more generally, employment policies. It was hoped that these initiatives would encourage the discussion of alternative measures, this time in line with Convention No. 102 and defined, as advocated in Recommendation No. 202, with “tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned”. Due to the urgency and significance of the case, it should be placed in a special paragraph of the Committee’s report.

The Employer members expressed appreciation of the comments, which they had considered carefully, but noted, firstly, that aside from one additional intervention by a Government representative of the Russian Federation, the Government members had remained silent. Secondly, while the Declaration of Philadelphia should always be borne in mind, research had shown that this was the first case which had been based on its principles, and not on a Convention. The present case should be supervised under the provisions of Convention No. 102, which had still not been discussed and, because the case had been double footnoted, it had not been subject to negotiation between the social partners.
Conclusions

The Committee noted the statement by the Government representative and the discussion that followed.

The Government representative stressed that times were indeed extremely difficult and the Government had repeatedly been called upon to maintain the necessary balance between providing for social protection standards under Convention No. 102 and meeting the commitments assumed within the framework of the Memorandum of Understanding agreed with the “Troika” (i.e. the European Commission, European Central Bank and the International Monetary Fund) and drastically restructured, as the institutional framework of the Greek social security system. The viability of the system was ensured through actuarial studies elaborated by the National Actuarial Authority every three years for the entire social security system based on the ILO model, the development and application of the necessary IT systems, improved collection of contributions through a new unified Social Security Contributions Collection Centre (KEAO), and establishment of an Insurance Fund for Generations Solidarity (AKAGE). The Committee noted the Government’s statement that the effectiveness and scope of those efforts were limited due to the impact of the crisis and social budget limitations incurred by the implementation of the economic adjustment programme. Nevertheless, pensions granted to the entire working population were above the rates provided for in Articles 65–67 of the Convention, while specific social assistance schemes were reviewed in order to ensure that the established minimum amounts remained in all cases above the physical subsistence level for different age groups of the population. Special effort had been made for the design and application of anti-poverty policies for the most vulnerable, which included payment of a “social dividend”, the establishment of the benefit for the long-term unemployed, setting of the minimum guaranteed income in collaboration with the World Bank, and the inclusion of precise targets for poverty reduction until 2020 into the National Reform Programme 2011–14.

With respect to the impact of the economic crisis on the social security system in Greece, the Committee recalled that the principle of the general responsibility of the State for the sustainable financing and management of its social security system expressed in Articles 71 and 72 of the Convention required the Government to establish a sound financial and institutional architecture of the social security system and “take all measures required for this purpose”, including in particular the following: maintain the system in financial equilibrium, ensure proper collection of contributions and taxes taking into account the economic situation in the country and of the classes of persons protected, carry out the necessary actuarial and financial studies to assess impact of any change in benefits, taxes or contributions, ensure the due distribution of the benefits by the Government by the Council of Ministers in order to prevent hardship to persons of small means. The Committee further recalled that the Oslo Declaration of the Ninth European Regional Meeting called upon the ILO to promote adequate and sustainable social protection systems as well as “synergies and policy coherence with the international and regional organizations and institutions ... on macroeconomic, labour market, employment, and social protection issues”. Acknowledging the unprecedented financial and management challenges of steering the Greek social security system through the crisis, the Committee requested the Office to give guidance to the Government on reforming its social security system in accord with the guidance in the Oslo Declaration.

The Committee observed that the continuous contraction of the social security system in terms of coverage and benefits by branches of social security and in some instances resulted in reducing the overall level of protection below the levels laid down in Articles 65–67 of the Conven-
tional provisions on nationality, Parliament had adopted Act No. 169-14 of 16 May 2014 which established a special regime for persons born on the national territory whose registration in the Dominican civil register had been irregular, and which also dealt with naturalization. The Act envisaged a definitive decision for persons covered by this ruling. Her Government prohibited, condemned and rejected any act of discrimination or inequality. She asked the ILO to continue providing technical assistance with a view to strengthening the institutions responsible for applying and monitoring the policies planned for combating discrimination. The Government undertook to maintain the exchange of information with the ILO with regard to any measures adopted for strengthening institutions and the application of the Convention and to address the subject of discrimination in the Advisory Labour Committee.

The Worker members recalled that the Committee had closely examined this case in 2013, 2008 and 2004, and that for more than ten years the report of the Committee of Experts contained comments on the same points as those raised today. These recurring issues related to discrimination in employment and occupation against Haitians and dark-skinned Dominicans, and discrimination based on sex, including mandatory pregnancy testing and sexual harassment, and discrimination in the form of mandatory testing to establish HIV status. As in 2008 and 2013, the key issue was not the content of the legislation itself, but its application in practice and the means of redress available to the workers, as well as the interpretation of the law by the courts, in particular the Constitutional Court, which constituted an additional problem. In 2013, the Committee’s conclusions, which had been nuanced and paid attention to the various initiatives taken by the Government, had focused on three main areas: the taking of firm steps to ensure that workers were protected against discrimination in practice; the continuation of efforts to raise awareness among the population on these issues; and the guarantee of the efficacy and accessibility to all workers of monitoring and enforcement to combat discrimination. Nevertheless, the Government, which had requested technical assistance from the Office, had not provided the Committee of Experts in 2013 with the report demanded on the three above points. Given the number of years this case had been examined, the failure to submit a report was inexcusable. The Worker members added that since then, the Government was reported to have submitted a Bill to the Chamber of Deputies “establishing a special regime for persons born on the territory of the Dominican Republic incorrectly entered in the civil register and on naturalization”. According to the Government, the Bill was the outcome of a long process of consultation and attempts to reach a consensus with different sectors of society. However, the trade unions had not been included in these consultations, although the ongoing procedure with the Committee fully warranted this, and they regretted that they were not aware of the content of the Bill. Furthermore, in a long reply to the direct request made by the Committee in 2013, the Government had committed itself to transposing the provisions of the Convention into domestic legislation to the best of its ability. Nonetheless, this initiative did not respond adequately to the situation that had been criticized for many years, which primarily involved the implementation of the law in practice, particularly in relation to discrimination based on sex, compulsory pregnancy testing, violence against the women at the workplace, a person’s origin and skin colour, and HIV status. Tolerance and laxity in the face of discrimination at work constituted a violation of human rights. In addition, discrimination constituted a waste of human resources, undermining both enterprises and social cohesion.

Given a situation in which legislation existed but was not applied and in which the perpetuation of discriminatory attitudes was the product of history and the failure of education systems, it was of prime importance to provide the workers who were victims of discrimination with support so that they could finally enjoy the protection provided under the Convention. Furthermore, various ILO instruments might be useful in this respect, such as the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which called for a continuous dialogue with the social partners, which had not yet occurred and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), as that the social partners were in the best position to understand the strong cultural component characterizing discriminatory behaviour because they were the closest to the actual realities of the working world. The Government should also undertake to set up a standing committee on all forms of discrimination in occupation and employment, within the Ministry of Labour, which would not only propose improvements in the application of the legislation, but would also provide specific support in proceedings launched by the workers, who were victims of discrimination, and support national and cultural awareness-raising campaigns in this area. The Worker members denounced the illegal nature of the ruling of the Constitutional Court issued in September 2013, which had been referred to by the Committee of Experts. This ruling concerning the retroactive application of the law denying Dominican nationality to a person born in the country of parents of foreign migrants (Haitians) considered to be in transit or transitively resident was contrary to the principles of the Convention ratified in 1964 by the Dominican Republic. The Government should follow the recommendations of the Committee of Experts and take all the specific measures needed to guarantee that full effect was given to the existing legislation.

The Employer members recalled that the case had been on the Committee’s agenda since 1990 and thanked the Government for supplying information that showed the progress made in terms of legislation and in the functioning of the country’s institutions. They were however deeply concerned at the lack of any information that might enable them to assess the extent of the problem. The Government had not provided all the information that had been requested by the Committee of Experts on discrimination in employment and occupation, to which Haitians and dark-skinned Dominicans in particular were subjected, between the Dominican and Haitian Republic. The problem of discrimination based on HIV status and on compulsory pregnancy tests. Consequently, it was difficult to assess the extent of the issue and to determine whether it concerned just a few exceptional cases, or whether the problem was widespread. Since the Constitution and legislation, including the Labour Code, contained provisions relating to equality and non-discrimination, the problem was not one of legislation, but rather of application of national laws and regulations. The Employer members emphasized that the law adopted in May 2014, to which the Government representative had referred, was designed to resolve the problem of whether the children of Haitian workers in an irregular situation should be granted or denied Dominican nationality. It should provide a satisfactory response to the consequences of the ruling of the Constitutional Court of September 2013 on Haitians living in the Dominican Republic (between 700,000 and 1.2 million persons). Discrimination was a cultural phenomenon, the Worker members had observed laws existed and they needed to be applied, and the focus should be on training and education to correct discriminatory practices. Labour inspectors, who had a role to play in terms of prevention, should also receive
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Dominican Republic (ratification: 1964)

appropriate training. The Government had adopted a series of measures, but it still needed to do more to give full effect to the national legislation and to begin to change cultural attitudes.

A Worker member of the Dominican Republic emphasized that the national trade union movement condemned any kind of discrimination that affected the fundamental rights of any person, whether or not they were Dominican Nationals. The Dominican Republic had constitutional and legal provisions that explicitly recognized protection against discrimination, but regrettably there was a strong culture of non-compliance with the legislation and a very weak justice system. Furthermore, the Domestic Workers Convention, 2011 (No. 189), had been ratified in 2013, but for reasons that were unclear, the official instrument of ratification had not been communicated to the ILO and was still in the hands of the Ministry of External Affairs. Consequently, for both his country and the ILO, it was as if the Convention had not been ratified. The report of the Committee of Experts’ highlighted discrimination against Haitian workers and the violation of the fundamental rights of Dominicans of Haitian origin. The United Nations Committee on the Elimination of All Forms of Racial Discrimination had concluded in March 2013 that there was structural discrimination against persons of African origin, who suffered clear exclusion and whose fundamental rights and opportunities for development were restricted. Several calls had been made for a mechanism for the protection of vulnerable workers, in the present case migrant workers who were excluded from the scope of Act No. 87-01 establishing the Dominican social security system. The country’s three trade union confederations, and the trade union movement in general, had strongly condemned the ruling of the Constitutional Court, which had opened up the possibility of retroactively denying Dominican nationality to persons born in the Dominican Republic whose parents were foreign migrants in an irregular situation, a problem that particularly affected workers of Haitian origin. The ruling was morally unjust and legally incompatible with the international human rights treaties signed by the Dominican Republic. The ruling of the Constitutional Court affected more than three generations, who would be deprived of the acquired right of nationality without any valid reason. That violated a number of constitutional principles, including the right of the child to identity and nationality, the principle of non-retroactivity of laws, the binding nature of the decisions of the Inter-American Court of Human Rights, and the principle of equality on the ground of nationality. In early 2014, the Dominican Republic and Haiti had signed an agreement to regularize the temporary immigration en masse of Haitian daily labourers working in the sugar cane harvest. Haitian labour had become indispensable to the booming Dominican sugar industry. It was unjust that people who had been born in the country should be deprived of the nationality of the Dominican Republic, that they were exposed to labour exploitation and were without social protection. With the aim of tackling that situation, the Government had recently adopted a national plan for the regularization of foreign nationals in an irregular migratory situation and also a law on naturalization. Consultations on that law had been held with various civil society organizations, but the trade unions had been excluded from the consultations. It was not just a problem of legislation, it was therefore entitled to new provisions to address the situation, but it was a problem of efficacy and control by the part of the State. The systems of inspection and control had failed to adopt specific measures for the elimination of discrimination. Discrimination affected various sections of the population, particularly the most vulnerable, such as migrants, young people, persons over the age of 35, women and workers in export processing zones.

The practice of gender-based discrimination, particularly sexual harassment against women workers and mandatory pregnancy testing to fund employment was widespread, and effect was not given to the protective legislation. Discrimination against persons living with HIV and AIDS also persisted, and was one of the most serious problems facing the country. In conclusion, he called for the setting up of a special committee to reinforce the technical committee, the establishment of which had been decided at the 102nd Session of the Conference, which would have the function of following up on practical compliance with the legislation relating to discrimination. The participation in this committee of the representatives of the workers from Haiti and the Dominican Republic would have a very positive impact on the dialogue.

Another Worker member of the Dominican Republic added that the national trade union movement should work with the Haitian trade union confederations, and therefore called for the technical committee to be strengthened with the participation of the Haitian trade union confederations. This was the only way to ensure that the Haitian migrant workers would not be subject to discrimination, or have their rights undermined. Strengthening the working relationship between the trade unions of the Dominican Republic and Haiti would give more impetus to the call for the inclusion in the Social Security Act of all types of work carried out by Haitian workers in agriculture, domestic work and construction and in the informal economy. Haitian workers needed to be adequately protected, without encouraging exploitation by businesses and human traffickers in forced labour, which would have a downward effect on the wages of national workers. Finally, he indicated that the demands of the trade union movements of the Dominican Republic and Haiti must be addressed both to the countries of origin and of destination. Effective measures should also be adopted to prevent the trafficking of persons for profit by civilians and by the military in both countries. He therefore requested ILO support for the creation of a special committee to provide follow up for the fulfilment of commitments in this area.

The Employer member of the Dominican Republic said that the employers in his country rejected all acts of discrimination and supported and respected the national legislation. Article 39 of the Constitution covered the right to equality. All people were born free and equal before the law, received the same protection and treatment from institutions, authorities and other persons, and enjoyed the same rights, freedoms and opportunities without any discrimination on the ground of gender, colour, nationality, race, social origin, family relations, language, religion, public or philosophical opinion, or social or personal status. Equality and equity therefore existed for men and women in the exercise of the right to work, and also equality in access to employment. The Dominican Republic recognized the international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. Act No. 135-11 concerning HIV/AIDS, guaranteed the dignity of people living with HIV and AIDS. Section 6 of the Act provided that human beings were born free and equal in dignity and rights and were therefore entitled to equal protection against discrimination or incitement to discrimination. As a result, mandatory testing for HIV and its antibodies for people to secure or retain employment was prohibited. In the same spirit of justice, acts of discrimination or exclusion were prohibited. Moreover, all persons were guaranteed access to the judicial system. Efforts had also been made to strengthen labour inspection by increasing the number of labour in-
spectors. It was planned to recruit a further 75 labour inspection officials in the near future. A national policy on HIV and AIDS would also be developed in export processing zones. Around 25,500 workers had received training related to the elimination of the stigma of HIV in the workplace. The second phase of the project was expected to start this year. In September 2014, the Ministry of Labour would carry out awareness-raising workshops on gender and equal opportunities. He then expressed his perplexity at the term “dark-skinned Dominicans”. Eighty-five per cent of Dominicans were black and mixed race, and he therefore considered the term “dark-skinned” to be discriminatory. Employers in the Dominican Republic advocated a zero-tolerance policy towards discrimination and wished to play an active part in all aspects relating to the implementation of Convention No. 111.

The Government member of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), said that GRULAC had duly noted the measures adopted by the Government in relation to Convention No. 111 with a view to ensuring protection against discrimination of workers of foreign origin, dark-skinned Dominicans, migrant workers in an irregular situation, women and persons living with HIV and AIDS. GRULAC wished to highlight certain measures taken by the Government, such as the Migration Regulations adopted under the Migration Act, the continued functioning of the Labour Migration Unit of the Ministry of Labour and the Committee on the Promotion of Equal Opportunities and the Prevention of Discrimination at Work, with the aim of guaranteeing compliance with migrants’ rights through inspection procedures, which allowed for the monitoring of compliance with labour laws applicable to foreign nationals, as well as the dissemination of information and awareness raising on their rights. GRULAC noted with interest the recently approved Act No. 169-14 of 23 May 2014 establishing a special regime for persons born on national territory and irregularly registered in the civil registry concerning naturalization. The objective of this Act was to address the problems arising from the September 2013 ruling of the Constitutional Court for persons born in the country who were children of migrants in an irregular situation, which demonstrated the Government’s commitment on the subject. GRULAC reaffirmed its commitment to the protection and promotion of equality of opportunity, non-discrimination at work and the defence of fundamental human rights, which must be guaranteed and protected with the same effectiveness as the restrictions. The Government, while appreciating the efforts undertaken by the Government and encouraged it to pursue the measures initiated so as to achieve full compliance with Convention No. 111.

The Worker member of Uruguay emphasized the ruling of the Constitutional Court which denied Dominican nationality to a person born in the country who was the child of Haitian migrants who had been long-term residents in the Dominican Republic, and which ordered the retroactive re-examination of the Dominican nationality granted to children of Haitian immigrants between 1929 and the date of the ruling. The ruling had caused “deep concern” as it represented a clear case of discrimination against a section of the Dominican population (migrant workers, dark-skinned persons and persons of Haitian origin). It was a denial by the Dominican Republic of the essential rights of every person (the rights to identity, personality and nationality), and was a grave violation of the principle of non-discrimination enshrined in universally applicable legal instruments. It should be recalled that member States of the ILO, by the very fact of their membership, had an obligation to respect, to promote and to realize the fundamental principles and rights at work set out in the ILO Constitution and fundamental Conventions, in particular the elimination of discrimination. In the present case, the Constitutional Court, in addition to ignoring fundamental principles of international law on the rank of domestic law, such as the principles of pacta sunt servanda, which provided that international law prevailed over domestic law, and pro homine, under which international and national standards must be interpreted and applied in the manner most conducive to the human being, failed to recognize essential human rights-related obligations assumed by the Dominican Republic. The Constitution had been amended on 3 January 2010, introducing the principle of parenthood, or jus sanguinis; for the granting of nationality, instead of jus soli, or the granting of nationality to those born on the national territory, the principle that had applied under the previous constitutions, from 1929 to 1966. On 23 May 2014, Act No. 169 had been adopted, which established special rules for children born on Dominican soil to foreign “non-residents” during the period between the adoption of the 1929 Constitution and that of the Constitution of 28 April 2007. The new rules were based on the ruling of the Constitutional Court, reflecting a passage that referred to “deficiencies in migratory policy and in the working of the civil register” that dated from the period immediately after the adoption of the 1929 Constitution. Although Act No. 169 acknowledged that the “Dominican State had been responsible” for the supposed irregularities in civil registration, it virtually obliged those born on Dominican territory and not entered in the civil register, to register within a short time period as “foreign nationals”; thereby abruptly and retroactively divesting them of their acquired rights to nationality, which the 1966 Constitution had granted. Accordingly, persons born in the Dominican Republic had been stateless, by the law, and were condemned to apply, within a very short 60-day period, to be registered as “foreign immigrants in an irregular situation”.

The Government member of the United States expressed concern about the Constitutional Court and its consequences for persons born to “in transit” parents in the Dominican Republic, including the difficulty of accessing social security benefits and services, risks involved in reporting violations of national labour law and a potential financial burden entailed in applying for resident status under the Government’s regularization plan for foreigners in an irregular situation. She looked forward to the publication of the enabling regulations under the Naturalization Act and the processes it would establish, which should ensure its transparent, accessible and comprehensive implementation. She criticized the recommendations of the Experts for the Government to ensure that court rulings and Government policies did not increase discrimination against workers of Haitian origin, dark-skinned Dominicans or migrant workers in an irregular situation. The Government must ensure that such workers were not subject to exploitative labour practices due to their precarious status. Limited education significantly increased children’s vulnerability to exploitation, and the Government should therefore also guarantee that all children received the identity documentation necessary to attend school. The Constitution of the Dominican Republic, as amended in 2010, expressed commitment to the fundamental rights and human dignity of every person, and to the elimination of all kinds of discrimination. The Government must make that commitment a reality for all workers. It should combat labour exploitation and to use technical assistance to address discrimination, as well as to specifically address discrimination based on sex and real or perceived HIV status.

The Worker member of the United States said that the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), to which the Dominican Republic was a party, required it to comply both with its
own national laws and with ILO standards (including Convention No. 111). Nevertheless, the Government had long delayed promised actions to address workplace discrimination faced by women. For example, there was no effective Government policy to combat economic discrimination against women, who received approximately 44 per cent less pay than men for comparable jobs requiring equal skills. Women workers were the first to lose their jobs when the economy slowed and female unemployment was double male unemployment in the Dominican Republic. Women were discriminated against even when looking for work, and for instance it was common for advertisements to state that employers were only looking for women below a certain age and who looked a certain way. Such discrimination illustrated the serious need for the Government to develop effective policies to promote women’s place in the workforce as being equal to that of men. Women continued to report that pregnancy tests comprised part of mandatory medical examinations, the results of which were sent to potential employers. While discrimination based on such tests was illegal on paper, employers often did not hire pregnant women, and often fired women already working for them who became pregnant. Women in certain sectors, such as domestic work, were particularly vulnerable to discrimination. Following pressure from labour unions, a bill that would have extended social security benefits to domestic workers had been introduced in Congress, but had failed to pass. Substantial evidence supported the argument that an increase in employment and incomes of women workers impacted very positively on social and economic development. The Government should therefore strengthen its commitment and capacity to eliminate discrimination against women.

The Worker member of Chile expressed support for the denunciation by the Worker members of the Dominican Republic concerning the persistent sexual harassment to which thousands of workers were prey. Sexual harassment was one of the worst forms of discrimination against women and was a form of extreme violence against women in the workplace. It was a violation of the fundamental human right to mental well-being, limited women’s opportunities of progress and personal development and excluded them from political and social life. Sexual harassment was an abuse of power that occurred most when employment relationships were unequal, and when workers, individually and collectively, lacked the protection that should enable them to work in safe conditions, because they were not fully able to refuse and outlaw such discrimination. The serious threat that sexual harassment represented to workers’ integrity was one of the most difficult scourges to eliminate, and not only in the Dominican Republic, given that it was rooted in macho cultural stereotypes. It was an aggression faced daily by thousands of women workers, especially in export processing zones. An unavourable cultural environment, a lack of a functioning system of monitoring and evaluating and insufficient state mechanisms left women feeling unprotected and unlikely to log complaints, as doing so led to them being dual victims: they suffered not only institutional violence, and were likely to be victims of domestic violence, as they were frequently blamed for having initiated or provoked the harassment. She proposed: the establishment of a tripartite committee on gender equality; the establishment of a justice system better equipped to address discrimination, with more severe sanctions for sexual harassment; more campaigns against sexual harassment in businesses and workplaces; permanent and preferably tripartite cooperation against sexual harassment and discrimination; training for judicial personnel and all the actors who influenced or were involved in handling sexual discrimination, particularly those who interacted directly with victims; more thorough information on harassment at work, explaining how it affected women both at work and at home; workplace campaigns on women’s reproductive and gender-based rights; and a greater voice for migrant women in the country.

The Worker member of Spain, focusing on the issue of HIV and AIDS, considered it vital to adopt a gender perspective. Women and social discrimination suffered by people living with HIV, as 49 per cent of the people infected with HIV throughout the world were women. HIV and AIDS did not affect women in the same way as men. Women were vulnerable to sexual harassment at work, and more generally to gender-based violence for a number of reasons; they were in the majority in the informal economy, where they worked for low wages, without rights or benefits; poverty clearly increased vulnerability to AIDS; they were normally the ones who cared for the sick; and they were exposed to unprotected sex work. The situation in the Dominican Republic regarding HIV and AIDS and the world of work revealed the stigma and discrimination against people living with HIV that limited their employment prospects. A social pact on the issue should be negotiated rapidly between the Government, the social partners and social organizations, with the establishment of action plans, and efforts should be multiplied and resources increased with a view to taking concrete action. Lastly, she expressed the hope that the demands and proposals of the trade unions of the Dominican Republic would be well received and that women workers in the country would soon have the protection and security to which they were entitled so that they could benefit from decent work.

The Government representative stated that, following the discussion in the Committee, he would return to his country with optimism and willingness to continue to move forward towards increased inclusiveness and equality for all workers in the Dominican Republic, including migrant workers. He reaffirmed his Government’s commitment to continue to implement labour policies seeking to achieve compliance with provisions relating to equality and non-discrimination. The Government had declared decent work as a priority goal and was currently taking specific measures at national level with the assistance of the ILO Regional Office in all ILO subject areas, including non-discrimination. A programme of preventative labour inspection had recently been launched in the agricultural sector, where there was a significant presence of foreign workers. The Ministry of Labour, with the support of the ILO and the International Organisation for Migration (IOM), had recently developed an electronic database to register labour contracts of migrant workers to render transparent all information normally compiled within a labour relationship (such as hours of work, wages, etc.), with a view to facilitating the compilation of accurate statistics and improving the monitoring of working conditions of migrant workers. This tool was supplemented by the electronic system of labour registration under which employers were required to register their workers with the Ministry of Labour, and which also validated the registration of migrant workers without requiring the types of visa envisaged by the Migration Act. As part of the Ministry of Labour’s plan of action to combat discrimination and equality of opportunity, 14 new labour inspectors had been recruited the previous month, and 60 more inspectors would soon be recruited. A justice system would result in better monitoring of compliance in the area of non-discrimination. With regard to the ruling of the Constitutional Court, he regretted the mistaken direction taken by the discussion in the Committee, emphasizing that both prior to and following the decision, all workers (both men and women), irrespective of nationality and migration status, were guaranteed their labour rights without discrimination. He also referred to
the establishment of the Tripartite Committee to Promote Equal Opportunities and Prevent Discrimination at Work under the Ministry of Labour. The national debate triggered by the ruling had resulted in the adoption of Act No. 169-14, which had been the outcome of a broad consensus at national level involving the social partners and civil society, and had been welcomed by the Prime Minister of Haiti. The Act sought to ensure that all workers affected by the ruling would benefit from more participatory and fair measures. The Government had also sought to resolve the problems affecting Dominicans lacking identity documents. To this end, a tripartite committee had recently been set up which had encouraged the various sectors to reach agreement with the social partners so as to ensure that workers without identity documents would be able to benefit from social security. In conclusion, he emphasized that the national labour legislation applied to all workers. A clear distinction therefore needed to be made between two issues, namely, the legal provisions which he assured were fully applied and, on the other hand, the issues related to migrants, which the Government was striving to address in full respect of the human rights of the persons concerned.

The Worker members noted that the present issue concerned the effective implementation of the law, the solution to which depended on the adoption of concrete measures in the three following areas: strengthening penalties against acts of discrimination; guaranteeing free and easy access to dispute settlement mechanisms, particularly labour inspection services and the courts; and acting to combat sexual harassment, mandatory pregnancy tests for recruitment and discrimination on the grounds of HIV and AIDS status. Government agencies, judges, labour inspectors and society as a whole also needed to be made aware of the unacceptable nature of discrimination. They encouraged the Government to establish, in cooperation with the social partners, a standing commission in the Ministry of Labour to deal with questions of discrimination, particularly against workers of Haitian origin. The commission’s functions would be to: monitor and improve the application of the law in practice to eliminate all forms of discrimination in employment and occupation; provide workers who were victims of discrimination in cooperation with the workers’ organizations, free assistance to institute and complete legal proceedings and ensure enforcement of the final decision; and participate in awareness-raising and education campaigns against discrimination in employment and training. The social partners should also be encouraged to provide targeted and practical solutions through collective bargaining. They recalled that in 2013 the Government had requested ILO technical assistance and they proposed, in order to support that request, the sending of a direct contacts mission, the objectives of which would be to ascertain the conformity of the law and practice with the provisions of the Convention and to carry out, with the Government and the social partners, including representatives of the Haitian workers concerned, any training, awareness-raising and promotion activities necessary with a view to eliminating discrimination.

The Employer members once again welcomed the efforts made by the Government, especially for its handling of the legal consequences arising out of the ruling of the Constitutional Court concerning the granting or refusal of Dominican nationality to the children of Haitian nationals living in the country. Particular mention should also be made of the efforts made to give a tripartite dimension to the institutional solutions identified to deal with the problems of the application of the legislation in practice. This was an important issue. However, it was still difficult to gauge the extent of the problem, in view of the lack of adequate data. The Employer members requested the Government to provide all the information requested since 2013, as well as statistics, broken down by gender and occupation, which would make it possible to carry out an objective evaluation of discrimination in the country, measure women’s difficulties of access to employment and assess the measures adopted in the context of the policy of equality between men and women. These data were indispensable to measure the extent of the problem and assess any progress made in these areas. They called upon the Government to adopt, in accordance with Article 2 of the Convention, a national policy designed to promote equality of opportunity and treatment with a view to eliminating all discrimination in employment and occupation. To ensure its full application, this policy should be the outcome of a social dialogue covering not only the world of work, but also education, with a view to addressing social and cultural stereotypes encountered by children at a very young age. Furthermore, labour inspection needed to be strengthened and inspectors should be able to benefit from appropriate training. They also hoped that the Government’s request for ILO assistance would be granted in order to implement the legislation and eliminate all forms of discrimination.

Conclusions

The Committee noted the oral information provided by the Government representative and the discussion that followed.

The Committee recalled that it had examined this case in 2008 and 2013, and that it raised issues with respect to discrimination in employment and occupation against Haitians and dark-skinned Dominicans, discrimination based on sex, including sexual harassment, mandatory pregnancy testing and also mandatory testing to establish HIV status. It also recalled that, in its last observation, the Committee of Experts had noted with deep concern Constitutional Court ruling No. TC/0168/13 of 23 September 2013 which retroactively denied Dominican nationality to foreigners and children of foreigners, particularly affecting Haitians and Dominicans of Haitian origin.

The Committee noted the information provided by the Government in relation to the legislative and practical measures taken to address discrimination and promote equality in employment and occupation, including Decree No. 327-13 of 20 November 2013, which established the National Plan for the regularization of foreign nationals and Act No. 169-14 of 23 May 2014, which aimed at resolving the situation of Dominicans of Haitian origin. The Committee also noted the information on legal assistance available to migrant workers; the training for judges and awareness-raising activities in enterprises relating to non-discrimination and gender equality; as well as the Government’s commitment to address the issue of discrimination in the tripartite Advisory Labour Council.

While welcoming the information on the recent legislative steps taken, the Committee stressed the importance of their effective application in practice highlighting the important role of labour inspection in this respect. The Committee therefore urged the Government to strengthen its full cooperation with the social partners, to effectively implement the existing legislation addressing discrimination, to reinforce penalties and to ensure that existing complaints procedures were effective and accessible to all workers, including workers of Haitian origin, migrant workers and workers in export processing zones. In this context, the Committee urged the Government to take specific steps, including through educational programmes, to address existing social and cultural stereotypes contributing to discrimination in the country. The Committee also urged the Government to take the necessary measures to ensure the effective application of the legislation that prohibits mandatory pregnancy and HIV testing to gain access and to keep a job,
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Kazakhstan (ratification: 1999)

and to adopt appropriate provisions prohibiting sexual harassment in the workplace. With a view to assessing the full nature and extent of discrimination in the country, the Committee requested the Government to provide statistical information, disaggregated by sex, origin and age, on access to employment and occupation and vocational training. Emphasizing the importance of tripartite consultations, the Committee encouraged the Government to establish a standing tripartite committee to address all matters relating to equality and non-discrimination, including those relating to workers of Haitian origin. The Government was also encouraged to develop awareness-raising campaigns on equality issues.

The Committee invited the Government to avail itself of ILO technical assistance with a view to ensuring the effective application and monitoring of anti-discrimination law and policy. The Committee requested the Government to provide a report to the Committee of Experts, including detailed information regarding all the issues raised by the Committee and the Committee of Experts, for examination at its next meeting.

KAZAKHSTAN (ratification: 1999)

The Government communicated the following written information.

With regard to the prohibition of discrimination, in accordance with section 7 of the Labour Code of the Republic of Kazakhstan, everyone has equal opportunities for the exercise of his or her rights and freedoms in respect of employment. In the exercise of labour rights, nobody may be subjected to any discrimination on the grounds of sex, age, physical disability, race, nationality, language, material or social situation, public position, place of residence, attitude to religion, political beliefs, tribe or social stratum of membership of public associations. This provision fully reflects the Constitution of the Republic of Kazakhstan (article 14.2 of which provides that nobody may be subjected to discrimination of any kind on grounds of origin, social, public or material status, sex, race, nationality, language, attitude to religion, beliefs, place of residence, or on any other grounds). The concept of “race” is generally understood as being inseparable from “skin colour”. However, in practice there have been no problems with this issue. Nevertheless, in order to resolve the question of including skin colour as a basis of discrimination, further consultations will be held with representatives of the central State authorities and with employers’ and workers’ organizations at the national level. The findings of over 200 special spot investigations in 2013 by state labour inspectors, together with prosecuting authorities, of organizations recruiting foreign labour, revealed 123 instances of wage discrimination between national and foreign workers. The state inspectors responded by issuing 65 orders to employers to eliminate these violations, and imposed 96 administrative fines, amounting to 4.6 million Kazakhstan tenge (KZT). In the first four months of 2014, checks at over 2,000 organizations in the country did not reveal any instances of wage discrimination. To ensure that employers comply with the requirements of labour laws concerning workers of pre-retirement age and the prohibition of discrimination against them, supplementary provisions were added in 2013 to the Law of the Republic of Kazakhstan of 23 July 1999 to prohibit the mass media from disseminating information about employment vacancies containing employment requirements of a discriminatory nature. However, the state labour inspectorate has not received any complaints from citizens alleging violations of their employment rights.

With reference to the exclusion of women from certain occupations, section 186 of the Labour Code of the Republic of Kazakhstan specifies the types of work in which the employment of women is prohibited: (1) it is prohibit-
With regard to the representation of women in the civil service, it should be noted that of the actual number of civil servants (90,220), there were 49,527 women, or 54.9 per cent (as of the fourth quarter of 2013). It should also be noted that in 2013 Kazakhstan occupied a high position, at No. 26, for the indicator, “women in the labour force, ratio to men” in the Global Competitiveness Index of the World Economic Forum. In the context of implementing the general agreement between the Government of the Republic of Kazakhstan and the national workers’ and employers’ associations for 2012–14, provisions have been included in sectoral and regional agreements and in collective agreements to promote employment, save jobs, create decent working conditions for workers over the age of 50, and adopt programmes to improve the qualifications and mobility of those over 50. Monitoring is carried out in compliance with the requirements of labour law for the prevention of discrimination against persons over the age of 50 in recruitment and during employment. It is prohibited to disseminate job vacancies containing requirements of a discriminatory nature in reference to employment. An active employment policy is now being conducted in Kazakhstan in the framework of the programme “Roadmap for Employment 2020”. It provides for the creation of entrepreneurial activity, the creation of social jobs, the organization of entry-level work for young people, and an increase in the occupational and territorial mobility of labour resources. In the first quarter of 2014, the economically active population numbered 9.1 million people, of whom 4.4 million, or 48.4 per cent, were women. Women account for 48.8 per cent of those in employment (4.2 million). In the first quarter of 2014, there were 464,000 unemployed people, the number having fallen by 10,500, or 2.2 per cent, in comparison with the same period in 2013. The unemployment level was 5.1 per cent (5.3 per cent in the first quarter of 2013). The female unemployment level was 5.9 per cent. The proportion of unemployed men in the first quarter of 2014 was 43.8 per cent (203,000), and the figure for women was 56.2 per cent (261,000). No figures are kept on the labour market situation of men and women belonging to ethnic and religious minorities. A general agreement has been concluded for 2012–14 between the Government and the national workers’ and employers’ associations. The agreement sets out the obligations of the parties to secure the necessary conditions for decent work, to introduce standards for the quality of life and to bring about growth in labour productivity and stable employment. The draft general agreement was prepared for 2015–16 and approved in November 2014. Moreover, state labour inspectors regularly undergo training courses to improve their qualifications, including courses on the law relating to the prevention of discrimination.

In addition, before the Committee, a Government representative referred to the general agreement that had been concluded for 2012–14 and stated that provisions had been included in sectoral and regional agreements and collective agreements to promote employment and create decent working conditions for workers over the age of 50, and adopt programmes to improve the qualifications of persons over 50. Monitoring was carried out in compliance with the labour law. Moreover, an active employment policy was carried out in Kazakhstan in the framework of the programme “Roadmap for Employment 2020”. In response to the issues raised by the Committee of Experts with respect to the implementation of section 7(2) of the Labour Code, including information on any activities undertaken to disseminate the legislation and information on the number, nature and outcome of discrimination cases dealt with by the courts or the labour inspectorate, the Government representative stated that section 7 of the Labour Code provided that everyone had equal opportunities to enjoy their rights and freedoms at work, and no one could be subjected to discrimination. Race was directly linked to the ground of colour and, in practice, there had been no problems with this particular provision. Consultations would be held at the national level with employers’ and workers’ organizations to discuss this particular issue. With respect to the list referred to in section 186 of the Labour Code, the Government representative indicated that section 186 provided for areas where the work of women was prohibited. Work was prohibited in harmful and hazardous conditions. Manual lifting of loads exceeding a specific weight limit was also prohibited. Resolution No. 1220 of 28 October 2011 contained a list of categories of work where employment of women was prohibited. Over the last 20 years, this list had been revised and updated. These restrictions did not limit the employment of women but existed to protect maternity and women’s health.

The Worker members recalled that Convention No. 111 was one of the fundamental Conventions because discrimination at work constituted a violation of a human right that threatened social cohesion and solidarity, and had an impact on the productivity of enterprises. To achieve equality measures, permanent measures should be implemented by the implementation of employment policies and education to combat stereotyping, as well as the involvement of state officials at all levels of power, including the judiciary. It should also be guaranteed that the social partners were involved, so that they might participate in negotiations on economic and social issues. As mentioned by the Committee of Experts, attention should be paid to the implementation in practice of the legislation. Despite the employment programmes announced in Kazakhstan and the funds allocated to active labour market policies, the Government had not been able to eliminate certain forms of discrimination affecting women, ethnic or religious minorities and persons who were not ethnic Kazakhs. The Worker members stressed moreover the positive role of the social partners in the area of non-discrimination and the trade union organizations in this area. In order to make equality a reality, independent trade unions were required to relay the complaints of workers who were unfairly disadvantaged. A bill on trade unions was threatening workers’ organizations in Kazakhstan. The Office had voiced reservations on the compliance of this bill with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Worker members pointed out that the fundamental Convention had not been presented as a report and the application of Convention No. 111 could not be guaranteed without the involvement of the workers’ and employers’ representative organizations. They recalled the Committee of Experts’ comments on the notion of “colour”, which was not considered a ground of discrimination in the Labour Code, whereas this matter constituted a prohibited ground of discrimination under Convention No. 111. According to the Government, conventional discrimination was considered inseparable from that of “race” and was adequately covered, but it committed to hold consultations with the workers on the subject. The Worker members expressed the hope that the bill being drafted on trade unions would allow for these consultations referred to in the written information submitted by the Government. The Worker members underlined that the Government had discriminated against Kazakh ethnic minorities. A bill on trade unions was threatening workers’ organizations in Kazakhstan. The Office had voiced reservations on the compliance of this bill with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Worker members pointed out that the fundamental Convention had not been presented as a report and the application of Convention No. 111 could not be guaranteed without the involvement of the workers’ and employers’ representative organizations. They recalled the Committee of Experts’ comments on the notion of “colour”, which was not considered a ground of discrimination in the Labour Code, whereas this matter constituted a prohibited ground of discrimination under Convention No. 111. According to the Government, conventional discrimination was considered inseparable from that of “race” and was adequately covered, but it committed to hold consultations with the workers on the subject. The Worker members expressed the hope that the bill being drafted on trade unions would allow for these consultations referred to in the written information submitted by the Government. The Worker members underlined that the Government had discriminated against Kazakh ethnic minorities. A bill on trade unions was threatening workers’ organizations in Kazakhstan. In March 2014, the United Nations Committee on the Elimination of Racial Discrimination reiterated its concern that Kazakhstan had not adopted comprehensive legislation to prevent and combat discrimination in all areas. On the basis of this, and the comments made by the
Committee of Experts, the Worker members were of the opinion that the Kazakh legislation as a whole was not in conformity with the Convention, and that the 2013 amendment of the Act of 23 July 1999 had not attained its objective. As regards the exclusion of women from certain occupations, it was impossible to check the list of occupations under section 186 of the Labour Code, as this list was not included in the written information provided by the Government. With respect to equality of men and women in employment, this written information contained figures that the Worker members had not been able to verify. Without wishing to question their accuracy, they referred to the report of the United Nations Committee on the Elimination of Discrimination against Women of 10 March 2014. Although this Committee had noted positive developments, it remained concerned by a number of facts: (i) the concept of gender-based discrimination existed but did not incorporate the issues of direct or indirect discriminations, as required under Convention No. 111; (ii) women who were victims of violence or harassment did not have adequate access to justice and encountered social stigma and negative stereotyping in the world of work and in their daily life; (iii) women and girls encountered access to education, public health and nationality, which was a factor that exacerbated discrimination; and (iv) the wage gap between men and women still existed. On this subject, the situation had somewhat improved with a 6 per cent drop in the wage differentials between men and women, but the average monthly nominal wages for women workers only increased to 67.6 per cent of that of men in 2011. The average monthly wages of men were higher in all areas of activity, including in traditionally “female” occupations such as education and health care. The trend in the reduction of the relative competitiveness of women in the labour market compared to men started during pregnancy and continued during child care. The Worker members concluded that the Government should urgently provide the information requested by the Committee of Experts, while noting the information on the component of the active employment policy concerning the elimination of discrimination, and stressed the need for the optimal functioning of freedom of association.

The Employer members recalled that the Committee of Experts had noted that section 7(2) of the Labour Code covered all of the prohibited grounds set out in Article 11(1)(a) of the Convention, except for colour and it had requested the Government to amend the Code in this regard. The Government had indicated that amendments would be undertaken on this matter between the Government and the workers’ and employers’ organizations. The Government was urged to conduct such consultations, including with the social partners, with a view to ensuring that the Labour Code prohibited all of the grounds articulated in the Convention. Regarding the list of occupations for which it is prohibited to engage women and the maximum weights for women to lift and move manually, pursuant to section 186(1) and (2) of the Labour Code, the Government had indicated that this list was meant to protect women’s health. However, protective measures applicable to women’s employment that were based on stereotypes regarding women’s professional and physical abilities, as well as stereotypes concerning their role in society, violated the principle of equality of opportunity and treatment between men and women in employment. Therefore, such a list was troubling in light of the obligations of the Convention. The adoption of the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women, which provided for gender equality in labour relations as well as in education and training, appeared to be one area of progress in the case. With regard to sections 187, 188 and 189 of the Labour Code, it was problematic when legislation reinforced and prolonged stereotypes regarding the roles of men and women related to family responsibilities, including the stereotype that caring for a child was the primary role of women. If legislation included measures aimed at facilitating the quality of remuneration of work and the reconciliation between work and family responsibilities, they must be applied on an equal basis to both men and women. Sections 187 to 189 of the Labour Code should therefore be amended to grant entitlements related to family responsibilities to men and women on an equal footing. More information should be provided, without delay, regarding Law No. 566-IV of 17 February 2012, which the Government indicated had introduced an amendment to section 189 of the Labour Code. In addition, the information provided by the Government partially responded to the request of the Committee of Experts regarding measures taken to promote and ensure equality of opportunity and treatment for women and men in employment, including in the public sector. Furthermore, the Committee of Experts had expressed its concern related to discrimination against minority groups, particularly non-ethnic Kazakhs, with regard to employment opportunities in state or public services. The Government was encouraged to provide information in this regard, without further delay. The Government was also encouraged to work with the ILO in order to provide such information, including information on progress made in applying the Convention in both law and practice.

The Worker member of the Russian Federation noted that it was important to place the discussion of the case in the context of the recent signing between the Russian Federation, Belarus and Kazakhstan of an agreement establishing a single economic zone. Discrimination, despite being prohibited by the Constitution and national legislation, remained a serious unaddressed issue. To give effect to the law, effective implementation, the involvement of the social partners, and an independent specially trained judiciary were necessary. Discrimination due to trade union membership was very widespread and deep-rooted, and there were many cases in both the private and public sectors of dismissal or intimidation aimed at forcing members to leave unions. In such conditions, the activities of independent trade unions were seriously compromised. Furthermore, there was no independent body to deal with cases of discrimination and the isolated interventions from the labour inspectorate were insufficient given the extent of the phenomenon. The lack of adequate and dissuasive sanctions made further correction of oppositions was another problem. In addition, the situation was liable to deteriorate following current significant amendments to labour legislation, which could have the effect of preventing the independent organizations from accessing the collective mechanisms for the defence of workers’ rights. The Government should, in that context, request the ILO to provide extended technical assistance.

The Government representative of Denmark, speaking also on behalf of Finland, Iceland, Norway and Sweden, recalled that the promotion of gender equality and equal opportunity was one of the central objectives of the ILO and the United Nations. Gender equality was important for the development of successful societies which could only be achieved using the talents of the whole society, both men and women. Gender equality was hence a condition for democracy, economic growth, and welfare. In Nordic countries, where the idea of equal opportunities was an overriding principle, women played a decisive role in the establishment and maintenance of the welfare state. In this respect, she stressed that the role of women in the labour market should not be determined by assumptions and stereotypes and reflected in a legal framework that created obstacles to the equal participation of woman and
men in the labour market. She further recalled that the aim of legislation regarding occupational safety and health was to protect all workers irrespective of their gender against risks inherent in their work. Therefore, the Government needed to eliminate all legislation that violated the principle of equality of opportunity and treatment for men and women in employment and occupation. To this end, it was further necessary to amend the legislation reflecting the assumption that the main responsibility for family care lay with women, as well as the legislation which excluded men from certain rights and benefits.

The Worker member of Norway referred to section 186 of the Labour Code and to the list in accordance to which the employment of women was prohibited in 299 occupations. The objective of this prohibition was to protect women from hazardous or difficult work and to avoid health problems. However, provisions relating to the protection of persons working under these conditions should be aimed at protecting the health and safety of both men and women at work. The speaker indicated that in the Nordic countries women could choose their occupation and that protective measures applicable to women’s employment which were based on stereotypes regarding women’s professional abilities and role in society violated the principle of equality of opportunity and treatment between men and women in employment and occupation. She urged the Government to abolish this list of prohibited occupations and to adopt stricter measures for the protection of occupational health and safety of both men and women.

The Government member of the Russian Federation expressed his appreciation for the significant efforts deployed by the Government in order to achieve conformity with the Convention, particularly by undertaking monitoring and inspections, and where required, imposing administrative sanctions. The discussion had established that the national legislation was not in full compliance with the Convention with regard to the list of hazardous and difficult jobs for which it is prohibited to engage women. This could give the impression of a limitation on the principle of equality between the sexes, but it in fact had the objective of protecting the health of women, who were otherwise well represented in the workforce. The Government should therefore continue to work in the constructive spirit it had demonstrated during the discussion of the case. In conclusion, the speaker underlined that the discussion should focus only on the Convention under examination.

The Government representative stated that the Government had set up, together with the ILO, on the grounds of the debate to ensure the full implementation of the Convention. Turning to the intervention of the Worker members, which gave rise to the impression that the Government had not supplied the list of occupations in which women could not be employed, he recalled that information on this list could be found in the written information submitted by the Government to the Committee. In this respect, he considered that the use of many technical terms related to the area of metallurgy had possibly provoked this confusion. In this context, he stressed that the jobs on this list were not tantamount to an indication that women were not qualified or competent to do these jobs. The jobs which appeared on the list were inaccessible for women due to their hazardous nature or difficult conditions. In conclusion, he reiterated that the Government would consider the recommendations of this Committee to ensure full implementation of the Convention.

The Employer members, noting the Government’s indication that the purpose of the list of jobs for which it is prohibited to engage women was for the protection of these persons, reiterated their concern that protective measures based on stereotypes with regard to professional abilities and roles in society violated the principle of equality of opportunity and treatment between men and women in employment and occupation. They supported the comment of the Worker member of Norway that, rather than excluding women from performing some professional roles, it was important to assure that work was safe for both men and women equally. The conclusions should include the areas regarding which the Government was requested to provide further information, as well as information on the progress made with respect to the required changes to the Labour Code. The Government’s indication that it hoped to work on resolving these issues, in order to achieve full compliance with the Convention in both law and practice, was encouraging.

The Worker members emphasized the importance of the question of the protection of persons which were based on stereotypes with regard to professional abilities and roles in society. This prohibition was for the protection of women due to their hazardous nature or difficult conditions. In this context, he stressed that it was necessary to review the possible prohibition of jobs which risked cancelling out the measures taken to combat discrimination. Discrimination against women with respect to access to certain professions, concerning acts of violence or harassment at the workplace as well as the level of remuneration remained problems on which the Government had not given a completely satisfactory reply. In the light of these objectives, it was necessary to evaluate the results obtained in the implementation of the Roadmap for Employment 2020 and the general agreement concluded between the Government and the national workers’ and employers’ organizations for the period 2012–14. The consultations to be carried out to this effect implied moreover the full respect of Conventions Nos 87 and 98 and should take place with independent trade unions respecting pluralism. The Government should therefore request technical assistance from the ILO and provide information to the Committee of Experts in time for its session in 2014 concerning the list of occupations from which women were excluded, statistical data on the salary gap between men and women, as well as statistical data on the employment situation of men and women who were not ethnic Kazakhs.

The Government provided the following written information.

With regard to the protection of migrant workers, the Government of the Republic of Korea aims to set best practice in the management of labour migration. A transparent selection system is in place to help prevent workers under the Employment Permit System (“EPS workers”) from being taken advantage of. After entering the Republic of Korea, EPS workers are provided with detailed information on their rights under all relevant labour laws, including the Labour Standards Act, occupational safety and health, education and detailed instructions on the means and procedures for filing a complaint when their rights have been infringed. The education costs are fully borne by their employers. Labour laws, including the Industrial Accident Compensation Act, the Minimum Wage Act and the Labour Standards Act, are also applied to both migrant workers and Korean nationals. The 47 local labour offices across the country are responsible for dealing with complaints of the violation of rights under labour laws. After providing guidance and conducting inspections of 3,048 workplaces in 2013, the Government found a total of 5,662 cases of violations (in 1,992 businesses) and issued
correction orders, imposed fines and notified relevant agencies, including the Ministry of Justice, of the violations. Most cases involved violations of administrative duties or procedures, such as migrant workers or employers not joining insurance schemes and employment changes not being reported. Sixty-four job centres under the Ministry of Employment and Labour across the country dealt with various employment-related matters for migrant workers, including the extension of employment periods, and provide counselling services regarding legal matters. A total of 37 support centres and one call centre for migrant workers are in operation. These provide various services free of charge, such as counselling services on labour law language and cultural awareness training, medical check-ups and shelters. Five more support centres will be established in 2014, to improve services for migrant workers and better protect their rights. Free interpretation services are also provided. In 2013, the Government, in cooperation with the embassies in the Republic of Korea of countries of origin, organized 11 cultural events for migrant workers. A national cultural event called the “Korean Cultural Festival with Migrant Workers” was also held. In 2013, 5,826 migrant workers completed a five-day course. In 2014 to 2015, a working place such as computer literacy, operation of heavy construction equipment and car repair. An insurance system designed exclusively for EPS workers is in operation. The Government requires employers to join the “guarantee insurance” for overdue wages and the “departure guarantee insurance” to protect migrant workers from the risk of overdue wages or severance pay. Under the returnee support programme, information sessions are held to inform the workers on how to prepare for their return to their home countries. For instance, instructions are provided on how to collect unpaid wages and receive insurance benefits. In 2013, 68 information sessions were held and attended by 6,465 EPS workers. After the departure of EPS workers, the Government supports migrant workers to build returnee community networks in their home countries, provides job placement services for returnees and ensures that migrant workers who left the Republic of Korea without receiving the insurance compensation of the “departure guarantee insurance” or the return cost insurance, receive such insurance compensation. In 2013, 270 million Korean won (KRW) (approximately US$265,000) were paid for 249 cases under “departure guarantee insurance”, and KRW500 million (approximately $490,000) were paid for 1,208 cases under the returnee support programme. If the returns decide to come back to the Republic of Korea and find work in the Republic of Korea, they are provided with an opportunity for re-entry and employment.

With reference to equality of opportunity and treatment for women and men, the economic activity rate and employment rate of women in the Republic of Korea were on a continued rise (53.9 per cent of female activity rate and 52.2 per cent of women in employment in 2009 and 55.6 per cent of female activity rate and 53.9 per cent of women in employment in 2013). The percentage of women workers and managers has risen steadily in workplaces which are subject to the Government’s affirmative action scheme, with 36 per cent of women workers and 17 per cent of women managers in 2013. The proportion of women workers in the public sector has also increased, with 42.7 per cent of women public officials and 27.7 per cent of women appointed in central agencies in 2013. Moreover, the use of paid maternity leave (up to 90 days) and childcare leave available to those with a child under the age of 6 has increased. In this respect, 90,507 women took maternity leave in 2013 and 69,616 workers took childcare leave in 2013.

Respecting the supervisory activities of labour inspectors concerning discrimination against non-regular workers, in 2013, the Government inspected a total of 1,112 workplaces which employ a large number of non-regular workers, such as fixed-term, dispatched and in-house subcontracted workers: 991 were found to have committed 4,468 violations of labour laws, 54 cases were sent to the prosecutor’s office; fines were imposed in nine cases; and administrative action was taken in 123 cases. Most cases involved violations of the Labour Standards Act or the Minimum Wage Act, and other cases included 589 violations of the Act on the Protection of Dispatched Workers and there were 213 violations of the Act on the Protection of Fixed-term and Part-time Employees.

In addition, before the Committee, a Government representative said that the Government had been making every effort to respect, promote and implement the principles and rights enshrined in the Convention and highlighted the Korean Government’s legal amendments and policy measures to eliminate discrimination in employment and occupation. The Act on the Protection of Fixed-term and Part-time Employees and the Act on the Protection of Dispatched Workers had been revised in March 2013 and March 2014 to ensure that the working conditions and fringe benefits of fixed-term and part-time workers were guaranteed against discrimination and to establish a punitive monetary compensation system to address repeated or wilful discrimination. In December 2013, the Enforcement Decree of the Act on Equal Employment and Support for Work-Family Reconciliation had been amended and the minimum proportion of women employees and managers which was used as the criterion to impose affirmative action obligations had been raised from 60 per cent of the average number of women workers for the same industry to 70 per cent. Under the revised Act on Equal Employment and Support for Work-Family Reconciliation in January 2014, a list of employers failing to comply with affirmative action obligations would be made public beginning in 2015. In February 2014, the Government had announced a plan to help working women, who were married or had children, maintain their careers. Under the plan, it had become possible for people entitled to childcare leave to ask instead for a reduction of their working hours. Moreover, the Act on the Employment of Foreign Workers had been amended in 2013 to require “departure guarantee insurance” benefits to be paid to foreign workers within 14 days after the date of departure. With regard to equality of opportunity and treatment between men and women, the Government supported the development of women through a vocational voucher system to enhance women’s employability, and to help them return to work. Furthermore, the Government had announced Support Measures for Working Women’s Career Continuation at Every Stage of Life on 4 February 2014, aiming to reduce the childcare burden of women, increase men’s participation in childcare, and create a working environment that engendered a healthy work–family balance. The Government, all public institutions and businesses with 500 employees or more, were taking affirmative action to tackle discrimination against women. Since an affirmative action programme had been introduced in 2006, the employment rate of women had increased from 30.8 per cent in 2006 to 36 per cent in 2013, and the percentage of women managers had increased from 10.2 per cent in 2006 to 17 per cent in 2013.

The Government representative indicated that, since the adoption of the Measures for Non-regular Workers in the Public Sector in November 2011, 22,069 non-regular workers engaged in permanent and continuous work in the public sector had become workers with open-ended contracts by 2012, increasing to 31,782 in 2013. The
Government had revised the Act on the Protection of Dispatched Workers in August 2012 to require employers to directly and immediately hire illegally dispatched workers identified by the labour inspection. As a result, 2,489 people in 2012 and 3,800 people in 2013 had been directly hired in accordance with government orders. The Government had also made it mandatory for companies with more than 500 employees to announce their current status of employment types starting from 2014 to encourage companies to convert non-regular workers into regular status. The Government planned to introduce the Guideline for Non-regular Workers’ Employment Security and Conversion into Regular Status in 2014. With regard to migrant workers, EPS workers were allowed to change workplaces if certain criteria provided for in the law were met. Every year, the Government inspected approximately 5,000 workplaces which employed migrant workers, issued corrective orders and imposed sanctions against violations of labour laws to protect the rights of migrant workers. With regard to discrimination based on political opinion, he recalled that in 2012 the Constitutional Court had ruled that the prohibition and restrictions on political activities of public officials, including school teachers, was constitutional. In conclusion, the policy measures of the Government were designed to eliminate discrimination in a way that was most appropriate within the framework of the national context and practices of the Republic of Korea, in accordance with Article 3 of the Convention. He added that the Government would continue to move forward in consultation with various sectors, including the tripartite constituents, for sustainable growth and social development.

The Employer members recalled that this case was being examined for the third time since 2009. In 2013, the Committee had concluded that the Republic of Korea should take steps in three areas to prevent or bring discriminatory practices to an end with respect to migrant workers, women, and primary and secondary school teachers. With respect to the EPS, migrant workers were allowed to change jobs when they were subject to unfair treatment. Foreign workers could file a complaint with the National Human Rights Commission (NHRC) and submit the outcome of the decision to their respective job centre, which could authorize the migrant worker concerned to change employment or carry out an inquiry into the grounds of discrimination. Only six cases had been brought before the NCRC, and five had been dismissed. As stated by the Employer members in 2013, these figures confirmed the difficulties of migrant workers to assert their rights for reasons linked to linguistic and cultural differences. They encouraged the Government to continue its efforts to ensure that migrant workers had access to the information and assistance needed to handle impartially discrimination cases that were based on nationality, religion, gender or disability, as provided for under the legislation. Furthermore, they were of the opinion that the arrangements in place worked well because the Government had provided specific data on the number of workplaces inspected, the number of violations and the steps taken to make migrant workers aware of the applicable legislation and procedures of redress for both foreign and national workers.

With regard to discrimination against women, an increasing number of enterprises were changing the status of irregular workers to regular workers, and labour inspections had been carried out on a regular basis since 2012. The Government had therefore taken a number of measures to curb irregular employment. The fact that these measures mostly affected women, who accounted for a large share of irregular employment, did not mean that they could systematically be qualified as discrimination. However, as requested by the Committee of Experts, more specific information on this matter would be relevant to be able to assess the impact of the measures taken on women’s employment. With regard to equality of opportunity and treatment, the Employer members noted that a number of positive action mechanisms were operating in the Republic of Korea, such as the obligation for enterprises employing more than 500 workers to publish information on the number of women employed and women managers. The system of honorary equal employment inspectors also operated. Although additional measures could be taken, the current ones were developing in the right direction with a view to increasing the activity rate of women and putting a stop to all forms of discrimination towards them. They encouraged the Government to continue with this course of action. Referring to a ruling by the Supreme Court on the participation of teachers in political activity (2012), the Employer members felt that the political neutrality of teachers in primary and secondary schools was justified when this principle applied in the education sector. When the principle of political neutrality was applied outside this sector, it should be justified on the basis of specific criteria and objectives linked to the requirements of a particular job, because it was likely to constitute discrimination based on political opinion. In 2013, the Employer members had asked the Government to provide information on the matter. They therefore called on the Government to ensure that the principle of neutrality was thus defined and that the requirement of teachers’ political neutrality was justified on the basis of specific and objective criteria in accordance with Article 1(2) of the Convention. They also asked the Government to take the necessary steps to protect teachers against discrimination based on political opinion.

The Worker members deeply regretted that serious violations of the Convention had continued in the Republic of Korea. They protested against the arrest of the General Secretary of the Korean Confederation of Trade Unions (KCTU) following his participation in a march calling on the Government to take responsibility for the recent ferry disaster. His arrest undermined the ability of the KCTU to carry out its important work as a national centre and to participate fully in the work of the ILO. The Government had been urged in 2013 to avail itself of ILO technical assistance, which it had not done, in order to bring its laws and practice into line with the Convention. Migrant work was regulated under the EPS. Concerns had been expressed about the system and steps should be taken to improve to the conventions of the ILO. Given the current situation, the Government was once again urged to take steps, in collaboration with employers’ and workers’ organizations, to protect migrant workers from discrimination. The EPS legislation did not expressly prohibit changes of workplace; however various restrictions made the process difficult in practice. Migrant workers were only allowed to change their job a total of three times in a three-year period. In addition, their employer had the authority to deal with cases without release permission was not granted, migrant workers who left their jobs lost their regular migration status. The job centre had the authority to deal with cases without release papers. In such instances, however, the burden of proving discrimination fell entirely on the migrant worker. Although a Ministry of Labour directive covered such cases, the Employers had noted that it was still not entirely clear how jobcentres “objectively recognized” a victim of discrimination. Korean labour law imposed a ban on political expression by civil servants and certain teachers, which had been denounced by the ILO on several occasions. They once again urged the Government to take steps to ensure effective protection against discrimination based on political opinion, in particular for pre-
school, primary and secondary school teachers. The Korean Constitutional Court had ruled in March 2014 against the Korean Government Employees Union (KGEU) and the Korean Teachers and Education Workers’ Union (KTU), two public sector unions that had filed a complaint to strike down the ban on political expression. In November 2013, the Government had used the excuse of an alleged lack of political neutrality to delay warrants to search and seize the servers of the KGEU and KTU. The prosecutor’s office had conducted a second search on another server and had inspected personal telephone records. A third search had been conducted on another seven servers, which was not included in the warrant. It was clear that the seizure had had no other purpose than to harass and intimidate KGEU leaders and members. TheKTU had been deregistered because the union allowed dismissed and retired workers to be members, even though the ILO had repeatedly reaffirmed that workers were entitled to be union members. A final decision on this case was expected in June 2014. The KGEU had never been registered for the same reason.

Over a third of the workforce was in some form of precarious work. This had created a two-tier labour market with a huge gap between regular and non-regular workers. Many workers earned roughly 40 per cent less than regular workers doing the same or similar work. Women workers were disproportionately affected. The seriousness of the problem had been noted by the international community, including the International Monetary Fund (IMF). Women’s participation in the labour force was the lowest in the Organisation for Economic Co-operation and Development (OECD), at about 60 per cent, which was 23 per cent below Korean men. The gender earnings gap was also the highest in the OECD. Indeed, the Committee of Experts had observed many times that the concentration of women in precarious forms of employment violated the country’s obligations under the Convention. The Worker members urged the Government to take the necessary measures to protect fixed-term, part-time and dispatched workers against discrimination, and particularly women, and to provide information on the impact on precarious employment of the measures adopted in 2011, including the measures to convert non-regular employment into regular employment and measures for the protection of subcontracted workers. The trade unions had yet to see any progress on the regularization of workers engaged under precarious work conditions. The Employer member of the Republic of Korea expressed concern that the EPS still did not provide migrant workers with adequate flexibility to change employer. In addition, on 29 July 2014, the amended provision regarding severance pay of the Act on Foreign Workers’ Employment would enter into effect. After this, migrant workers with adequate flexibility to change employer. In addition, on 29 July 2014, the amended provision regarding severance pay of the Act on Foreign Workers’ Employment would enter into effect. After this, migrant workers with adequate flexibility to change employer. In addition, on 29 July 2014, the amended provision regarding severance pay of the Act on Foreign Workers’ Employment would enter into effect. After this, migrant workers would only be paid severance pay “within 14 days after the departure date”, whereas up to now they was considered to be directly employed. Increased labour market regulation had made the labour market more rigid, which had led employers to hire more non-regular workers to adapt to the changing business environment. Regarding equality of opportunity between men and women, she agreed that women’s economic participation rate was low. In order to increase their participation, it was necessary to take into account a large spectrum of different types of employment. By doing so, work–life balance could be achieved. It should also be taken into account that some women had voluntarily opted to become non-regular workers for reasons of maintaining a work–life balance. In general, women’s wages were lower than men’s, but that was a result of many factors, rather than just discrimination. For example, many women preferred to work part time because of childcare responsibilities, and in this case their working hours and work experience would be less than that of men. Moreover, the law already required certain companies to apply affirmative action and the Republic of Korea was the only country in Asia which required companies to do so. The level of regulation was also higher than that of other advanced nations. Lastly, regarding discrimination on the basis of political opinion, she reiterated that in the Republic of Korea civil servants and teachers were asked to remain politically neutral. This, however, did not mean that they had to give up political freedom. Rather they were requested not to show their political views when performing their profession.

A Worker member of the Republic of Korea indicated that, despite the conclusions adopted by this Committee in 2009 and 2013, no tangible improvements could be noted. Precarious workers, the majority of whom were women, accounted for 50 per cent of the total workforce and 78 per cent of the workforce in those workplaces with fewer than five employees. Women non-regular workers earned 35.5 per cent of men’s wages. While 84 to 99 per cent of regular workers were covered by social security, only 33 to 39 per cent of non-regular workers were covered by such schemes. Similar situations existed with respect to severance pay, bonuses and overtime pay. This important wage gap between regular and non-regular workers was the consequence of serious flaws in the existing legislation. It was also extremely difficult for precarious workers to seek redress as they feared retaliation by employers. Employers generally terminated employment contracts before the completion of a statutory period that would allow fixed-term workers to be considered as regular workers. Furthermore, workers in various special employment arrangements were not covered by the legislation, and were thus denied appropriate working conditions and social protection. The Government should take all necessary steps to bring the relevant law and practice into line with the Convention, in particular with respect to effective access of these workers to remedies. The Labour Standards Act should provide for direct employment by the user company and all workers should be covered by industrial accidents insurance and provided with equal training opportunities. In this regard, it should be noted that in the recent ferry disaster, which had claimed 300 lives, more than two-thirds of the crew members were contract workers.

Another Worker member of the Republic of Korea expressed deep regret at the lack of improvement in the implementation of the Convention. Indeed, the situation had been exacerbated. The EPS still did not provide migrant workers with adequate flexibility to change employer. In addition, on 29 July 2014, the amended provision regarding severance pay of the Act on Foreign Workers’ Employment would enter into effect. After this, migrant workers would only be paid severance pay “within 14 days after the departure date”, whereas up to now they
had received the payment within three days of leaving their job, regardless of whether they left the country. Turning to the situation of non-regular workers, she indicated that discrimination and exploitation of indirectly employed workers had become an issue of national importance when a subcontracted worker had committed self-immolation in October 2013. Companies, especially major conglomerates, were using subcontracting in this type of employment in order to circumvent labour regulations, and this practice was increasing the number of precarious workers. Workers in indirect employment were discriminated against despite the fact that they were doing the same work as regular workers. This year, the Government had strengthened the penalties and introduced punitive damages against employers who discriminated against precarious workers. While the Government considered this to be an improvement, in reality penalties and punitive damages were imposed only in cases in which the Labour Relations Commission found discrimination following a complaint by an individual worker. Since trade unions were still not allowed to represent individual precarious workers, those workers had no access to effective remedies. She also drew attention to the very high number of fatal industrial accidents incurred by indirectly employed or subcontracted workers, and regretted the death of eight subcontracting workers during work in the past two months. Under the Occupational Safety and Health Act, subcontracted workers were not equally protected against industrial accidents, even when doing the same job at the same workplace. In practice, subcontracted workers did not have safety equipment and could not participate on an equal footing with other workers in the council or investigation body on occupational safety and health. In order to end the increase in the death toll of precarious and especially subcontracted workers, all workers should be protected under the same system without discrimination. The Committee’s conclusions the previous year had not been implemented and the Government was in violation of many other ILO standards, which had required an urgent ILO intervention four times within a year. A direct contacts mission was therefore inevitable to address discrimination against precarious workers, she said that under the EPS, introduced in 2004, an employer had complete control over migrant workers. Migrant workers could not change employers, and this restriction increased the risk of exploitation and abuse in the workplace. The Government had also suppressed the trade union rights of migrant workers, and since 2005, most leaders of migrant trade unions had been deported. Following an intervention of the courts, the migrant workers’ trade union had been registered, but the attitude by the Government remained suppressive. Despite having passed a Korean language test in order to enter the labour market, migrant workers were not treated as workers. The EPS called on the Government to develop a plan for the gradual direct employment of subcontracted workers with permanent jobs. She called for an ILO direct contacts mission to achieve real progress, based on the application of the relevant ILO Conventions, which had become more relevant given the export of the Korean model of precarious work to other countries by large Korean companies.

An observer representing Education International addressed two issues affecting teachers and the KTU. The first concerned the fact that teachers did not enjoy civil and political rights, unlike lecturers in higher education and other citizens. In that regard, the Committee of Experts on Freedom of Association had called on the Government to repeal the provisional prohibiting dismissed and unemployed workers from keeping their union membership. Until now the KTU, of which nine members had been dismissed, had reformed its legal status, but on 19 June 2014 the decision on the legal status of the union would be issued. Regarding the KGEU, the decision of the Supreme Court to support the Government’s refusal to register the union was a matter of concern. In March 2014, the Committee on Freedom of Association had urged the Government to take necessary measures to ensure the certification of the KGEU. Education International was especially concerned about the avalanche of judicial decisions that undermined respect for ILO Conventions and narrowed the scope of union activities in the Republic of Korea. The Government should once again be asked to respect international labour standards by giving all teachers civil and political rights.

An observer representing Public Services International (PSI) raised the issue of deeply entrenched discrimination against precarious workers in the public sector, where a 70 per cent employment rate was envisaged through deregulation, cost cutting and efficiency maximization. These measures were part of a plan to expand part-time jobs, targeted at 3 per cent of newly hired civil servants in 2014. These lower paid, lower status jobs predominantly targeted women workers. This policy deepened discrimination between men and women, and had a negative impact on the quality of public services. Since the election of the new President of the Republic, short-term contracts for directly employed public sector workers were converted into permanent contracts after the completion of two years of continuous employment. This measure however only targeted one third of the total of one million precarious workers in the public sector, and did not eliminate wage discrimination against these workers or enhance their job security. The measure had also resulted in an artificial reduction of the duration of short-term contracts with the aim of avoiding completion of two years of continuous employment. She referred to the Sewol ferry tragedy of 16 April 2014, which had its origins in deregulation, outsourcing and privatization policies, and the expanded use of precarious workers. To genuinely address discrimination against precarious workers, she called on the Government to develop a plan for the gradual direct employment of subcontracted workers with permanent jobs. She called for an ILO direct contacts mission to achieve real progress, based on the application of the relevant ILO Conventions, which had become more relevant given the export of the Korean model of precarious work to other countries by large Korean companies.

The Worker member of Nepal said that under the EPS, introduced in 2004, an employer had complete control over migrant workers. Migrant workers could not change employers, and this restriction increased the risk of exploitation and abuse in the workplace. The Government had also suppressed the trade union rights of migrant workers, and since 2005, most leaders of migrant trade unions had been deported. Following an intervention of the courts, the migrant workers’ trade union had been registered, but the attitude by the Government remained suppressive. Despite having passed a Korean language test in order to enter the labour market, migrant workers were not treated as workers. The EPS called on the Government to develop a plan for the gradual direct employment of subcontracted workers with permanent jobs. She called for an ILO direct contacts mission to achieve real progress, based on the application of the relevant ILO Conventions, which had become more relevant given the export of the Korean model of precarious work to other countries by large Korean companies.
The Government representative said that, although the labour legislation applied equally in principle to Korean workers and migrant workers covered under the EPS, it nonetheless allowed for a certain flexibility given the varying characteristics of these workers. Both the 1958 Report prepared with the view to the adoption of Convention No. 111 and the 1996 Special Survey on equality in employment and occupation noted that the concept of national extraction in the Convention did not refer to the distinctions that might be made between the citizens of a given country and persons of another nationality. Furthermore, the direct comparison between the severance pay of Korean nationals and the departure guarantee insurance provided for under the EPS was not appropriate. Although the departure guarantee insurance constituted a way of ensuring severance pay for foreign workers, it also set out to prevent any delays in payment and to secure a livelihood for these workers once they had left the country. The burden of proof did not lie solely with the workers. If a worker under the EPS submitted evidence, the local job centre made a judgement primarily on the basis of that evidence. However, in the event of no or insufficient evidence, the job centre itself tried to gather together the facts in its possession. In addition, the Government was implementing various measures to facilitate the non-payment of the Government was implementing various measures to facilitate the entry of non-regular workers into regular employment. In this respect, enterprises with over 300 employees were bound now to provide statistics on the various work contracts applicable to their staff. This year, the Government was planning to establish guidelines to help non-regular workers enter regular employment and to encourage those workers to accept the guidelines voluntarily. It also intended establishing its role as a model employer. As stated in the 1996 Special Survey of the Committee of Experts, the Convention did not contain any specific provision concerning the right to establish trade unions, thereby avoiding any overlap with Convention No. 87. There was therefore no need to go into detail on the issues related to the so-called KGEU and the KTU. It should nonetheless be noted that the measures taken by the Government with respect to the KGEU and the KTU were both lawful and legitimate. In conclusion, he hoped that the Committee of Experts would continue to support the effective implementation of the Convention within the specific scope of the instrument and recalled the Government’s firm commitment to eliminate all forms of discrimination in employment.

The Employer members considered that problems related to discrimination in the implementation of the Convention, even though it should be recognized that steps had been taken by the Government with regard to discrimination likely to affect migrant workers, workers in precarious employment, women and also public sector teachers. Before any proposal was made to send a direct contacts mission, the Government needed to step up its efforts and its cooperation with the ILO to take account of the observations of the Experts concerning the various situations that might generate discrimination, including discrimination concerning access to legal remedies for migrant workers and discrimination on the basis of political opinion affecting teachers in the public education system.

The Worker members recalled that the Government and Employer members had provided information on the measures taken to address discrimination in the country, while several Worker members had indicated that important steps still needed to be taken. Migrant workers still faced discrimination in the country, and many public sector workers were prohibited from expressing their political opinion, in violation of the Convention. The Government was not relieved of its obligations under the Convention, even if the decision by the Constitutional Court was inconsistent with the Convention. Even with the amendments made to the legislation on dispatch workers and fixed-term workers, a large portion of the Korean workforce continued to be trapped in low-paid insecure jobs. They urged the Government to respect the civil and political rights of all teachers, to reinstate teachers dismissed for exercising freedom of speech and to allow dismissed and retired workers to be members of a union. They also urged the Government to take the necessary measures to ensure the re-registration of the KGEU and to facilitate the registration of the KGEU. Moreover, they called on the Government to ensure that migrant workers were able, in practice, to change workplaces when subject to violations of the anti-discrimination legislation, that the legislation protecting migrant workers from discrimination was fully implemented and enforced and that migrant workers had access, in practice, to speedy complaints procedures and effective dispute resolution mechanisms. They also urged the Government to extend the scope of the labour law to the agricultural sector, where the majority of migrant workers employed under the EPS were working. They also urged the Government to ensure immediate measures to regularize the employment of non-regular workers, so as to eliminate employment discrimination against fixed-term, part-time, subcontracted and dispatched workers. Discrimination had a serious and lasting impact on workers’ wages, employment security and social protection, particularly for women workers. Lastly, they urged the Government to accept a direct contacts mission to ensure that the observations and conclusions of the supervisory system, which had been reiterated on repeated occasions, were adequately addressed, and that the offer of technical assistance was re-extended, if necessary.

Employment Policy Convention, 1964 (No. 122)

Mauritania (ratification: 1971)

A Government representative recalled that Mauritania had been an ILO Member since 1961 and had ratified some 40 international labour Conventions, including the fundamental Conventions and a number of priority Conventions, including Convention No. 122 in 1971. In response to the observations made by the General Confederation of Workers of Mauritania (CGTM) in September 2013 concerning the lack of consultations with trade unions, he indicated that the claims made by the trade unions to the Labour Department on 1 May 2014 had been communicated to the Council of Ministers and that the commencement of negotiations was imminent. Given the absence of a national employment policy as referred to by the CGTM, the Government was stepping up its policy to further reduce poverty and to promote employment by means of important sectoral programmes, which had already had a positive impact on reducing unemployment to 10.1 per cent, down from 31 per cent in 2008, according to the employment survey that had just been conducted by the National Statistics Office with ILO technical support. From the viewpoint of strategic guidelines, the Ministry of Employment, Vocational Training, Information Technologies and Communication (MEFTC) intended henceforth to play a more active role with a view to organizing, monitoring and helping other actors involved in employment promotion in order to avoid a duplication of efforts. Focal points, appointed in each ministry, would be entrusted, in close cooperation with the Employment Directorate, with providing input to the database administered by this Directorate in order to establish a global and integrated information system on employment and vocational training. A short-, medium- and long-term action plan had been prepared by the MEFTC and adopted by the Council of Ministers. It envisaged the following actions and
measures: the updating and adoption of the national employment promotion strategy and its operational implementation plan; the establishment of a National Council of Employment, Technical and Vocational Training to guide policies and ensure their implementation; the establishment of a coordinating mechanism with the various departments to integrate the “employment dimension” in sectoral strategies and action plans, paying particular attention to sectors that were potentially job-generating (construction and public works, stockbreeding, agriculture, fishing, mining, tourism, etc.); the launching of the national information system that would make it possible to initiate, follow up and evaluate employment and vocational training policies and their implementation; the introduction of an agreement establishing a partnership framework between the MEFTC and the employers; and the setting up of a mechanism for dialogue, the sharing of experiences, and participation of the social partners in the design and validation of strategies and action plans. The Government was also including small and micro-enterprises (SMEs) in a strategy in which they played a priority role in developing self-employment, to structuring informal production units and providing an appropriate framework for clients of microfinance. In order to promote SMEs, the Government had taken the following measures: the setting up of a service entrusted with promoting SMEs within the MEFTC; the agreed updating of the national promotion strategy of SMEs for the 2014–18 period and its endorsement by all the public, private, technical and financial partners concerned; the reorganization of the institutional framework of the National Programme for Insertion and Support to the SMEs, with the inclusion in the steering committee of representatives of the State, those of the private sector (the employers and the Chamber of Commerce); and the registration of priority activities for setting up 1,000 SMEs.

With regard to the promotion of labour-intensive employment, a package of measures had been taken to incorporate an “employment objective” in all development programmes, to implement a number of specific programmes for integrating unemployed persons with qualifications into the agricultural, construction, fishing and environmental sectors, and to introduce a public service to improve assistance for jobseekers. Measures had also been taken to transform the project to promote stonecutting into a sustainable public enterprise, and to give priority to labour-intensive methods in the construction of roads and buildings, and the installation of water and electricity networks. In order to introduce a system of technical and vocational training (FTP), training and professional development centres had been rehabilitated and their equipment upgraded. In addition, 54 teachers and 50 temporary trainers had been recruited, 34 study programmes had been established, and training courses had been diversified, especially by introducing short-term training programmes leading to certificates which had already benefited 1,500 young people. Two new multi-skilled training schools had been established and grants had been disbursed, of which 70 were for training abroad. Although these measures had doubled the capacity (5,200 trainees in 2013, compared with 2,280 in 2008, excluding short-term skills training courses) and had improved, to a lesser extent, the quality of the service, they had not adequately met employment market and social demands. The main objective was to achieve by 2020 an upgrading of the FTP both from the qualitative and quantitative standpoint in order to achieve an appropriate capacity (15,000 places in training leading to diplomas and 35,000 places in short-term training programmes). The objectives would be revised in the light of the labour market survey and an in-depth appraisal of needs and potential of growth sectors. While waiting for the strategy to be updated, a short- and medium-term action plan had been proposed to deal with constraints linked to implementation, human resources, infrastructure, equipment, training programmes, financing and public-private partnerships. The Government was currently in discussions with the International Labour Office with a view to benefiting from strengthened technical assistance to establish an employment policy that would respond to the country’s objectives.

The Worker members recalled that Convention No. 122 expressed the will of member States to achieve full, productive and freely chosen employment and required ratifying States to formally adopt a specific employment policy. The approach set out by the Government representative did not give full effect to the Convention. In its observation, the Committee of Experts referred to the comments of the CGTM which regretted the absence of a national employment policy and of consultations with the social partners. The CGTM also deplored the removal of employment and placement offices and the freeze on recruitment in the public service (except to replace retirees). Although Mauritania was a poor country, it had a mining sector, agricultural resources and a significant fishing zone. According to the country’s trade unions, the greatest resources were exploited by multinational enterprises, and the economic benefits were not equally distributed among the population, which did not make it possible to create quality jobs. In that context, the Government could draw on the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

The Employer members recalled that the ILO Declaration on Social Justice for a Fair Globalization identified Convention No. 122 among the standards that were the most significant from the viewpoint of governance. In light of the wording of the requirements contained in Article 1 of the Convention, they considered that, while this promotional instrument required ratifying member States to adopt an employment policy, it did not specify the concrete contents of such a policy. This was appropriate, since the objective of full employment required broad and complex policy achievements in terms of economic policy (an adequate economic, political, social and legal environment, low inflation, low interest rates, guaranteed human rights, the enforcement of contracts and the security of property rights, etc.) and in terms of employment growth (employment-friendly social protection systems, a well-functioning labour market, etc.), which were factors that were only partly in the sphere of influence of ILO. Moreover, the policy mix and the appropriate type of employment policy depended on national conditions. Therefore, in the view of the Employer members, the role of the Committee of Experts and the present Committee was to examine compliance with the provisions of Convention No. 122, that is to verify that there was an express intention on the part of the State to ensure full and productive employment, that there were measures in place to seek to realize that intention, and that the social partners were being consulted on those policies and measures that fell within their sphere of influence. The Committee of Experts was not competent to judge the validity, efficiency or justification of the policies adopted and measures taken, nor to propose the policies to be adopted or the measures to be taken. In the context of the observations of the CGTM on the absence of an employment policy, and on multinational companies exploiting the mining, fishing and agricultural resources of the country without adopting policies to promote employment, the Committee of Experts had made reference to its 2010 General Survey on the employment instruments and had requested the Government to provide information on the measures taken to reinforce the institutions necessary
Employment Policy Convention, 1964 (No. 122)
Mauritania (ratification: 1971)

for the achievement of full employment. However, the relevant General Survey was much broader than the scope of Convention No. 122, as it also covered the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), and the related Recommendations. The Employer members believed that the current case should maintain its focus on Convention No. 122. They were also surprised to see a specific reference by the Committee of Experts to the MNE Declaration. While fully supporting the promotion of the MNE Declaration and its follow-up, the Employer members considered that these matters fell within the remit of the Governing Body. The Committee should therefore confine itself to examining the application of Convention No. 122, as it was not within the mandate of the Committee of Experts nor of the present Committee to discuss the MNE Declaration. They therefore requested the Committee to respect its own mandate, as well as the mandates of other ILO constitutional bodies. Reiterating that Convention No. 122 required governments to pursue an employment policy, consult the social partners and provide appropriate mechanisms for its review, the Employer members duly noted the concrete and exhaustive information provided by the Government representative.

Should the information be confirmed, they considered that the action taken by the Government satisfied its obligations under the Convention. The Committee should therefore invite the Government to submit the above information in writing, substantiating it with concrete facts and figures.

The Worker member of Mauritania emphasized that Convention No. 122 underlined the need for dialogue on employment policy. With regard to the issue of multinational enterprises, which had a strong link with employment, he deplored the fact that those enterprises, with disregard for the laws of the country, enforced 12-hour working days in mines. Moreover, the country only received 4 per cent of the profits of the multinationals, whereas redistribution averaged 37 per cent at the global level. Although there could not be full employment without growth, there could well be growth that did not benefit employment. Action was required to redistribute the benefits of growth. With its vast territory, small population, rich mineral deposits and long coastline, Mauritania had significant potential. However, the Government’s policies on mining and fishing were catastrophic for the country. Fishing licences granted to, among others, the Russian Federation and the Russian Federation led to the plundering of resources. Of the thousands of new jobs in the industrial fishing sector, only 2,000 had been created in the country. Moreover, the agricultural potential was not being exploited, and stockbreeding continued to be marginalized. In 1994, a National Employment Strategy based on consensus had been developed, with ILO technical assistance and in consultation with workers’ and employers’ organizations and civil society organizations. In 1995, many had protested at the imbalance between employment policy and training policy. Despite being approved in 1996, the employment policy had been put aside. In 2004, during the revision of the Labour Code, the state authorities had abolished employment offices without consulting the National Labour Council, thereby causing the loss of statistics on jobseekers and employers’ organizations and civil society organizations. In 1995, many had protested at the imbalance between employment policy and training policy. Despite being approved in 1996, the employment policy had been put aside. In 2004, during the revision of the Labour Code, the state authorities had abolished employment offices without consulting the National Labour Council, thereby causing the loss of statistics on jobseekers and employers’ organizations and civil society organizations. In 1995, many had protested at the imbalance between employment policy and training policy. Despite being approved in 1996, the employment policy had been put aside. However, the reserve of natural resources could not be full employment, with technical assistance from the ILO would be welcome.

The Worker member of France recalled that Mauritania was classified as a low-income country in terms of GDP. Although poverty affected all of the population, it was more pronounced in rural areas, and particularly among women, who worked predominantly in the informal economy, and who therefore had little security and protection. The employment situation continued to be of concern: levels of unemployment were high, informal employment was predominant, the social protection system was weak, high population growth, low prospects of economic growth, the weak link between growth and employment, and the lack of any employment strategy. According to the five-year employment programme (2010–14), the situation derived from a profound change in the structure of the economy and the labour market dating from the 1990s, reflected particularly in the decline of the primary sector, the limited development of the secondary sector, that was dominated by large industrial units that depended on export expansion, and the expansion of the tertiary sector, which mainly benefited foreign workers. Gaining access to information on job vacancies was also very difficult, while recruitment in the public service had dropped significantly because of a deliberate attempt to reduce employment and restore public finances by means of programmes backed by the International Monetary Fund and the World Bank. She called on the Government to establish an integrated system of labour statistics, by date and region, which could provide an objective basis for public decent work policies. The implementation of these policies would serve to promote social dialogue. A concerted and consensual national employment strategy, deriving its legitimacy from social dialogue, was urgently needed to defend the country against the blackmail practiced by multinational enterprises by imposing an unacceptable system of overtime that undermined the labour market and exhausted the workers. Training should also be a priority, so that those who were most vulnerable in terms of unemployment, especially women and young people, could acquire the skills they needed to find employment.

The Government representative stated that the Government was committed to consultation and social dialogue and that, in line with the requests made by the Employer and Worker members, the information that he had provided in his opening speech on Convention No. 122 would be included in the report to the ILO and included in the report on the application of the Convention. Regarding the situation of employment in the country, it should be recalled first of all that the 10 per cent unemployment rate disputed by the Worker members had been established by a recent study carried out by the National Statistics Office, in collaboration with the ILO Office in Dakar. Moreover, to create jobs, investment was necessary and, to attract investment, the rights of foreign investors, as well as those of workers, had to be guaranteed. Foreign workers and national workers were treated in the same way. Foreign workers possessed qualifications that were not found among the national workforce but, in the context of the policy of the “Mauritanization” of employment, they were obliged to train Mauritanian workers for the posts that they occupied. In 1994, an employment strategy had indeed been adopted, but it had been based on an inadequate training strategy. The decision had therefore been taken to separate training and employment. Training policy now focused on vocational training with a view to meeting the needs of the labour market. Regarding recruitment to the public service, more than 8,000 jobs had been created since 2008.
The Employer members said that Convention No. 122 dealt with development issues. The Convention stated that members “shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. For that to be achieved, certain conditions first had to be in place, such as the necessary legal framework, infrastructure and a training framework that corresponded to the needs of the labour market. They looked forward to receiving concrete information from the Government in order to evaluate the progress that had been achieved, bearing in mind that there was always room for improvement. The Employer members were ready and willing to discuss with the Worker members any problems that might arise, but that discussion should take place in the appropriate forum. A discussion of multinational enterprises in Mauritania belonged in the Governing Body in the context of the MNE Declaration and its follow-up. The current discussion was not, and should not be turned into a legal discussion on the application of the Convention.

The Worker members thanked the Government representative for the information provided on the employment measures which had been adopted, noting that it would be included in the report to be examined by the Committee of Experts. Returning to the statement made by the Employer members, the Worker members emphasized that it was clear that there was no confusion between the role and competencies of the Governing Body and those of the present Committee. In referring to the MNE Declaration, the Worker members were not seeking to take the place of the Governing Body. For them, the present Committee had two functions: to analyse and to supply information, inter alia, information from trade unions. That was the context in which the reference to the MNE Declaration had been made. Regarding multinational enterprises in the mining, agriculture and fishing sectors in Mauritania, the issue was the redistribution of profits to the population, particularly in terms of job creation. It should be noted that the issue had been mentioned by the Government representative himself. The Worker members supported the Government’s request for technical assistance and emphasized the importance of government decisions being converted into specific actions in order to develop a genuine employment policy that was based on dialogue and had an impact on people’s day-to-day lives.

A Government representative stated that his Government had adopted active policies to reform the labour market as part of the Economic and Financial Adjustment Programme established to revive sustainable employment and consequently reduce unemployment, where a positive trend had been emerging since the end of the first quarter of 2013. According to the data provided by the National Statistics Office, the employment rate in the first quarter of 2013 was 48.8 per cent and of 50.2 per cent in the fourth quarter. In 2013, between the end of the first and fourth quarter, a total of 114,000 jobs had been created. In the first quarter of 2014, the employment rate was 49.8 per cent and 72,300 jobs had been created in comparison with the first quarter of 2013. The rate of full-time employment had increased in comparison with that of part-time employment, and the number of contracts of indefinite duration had risen by 3.5 per cent in comparison with the first quarter of 2013. There was also a clear downward trend in unemployment, which had continued for four consecutive quarters. The unemployment rate, which had stood at 17.5 per cent in the first quarter of 2013, had fallen to 15.1 per cent in the first quarter of 2014, which meant a 138,700 drop in the jobless total in one year. According to EUROSTAT data, that trend was holding in 2014. In April 2014, with the unemployment rate standing at 14.6 per cent, Portugal was recording the second largest drop in unemployment in the European Union. The youth unemployment rate had fallen by 4.2 percentage points since the first quarter of 2013 and in April 2014 it had stood at 36.3 per cent, which corresponded to a reduction of 16,000 in the number of unemployed young persons in one year. The Government’s action in the sphere of employment policy followed the specific guidelines and measures contained in the agreement entitled “Commitment to growth, competitiveness and employment”, concluded between the Government and the social partners in January 2012. The “Programme for the relaunching of the public employment service” was an example of the measures adopted under the agreement and provided for a comprehensive rationalization of active employment measures in collaboration with the social partners to give better support to unemployed persons and active workers. The public employment service was tripartite and played a key role in combating unemployment and in job creation, employment promotion and vocational training. The Government referred to the establishment in March 2012 of an integrated, cross-cutting strategy with the prime goal of ensuring that the adjustment was more efficient and effective employment service to place people in jobs. By comparison with 2012, there had been a 49 per cent rise in job vacancies and an increase of 43.5 per cent in job placements in 2013. Between January and April 2014, employment rose above 52.4 per cent and job placements increased by 49.4 per cent. The Government also referred to two specific training measures, both taken with a view to avoiding long-term unemployment, which applied to 235,000 unemployed persons in 2013 and to 101,000 persons in January–April 2014.

Regarding youth unemployment, specific programmes adopted since 2012 had benefited 100,000 young persons via internships, recruitment support, enterprise development and vocational training. A total of 35 per cent of young people who had undertaken training and 70 per cent of those who had embarked on internships subsequently managed to find jobs. The “National youth guarantee implementation plan” was currently under way. Measures to improve the business climate included financial support for self-employment and enterprise creation for the unemployed through enterprise creation support measures and the National Micro-Credit Programme, which had resulted in the creation of 1,090 jobs and the advance payment of unemployment benefits to finance self-employment, which had catered to 2,643 persons. In 2013, the number of new enterprises had increased by 15 per cent and the number of enterprises that had gone into liquidation had fallen by 30 per cent in comparison with 2012. The Government representative added that training needs at national, regional, local and sectoral levels were taken into account in planning the provision of training, following the analysis of training needs with the participation of the social partners.

The Employer members said that this was a difficult case in a number of respects. It was difficult for the Government, as it was required to respond to an economic and financial crisis in a manner that both stabilized its finances and raised productivity. For the social partners the challenge lay in their role in employment creation policies as well as the role of small and medium-sized enterprises. The case was also difficult for the Committee of Experts.
as this body was composed of lawyers who lacked the specific expertise of a labour economist or public policy expert. Therefore, the Committee of Experts rightly limited itself to asking questions and raising issues rather than providing dogmatic positions. As to the measures taken, the Government had not acted in a unilateral manner, as the majority of the social partners had agreed on the modifications introduced to the Labour Code as well as on a number of economic and employment adjustment programmes on the grounds of dialogue carried out at the national and regional levels. Although there had been some progress, it remained a case of concern due to the high level of unemployment. However, there existed a number of different policy paths available to meet the obligations of the Convention, which consisted in the proper functioning of the labour market with both high levels of employment and good quality occupations. In this regard, the 2013 Declaration of Oslo entitled “Restoring confidence in jobs and growth” correctly reflected the spirit of the Convention when it called for the need to establish policy coherence between social and economic measures in order to overcome the negative economic, social and political effects of the crisis. With regard to employment, the creation of the obligations of the Employer members were with regard to the creation of jobs that covered the basic rights and standards, and not to an assessment of whether these jobs provided the best employment conditions, skills or career opportunities. A country coming out of an economic and financial crisis had to focus on the creation of sustainable jobs in a strengthened labour market. The requirement of an active employment policy, set forth under the Convention, was tantamount to a policy that was created, conducted or financed by the State. There was no magic formula regarding active labour market policies and several elements could play a role in this respect, such as the promotion of self-employment and the financial stability of the markets. Turning to the issue of youth employment, they considered that some Government measures designed to create youth employment through public spending in training could result in discontent and loss of confidence in the training and skills system if it did not lead to real jobs. There was a need for a viable economic base suited to the creation of employment. In this respect, the creation of sustainable employment depended on the existence of enterprises that were subject to a policy that created a favourable environment for entrepreneurship. Turning to the creation of jobs in small and medium-sized enterprises had never implemented the agreement in a balanced way and had resorted instead to implementing labour reforms that was currently facing low economic growth, limited economic flexibility, rising unemployment and low wages. In 2012, most of the Government’s social partners had agreed to sign a tripartite agreement that gave priority to the creation of jobs in small and medium enterprises had the potential to increase the labour market capacity and policies to support such enterprises would act as a supplement to labour market policies in meeting the goals of the Convention.

The Worker members stressed that this case raised the issue of the compatibility of austerity measures with ILO standards. In this respect, reference should be made to Article 3 of the Convention, which was inspired by the basic values of the ILO, and to the Declaration of Philadelphia. The purpose of the Convention was not to grant individual or collective rights to workers, but to serve as a pragmatic instrument, recalling that the ultimate aim of the economy was to serve the cause of all human beings and not to enrich only a few. Contrary to what had been said, the issue was not about economic and social policy but within the legal context, about examining whether the policies being conducted complied with the principles of the Convention, which did not prevent the adjustment of social policy to meet economic needs. These principles allowed for an examination of the extent to which certain elements of social policy might be justified by these economic needs, especially in the event of cuts in pre-existing levels of protection, but also allowed for a discussion on their proportionality or the existence of alternatives. These were legal criteria, to which national and international jurisdictions had recourse on the basis of the principle of “non-regression” established by international and constitutional social standards. The current situation in Portugal raised the question as to whether the policy of cutting labour costs and labour rights was, in the end, favourable to employment. It was not evident that the Worker members’ position on this matter could serve as a basis for consensus for the drafting of conclusions. In addressing the highly complex issues under consideration, which are fully documented by the excellent report of the ILO’s interdepartmental team on the crisis in the European States, it might be worth searching for a compromise and the conclusions should refer to the Oslo Declaration of 2013 and to the mandate it gave to the ILO.

A Worker member of Portugal recalled that Article 1 of the Convention was in direct conflict with the policies leading to recession imposed by the Troika and by the Government of Portugal, which had led to the deterioration of the quality of employment, the devaluation of trades and careers, widespread job insecurity, unemployment (particularly in manufacturing), a succession of wage cuts and the reform of pensions. The official unemployment rate had reached 15.1–24 per cent if one included the underemployed, two-thirds of whom received no benefits whatsoever. Between 2011 and 2013 some 300,000 people emigrated, most of them young professionals. The determination to cut the budget deficit at all costs meant a decline in public investment and in the resources allocated to public services, health, social security and public education. The labour legislation had been amended to facilitate dismissals and make them less costly, to reduce the payment of overtime and to extend the length of fixed-term contracts. Social dialogue and collective bargaining were at a complete standstill and the Government had presented new proposals that undermined collective bargaining and encouraged further wage cuts. Labour was therefore devalued and underpaid and workers’ rights and freedom were at issue; two-thirds of job vacancies were for precarious jobs paying 580 euros a month. Meanwhile, tens of thousands of unemployed people were being recruited on integration contracts in the public administration where they were entitled only to unemployment benefits, which undermined decent work in the public service where wage cuts could be as much as 20 per cent. The minimum wage was still 485 euros and should be immediately reviewed. The austerity measures imposed by the Commission, the Council of Ministers and international institutions, and the ILO should devise measures to promote employment-generating policies in a spirit of social justice.

Another Worker member of Portugal observed that her country was going through one of the most difficult periods of its history, particularly from the perspective of employment promotion. The sole concern of Government policy was to reduce budget costs, and that had a devastating effect on the economy and the labour market. Austerity policies only made the situation worse in a country that was currently facing low economic growth, limited economic flexibility, rising unemployment and low wages. In 2012, most of the Government’s social partners had agreed to sign a tripartite agreement that gave priority to employment growth, which included proactive education and vocational training policies. However, the Government had never implemented the agreement in a balanced way and had resorted instead to implementing labour reform. The policies pursued under the guise of consolidating the budget showed clearly that its new objective was to modify the labour market and to cut labour costs. The results were well known: rising unemployment, particularly among young people; an increase in long-term un-
employment; a drop in employment rates; a reduction in active employment policies; and a decline in productivity. It was unacceptable that the Government should give priority to balancing the budget rather than to active employment policies in favour of the workers, and especially young people.

The Employer member of Portugal recalled the difficult situation that Portugal was facing, and stated that the Government and social partners had acted together to find responsible solutions during this period. The conclusion of the Tripartite Agreement for Competitiveness and Employment and the Commitment to Growth, Competitiveness and Employment was evidence of the social dialogue that had taken place. The Memorandum of Understanding, signed with the Troika had had a recessive effect, resulting in the closure of more enterprises, and there had not been any improvement in the labour market since this financial assistance had been launched. The Memorandum of Understanding had not considered some important factors in the country’s economy, and had contributed to further unemployment. Nonetheless, reforms took a long time to produce results, and the start of the recovery could now be observed. The revision of the Labour Code had been an attempt to adapt to the current financial circumstances of the country. The measures were innovative and had been approved by the four most representative employers’ organizations and one of the two most representative trade union confederations. Such changes would have an effect on new labour contracts in the future, which could lead to more jobs. It was not true to say that those measures had contributed to unemployment. In his opinion, the accusation was unfair that the reform had facilitated the termination of employment and had introduced flexibility in working time, and failed to take into account the important innovations introduced, which had been accepted by four employers’ federations and the General Workers’ Union (UGT). The other trade union federations had rejected the measures, even though they had participated in all the meetings. He recalled that enterprises were essential in the recovery as enterprises provided employment. While various measures had been taken, at a cost of more than 2 billion euros, it was not yet possible to calculate the impact of those measures. Moreover, such measures needed to be improved to be more friendly to both businesses and workers. Nonetheless, Portugal was on the right path towards respecting its obligations under the Convention.

The Worker member of Spain stated that the facts on the ground were impressive and the general situation in Portugal confirmed that the country was worse off in terms of poverty and inequity. The plight of young people was particularly alarming, and because of the lack of employment opportunities their prospects were bleak. Youth unemployment had risen dramatically in recent years and wages, where there were jobs to be had, barely covered basic needs. In 2012, the poverty rate had reached 24.7 per cent, which meant that almost a quarter of the population was living on less than 434 euros a month. Youth unemployment (workers under 25 years of age) had risen from 28 to 37.5 per cent. Young people were the largest group among the long-term unemployed and, as a result, were also the largest group to emigrate. More than 300,000 Portuguese workers had left the country between 2011 and 2013, even though most of them were highly skilled. This was bound to have disastrous consequences for the birth rate and for the sustainability of the social security system. Most of the unemployed, especially among younger workers, had no social protection; coverage for unemployed workers under 25 was only 7 per cent and for those between 25 and 34, where the employment rate was lowest, only 33 per cent. High unemployment and workers’ fear of losing their jobs encouraged exploitation and low wages. Priority should be given to employment creation, and austerity policies should be abandoned in the interest of young workers. The measures that were largely responsible for the difficult social and economic conditions of young Portuguese candidates for emigration needed to be corrected. It was vitally important that wages and pensions be improved, that social justice be promoted, that priority be given to the domestic market, that the minimum wage be increased and that workers’ rights be protected.

The Worker member of Brazil, speaking also on behalf of the Worker members of Argentina, Uruguay and Venezuela, recalled the founding principles of the ILO and referred to the fourth paragraph of the preamble of the Convention. Legal bodies, such as the Committee, did not have the political legitimacy to determine which economic and social policies were best in times of difficulties. However, the Committee had the obligation to analyse the implementation of standards, and that included the determination of whether or not a certain policy was in conformity with those standards. In that regard, the Government of Portugal was implementing an economic and social policy that was not in conformity with the Convention. With reference to Article 1 of the Convention, it was evident from the report of the Committee of Experts that there was a continuous growth in unemployment in the country, while social protection continued to fall. The austerity policies implemented in Portugal had not generated employment, had not contributed to the free choice of employment and had not contributed to the economic growth and development of the country. While the policy decision was the responsibility of the Government of Portugal, it was the responsibility of the Committee to examine its conformity with the Convention. In closing, the speaker referred to the success of his own country in combating the crisis by raising salaries and distributing income.

The Government member of France, speaking also on behalf of the Government members of Cyprus, Germany, Greece, Italy and Spain, indicated that all those Governments were actively engaged in a coordinated campaign to reduce unemployment, especially among young people. Portugal too was fully committed to the campaign and the Governments she spoke for wished to express their solidarity with the Government of Portugal in its efforts to overcome the crisis in particularly difficult circumstances. It was important to reaffirm the aforementioned Governments’ commitment to social dialogue, without which no long-term solution was possible, as was the case with countries aimed at productive and freely chosen full employment. The Portuguese Government was striving in that direction and would continue to do so. She concluded by recalling that the ILO played a major role in the multilateral system, that of promoting its international labour standards by means of increased collaboration with other multilateral organizations, especially the system’s economic and financial institutions.

The Worker member of France, speaking also on behalf of the Worker member of Italy, stated that the social indicators in the country were worrying in a context of increasing debt and the erosion of the public services, social transfers and collective bargaining, which would result in an increase of inequalities and a drop in wages in real terms. The Government’s cost-saving measures were seriously undermining the viability of the social security system and generating inequalities that threatened public safety, social stability and social, economic and environmental balances, thereby entrenching a whole generation in poverty and extreme precarity. The Programme of Economic and Financial Assistance, adopted in May 2011, had brought about a drop in the number of jobs in real terms, high unemployment rates, forced emigration, a
Employment Policy Convention, 1964 (No. 122)  
Portugal (ratification: 1981)

drop in fertility rates and the impoverishment of the country. Meanwhile, the Constitutional Court had ruled on eight occasions, most recently in May 2014, that the unprecedented measures adopted were unconstitutional, as they excluded any stimulus policy involving demand, job creation, public services or systems of solidarity and well-being for the population, in line with ILO standards, as advocated by the 2012 Oslo Declaration, which stated that structural reforms and competitiveness should not be in competition with stimulus measures and investment in the real economy.

The Government member of Angola was confident that the government would manage to implement its active employment policies in the exceptional context of economic readjustment that currently prevailed. It had launched a programme for enterprises and independent employment under which young people were to benefit from job creation support. The government had demonstrated its determination by resolving the issues surrounding employment promotion and the competitiveness of enterprises, and it was doing all it could to bring about an environment that was conducive to applying the Convention.

The Worker member of the United Kingdom recalled the requirements concerning an active employment policy set forth in the Convention. Compliance involved the government’s consideration of economic, social and education policies. In the context of the European crises, the Organisation for Economic Co-operation and Development placed particular importance on education and training measures which could help displaced workers find new job opportunities and could thus support the restructuring process. Turning to the situation in Portugal, in spite of some improvements, state social support had been reduced and scholarships had been abolished, so that fewer students were able to continue their studies. The growing unemployment rate of young people and workers aged between 35 and 45 had led to a growing skills gap, an increase in precarious work and short-term contracts. There was hence a need for concerted programmes to provide vocational and skills training so that jobseekers could attain lifelong learning skills. This was even more important due to the reduction of entitlements to compensation for dismissal. Moreover, higher qualified workers also had difficulty finding jobs in keeping with their qualifications and 20 per cent of workers had already left the country to seek employment opportunities abroad. Coming to the labour policy conducted by the government since the first quarter of 2013, the rapporteur recalled that the most significant change had been the new Labour Code, which however did not improve the situation. Other initiatives such as the “Personal Employment Plan” and encouragement from self-employment and entrepreneurship had also not changed the situation. In conclusion, she considered that the government needed to coordinate measures for promoting employment, which included in particular education of good quality and training measures.

The Government representative reiterated that his government was implementing active measures to promote employment within the framework of Convention No. 122 and other ratified international agreements. It was also fulfilling its commitments as a member of the European Community and the Eurozone, within the framework of a stringent austerity programme and financial adjustment programme signed with the Troika. The revisions of the Labour Code were undertaken as part of a wide process of social dialogue and agreed upon by the majority of the social partners, which had made for greater flexibility while putting a brake on job losses. Despite stringent national and international restrictions, in a context of financial, economic and social crisis, Portugal had not ceased to pursue active employment policies and had formulated a restructuring of the public employment service, both at the organizational level and with respect to its technical interventions. This had produced encouraging results, for example, there had been an increase in the number of persons covered by active employment measures in 2013, accounting for a 22 per cent increase over 2012, broken down as follows: employment measures were 40 per cent higher; vocational training measures were 17.3 per cent higher; and assistance for persons with disabilities had increased by 29 per cent over the same period. Portugal remained committed to its measures to promote full employment, within the extent of its possibilities and the abovementioned restrictions. It would have to adjust to using innovative instruments to boost the labour market and stimulate the economy, and it had already witnessed a gradual decline in unemployment since 2013. As pointed out by both the Employer and the Worker members, the government was faced with structural problems, and only a healthy economy would enable it to create sustainable employment. Referring to the criticisms of the Worker members with respect to the increasingly precarious nature of employment, there had been a downward trend in the number of part-time labour contracts and a proportional increase in the number of open-ended contracts in the first quarter of 2014.

The Employer members indicated that when delving deeply into aspects of employment policy, differences could emerge but they could not be resolved by the Conference Committee, since the Convention and its supervision were such that there was a range of ways in which the objectives could be met according to national circumstances and practices. It was clear that the government’s objectives in implementing the relevant measures were consistent with the Convention. The government was undertaking its work at the domestic level with a good understanding of the value of social dialogue, and they encouraged it to have its social partners, particularly its private sector, participate in the implementation of these measures, highlighting that while the private sector had already left the country to seek employment opportunities abroad, the crisis had weakened the country’s problems and, more than that, whether all the measures, highligh...
historical background, they possessed a more or less acute sense of the links between their own well-being, on the one hand, and peace and open borders, on the other. The ILO itself could not possibly have forgotten the fierce debate which, at the turn of the century, gave the “worker issue” and the “social issue” all their relevance. Here and now, therefore, the ILO had an important role, a positive role, to play in reminding those who held the power of decision in Europe of the debate that had held sway at the time. In Portugal’s case the ILO should contribute actively both to the Government’s efforts to define a policy founded on the fundamental values of the Organization of which it was a Member, and to its partners’ understanding of the reasons behind that policy.

Minimum Age Convention, 1973 (No. 138)

**Niger** (ratification: 1978)

A **Government representative** noted with interest the comments of the Committee of Experts relating to the application by Niger of Convention No. 138. Niger had ratified the Convention on 2 December 1978, thus demonstrating its wish to protect and defend young people against child labour and to ensure that children were in a position to complete normal schooling. Niger had always fulfilled its obligations under the ILO Constitution by regularly sending to the ILO the reports due on ratified Conventions, including Convention No. 138. With regard to the scope of application of the Convention, a national survey of employment in the informal economy was conducted in 2012 by the National Statistical Institute (INS). An initial report on the informal economy and the labour market had been produced, but the data could not be communicated before their official adoption. Although child labour had not been covered by the report, it could provide indications, as other reports, especially those relating to decent work indicators, would cover these aspects in greater detail. Moreover, the survey period had coincided with the launch of the General Census of the Population and Habitat (RGPH-2012), results of which had been published in April 2014. The INS was the only accredited institution for this type of survey, which explained the delay in the finalization and official publication of the results of the survey.

With regard to compulsory schooling, legislative measures had been taken to ensure that children attended school for as long as possible. These included: the adoption of the Framework Work Act for 2012–2015 of Niger (LOSEN), which made primary education compulsory for boys and girls in Niger; and the formulation of the letter setting out the Government’s education policy, which prescribed compulsory schooling until the age of 16 years. This letter contributed towards the goals of the “Niger 2035 and PDES 2012–15” strategy for sustainable development and inclusive growth, and the formulation of the Sectoral Education and Training Programme (PSEF) 2014–24, which was a strategy paper for the application of the above Act. All these instruments were endorsed by the education partners. In the PSEF (2014–24), the Government undertook to stimulate social demand in the area of education and the promotion of the schooling of young girls at primary level, in accordance with an operational strategy based on the management committees of the educational establishments, the recruitment of women teachers in rural areas and income-generating activities for the parents. Other actions were also being taken to improve pre-school education and the non-formal education of young people from 9 to 15 years of age, in addition to awareness raising among parents. The work of the public bodies was supplemented by that of non-governmental organizations (NGOs) and associations operating through various networks, and particularly the adoption and implementation of the national action plan to eliminate child labour, which had been reviewed and validated with the support of the ILO.

With regard to authorization to employ children in hazardous work from 16 years of age, the Government representative observed that the occupational safety and health committees (CSSTs), set up at the level of enterprises covered by the Labour Code, were functioning normally. Furthermore, a national coordinating body has been created under Decree No. 365/MFP/7/DSSST of 16 March 2012. This body had carried out a number of activities including: the training of members of the CSSTs; the participation in monthly activities concerning the prevention of occupational hazards; the capacity building of members; the organization of visits to enterprises in collaboration with the labour inspectorate; and the formulation and adoption of a three-year action plan (2013–15). He indicated that CSSTs existed in enterprises subject to the supervision of labour inspectors, an area in which it was rare to encounter child workers, because the CSSTs operated in enterprises with more than 50 employees. No labour inspection report had revealed such an offence. He added that mostly existed in the informal economy. He concurred with the Committee that child labour existed in Niger, and recalled that the Government had committed, with the support of the development partners, the NGOs and associations, to eradicate this phenomenon. There was no prohibition in law for labour inspectors to intervene in establishments in this sector. However, labour inspectors found it difficult to identify child labour because of its complexity and the scarcity of resources, and they intervened more in the formal economy to prevent this phenomenon. Furthermore, the Minister of Labour had provided all the labour inspection services with a vehicle and increased their operating budget substantially. He emphasized that, whatever means were used to combat child labour, it was first and foremost a direct intervention on the part of the labour inspectors, in cooperation with the communities and the other actors in the informal economy, that would help to eradicate this problem. In order to ensure this, the Government was prepared to create conditions for the establishment of the institutional audit of labour inspection that it had requested from the ILO, and to propose actions liable to strengthen the capacities of intervention of labour inspections in the informal economy. In this respect, he expressed the hope that the activities of the second phase of the ILO support project for labour administration and social dialogue (ADMITRA) would also cover Niger. In conclusion, there needed to be strong cooperation between the various ministries to overcome the phenomenon of child labour. Niger intended pursuing the above initiatives in accordance with the application of Convention No. 138. Increased support from partners, including the ILO, was necessary to ensure that actions to combat child labour produced the desired effects.

The **Worker members** said that half of the population of Niger was under the age of 15 years and that population growth was 3.3 per cent per year. As a result, many children of school age were working, a significant proportion of whom were working in hazardous conditions. According to statistics from a national survey carried out in 2009, 50 per cent of children between 5 and 17 years of age were economically active in rural areas, representing 1.8 million children. According to the latest Education for All Global Monitoring Report, Niger was one of the ten countries with the highest number of children, almost 1 million, not enrolled in school. Three children out of four spent less than four years in school and nearly 50 per cent of girls could not read or write. They added that 1.6 million children were engaged in work prohibited by Con-
vention No. 138. Of these children, 1.2 million children were involved in hazardous work. Two out of three children between 5 and 17 years of age were working in dangerous conditions. These children of school age were working in difficult conditions and were performing tasks beyond their physical ability. They often worked with their families in rural areas, labouring the land, grinding cereals and looking after livestock. Despite the Minister of Labour’s circular banning the use of children in gypsum and salt mines, no penalties had been issued in this respect. The Worker members noted that the Labour Code in Niger did not apply to work in the informal economy. They emphasized that the Government’s response to the Committee of Experts’ comments indicated that extending the Labour Code to the informal economy required the formal collaboration between various ministries and that the Government wished to first understand, by means of a national survey, the extent to which informal work was being performed by children. However, the Worker members noted that the Government had not provided any new information with regard to either the survey that should have been held in 2012 or the situation of children in the informal economy. They recalled that Convention No. 138 applied to all sectors of economic activity regardless of whether there was a contractual relationship. Moreover, referring to the 1967 Decree, which permitted the use of children in certain types of hazardous work from the age of 16, they called for workplace health and safety committees to engage in awareness raising and safety training. However, the Government had never provided information as to the nature of the activities carried out by these committees, which were supposed to ensure that the work carried out by these young persons did not jeopardize their health or safety. In conclusion, the Worker members recalled that, under Article 3(3) of Convention No. 138, young persons from the age of 16 were only permitted to undertake hazardous work on condition that their health, safety and morals were fully protected. However, that did not appear to be the case in Niger.

The Employer members agreed with most of the points raised by the Worker members. It was a case of frustration as it was a case of persistent failure to provide information and concrete evidence of progress on the important issue of ensuring that children received adequate basic education and were protected from being required to be engaged in activities that might be injurious to their physical or mental well-being. The Committee had previously noted that Niger’s Labour Code did not apply to the informal economy. Thus, the changing scale of labour legislation would require formal collaboration between several ministries. Moreover, the Ten-Year Education Development Programme of 2002 was aimed at achieving an 80 per cent enrolment rate in primary school by 2012, and 84 per cent by 2015. Estimates by various organizations, including UNESCO, indicated a continuing low rate of school attendance by children between 7 and 12 years old, and a significant number of children who dropped out of school well before attaining the minimum age for admission to employment. According to the 2012 *Education for All Global Monitoring Report*, the gross primary school enrolment rate was 71 per cent in 2010 (64 per cent for girls and 77 per cent for boys), compared with 67.8 per cent (58.6 per cent for girls and 77 per cent for boys) in 2008–09. This increase in enrolment was, however, not matched by a corresponding increase in the number of children who completed their schooling. Referring to statistics from 2009 on child labour, the Employer members noted that the Committee continued to lack any concrete information on which it could better assess the situation in Niger. With respect to Article 3 of the Convention, the Committee of Experts had asked the Government to provide information on the manner in which health and safety committees ensured that the work performed by young persons did not jeopardize their health and safety. Lack of information denied the Committee the ability to establish a view on the situation, and fuelled the continuing concern about the seemingly significant exposure to unsatisfactory work practices of an alarmingly large percentage of the nation’s young people. The Employer members urged the Government to take the necessary measures to ensure that enterprise safety and health committees ascertained that the conditions of work of young persons aged between 16 and 18 years of age did not jeopardize their health and safety. They expressed deep concern at the high number of children engaged in work in Niger who were below the minimum age for admission to employment, and at the significant proportion of these children working in hazardous conditions. Considering that compulsory schooling was one of the most effective means of combating child labour, the Employer members strongly encouraged the Government to pursue its efforts and to take measures to enable children to attend compulsory basic education. They also called on the Government to: intensify its efforts to combat and progressively eliminate child labour in Niger; continue providing information on the application of the Convention in practice, including extracts from the reports of the labour inspection services indicating the number and nature of the contraventions reported and the penalties applied; and provide statistical data, disaggregated by sex and age group, on the nature, extent and trends of child labour and work by young persons under the minimum age specified by the Government when ratifying the Convention. They hoped that the Government would make every effort to take these actions in the near future.

The Worker member of Niger said that the extent of child labour in Niger largely depended on the sectors concerned; these included agriculture, livestock breeding, fishing, manufacturing industries, small-scale mines, quarrying and extractive industries, the informal economy, manufacturing and maintenance, and services. The extent and nature of the work could depend on the age of child labourers, which ranged from 7 to 13 years. It was common to find working children under 7 years of age, but in those cases they were with their parents or an adult member of the family instead of being at school. The causes of child labour included poverty, weak economic growth, ignorance by parents of the consequences of child labour, poor levels of education, unemployment, the physical disability of parents and the exodus of families from rural areas. With the type of approach taken by the Government to the issue of schooling, although access to education had improved with the school enrolment rate rising from 76.1 per cent in 2011 to 79.1 per cent in 2012, the completion rate for primary education of 55.8 per cent in 2012 was still relatively low. The gross enrolment rate varied from 108 per cent in urban areas to 71 per cent in rural areas, with 88 per cent for boys and 71 per cent for girls. With respect to unemployment, although human capital was the most abundant resource in Niger, employment opportunities remained relatively scarce, resulting in underemployment and unemployment for a large proportion of the active population. The proportion of the active population that was unemployed was 56 per cent overall, with 40 per cent for men and 71 per cent for women, and 46 per cent and 59 per cent the respective figures for urban and rural areas. However, it indicated that there were other specific causes of child labour in Niger, particularly: inadequate public awareness of the consequences of child labour; demographic factors; difficulties in applying the legal and institutional framework; and socio-cultural factors, since customs and religion had a decisive influence on social attitudes and behaviour in Niger. The workers in Niger had sought, and would continue to seek, the sound appli-
ication of Convention No. 138 by the Government. He acknowledged that, in the current socio-economic and cultural context in Niger, the effective application of the Convention would require not only strong political will, as well as sustained technical assistance. As a result, he agreed with the comments of the Committee of Experts and suggested that statistical data on child labour in Niger should be updated with the participation of different partners, including the ILO. He called on the Government of Niger to allocate a significant budget for education, which was the best alternative to child labour, and the ILO to provide technical assistance to ensure the effective operation of occupational safety and health committees in both the formal and informal economy. In conclusion, he indicated that it was vital for the ILO to support its country in the implementation of different actions to combat child labour.

**The Government member of Norway**, speaking on behalf of the Government members of Denmark, Finland, Iceland, Norway and Sweden, expressed grave concern with regard to the failure of the Government of Niger to provide the requested information concerning child labour in the informal economy and the action taken by the labour administration. This was a serious case and needed to be assessed together with the findings of the Committee of Experts on Niger’s compliance with the Worst Forms of Child Labour Convention, 1999 (No. 182). Children under 18 years of age were being exploited in forced or compulsory labour in the form of trafficking, forced begging and the most hazardous types of work. Insufficient labour inspections meant that there was inadequate monitoring regarding children engaged in the worst forms of child labour. There was also a lack of investigation, prosecution and dissuasive sanctions for using children for purely economic ends. The Government needed to intensify its efforts to ensure the protection of children from these worst forms of child labour, in particular from hazardous types of work. Governments remained the main drivers of change. The Government needed to show political willingness and an ability to act in accordance with the principles of good governance and to fight corruption. It was necessary to strengthen labour administration, including labour inspection, labour protection and social security. She emphasized that one of the most effective means of combating child labour was to provide compulsory and accessible education. A national survey on the informal economy to measure the extent of children working on their own account would be beneficial and would facilitate intervention. The Government was encouraged to seek technical assistance from the ILO to eliminate child labour in the country, recognizing the need for a joint effort to overcome the challenges in this critical area.

**The Worker member of Zimbabwe** expressed deep concern at the alarming number of children working in Niger. Despite the Labour Code, adopted in 2012, setting the minimum age for employment at 14 years of age, about half of children between 5 and 14 years of age were working and a third were engaged in hazardous work. Children working in mines were exposed to mercury and at risk of suffocation or death as a result of cave-ins. Children working in agriculture were exposed to serious workplace hazards. Children, especially girls, were working in domestic service and were particularly vulnerable to long hours, and physical and sexual abuse. The traditional practice of men taking a girl as a “fifth wife” was a grave issue, as they were slaves and their children were sold as slaves. Some children were sent to Koranic schools, and some teachers exploited these children by forcing them to beg or work as domestic or agricultural workers. He urged the Government to draw up appropriate laws and policies with the social partners to put an end to child labour.

The Worker member of Nicaragua regretted that the government authorities of Niger did not consider it a priority to ensure free access to public education, which was a guarantee for the development of persons and society. Education International was conducting a campaign to promote quality in, and access to, public education as a means of eliminating child labour. Statistics revealed a clear absence of short- and long-term policies, a lack of interest in guaranteeing positions for teaching staff and a lack of adequate economic resources. Exploitation of girls and boys in Niger was only possible because of the abdication by the Government from supervising and controlling enterprises and because employers encouraged such work. Responsibility for children dropping out of school lay not only with the Government but also with companies that allowed the use of child workers with the aim of maximizing revenue. Not guaranteeing access to quality public education had implications for economic growth and the strengthening of democracy, condemning the country to poverty. The best way to eliminate child labour was to ensure that all children attended school and their parents had decent jobs. In conclusion, he urged the Government of Niger to make a commitment to eliminating child labour, assigning the necessary economic and financial resources to public education, exercising greater controls on enterprises and considering education as a fundamental priority.

**The Worker member of Swaziland** said that there was a high prevalence of children working in Niger. Effective labour laws were essential to prevent child labour. Labour law and its enforcement fell short as it did not cover the informal economy and immediate action was necessary. While the law established the minimum age for work at 14 years and contained provisions restricting the number of hours worked by children between 14 and 18 years of age, there were no dissipative sanctions for violations, despite the alarming number of children working. Penalties in criminal law did not go beyond one year’s imprisonment. Inadequate policies left children unprotected and vulnerable. Legislation had to be extended to include domestic workers and the informal economy, and laws on child labour also needed to be reformed.

The Government representative emphasized Niger’s commitment to continue with the implementation of Convention No. 138. He said that the debate appeared to open the discussions that had taken place in the Committee in 2005, but since then many developments had occurred. In this respect, he recalled the ILO high-level mission’s conclusions on forced labour in Niger (2012). He stressed that the 2012 Labour Code did not restrict inspectors to carry out inspections in the informal economy, but he mentioned the lack of means and resources of the labour inspection services. With regard to occupational safety and health committees, they were established in enterprises with at least 50 workers in the formal economy. He also referred to the new education policy, for which a quarter of the national budget was allocated to education and occupational and technical training. With regard to the timing of the various surveys, the Government was committed to speeding up the completion of the survey on employment and the informal economy. In this respect, he requested the technical support of the ILO for the INS. Finally, the Government was committed to finalizing the process for the implementation of an occupational safety and health framework in which the framework document for the occupational safety and health policy had been reviewed and validated.

**The Worker members** indicated that on 12 June the World Day Against Child Labour would be held, and this year the theme would be “Extend social protection: Combat child labour”. The case of Niger demonstrated the importance of the World Day in combatting child labour.
and of social protection for that purpose. Forms of labour which ran counter to fundamental human rights were obstacles to decent work. International Conventions identified child and forced labour as part of those unacceptable forms and required their permanent abolition. Such forms of labour were real concerns for Niger and their eradication should be of the utmost priority for the authorities. They urged the Government to establish an action plan in close cooperation with the social partners. This plan should: (i) give priority to the abolition of child labour, particularly in hazardous work; (ii) provide for a rise in the education budget from 4.5 to 6 per cent of Gross Domestic Product to increase the school enrolment rates and recruit qualified teachers; (iii) provide for alternatives to child labour for families’ standards of living; and (iv) organize a basic social sector covering income, food, health and maternity. They concluded by requesting the Government to: (i) update the statistical data on child labour; (ii) extend the Labour Code to the informal economy; and (iii) ensure adequate application of the decree on hazardous work. They also called on ILO–IPEC to re-establish its partnership with Niger.

The Employer members agreed with the Worker members on the pressing need for the Government to give attention to the issue of child labour in Niger. There had been no disagreement among the speakers on the seriousness of the present situation. However, it had been acknowledged that the Government was aware of the problems. With respect to information and statistics, the Government should find a systematic way of effectively identifying the information that was needed in a timely manner. The Government was encouraged to collect, analyse and publish information and statistics, as part of the plan of action mentioned by the Worker members. The INS was the only organization dealing with information on child labour. The Employer members encouraged the Government to request technical assistance in relation to data collection, analysis and dissemination, and assistance on other matters. They also urged the Government to strengthen its inspection services. The Labour Code should apply in practice to all branches of the economy, including the informal economy. Measures needed to be taken without delay to address the issue of child labour in Niger.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed relating to the high number of children between the ages of 5 and 14 who were not attending school and who were involved in child labour, including hazardous work, as well as the phenomenon of child labour in the informal economy.

The Committee noted the Government’s indication that it was taking several measures to keep children in school and that it was committed to the elimination of child labour in the country. The Committee further noted the Government’s commitment to implement the Convention through various measures, including strengthening the labour inspectorate and the establishment of health and safety committees at the enterprise level. The Committee also noted the detailed information provided by the Government outlining the laws and policies in place to provide free and compulsory primary education, including a sectoral education and training programme from 2014 to 2024 (PSEF), as well as the allocation of a substantial percentage of its national budget for this purpose. It observed in this regard that the Government intended to take various measures to promote access to primary education, especially for young girls. The Committee also noted the Government’s indication that a national survey of the informal economy was organized by the National Statistical Institute in 2012, but this survey did not include child labour in the informal economy. Finally, the Government representative had highlighted that child labour and its worst forms were the result of poverty, exclusion and underdevelopment. In this regard, the Committee noted that the Government of Niger had expressed its willingness to continue its efforts in cooperation with the social partners to eradicate child labour with the technical assistance and cooperation of ILO.

While noting certain measures taken by the Government to combat child labour, the Committee nevertheless expressed its deep concern at the high number of children below the minimum age for admission to employment or work of 14 who were involved in child labour in Niger, and at the significant proportion of these children who worked under hazardous conditions. It urged the Government to strengthen its efforts to improve the situation and to combat child labour in the country with a view to eliminating it progressively, within a defined time frame, notably by developing a national policy to ensure the effective abolition of child labour and an action programme to combat child labour, with priority to be given to hazardous child labour. Moreover, while noting the difficulties encountered by the Government in monitoring the informal sector, it called on the Government to take the necessary measures to extend the scope of the Labour Code to the informal economy, to further strengthen the capacity and expand the reach of the labour inspectorate in this sector and to ensure that regular visits, including unannounced visits, were carried out so that penalties were imposed on persons found to be in breach of the Convention. In this regard, the Government was requested to provide extracts from the reports of the labour inspection services indicating the number and nature of the contraventions reported and the penalties imposed.

The Committee noted with concern that low school enrolment and high drop-out rates continued to prevail for a large number of children. Underlining the importance of free, universal and compulsory education in preventing and combating child labour, the Committee strongly urged the Government to develop and enhance the education system, including by taking effective measures, within the framework of the PSEF, to ensure access to free basic and compulsory education for all children under the minimum age, with special attention to the situation of girls, with a view to preventing children under 14 years of age from working, and to reduce school drop-out rates.

While noting that occupational health and safety committees had been established and were active at the enterprise level, the Committee expressed its concern at the Government’s indication that the committees were not effective in combatting hazardous child labour in the course of their activities. The Committee strongly encouraged the Government to ensure that these health and safety committees carried out awareness-raising activities and training to ascertain that the conditions of work of young persons did not jeopardize their health and safety or well-being.

Moreover, in light of the lack of data on the number of children working under the minimum age, and noting the Government’s indication that child labour largely took place in the informal economy, the Committee urged the Government to undertake a national survey of child labour in the informal economy in the very near future in order to make it possible to measure the extent of the phenomenon of children working in the informal economy, thereby enabling the labour administration to intervene more effectively in this field.

Recognizing the importance of policy coherence, the Committee encouraged international cooperation in order to promote poverty eradication, sustainable and equitable development and the elimination of child labour and, in this regard, it recommended that ILO–IPEC resume its activities in the country. It requested the Government to avail itself of ILO technical assistance to ensure the full and effective ap-
plication of this fundamental Convention, including the adoption of a time-bound action plan to address the issues raised by this Committee. It requested the Government to include in its report to the Committee of Experts for examination at its next session in 2014 complete information regarding all the issues raised by the Conference Committee and the Committee of Experts. The Committee expressed the hope that it would be able to note tangible progress in the application of this Convention in the very near future.

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

**CENTRAL AFRICAN REPUBLIC (ratification: 2010)**

A Government representative recalled the context of the Committee of Experts’ comments on its application of Convention No. 169. The Central African Republic was a vast country with low density population and borders that were not well controlled, which had over 650,000 people displaced due to internal violence. The transitional Government was trying to restore the authority of the State, with limited means for the maintenance of order at its disposal, while the international community had prohibited the re-armament of the national armed forces and administration was virtually non-existent outside the capital. Despite the presence of different peacekeeping forces, the two main armed militias, the Seleka and the Anti-Balaka, continued their violence against civilians targeted by their supposed religious identity. The situation in terms of humanitarian law and human rights was compounded by the inability of the judicial system, which fostered a sense of impunity. The indigenous peoples of the Central African Republic suffered in varying degrees from the conflict. The BaAka pygmies were not directly affected. Living in a semi-nomadic manner in the heart of the dense forest, their difficult cohabitation with the Bantu peoples was characterized by exploitation, discrimination and violence. The Mbororo Peul were the direct victims of the Seleka, which had seized some of their herds before imposing a duty of illegal grazing. The Anti-Balaka militia also attacked the cattle of the Mbororo Peul in the regions they controlled. Those persecutions had resulted in massive displacement of the Mbororo, both inside, from the north-west to the south-east of the country, and outside, to Cameroon, the Democratic Republic of the Congo, Chad and Sudan. Relocation measures had been taken with the support of the International Organization for Migration (IOM) to protect the Mbororo Peul people. Under the circumstances prevailing since March 2013, the ILO considered it difficult for the Government to ensure the application of Convention No. 169, and the conflict affected the entire population and not only the indigenous peoples. The Government was counting on the active solidarity of the international community to overcome the serious crisis which the country faced. The Office could contribute through its assistance in the promotion of Convention No. 169.

The Employer members congratulated the Government on its ratification of Convention No. 169, particularly as it was the first African country to have done so, as well as on sending its first report, in June 2013, despite the exceptional circumstances in the country. The available information provided indicated that the Government was in a weak position and that the country was under serious threat. It was therefore difficult to speak of the effective implementation of Convention No. 169, in view of the absence of the institutions necessary to give effect to it. The ILO needed to enter into collaboration with the organizations of the United Nations with a view to strengthening national institutions, and only then could the effective implementation of the Convention be required. Once the present humanitarian and institutional crisis was over, the Government could be expected to use the Convention as a means of governance, including the obligation for prior informed consultation of the indigenous and tribal peoples. The Convention could serve as a general platform for the revival of social dialogue and consensus. The parties responsible should be urged to comply with Article 3 of the Convention to guarantee full respect for the human rights of the Aka and Mbororo.

The Worker members recalled that the Central African Republic was the first African country to ratify Convention No. 169 in 2010. However insecurity, the breakdown of public order and inter-religious tension had led to a situation of the mass violation of humanitarian and human rights, mainly targeting the Aka and Mbororo. Militias committed extra-judicial executions, torture, sexual abuse, rape and the forced recruitment of children, all of which constituted war crimes and crimes against humanity. Most of the violence was targeted at ethnic and religious groups. In the circumstances, the Committee of Experts was concerned at the aggravation of inter-community tension and at the violence that was directed specifically at indigenous people, consisting of the Aka and Mbororo. However, under Article 2 of the Convention, the Government was required to protect the rights of these peoples and to guarantee, in particular, the rights of the Aka and Mbororo population. The Government had also failed to indicate the form taken by the participation and cooperation of peoples called for in Article 5 of the Convention or how effect was given to Article 8 in relation to the preservation of their customs and institutions. The Government needed to undertake to protect the culture of ethnic minorities, recognize the traditional forms of justice of the Aka and Mbororo, reinforce the provisions of the Provisional Code prohibiting discrimination, take account of their linguistic difficulties in their access to justice and guarantee the effective exercise of their right to land.

The Worker member of Zambia echoed the Government’s description of the political and social instability in the Central African Republic, which had begun in 2012. The situation had worsened the human rights and humanitarian crisis in the country, and there had been distressing stories of hardship. The grave situation had negatively impacted the indigenous people in the country. The number of internally displaced people had risen since March 2013, peaking at 650,000 in 2012 to 625,000 in 2014. Similar numbers of people had fled the country, which had given rise to difficulties in host countries such as Cameroon, Chad and the Democratic Republic of the Congo. Reports referred to over 3,000 child soldiers, and the majority of the victims were women, children and the elderly. The Church of the United Nations to make use of its mandate and the means available to it to protect vulnerable civilians. An environment conducive to humanitarian aid should be created immediately while other efforts to end the conflict were under way.

The Worker member of France noted that the Aka and Mbororo were among the most vulnerable in the country and that they had been victims of violence and discrimination well before the present conflict, including being expelled from the land without compensation, confined to poorly paid jobs, and having limited or no access to health and education owing to their remoteness and the cost. The worst atrocities had been committed in a climate of civil war, to such a degree that the United Nations had warned of a threat of genocide. Land claims and displacement of peoples added to the existing tensions, in particular against indigenous peoples.
Worst Forms of Child Labour Convention, 1999 (No. 182)
United States (ratification: 1999)

The Worker member of Mali raised the issue of the legal framework for the protection of indigenous peoples in the Central African Republic. The Aka pygmies and the Mbororo Peul did not benefit from official legal recognition which would ensure their statistical visibility and facilitate the coordination of public initiatives on their behalf. A specific legal framework needed to be developed to safeguard their cultural rights and to protect them against discrimination, including that faced by indigenous women. Indigenous peoples’ access to justice also needed to be promoted, particularly through the removal of financial and linguistic obstacles. Lastly, the Labour Code should take account of the specific and often abusive conditions to which they were subjected, particularly in the forestry and tourism sectors.

The Government representative thanked the speakers for their understanding concerning the situation in his country. With the support of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) established by the Security Council by Resolution 2149 (2014), it was to be hoped that the authorities would be able to protect all of the indigenous peoples of the country including the Aka and Mbororo. The assistance and advice of the ILO should contribute to the search for a lasting solution giving all due consideration to international labour standards. For its part, the Government was firmly committed to this objective, in cooperation with employers’ and workers’ organizations, as well as representatives of the indigenous peoples.

The Employers members said that the case concerned a humanitarian crisis of as yet incalculable proportions. For that reason, there was an immediate need to collaborate with the United Nations system to gain entry to evaluate and review the compliance of Convention No. 169. The Employer members requested the Government to keep the Committee informed of any developments in that respect.

The Worker members thanked the Government representative and expressed their understanding of the challenges faced by the transitional Government. Despite those difficulties, compliance with the Convention must be secured urgently so that indigenous and tribal peoples could enjoy all of the rights guaranteed to them. Mechanisms of participation and consultation of the Aka and Mbororo must be strengthened in accordance with the Convention. The Government needed to provide information on the application of the Ministerial Decree of 1 August 2003, ensure formal recognition of traditional land titles and facilitate access to ensure the rights protected by the Convention. It should present a report in time for the next session of the Committee of Experts on the action taken up to now so that it could follow up the situation in its 2015 report. Finally, the request by the Government for technical assistance should be followed up.

Worst Forms of Child Labour Convention, 1999 (No. 182)
farming in the United States, the speaker echoed the report’s emphasis on the importance of engaging with workers, employers and others in protecting vulnerable children at work. WHD officials had spoken with the report’s authors about their findings and ways to work together to ensure that young workers in agriculture were not working illegally. He reiterated the Government’s firm commitment to ensuring full compliance with Convention No. 182 and indicated that it would continue to inform the ILO about its efforts to secure the prohibition and elimination of the worst forms of child labour in its next article 22 report, which would respond in full to the most recent observation of the Committee of Experts taking into account the comments and recommendations of the Conference Committee.

The Employer members stated that child labour was a problem of immense global importance. Eliminating child labour was a priority for the Committee and the private sector was committed to taking concrete steps to eliminate child labour. In supervising the case, it was important for the Committee to bear in mind the meaning of the term “worst forms of work”, namely work that was, by its nature or the circumstances in which it was carried out, likely to harm the health, safety or morals of children. The term child labour applied to persons under the age of 18. Section 213 of the Fair Labor Standards Act authorized children from the age of 16 to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health, as permitted under the agreed exception in paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), on the condition that the health, safety and morals of young persons were fully protected. The exception had been explicitly agreed after consultation with the United States employers’ and workers’ organizations. They raised the question about why a complaint on non-compliance regarding children under 18 years of age working in agriculture and dangerous conditions had been made with respect to the United States. In 2010, on the recommendations of the National Institute for Occupational Safety and Health, the Wage and Hour Division of the Department of Labor had published a Final Rule on child labour provisions, which revised the existing Hazardous Orders (HOs) to prohibit children under the age of 18 from performing certain types of work. In 2011, a Notice of Proposed Rulemaking was issued, containing proposals to revise the child labour agricultural HOs. The proposed rule had been withdrawn in 2012 following a consultation process. This had been a demonstrate of agricultural HOs that it was not necessary to be withdrawn based on the responses of a public consultation exercise. The Wage and Hour Division continued to focus on improving the safety of children working in agriculture. The Employer members recalled that the Committee of Experts had welcomed the measures taken by the Government to protect agricultural workers, including those under the age of 18. Article 4 of Convention No. 182 stipulated that the types of work were to be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned. The competent authority was to identify where these types of work existed, after consultation with the organizations of employers and workers concerned. Moreover, the list of the types of work was to be periodically examined and revised, once again, in consultation with the organizations of employers and workers concerned. All three requirements established in Article 4 had been complied with. Article 5 prescribed that members must, after consultation with its social partners, establish or designate appropriate mechanisms to monitor the implementation of provisions giving effect to the Convention. This too appeared to be occurring in the United States. They recalled that the mandate of the Committee of Experts was to undertake an impartial and technical analysis of how the Conventions were applied in law and in practice in member States. Its recommendations were intended to guide the actions of national Authorities. In this case, there was no requirement for the United States to amend its national law and it would seem inappropriate to criticize the Government for deciding not to. The Committee was a technical committee and conclusions had to be based on technical issues arising from the ratification of a Convention.

The Worker members said that United States legislation allowed children to work from the age of 16 onwards, even where they were exposed to pesticides for long periods with the risk of serious injury. That information was based on official statistics relating to the number of fatal accidents on farms and on a Department of Labor document indicating that the fatality rate for young workers in agriculture was four times higher than for their peers in non-agricultural sectors. The proposed rule drafted by the Department of Labor in 2011 to regulate the issue had been withdrawn in 2012. The Government was focusing on awareness-raising and education rather than regulation, and the Worker members disapproved of this. They emphasized that opponents of the proposed rule had used images that appeared to public opinion in the United States. They recalled that the point of the debate was to focus on young workers, most of whom were migrants, sometimes in a precarious or illegal situation, not organized, with a limited knowledge of English, and were wage earners on farms. For that category of workers, education and grassroots action were not sufficient. For that reason, the Government should be required to go back to the drawing board with respect to the regulation that had been withdrawn.

The Worker member of the United States stated that the United States had made a move in the right direction by ratifying Convention No. 182 in 1999 and, since then, related laws and regulations had been improved to reduce the number of children working in dangerous and unhealthy working conditions. Many government-led programmes and training partnerships with workers’ and employers’ organizations had been supported in a range of sectors. Resources dedicated to enforcement had been increased. However, United States’ laws failed to protect children working in agriculture. In 2011, the executive branch proposed changes to regulations that would have taken an important step forward. In 2012, the Government withdrew the proposed changes, which would have updated the agricultural child labour provisions of the Fair Labor Standards Act by updating the list of hazardous work prohibited for children under the age of 16. The regulations had been designed to prevent children from being hired to perform work that was hazardous to their health and welfare and bring parity to the agricultural and non-agricultural employment provisions affecting children. In 2013, the National Institute for Occupational Safety and Health estimated that more than 360,000 children were aged 16 working on farms in 2009. While official figures indicated that only about 10 per cent of these children were hired workers, a large number of children were thought to be working “off the books” on farms. Nearly half of the estimated 197,000 16- and 17-year-olds who worked on farms were hired workers. All these points showed that hired farm workers were a large and vulnerable working population that the Convention included with the organizations of employers and workers concerned. The Committee had focused not on young workers specifically, but on young workers generally. The Committee was a technical committee and conclusions had to be based on technical issues arising from the ratification of a Convention.
creased sense of worth as a result of working on their family’s farm. However, a slowly growing body of research that focused on hired migrant farm labour, including youth, did not point toward such an enriching work experience. It identified an extremely precarious workforce with many children and young persons who had reduced access to education and worker rights. Unfortunately, research such as the National Agricultural Workers Survey that was supported by the Department of Labour and focused on such hired workers was underfunded and its results and analysis inadequately used in implementing policies. Such research and information must be further developed and should weigh heavily in establishing an accurate national context for defining what work was safe and edifying for children in agriculture – and to evaluate whether the United States was in compliance with the Convention. As the United States continued to negotiate trade agreements that included commitments to core labour rights, including the elimination of the worst forms of child labour, it should increase rather than decrease its capacity to honour those commitments in supply chains that produced goods for trade. Governments, workers and employers seeking to meet these obligations agreed to improve working conditions and protection and respect for rights in these supply chains. Corporate codes could play a role in such efforts, but that role had limits. In order to achieve these goals, including the elimination of the worst forms of child labour, there was no substitute for legally binding laws and work rules.

The Worker member of Brazil recalled that the fight against child labour was one of the ILO’s main challenges. An intense social dialogue had highlighted the efforts made in his country. At the third Global Conference on Child Labour, held in Brasilia in 2013, significant commitments had been made by the 150 countries present. The case under review was of concern; attention was drawn to the information set out in the Committee of Experts’ observation and that provided by the Government. He ten referred to the publication of Human Rights Watch. The report concerning child labour in the agricultural sector published in 2010 reported that children of 7 years of age or younger were involved in cotton, pear and strawberry harvesting. The majority of children interviewed were subjected to long strenuous work days and were paid less than adults and below the minimum wage, if at all. Testimonies contained in the report published in 2014 concerning child labour on tobacco plantations showed how dangerous the work in that sector was. In contributing to trade and supply chains, agricultural workers seeking to meet these obligations agreed to improve working conditions and protection and respect for rights in these supply chains. Corporate codes could play a role in such efforts, but that role had limits. In order to achieve these goals, including the elimination of the worst forms of child labour, there was no substitute for legally binding laws and work rules.

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The Government member of the Russian Federation thanked the representative of the Government of the United States for the information on the application of the Convention and took note of the oversight measures that were strengthened with a view to preventing injuries among young agricultural workers. On the basis of the information obtained during the discussion, it was noted that there was a seemingly high level of injuries among young agricultural workers between the ages of 16 and 18 in the United States. The awareness-raising work that had been carried out by the Department of Labor with regard to the dangers in agricultural work was noted. It was important to bear in mind that the workers were often young persons who had no agricultural work experience. It was not always in a position to fully evaluate the risks of hazardous work. Measures undertaken by the Government should be supplemented by a direct prohibition of hazardous work for young workers between the ages of 16 and 18 for types of work that would threaten their health and safety. Attempts at amending the legislation had been taken in 2011 but had not been conclusive. The speaker agreed with previous speakers that invited the Government to reconsider following through with this legislative amendment.

The Worker member of Canada stated that Canadian workers were concerned about the use of child labour in United States agriculture because it ethically contaminat ed the import of agricultural products into Canada, thus contaminating unfair trade by the sale of Canadian-made goods. The speaker referred to the North American Agreement on Labour Cooperation (NAALC) which required the governments of Canada, Mexico and the United States to work together to “protect, enhance and enforce basic workers’ rights”, in each country. In its observation, the Committee of Experts referred to information found on the Department of Labor’s website about the use of child labour in agriculture which validated this problem as an ongoing concern. United States imports entered Canada as products in the supply chains of multinational enterprises, operating in both countries. The case was well illustrated by looking at the tobacco industry, and the speaker referred to a Human Rights Watch report exposing child labour in the United States tobacco industry. Many more companies were involved in the cross-border supply chain of all agricultural products from the United States to Canada, not only for tobacco. The speaker then referred to the legislative changes the Government had proposed in 2011 and stated that the Government clearly understood the steps that needed to be taken on this issue. He urged the Government to do so.

The Worker member of the Netherlands said that agriculture was considered to be the third most hazardous sector for workers. Children were particularly vulnerable to the effects on health of pesticides and the risks of working with heavy machinery and sharp tools, and carrying out repetitive and physically straining work was damaging their development and health. The Government offered children in this sector less protection than children employed in other sectors. There were fewer restrictions concerning age and working times for children in agriculture and children working on family farms were afforded even less protection. Measures taken or planned to lessen the gap had been discussed but had not been pursued. The Government was urged to reconsider the withdrawal of the proposed legislative changes. The United States and the European Union were negotiating a Transatlantic Trade and Investment Agreement and imports of agricultural products from the United States to Europe were increasing at an annual rate of 3 per cent. Through increased trade and supply chains, agricultural workers in the United States were subject to unacceptable conditions involving the worst forms of child labour, might reach European markets. Moreover, workers in Europe were concerned that the low standards of implementation of ILO fundamental Conventions, including Convention No. 182, in the United States could have a negative impact on the application of standards in Europe. When the Government’s efforts to protect children from exploitation were appreciated, she urged the Government to close the protection gap between children in the agricultural and non-agricultural sectors.

The Worker member of Colombia observed that the Government of the United States had only ratified 14 ILO Conventions. He stressed that the case under consideration concerned workers between 16 and 18 years of age, many of whom were poor migrants and engaged in particularly hazardous work. He recalled that, at the time of negotiation of the Free Trade Agreement, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) had pressured the United States’ Government to demand that labour standards be improved in Colombia, a pressure which had resulted, inter alia, in the adoption of the Labor Action Plan. He thought it paradox-
ical that the same Government which, at the time, had demanded better working conditions in Colombia was tolerating child labour in agriculture in its own country. The situation also disadvantaged Colombian workers as some 2 million of them were working in the United States, thousands of them in agriculture. Even more serious was the fact that United States legislation allowed young persons to work in agro-industrial activities that could be dangerous to their health. In conclusion, he requested the Committee to urge the Government to reconsider the draft legislation submitted for consultation by the Department of Labor in 2011.

The Employer member of the United States said that while he was often critical of the Government, in this instance there was no cause for criticism. A tripartite process was in place which compared national law to the provisions of the Convention to ensure compliance. The Government and its social partners had agreed that United States law was in line with the Convention. Since its ratiﬁcation, neither the law nor the terms of the Convention had changed. There had, however, been a change in the position adopted by one of the social partners, which might in turn affect the prospects of ratification of Conventions in the future. The withdrawal of the proposed legislative amendment had been part of a democratic process. More than 10,000 comments had been received and analysed as a result of which the decision to rescind the proposed changes had been taken. Legislation was in line with the Convention. A Human Rights Watch report referred to during the discussion seemed to focus on the tobacco industry, which the proposed changes would not have affected. Referring to previous comments, a speaker noted that they seemed to focus on issues relating to supply chains and recalled that the Convention had to be implemented by governments.

The Government representative fully supported the ILO’s supervisory machinery for ratified Conventions and thanked all those who had contributed to the discussion and offered recommendations. Special note had been taken of the comments made by the Worker member of the United States on the changing demographics of the agricultural workforce. The Government was working to adapt to these changes; further research and information would be valuable in this regard. The Government representative looked forward to continuing a dialogue with the Committee of Experts. Children were the future and it was important to protect them from labour that was unsafe, unhealthy or detrimental to their education and general well-being. This was an ongoing process in the United States and was approached with the urgency required under the Convention.

The Employer members thanked the Government for the considerable information provided. The Government attached great importance to the Convention and the work of the Committee. It had expressed its clear commitment to the Convention by means of the information provided and the initiatives undertaken, especially its monitoring mechanisms and the provision of information to youth in various languages. The Employer members expected the Government to ensure that its laws and practice complied with the Convention and to continue to monitor child labour in agriculture with due regard to their health, safety and morals. Private sector business was committed to taking concrete steps to eliminate the worst forms of child labour. There was a conﬁdent that was not easily reconcilable between, on the one hand, a democratic legislative review process that involved over 10,000 public comments and, on the other, a call to address the issue of children between the ages of 16 and 18 engaged in agricultural work. In this case, however, there was no requirement for the Government to amend its legislation in the light of the provisions of the Convention. It would therefore be inappropriate to criticize the Government given the information that had been heard during the discussion.

The Worker members emphasized that the discussion was not about agricultural work in family-run farms but the working conditions of young wage earners, more often than not migrants, who could not easily be reached by awareness-raising campaigns or educational measures because of the context in which they worked. It was for this reason that the Government of the United States should be encouraged to regulate the type of work that had been discussed, in accordance with ILO standards. They also stressed that the United States did not require ILO technical assistance and the proposed rule-making to which the Government referred was perfectly adequate. This should nevertheless be brought into effect, and no one should be misled by the distorted picture that certain lobbyists had managed to convey on this issue. The Worker members added that the discussions on the American administrative and democratic procedures should not overthrow the issue, because those who were being discussed were young workers, often migrants, who had less possibility of putting forward their opinions or interests than other groups of more organized groups. The Worker members suggested that the Government report on the initiatives that would be taken, thereby allowing the Committee of Experts to analyse this matter in its next report.

**Yemen (ratification: 2000)**

A Government representative said that the Committee was right in indicating that the situation of children was serious in his country, as they were harmed due to their involvement in armed conﬂict and in prohibited tasks which jeopardized their health and safety and were contrary to Convention No. 182. He indicated that economic problems were the reason behind parents pushing their children onto the labour market, whether inside or outside the country, in order to meet the household’s basic needs for food and housing. He highlighted the Government’s political will to eliminate child labour, including children being recruited by armed groups or sent abroad for employment, as the Government considered this to be one type of human trafficking. This political will was reflected in article 54 of the Constitution, which speciﬁed that basic education was compulsory until the age of 15 and that children who were not 15 years of age were not authorized to work. There were also national laws which penalized recruitment by armed groups, child smuggling outside Yemen and their entry into the labour market. In this connection, Ministerial Order No. 11 of 2013 speciﬁed the tasks in which the employment of children over 15 and under 18 years of age was prohibited and the tasks which were authorized. He added that, in view of the events of the Arab spring and the youth revolution which had occurred on 11 February 2011, Yemen had encountered many difficulties which had led to the cessation of the activities of a few companies and therefore to diminishing employment due to internal conﬂicts and the lack of security and stability. This in turn had caused families to push their children into unofficial recruitment by armed groups and types of work which were prohibited for children.

It should be noted that Yemenis had reached consensus on a new Yemen through the comprehensive National Dialogue Conference, and on a new Constitution. Consequently, laws and regulations would be formulated by the constitutional committee in order to safeguard the right of children to education and to ensure their withdrawal from any indecent work, such as enlistment by armed groups. In this connection, he referred to a recent action plan signed on 14 May 2014 between the Government of Yemen and the United Nations (UN), to end and prevent
the recruitment of children by the Yemeni armed forces. He stressed the need of his country for material and moral assistance through launching economic projects and providing jobs for the unemployed, as well as supporting poor families to encourage them to ensure the return of their children to school. He concluded by requesting ILO technical assistance with a view to re-establishing teams of qualified staff to combat child labour.

The Worker members said that the case of Yemen concerned two of the worst forms of child labour, namely their forced recruitment by armed groups and hazardous work. The political events of 2011 had exacerbated the country’s economic and social problems, poverty, unemployment, especially youth unemployment, and the increased number of child soldiers and children at work. With regard to the forced recruitment of children, they recalled the figures contained in reports by the Secretary-General to the UN Security Council (2012) and by UNICEF (2010) concerning the number of children killed and injured, the cases of recruitment and use of children conscripted by government forces, as well as the recruitment of children forcefully enrolled in armed groups. Furthermore, the legislation of 1990 established the minimum age for armed service at 18 years of age, while the Ministry of the Interior had sent a letter to the heads of all security forces instructing them to adhere to the minimum age of recruitment. Child soldiers should be released as soon as possible. The Government had admitted that the current legislation did not specifically provide for clear penalties for the involvement of children in armed conflicts, for the enrolment of children under the age of 18 or for inviting children to bear arms. A draft amendment to the Penal Code established penalties for the trafficking and sale of children, and penalties had been established for the use of children in drug trafficking, but no provision seemed to have been adopted specifically penalizing the forced recruitment of children. With regard to children involved in hazardous work, the National Child Labour Survey carried out in 2010 in collaboration with ILO-IPEC indicated that there were 1.3 million children working in Yemen, which accounted for the low school attendance rate, especially among young girls, and for high drop-out rates. One in two child workers were involved in hazardous work, especially in agriculture, where they were exposed to pesti-cides in the production of khat, for example, as well as in fishing, where they were exposed to extreme conditions and dangerous equipment. The Worker members indicated that the Labour Code allowed children aged between 14 and 18 years to be involved in light work, provided that it did not interfere with their schooling. They pointed out the contradiction between the new Ministerial Ordinance which prohibited children under 18 years of age from being involved in hazardous work in industry and fishing, and section 49(4) of the Labour Code, which banned dangerous work for children under 15 years of age. In accordance with Article 3(d) of Convention No. 182, no child under 18 years of age was to be involved in hazardous work. The Worker members recalled the lack of information provided on the measures taken by the labour inspection services, and emphasized the lack of support for the transport of inspectors. They concluded that the Committee of Experts had been justified in considering this case as a double-footnoted case.

The Employer members agreed with the Worker members on the issues they had raised. They reiterated that the issues affecting Yemen were not only of significant interest to the members of the Committee, but also to the general public. They revised the question of whether the issue of children being recruited by the military might better be dealt with by other UN agencies. Upon reflection, however, the Employer members concluded that, as it concerned work which was forced and involved children, it indeed fell within the scope of the Committee’s work. They were pleased that the social partners could agree on the matter and wanted to see the situation change in Yemen. Some of the problems were outside the scope of the Government’s control, such as the fact that militias were recruiting children. However, children were also recruited by Government forces, a matter that clearly fell within the Government’s control. The UN had verified reports that children as young as 13 were recruited by the Government. A report issued by the Government of the United States showed that children as young as 11 were being recruited. Such information and the issues raised by the Worker members were a serious concern and a concerted effort was needed to change the situation.

A representative of the European Union (EU), speaking on behalf of the EU, as well as Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Norway, Ukraine, the Republic of Moldova, Armenia and Georgia, said that the European Union fully supported the implementation of the eight fundamental ILO Conventions in Yemen. The recommendations set out in the conclusions of the National Dialogue Conference, in particular those regarding the right to education and the prohibition of child labour and recruitment of child soldiers, were to be welcomed. The Yemeni authorities had made efforts to implement the recommendations through an action plan to bring an end to the recruitment of children by Government forces, and through their work aimed at amending legislation on the rights of the child. He urged the Government to adopt the Child Rights Bill laying down the minimum age for marriage at 18. Effective time-bound measures needed to be taken to ensure that children were removed from armed groups and forces, families received support and children were reintegrated into society, including into the school system or vocational training. The EU would continue to support the authorities and relevant partners in Yemen to ensure the effective implementation of the measures, notably through its Juvenile Justice Programme, developed jointly with UNICEF. The Government was encouraged to make use of technical cooperation activities and to comply with its reporting obligations.

The Worker member of Japan emphasized that the use of children under the age of 18 in armed conflict in Yemen has been a serious violation of the Convention. He expressed concern about the fulfilment of some of the Government’s obligations. Areas of concern included the recruitment of children in state armed forces and allied armed groups and their participation in armed conflict; the recruitment of children in armed opposition groups and their use in armed conflict; and the lack of penalties and accountability for the recruitment and use of children in armed conflict. There had been numerous internal armed conflicts in Yemen and multiple reports of the Yemeni army recruiting children. There had also been reports of children being used as scouts, spies and human shields. Reports by the Office of the United Nations High Commissioner for Human Rights (OHCHR) also stated that children wearing military uniform had been directly involved in the violence. He noted that the Ministry of the Interior had sent a letter to the heads of all security forces instructing them to adhere to the minimum age of recruitment of 18 and releasing any underage members. He urged the Government to ensure that the minimum age for recruits was strictly enforced and that military units were regularly monitored in order to detect and prevent underage recruitment. Child soldiers should be released as soon
as possible and receive appropriate assistance for their rehabilitation and social integration.

The Government member of Switzerland welcomed the political progress made in Yemen and especially the successful conclusion of the National Dialogue Conference. He supported the statement by the EU, to which he wished to add a few points. Child labour, particularly the use of children in armed conflicts, was a matter of the gravest concern, and Switzerland was dismayed by the persistent practice of recruiting children into the armed forces. His country supported the Committee of Experts’ conclusions and recommendations. Recruiting children in armed conflicts was a violation not only of Convention No. 182, but also of Articles 32 and 38 of the UN Convention on the Rights of the Child, which Yemen had ratified. He added that adequate sanctions must be applied by the Government to punish the involvement of children in armed conflict. Switzerland was prepared to stand by Yemen to help it deal with its migration issues, including the protection of migrants and the provision of basic services for vulnerable groups, especially refugees and other people displaced and affected by the war.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, said that children in Yemen continued to be victims of serious violations of children’s rights, which had been confirmed by the Committee of Experts and other UN bodies. Children in Yemen were vulnerable to recruitment and involvement in the ongoing civil conflict. They had been observed in the ranks of the Central Security Forces, the Republican Guard and the First Armoured Division. Many had been enlisted by military officers, family members or sheiks. Rebel groups were also using children in armed conflict. About 1.3 million children in Yemen were engaged in the worst forms of child labour, such as in the fishing industry, agriculture, quarries and mines, as well as in armed conflict. Yemen was a transit and destination country for children subject to forced labour and trafficking. Some children travelled to Saudi Arabia, where they were forced into domestic service or prostitution. Some children were forced to smuggle drugs across the border to Saudi Arabia and some children, whose families supported the Houthis, were forced to serve in Houthi militias. With regard to girls, many were subjected to trafficking in Yemen or Saudi Arabia. She expressed deep concern at the violations of children’s rights. She urged the Government to take immediate and effective measures to put an end to the forced and compulsory recruitment of children in conflict. It called for an inspection to prevent children from undertaking hazardous work and from being trafficked. Penalties for such offences should be introduced and anyone forcibly recruiting children should be prosecuted and punished. She appealed to the Government to take its membership of the ILO seriously and to comply with Convention No. 182.

The Worker member of Italy expressed her deep concern regarding the continued violations of Convention No. 182 in Yemen. The Government had submitted a report on the Convention, claiming it was applied through constitutional rules, laws and regulations. However, major gaps remained in those texts and legislation on the minimum age for work was contradictory. In addition, existing norms were not translated into practice. Children were often subjected to exploitation, extreme poverty, hunger, illness, trafficking and sexual exploitation. Many of them were involved in armed conflicts or performed very dangerous work. Many girls worked in domestic service, often as slaves, unable to leave their employers’ homes and were exposed to physical, psychological and sexual abuse. While there were estimations of the number of children affected, the real extent was unknown. There was no information on the number of arrests, investigations and prosecutions for offences related to the worst forms of child labour. Access to education represented a very serious cause for concern. Yemen had one of the lowest enrolment rates in primary and secondary education in the world. Child labour was not happening in isolation; Yemen was one of the poorest countries in the Arab region and the world, progressing regarding the Millennium Development Goals was slow and unemployment was rising. It had one of the highest birth rates and the second highest malnutrition rate. However, poverty could not be used as an excuse to keep child labour as it, in fact, perpetuated poverty cycles and kept children out of education and development opportunities. She urged the Government to move quickly to address these serious concerns of the Worker members and the international community. Immediate specific measures should be taken to prevent severe and systematic child rights violations which were an obstacle to social justice, fair development and future opportunities.

The Worker member of Yemen indicated that the Government was not interested in implementing Convention No. 182, despite its ratification. He added that the justifications used by the Government before the Conference of Committee were not as convincing because the Government had not even formulated a draft law. He therefore urged the Government to take its responsibility and ensure collaboration between the relevant bodies in order to implement the Convention in view of the rising numbers of working children. The situation required all concerned to make efforts to combat the phenomenon. He added that children continued to work and were subjected to exploitation in dangerous work. Serious action was therefore required by the Government, the ILO and workers in order to implement the Convention. To this end, he called upon all political forces in Yemen to sign a code of honour which would end the recruitment of children by armed groups. He also called upon the international community to help his country overcome this difficult situation. He concluded that there was an urgent need for the ILO to play a more important role to follow the situation closely. He therefore called upon the ILO to send a high-level mission as soon as possible to follow up on the issue, and to make recommendations that could be implemented.

The Government member of Egypt invited ILO member States to consider Yemen’s political, economic and social situation carefully and recalled the ongoing fighting which made it difficult for it to implement Convention No. 182. The Government of Yemen had not even formulated a report before the Conference, nor had it even considered its responsibilities and hoped to remedy the situation. Meanwhile, the Government of Egypt invited the ILO to provide Yemen with assistance to prevent the situation from deteriorating and to help the country eradicate child labour completely. He supported those member States that had called for the elimination of child labour. In conclusion, he stated that the situation in Yemen was exceptional and called for extensive assistance.

The Government representative indicated that over the previous three years the country had witnessed child recruitment in armed conflict by armed groups, such as the Houthis and Al Qaeda, but not by the Government. The country’s economic and general climate accounted for this situation. In 2011, the country had undertaken to implement all possible programmes to eradicate child labour. Up to 2010, about 600,000, but that number currently stood at 1.5 million. The Yemeni Government was in a difficult situation due to the economic climate, armed conflict which affected even the capital, and the situation of violence. That had resulted in the destabilization of the country, which led people to resort to the recruitment and exploitation of child workers. The Government had adopted a
Worst Forms of Child Labour Convention, 1999 (No. 182)
Yemen (ratification: 2000)

decree in 2012 which prohibited the recruitment of children in the army and security forces and he emphasized the importance of taking into account the causes of child labour resulting from the violence and insecurity in Yemen. He concluded that the country was firmly committed to implementing the core ILO Conventions and the Conventions concerning the rights of the child. He recalled, in that respect, that 95% of children engaged in hazardous work in Yemen were under the age of 18 and that sufficiently effective and dissuasive sanctions were required to ensure that responsible individuals were held accountable.

The Committee noted the Government's statement that an action plan to deal with the issue should not prove problematic as the Yemeni Government was in agreement about the seriousness of the matter, which was ripe for ILO supervision. Agreement on how to proceed was already anticipated in the 2012 decree in the form of abductions, murders and sexual violence. The Government acknowledged the difficulties faced by the Government of Yemen. Some of the issues discussed were not within the Government’s control, although many were. The Government could, for example, combat child recruitment in the armed forces. Moreover, the Government had not denied that child recruitment in the armed forces was happening. Workers and employers were in agreement about the seriousness of the matter, which was ripe for ILO supervision. Agreement on how to deal with the issue should not prove problematic. The Employer members welcomed the fact that the Government was requesting ILO technical assistance to address the difficulties that had been discussed.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed concerning the compulsory recruitment of children for use in armed conflict in the country as well as the engagement of children in hazardous work.

The Committee noted the Government’s statement that an action plan to withdraw children under 18 from working in hazardous conditions and hazardous occupations and economic activities, including agriculture, the fishing industry, mining and construction. In this regard, the Committee requested the Government to strengthen the capacity and expand the reach of the labour inspectorate in enforcing Ministerial Order No. 11 of 2013 on child labour and hazardous work, including in rural areas. It urged the Government to ensure that regular unannounced visits are carried out by labour inspectors so as to ensure that persons who infringe the Convention are prosecuted and that sufficiently effective and dissuasive sanctions are applied. It also requested the Government to take effective and time-bound measures to withdraw children under 18 from working in hazardous conditions and to provide for their rehabilitation and social integration.

Underlining that education contributed to combating the worst forms of child labour, the Committee strongly encouraged the Government to provide access to free and public basic education for all children, particularly children removed from armed conflict and children engaged in hazardous work, with special attention to the situation of girls. In this regard, the Committee called on ILO member States to provide assistance to the Government of Yemen in line with Article 8 of the Convention, with special priority on facilitating free and public basic education and vocational training.

The Worker members welcomed the request for technical assistance made by the Government. With a view to starting to eliminate two of the worst forms of child labour discussed by the Committee, they believed that the Government should launch a series of actions and programmes at the legislative level, in particular amending the Labour Code, the law concerning the rights of children and the ministerial ordinances in order to ensure legislative coherence and conformity with Convention No. 182, and the adoption of criminal penalties for violations of the legislation. At the political level, it was necessary to formulate and implement a national plan of action aimed at preventing recruitment of children; establish a system of inspection in rural areas and in sectors where the worst forms of child labour occurred; and develop a database in this sphere, particularly with regard to the trafficking of children. In social terms, they added that the Government should draw up a programme for the disarmament, demobilization and reintegration of children recruited by armed forces or armed groups and should reduce child labour, particularly in agriculture and fisheries. While still bearing in mind the difficult situation in the country, the Worker members called on the Government to draw up a plan of action specifying the measures, phases and timeframes established in it with ILO assistance, which had already been requested by the Government. The plan should focus on child protection in order to prevent the recruitment of new child soldiers and provide for their return to normal life. In the meantime, they urged the Government to modify the national legislation and inform the Committee of Experts at its November 2014 session of the progress made, in particular regarding implementation of the plan of action. They also called on the Government to accept an ILO assistance mission.

The Employer members acknowledged the difficulties faced by the Government of Yemen. Some of the issues discussed were not within the Government’s control, although many were. The Government could, for example, control child recruitment in the armed forces. Moreover, the Government had not denied that child recruitment in the armed forces was happening. Workers and employers were in agreement about the seriousness of the matter, which was ripe for ILO supervision. Agreement on how to deal with the issue should not prove problematic. The Employer members welcomed the fact that the Government was requesting ILO technical assistance to address the difficulties that had been discussed.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed concerning the compulsory recruitment of children for use in armed conflict in the country as well as the engagement of children in hazardous work.

The Committee noted the Government’s statement that an action plan to withdraw children under 18 from working in hazardous conditions and hazardous occupations and economic activities, including agriculture, the fishing industry, mining and construction. In this regard, the Committee requested the Government to strengthen the capacity and expand the reach of the labour inspectorate in enforcing Ministerial Order No. 11 of 2013 on child labour and hazardous work, including in rural areas. It urged the Government to ensure that regular unannounced visits are carried out by labour inspectors so as to ensure that persons who infringe the Convention are prosecuted and that sufficiently effective and dissuasive sanctions are applied. It also requested the Government to take effective and time-bound measures to withdraw children under 18 from working in hazardous conditions and to provide for their rehabilitation and social integration.

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for children removed from the worst forms of child labour. Noting the information highlighted by several speakers that the worst forms of child labour were the result of poverty and underdevelopment in Yemen, the Committee encouraged the Government to avail itself of ILO technical assistance in order to achieve tangible progress in the application of the Convention. It also requested the Office to undertake a technical assistance mission in this regard.

Finally, the Committee requested the Government to provide a detailed report to the Committee of Experts addressing all the issues raised by this Committee and the Committee of Experts for examination at its next meeting. The Committee expressed the firm hope that it would be able to note tangible progress in the application of the Convention in the very near future.
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 Sudan indicated that the Conventions and Recommendations adopted from 1994 to 2012 had been submitted to the competent authorities.

A Government representative of Kazakhstan stated that the documents concerning submission had been brought to the attention of the Parliament.

A Government representative of Mauritania indicated that the Department of Labour had undertaken to rectify the delay in the submission of instruments before 31 July 2014. The comments of the present Committee, like those of the Committee of Experts, were certainly appreciated and taken into account. In fact, following an observation in 2013 from the Committee of Experts on the Labour Inspection Convention, 1947 (No. 81), labour inspectors had been given instructions concerning that Convention, and the number of inspectors had risen from ten in 2013 to 13 in 2014.

A Government representative of Brazil said that the Government was working to identify the best way of handling this issue in a comprehensive way, in accordance with the specific constitutional competencies of all the institutions involved in this procedure and in the context of tripartite dialogue. The primary objective was to avoid any recurrence of this situation in the future. Brazil had made progress in consolidating social dialogue. Hence, on the basis of her country’s experience, there was renewed confidence that the historical heritage of the Organization would serve as an inspiration for reaching the consensus that was needed to move forward in the debate.

A Government representative of Kuwait indicated that the Government was currently carrying out consultations, including with the social partners, on the possibility of ratifying the Conventions concerned, with a view to eventually submitting the instruments to the competent authorities. He recalled that in 2013, the Committee of Experts had welcomed the fact that all the instruments adopted by the Conference had been submitted by the competent minister to the Council of Ministers, and then to the National Assembly. This was a long and complicated procedure both in terms of logistics and administration and was subject to factors beyond the Government’s control such as the timing of parliamentary sessions. A national committee has been set up this year to deal with this constitutional obligation and to accelerate the process. Its creation was the outcome of technical cooperation received from the ILO. The results of the national committee’s work would be communicated to the Committee.

A Government representative of Libya wished to comment on both paragraphs 106 and 113 of the General Report. He indicated that Libya was going through a critical transitional phase, in its march towards the establishment of a democratic State. In spite of the present circumstances, the Ministry of Labour and Rehabilitation in the transitional Government had paid great attention to formulating draft laws on labour and trade unions. It had also set up a committee responsible for the preparation of reports on ratified Conventions and replies to the Committee of Experts’ comments. Libya had thus complied with its constitutional obligation. Furthermore, the Ministry had forwarded the Conventions adopted at previous sessions of the Conference to the relevant sectors for their examination and positions as to their ratification with a view to their eventual submission to the General National Congress, which was not exactly a Parliament given the present situation. The speaker indicated that his Government had communicated to the Office information to this effect which had probably arrived after the publication of the report. He pledged that his Government would keep the Office informed of any new developments in this regard, and that every effort would be made to meet Libya’s constitutional obligations.

A Government representative of Jordan explained that the constitution of Jordan had been amended in November 2011, and that the changes required the Government to examine all national legislation to ensure its conformity with the new Constitution. In January 2014, Jordan had ratified the Social Security (Minimum Standards) Convention, 1952 (No. 102). The Government had always submitted instruments to the competent authorities and would shortly be in a position to submit information in this respect.

A Government representative of Papua New Guinea referred to the progress made within the Government’s implementing agency in relation to the obligation of submission to the competent authorities, including through the preparation of a draft document concerning the submission of 19 instruments to the National Executive Council. This initial progress had been hindered in late 2012, when the implementing agency had undertaken administrative changes affecting its technical capacity to ensure that the submission would reach the competent authority. In view of the large number of instruments to be submitted to the competent authority, further technical and legal consultations were needed prior to submission. Nevertheless, he reaffirmed his Government’s commitment to address this failure and the internal technical capacity issues. Information would be communicated to the Committee in the near future.

A Government representative of Suriname informed the Committee that, on the previous day, her Government had submitted the report on the Worst Forms of Child Labour Convention, 1999 (No. 182). The Conventions adopted had not been submitted to the competent authorities due to an administrative problem. A document for submission to the competent authority (the National Assembly) was in the final stages of preparation, and her Government hoped to be able to meet its obligation by the end of 2014.

A Government representative of Bangladesh stated that 37 ILO instruments had been submitted to the competent authority of Bangladesh, the Tripartite Consultative Council (TCC). At its July 2013 meeting, the TCC had recommended that Bangladesh should ratify the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185) and the Maritime Labour Convention, 2006; Bangladesh had, accordingly, ratified those Conventions in 2014. He recalled however that any labour-related issue including ILO instruments needed to be discussed by the standing parliamentary committee related to the Ministry of Labour and Employment.

A Government representative of Bahrain said that his Government had sent a document detailing his country’s position on the procedure for submission in March. Article 19 of the Constitution gave member States a great deal of freedom as to the appropriate procedures, including when the Executive was the competent authority for examining instruments. The Government wished to do so.

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 certain delegates in complying with this constitutional obligation, and in particular the promises to submit shortly to parliaments the instruments adopted by the International Labour Conference.

The Committee pointed out that a particularly high number of governments had been invited to provide explanations on the important delay in meeting their constitutional obligation of submission. As had been done by the Committee of Experts, the Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to competent authorities. Full compliance with the obligation to submit meant the submission of the instruments adopted by the Conference to national parliaments and was a 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 countries mentioned, namely Angola, Bahrain, Belize, Brazil, Comoros, Democratic Republic of the Congo, Côte d’Ivoire, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Libya, Mali, Mauritania, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Vanuatu, would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

(b) Information received

Albania. Since the meeting of the Committee of Experts, the ratification of the Promotional Framework of Occupational Safety and Health Convention, 2006 (No. 187) was registered on 24 April 2014.

Bangladesh. Since the meeting of the Committee of Experts, the instrument of ratification of the Maritime Labour Convention, 2006 was received on 28 April 2014, but not registered pending information under Standard A.5, paragraph 10.

Congo. Since the meeting of the Committee of Experts, the ratification of the Maritime Labour Convention, 2006 was registered on 7 April 2014.

Seychelles. Since the meeting of the Committee of Experts, the ratification of the Maritime Labour Convention, 2006 was registered on 7 January 2014.
III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS
(APRTE 19 OF THE CONSTITUTION)

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

The Committee took note of the information provided.

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on unratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of General Surveys of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation. The Committee insisted that all member States should fulfill their obligations in this respect and expressed the firm hope that the Governments of the Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Libya, Marshall Islands, Solomon Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tuvalu 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.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from the following countries: Brunei Darussalam and Tajikistan.

(c) Reports received on unratified Convention No. 131 and Recommendation No. 135

In addition to the reports listed in Appendix II on page 203 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following country: Mongolia.
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<tr>
<th>Country</th>
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Notes:
- For Fiji, all reports received: Conventions Nos. 87, 98, 144, 149, 169, 172.
- For France, all reports received: Conventions Nos. 3, 14, 52, 62, 67, 96, 68, 101, 106, 137, 140, 142, 144, 149, 152.
- For Guyana, 14 reports received: Conventions Nos. 87, 95, 98, 100, 108, 111, 129, 138, 140, 144, 149, 151, 172, 175. 12 reports not received: Conventions Nos. 11, 12, 29, 94, 105, 115, 131, 135, 137, 139, 141, 142.
- For Kazakhstan, 8 reports requested. (Paragraph 50) 7 reports received: Conventions Nos. 100, 111, 122, 138, (167), 182, (185). 1 report not received: Convention No. (162).
- For Lao People's Democratic Republic, 8 reports requested. (Paragraph 53) 7 reports received: Conventions Nos. 6, 29, 100, 111, 138, (144), 182. 1 report not received: Convention No. 4.
- For Lebanon, 22 reports requested. 19 reports received: Conventions Nos. 1, 29, 30, 52, 59, 71, 77, 78, 89, 90, 95, 100, 106, 111, 131, 138, 152, 172, 182. 3 reports not received: Conventions Nos. 14, 122, 142.
- For Malawi, 19 reports requested. 16 reports received: Conventions Nos. 19, 26, 29, 81, 89, 97, 98, 100, 107, 111, 129, 138, 144, 150, 159, 182. 3 reports not received: Conventions Nos. 99, 105, 149.
- For Malaysia, 4 reports requested. All reports received: Conventions Nos. 29, 95, 100, 144.
- For Mali, 17 reports requested. All reports received: Conventions Nos. 6, 11, 14, 17, 18, 19, 26, 29, 52, 95, 100, 105, 111, 138, 144, 182, 183.
- For Malta, 16 reports requested. All reports received: Conventions Nos. 1, 14, 32, 77, 78, 95, 96, 98, 100, 106, 111, 117, 124, 131, 132, 149.
- For Mauritania, 16 reports requested. 1 report received: Convention No. 122. 15 reports not received: Conventions Nos. 3, 14, 29, 33, 52, 81, 89, 100, 101, 102, 111, 112, 114, 138, 182.
- For Mongolia, 8 reports requested. (Paragraph 53) 7 reports received: Conventions Nos. 100, 111, 122, 123, 138, 144, 182. 1 report not received: Convention No. 103.
- For Nicaragua, 14 reports requested. 13 reports received: Conventions Nos. 1, 3, 14, 30, 78, 100, 110, 111, 117, 122, 140, 142, 189. 1 report not received: Convention No. 4.
- For Panama, 15 reports requested. 13 reports received: Conventions Nos. 3, 29, 30, 52, 81, 89, 94, 105, 110, 122, 138, 182. 2 reports not received: Conventions Nos. 107, 117.
<table>
<thead>
<tr>
<th>Country</th>
<th>Reports Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portugal</td>
<td>18 reports</td>
</tr>
<tr>
<td>Slovakia</td>
<td>23 reports</td>
</tr>
<tr>
<td>Spain</td>
<td>22 reports</td>
</tr>
<tr>
<td>Suriname</td>
<td>9 reports</td>
</tr>
<tr>
<td>Thailand</td>
<td>7 reports</td>
</tr>
<tr>
<td>Turkey</td>
<td>17 reports</td>
</tr>
</tbody>
</table>

**Grand Total**

A total of 2,176 reports (article 22) were requested, of which 1,755 reports (80.85 per cent) were received.

A total of 143 reports (article 35) were requested, of which 141 reports (98.60 per cent) were received.
Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

Reports received as of 12 June 2014

<table>
<thead>
<tr>
<th>Year of the session of the Committee of Experts</th>
<th>Reports requested</th>
<th>Reports received at the date requested</th>
<th>Reports received in time for the session of the Committee of Experts</th>
<th>Reports received in time for the session of the Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1932</td>
<td>447</td>
<td>-</td>
<td>406 90.8%</td>
<td>423 94.6%</td>
</tr>
<tr>
<td>1933</td>
<td>522</td>
<td>-</td>
<td>435 83.3%</td>
<td>453 86.7%</td>
</tr>
<tr>
<td>1934</td>
<td>601</td>
<td>-</td>
<td>508 84.5%</td>
<td>544 90.5%</td>
</tr>
<tr>
<td>1935</td>
<td>630</td>
<td>-</td>
<td>584 92.7%</td>
<td>620 98.4%</td>
</tr>
<tr>
<td>1936</td>
<td>662</td>
<td>-</td>
<td>577 87.2%</td>
<td>604 91.2%</td>
</tr>
<tr>
<td>1937</td>
<td>702</td>
<td>-</td>
<td>580 82.6%</td>
<td>634 90.3%</td>
</tr>
<tr>
<td>1938</td>
<td>748</td>
<td>-</td>
<td>616 82.4%</td>
<td>635 84.9%</td>
</tr>
<tr>
<td>1939</td>
<td>766</td>
<td>-</td>
<td>588 76.8%</td>
<td>-</td>
</tr>
<tr>
<td>1944</td>
<td>583</td>
<td>-</td>
<td>251 43.1%</td>
<td>314 53.9%</td>
</tr>
<tr>
<td>1945</td>
<td>725</td>
<td>-</td>
<td>351 48.4%</td>
<td>523 72.2%</td>
</tr>
<tr>
<td>1946</td>
<td>731</td>
<td>-</td>
<td>370 50.6%</td>
<td>578 79.1%</td>
</tr>
<tr>
<td>1947</td>
<td>763</td>
<td>-</td>
<td>581 76.1%</td>
<td>666 87.3%</td>
</tr>
<tr>
<td>1948</td>
<td>799</td>
<td>-</td>
<td>521 65.2%</td>
<td>648 81.1%</td>
</tr>
<tr>
<td>1949</td>
<td>806</td>
<td>134 16.6%</td>
<td>666 82.6%</td>
<td>695 86.2%</td>
</tr>
<tr>
<td>1950</td>
<td>831</td>
<td>253 30.4%</td>
<td>597 71.8%</td>
<td>666 80.1%</td>
</tr>
<tr>
<td>1951</td>
<td>907</td>
<td>288 31.7%</td>
<td>507 77.7%</td>
<td>761 83.9%</td>
</tr>
<tr>
<td>1952</td>
<td>981</td>
<td>268 27.3%</td>
<td>743 75.7%</td>
<td>826 84.2%</td>
</tr>
<tr>
<td>1953</td>
<td>1028</td>
<td>212 20.6%</td>
<td>840 75.7%</td>
<td>917 89.3%</td>
</tr>
<tr>
<td>1954</td>
<td>1175</td>
<td>268 22.8%</td>
<td>1077 91.7%</td>
<td>1119 95.2%</td>
</tr>
<tr>
<td>1955</td>
<td>1234</td>
<td>283 22.9%</td>
<td>1063 86.1%</td>
<td>1170 94.8%</td>
</tr>
<tr>
<td>1956</td>
<td>1333</td>
<td>332 24.9%</td>
<td>1234 92.5%</td>
<td>1283 96.2%</td>
</tr>
<tr>
<td>1957</td>
<td>1418</td>
<td>210 14.7%</td>
<td>1295 91.3%</td>
<td>1349 95.1%</td>
</tr>
<tr>
<td>1958</td>
<td>1558</td>
<td>340 21.8%</td>
<td>1484 95.2%</td>
<td>1509 96.8%</td>
</tr>
<tr>
<td>1959</td>
<td>995</td>
<td>200 20.4%</td>
<td>864 86.8%</td>
<td>902 90.6%</td>
</tr>
<tr>
<td>1960</td>
<td>1100</td>
<td>256 23.2%</td>
<td>838 76.1%</td>
<td>963 87.4%</td>
</tr>
<tr>
<td>1961</td>
<td>1362</td>
<td>243 18.1%</td>
<td>1090 80.0%</td>
<td>1142 83.8%</td>
</tr>
<tr>
<td>1962</td>
<td>1309</td>
<td>200 15.5%</td>
<td>1059 80.9%</td>
<td>1121 85.6%</td>
</tr>
<tr>
<td>1963</td>
<td>1624</td>
<td>280 17.2%</td>
<td>1314 80.9%</td>
<td>1430 88.0%</td>
</tr>
<tr>
<td>1964</td>
<td>1495</td>
<td>213 14.2%</td>
<td>1268 84.8%</td>
<td>1356 90.7%</td>
</tr>
<tr>
<td>1965</td>
<td>1700</td>
<td>282 16.6%</td>
<td>1444 84.9%</td>
<td>1527 89.8%</td>
</tr>
<tr>
<td>1966</td>
<td>1562</td>
<td>245 16.3%</td>
<td>1330 85.1%</td>
<td>1395 89.3%</td>
</tr>
<tr>
<td>1967</td>
<td>1883</td>
<td>323 17.4%</td>
<td>1551 84.5%</td>
<td>1643 89.6%</td>
</tr>
<tr>
<td>1968</td>
<td>1647</td>
<td>281 17.1%</td>
<td>1409 85.5%</td>
<td>1470 89.1%</td>
</tr>
<tr>
<td>1969</td>
<td>1821</td>
<td>249 13.4%</td>
<td>1501 82.4%</td>
<td>1601 87.9%</td>
</tr>
<tr>
<td>1970</td>
<td>1894</td>
<td>360 18.9%</td>
<td>1463 77.0%</td>
<td>1549 81.6%</td>
</tr>
<tr>
<td>1971</td>
<td>1992</td>
<td>237 11.8%</td>
<td>1504 75.5%</td>
<td>1707 85.6%</td>
</tr>
<tr>
<td>1972</td>
<td>2025</td>
<td>297 14.6%</td>
<td>1572 77.6%</td>
<td>1753 86.5%</td>
</tr>
<tr>
<td>1973</td>
<td>2048</td>
<td>300 14.6%</td>
<td>1521 74.3%</td>
<td>1691 82.5%</td>
</tr>
<tr>
<td>1974</td>
<td>2189</td>
<td>370 16.5%</td>
<td>1854 84.6%</td>
<td>1958 89.4%</td>
</tr>
<tr>
<td>1975</td>
<td>2034</td>
<td>301 14.8%</td>
<td>1663 81.7%</td>
<td>1764 86.7%</td>
</tr>
<tr>
<td>1976</td>
<td>2200</td>
<td>292 13.2%</td>
<td>1831 83.0%</td>
<td>1914 87.0%</td>
</tr>
</tbody>
</table>

As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.
<table>
<thead>
<tr>
<th>Year of the session of the Committee of Experts</th>
<th>Reports requested</th>
<th>Reports received at the date requested</th>
<th>Reports received in time for the session of the Committee of Experts</th>
<th>Reports received in time for the session of the Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
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<td>1120</td>
<td>1328</td>
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<tr>
<td>1978</td>
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<td>251</td>
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<td>1391</td>
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<tr>
<td>1979</td>
<td>1593</td>
<td>234</td>
<td>1270</td>
<td>1376</td>
</tr>
<tr>
<td>1980</td>
<td>1581</td>
<td>168</td>
<td>1302</td>
<td>1437</td>
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<tr>
<td>1981</td>
<td>1543</td>
<td>127</td>
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<td>1340</td>
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<td>1982</td>
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<tr>
<td>1983</td>
<td>1737</td>
<td>236</td>
<td>1388</td>
<td>1558</td>
</tr>
<tr>
<td>1984</td>
<td>1669</td>
<td>189</td>
<td>1286</td>
<td>1412</td>
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<tr>
<td>1985</td>
<td>1666</td>
<td>189</td>
<td>1312</td>
<td>1471</td>
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<td>1986</td>
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<tr>
<td>1990</td>
<td>1958</td>
<td>192</td>
<td>1409</td>
<td>1639</td>
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<td>1991</td>
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<td>1992</td>
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<td>1993</td>
<td>1906</td>
<td>471</td>
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<td>1473</td>
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<tr>
<td>1994</td>
<td>2290</td>
<td>370</td>
<td>1573</td>
<td>1879</td>
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</tbody>
</table>

As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.

<table>
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<th>Reports requested</th>
<th>Reports received at the date requested</th>
<th>Reports received in time for the session of the Committee of Experts</th>
<th>Reports received in time for the session of the Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>1252</td>
<td>479</td>
<td>824</td>
<td>988</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Year of the session of the Committee of Experts</th>
<th>Reports requested</th>
<th>Reports received at the date requested</th>
<th>Reports received in time for the session of the Committee of Experts</th>
<th>Reports received in time for the session of the Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>1806</td>
<td>382</td>
<td>1145</td>
<td>1413</td>
</tr>
<tr>
<td>1997</td>
<td>1927</td>
<td>553</td>
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<td>1438</td>
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<td>1998</td>
<td>2036</td>
<td>463</td>
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<td>1455</td>
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<td>1641</td>
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<td>1672</td>
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<tr>
<td>2002</td>
<td>2368</td>
<td>600</td>
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<td>1701</td>
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<td>2003</td>
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<td>1544</td>
<td>1701</td>
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<tr>
<td>2004</td>
<td>2569</td>
<td>659</td>
<td>1645</td>
<td>1852</td>
</tr>
<tr>
<td>2005</td>
<td>2638</td>
<td>696</td>
<td>1820</td>
<td>2065</td>
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<td>2006</td>
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<td>745</td>
<td>1719</td>
<td>1949</td>
</tr>
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<td>2007</td>
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<td>811</td>
<td>1768</td>
<td>1962</td>
</tr>
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<tr>
<td>2010</td>
<td>2745</td>
<td>861</td>
<td>1866</td>
<td>2122</td>
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<tr>
<td>2011</td>
<td>2735</td>
<td>960</td>
<td>1855</td>
<td>2117</td>
</tr>
</tbody>
</table>
As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals.

<table>
<thead>
<tr>
<th>Year of the session of the Committee of Experts</th>
<th>Reports requested</th>
<th>Reports received at the date requested</th>
<th>Reports received in time for the session of the Committee of Experts</th>
<th>Reports received in time for the session of the Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>2207</td>
<td>809</td>
<td>1497</td>
<td>1742</td>
</tr>
<tr>
<td>2013</td>
<td>2176</td>
<td>740</td>
<td>1578</td>
<td>1755</td>
</tr>
</tbody>
</table>
INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT

Afghanistan
   Part One: General report, paras 180, 184
   Part Two: I A (b)

Albania
   Part Two: II (b)

Algeria
   Part Two: I B No. 87

Angola
   Part One: General report, paras 177, 184
   Part Two: II (a)

Bahrain
   Part One: General report, para. 177
   Part Two: II (a)

Bangladesh
   Part Two: I B No. 81
   Part Two: II (b)

Belarus
   Part One: General report, para. 193
   Part Two: I B No. 87

Belize
   Part One: General report, paras 177, 200
   Part Two: II (a)

Brazil
   Part One: General report, para. 177
   Part Two: II (a)

Brunei Darussalam
   Part Two: III (b)

Bulgaria
   Part Two: I A (d)

Burundi
   Part One: General report, paras 179, 183, 199
   Part Two: I A (a), (c)

Cambodia
   Part One: General report, para. 183
   Part Two: I B No. 87

Central African Republic
   Part Two: I B No. 169

Colombia
   Part Two: I B No. 81

Comoros
   Part One: General report, paras 177, 179, 183
   Part Two: I A (a), (c)
   Part Two: II (a)

Congo
   Part Two: I A (d)
   Part Two: II (b)

Croatia
   Part One: General report, paras 183, 199
   Part Two: I A (c)
   Part Two: I B No. 98

Côte d’Ivoire
   Part One: General report, paras 177, 199
   Part Two: II (a)

Democratic Republic of the Congo
   Part One: General report, paras 177, 186, 199
   Part Two: I B No. 29
   Part Two: II (a)
   Part Two: III (a)

Djibouti
   Part One: General report, paras 177, 199
   Part Two: I A (d)
   Part Two: II (a)

Dominica
   Part One: General report, paras 177, 183, 200
   Part Two: I A (c)
   Part Two: II (a)

Dominican Republic
   Part Two: I A (d)
   Part Two: I B No. 111

Ecuador
   Part Two: I A (d)
   Part Two: I B No. 98

El Salvador
   Part One: General report, paras 177, 183, 199
   Part Two: I A (c)
   Part Two: II (a)

Equatorial Guinea
   Part One: General report, paras 177, 179, 180, 183, 186, 200
   Part Two: I A (a), (b), (c)
   Part Two: II (a)
   Part Two: III (a)

Eritrea
   Part One: General report, para. 184
   Part Two: I A (d)

Fiji
   Part One: General report, paras 177, 199
   Part Two: II (a)

Gambia
   Part One: General report, paras 179, 183, 200
   Part Two: I A (a), (c)

Ghana
   Part One: General report, paras 183, 199
   Part Two: I A (c)

Greece
   Part Two: I B No. 102
Guinea
Part One: General report, paras 177, 183, 186, 199
Part Two: I A (c)
Part Two: II (a)
Part Two: III (a)

Guinea-Bissau
Part One: General report, paras 186, 200
Part Two: III (a)

Guyana
Part One: General report, paras 183, 184
Part Two: I A (c)

Haiti
Part One: General report, paras 177, 183, 199
Part Two: I A (c)
Part Two: II (a)

Iraq
Part One: General report, paras 177, 199
Part Two: II (a)

Jamaica
Part One: General report, paras 177, 199
Part Two: II (a)

Jordan
Part One: General report, para. 177
Part Two: II (a)

Kazakhstan
Part One: General report, para. 177
Part Two: I A (d)
Part Two: I B No. 111
Part Two: II (a)

Korea, Republic of
Part Two: I B No. 111

Kuwait
Part One: General report, paras 177, 184
Part Two: II (a)

Kyrgyzstan
Part One: General report, paras 177, 199
Part Two: II (a)

Lao People’s Democratic Republic
Part Two: I A (d)

Libya
Part One: General report, paras 177, 184, 186
Part Two: II (a)
Part Two: III (a)

Malawi
Part Two: I A (d)

Malaysia
Part Two: I B No. 29

Malaysia – Malaysia-Sarawak
Part One: General report, paras 183, 199
Part Two: I A (c)

Malaysia – Malaysia-Selangor
Part One: General report, paras 183, 199

Mali
Part One: General report, paras 177, 199
Part Two: I A (d)
Part Two: II (a)

Marshall Islands
Part One: General report, paras 186, 200
Part Two: III (a)

Mauritania
Part One: General report, paras 177, 183, 184
Part Two: I A (c)
Part Two: I B No. 122
Part Two: II (a)

Mongolia
Part Two: I A (d)
Part Two: III (c)

Mozambique
Part One: General report, paras 177, 199
Part Two: II (a)

Niger
Part Two: I B No. 138

Pakistan
Part One: General report, paras 177, 199
Part Two: I B No. 81
Part Two: II (a)

Papua New Guinea
Part One: General report, paras 177, 184
Part Two: II (a)

Portugal
Part Two: I B No. 122

Qatar
Part Two: I B No. 81

Rwanda
Part One: General report, paras 177, 183, 199
Part Two: I A (c)
Part Two: II (a)

Saint Kitts and Nevis
Part One: General report, paras 186, 200
Part Two: III (a)

Saint Lucia
Part One: General report, paras 177, 200
Part Two: II (a)

San Marino
Part One: General report, paras 179, 183, 199
Part Two: I A (a), (c)
Sao Tome and Principe
Part One: General report, paras 177, 180, 186, 200
Part Two: I A (b)
Part Two: II (a)
Part Two: III (a)

Saudi Arabia
Part Two: I B No. 29

Seychelles
Part Two: II (b)

Sierra Leone
Part One: General report, paras 177, 183, 186, 199
Part Two: I A (c)
Part Two: II (a)
Part Two: III (a)

Slovakia
Part Two: I A (d)

Solomon Islands
Part One: General report, paras 177, 186, 200
Part Two: II (a)
Part Two: III (a)

Somalia
Part One: General report, paras 177, 179, 186, 199
Part Two: I A (a)
Part Two: II (a)
Part Two: III (a)

Sudan
Part One: General report, paras 177, 184
Part Two: II (a)

Suriname
Part One: General report, para. 177
Part Two: II (a)

Swaziland
Part Two: I B No. 87

Syrian Arab Republic
Part One: General report, paras 177, 183, 199
Part Two: I A (c)
Part Two: II (a)

Tajikistan
Part One: General report, paras 177, 179, 183, 200
Part Two: I A (a), (c)
Part Two: II (a)
Part Two: III (b)

Thailand
Part Two: I A (d)

Timor-Leste
Part One: General report, paras 183, 200
Part Two: I A (c)

Turkmenistan
Part One: General report, paras 183, 199
Part Two: I A (c)

Tuvalu
Part One: General report, paras 186, 200
Part Two: III (a)

Uganda
Part One: General report, paras 177, 199
Part Two: I B No. 26
Part Two: II (a)

United States
Part Two: I B No. 182

Vanuatu
Part One: General report, paras 177, 179, 180, 183, 186, 200
Part Two: I A (a), (b), (c)
Part Two: II (a)
Part Two: III (a)

Venezuela, Bolivarian Republic of
Part Two: I B No. 26

Yemen
Part Two: I B No. 182
REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL
Before examining the report of the Committee on the Application of Standards, I would like to remind delegates that today, Thursday, 12 June, is the World Day Against Child Labour. I know that, for reasons of its programme, the Conference marked this day on 10 June this year. However, I wanted to inform participants that today, in more than 45 countries, the ILO, in cooperation with the tripartite constituents and partners in the worldwide movement, will be staging activities to highlight this year’s theme: “Extend social protection: Combat child labour!” In this connection, I am particularly pleased to congratulate the Government of my own country, the Republic of Argentina, on its decision to host the Fourth Global Conference on Child Labour in 2017. On behalf of myself and my Government, I invite you all to attend.

We now turn to the next item of business before us, which is the submission, discussion and approval of the report of the Committee on the Application of Standards. This report is published in Provisional Record No. 13, Parts One and Two.

I invite the Officers of the Committee to come up to the podium. They are: the Chairperson, Ms Gavi-ria; the Employer spokesperson, Mr Rønnest, Employer, Denmark, replacing the Employer Vice-Chairperson, Ms Regenbogen, who is unable to attend; the Worker Vice-Chairperson, Mr Leemans; and the Report of the Committee, Ms Mulindeti.

I call on Ms Mulindeti, Reporter of the Committee, to present the report.

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 International Labour Conference empowered under article 7 of its Standing Orders to examine the measures taken by States to implement the Conventions that they have voluntarily ratified. It also examines the manner in which States fulfil their reporting obligations as provided for under the ILO Constitution.

The Committee provides a unique forum at the international level. It governs 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. Significant work by all parties went towards the preparation for this session of the Committee.

In the framework of the follow-up to the events that took place in the Committee in 2012, the Governing Body held a constructive discussion on the main outstanding issues in relation to the standards supervisory system during its March 2014 session on the basis of a document prepared by the Director-General following consultations with the tripartite constituents.

The Governing Body took a number of decisions, including a call to all parties concerned, to contribute to the successful conclusion of the work of the Committee at the current session of the Conference. This process contributed to the smooth adoption by the Committee, in a timely manner, of a list of individual cases for discussion, something which had not been possible for the Committee in 2012.

Despite this positive accomplishment which allowed the Committee to hold very important discussions on, and supervise, the application of international labour Conventions in 25 cases, the Committee was ultimately unable to adopt conclusions for all these cases. It was able to do so in six cases which had been “double-footnoted” by the Committee of Experts in its 2014 report. I am sure that the Vice-Chairpersons of the Committee will provide their views on the reasons which led to the absence of conclusions in 19 cases.

The report before the plenary 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 this year is concerned with minimum wage systems. The second part consists of the discussions on the 25 individual cases examined by the Committee and the related conclusions adopted in six of those cases. I will recall the salient features of the Committee’s discussions in respect of each of these questions.

In the general discussion, the operative approach of the Committee’s work, which is also the ILO’s hallmark, namely oversight through discussion, was recalled. The fruitful dialogue between the Committee and the Committee of Experts is key in this respect. The Committee works closely with, and to a large extent on the basis of, the report of the Committee of Experts.
Furthermore, it is the established practice for both Committees to have direct exchanges on issues of common interest. To this end, the Vice-Chairpersons of the Committee engaged in an exchange of views with the members of the Committee of Experts at its last session in November–December 2013.

Subsequently, this year the Committee had the pleasure of welcoming the Chairperson of the Committee of Experts, who attended the first week of its session as an observer with the opportunity to address the Committee. The discussions placed emphasis on the importance of the interaction between the two Committees. The issues at stake following the 2012 session of the Committee were also addressed with reference to the ongoing process within the Governing Body.

During the first part of the Committee’s work, it examined the Committee of Experts’ General Survey concerning minimum wage systems, particularly the Minimum Wage Fixing Convention, 1970 (No. 131), and the corresponding Minimum Wage Fixing Recommendation, 1970 (No. 135).

The General Survey, together with the discussion in the Committee and the outcome adopted following that discussion, will inform the recurrent discussion on the strategic objective of social protection to be held at the 104th Session (2015) of the Conference, under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. In accordance with a decision taken by the Governing Body in November 2010, the review of the General Survey by the Committee on the Application of Standards therefore took place, for the first time, one year in advance of the recurrent discussion by the Conference, so as to facilitate better consideration and integration of the standards-related aspects in the report prepared by the Office for the recurrent discussion and into the outcome of that discussion.

In the outcome it adopted following its discussion of the General Survey, the Committee noted that minimum wage fixing was intended to protect wage earners against unduly low wages and that it offered a means of establishing a level playing field for all employers.

It records that Convention No. 131 and Recommendation No. 135 set out a number of essential principles, including full consultation with the social partners, compliance with the principle of equal remuneration for work of equal value and periodic adjustment of minimum wages rates, while offering flexibility to member States in their implementation. Minimum wages may be established by legislation, by decision of the public authorities after consultation of employers’ and workers’ organizations, or on a tripartite basis, or through collective agreements provided they are legally binding.

In view of its contribution to the preparation of the recurrent discussion on social protection, the Committee drew a number of lessons from the General Survey and its examination relating to the needs of member States and the means of action of the Organization, in particular standards-related action, technical cooperation and assistance, and the technical and research capacity of the Office.

With respect to its core work concerning the individual cases, the Committee pursued its efforts to achieve a balance between the different regions in the list of cases. This year the breakdown of cases was as follows: Africa, seven cases; Arab States, three cases; Americas, five cases; Asia and the Pacific, five cases; and Europe, five cases. As in previous years, the majority of the cases selected (15 out of 25) concerned the application of fundamental Conventions.

The Committee decided to include in its report a special paragraph on the application by Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Finally, allow me to thank the Chairperson, Ms Gaviria, along with the Employer and Worker Vice-Chairpersons, Ms Regenbogen and Mr Leemans, for their cooperation. Let me therefore recommend that the Conference approves the report of the Committee on the Application of Standards.

Mr RØNNEST (Employer, Denmark)

I am speaking on behalf of Ms Regenbogen, Employer Vice-Chairperson of the Committee on the Application of Standards.

On behalf of the Employers’ group, I commend the report of the Committee to the plenary and recommend its approval.

The work of the Committee started constructively and we expected it to finish as it started. However, it took us by surprise when, on the last day, the Workers refused to adopt 19 conclusions because of a divergence of views on how to reflect disagreements on three cases. This is deeply regrettable.

As you may recall, last year, the Committee agreed on the insertion of the following sentence for six cases which involved the right to strike related to Convention No. 87. The sentence was: “The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87”.

This sentence was not time-bound and there were no reservations attached to it.

During the current session of the Conference, the Employers negotiated the list of cases for consideration in good faith and delivered the list of 25 cases, plus two cases of progress, to the Governments by the proposed deadline. We advised the Workers that there were cases on the long list that involved the right to strike which the Employer members considered to be outside the mandate of the Committee of Experts. We had been transparent about our views on this matter during the negotiation of the list and also before the Committee and before the Governing Body. We highlighted to the Workers, when the negotiation of the list began, that it was expected that the conclusions of cases concerning Convention No. 87 would again include the sentence agreed upon and adopted by the Committee last year. As an alternative, and to avoid potential conflicts, we suggested to the Workers that Convention No. 87 cases on the list could be excluded from the final list, but this was not accepted.

After adopting the list of cases, the Committee moved forward and completed the discussion of all 25 cases over the course of the week. The discussions of each case were fruitful and the Committee had the opportunity to provide guidance to governments on how to ensure that national law and practice complied with international labour standards. The Employer members appreciated the effort that Government members had made to travel to Geneva, as well as their time and the presentations they made.

The Committee’s work proceeded and, in our view, the cases were supervised. A number of cases...
raised extremely serious issues relating to violations of fundamental Conventions. The Committee’s work progressed well and conclusions were adopted for the six double footnote cases. The Employers worked diligently towards reaching conclusions on the remaining 19 cases. There were draft texts agreed between Workers and Employers which could have been ready for adoption on the cases of Bolivarian Republic of Venezuela, Saudi Arabia, Central African Republic, Colombia, Republic of Korea, Croatia, Ecuador, United States, Kazakhstan, Malaysia, Mauritania, and Uganda. There were only three cases – Algeria, Cambodia and Swaziland – where disagreement emerged, on how to reflect the difference of opinion regarding the right to strike. We expected that the issue could be addressed by the same compromise sentence that was adopted in 2013. However, we were, and remained, open, up to the last minute, to other forms of compromise, such as the inclusion of a second sentence in the conclusion expressing the Worker members’ views on the right to strike, or the use of different language to reflect the Employer members’ views. We proposed, as a possible compromise, that the exact wording of paragraph 91 of the report of the Committee of Experts, stating that the views of the social partners on the right to strike issue are diametrically opposed, should be included in the conclusions. However, the Workers adopted the position that under no circumstances could the Employer members’ views be reflected in the conclusions. This is deeply regrettable.

We did not propose a new approach this year. We expected, given that the issue remained unresolved before the Governing Body, that the sentence agreed upon and adopted by the Committee the previous year for the urgent cases would again provide a coping mechanism to deal with the differences of opinion. However, the Workers rejected that approach. We were disappointed but nevertheless tried to remain constructive, and we proposed to continue negotiations on conclusions on the 16 outstanding cases, to which the disagreement was irrelevant. In our view, there was an opportunity for broad consensus on those cases. The Employers were ready in the end to proceed to adopt conclusions on the cases where agreement already existed. Disagreement on one issue should not prevent consensus on other issues. The Workers’ refusal to agree on conclusions for all the remaining 19 cases was very unfortunate, especially given that 16 were unaffected by the major differences on the right to strike in Convention No. 87.

We reaffirm our commitment to the supervisory system, including the Committee on the Application of Standards. The work that the Committee accomplished over the last two weeks is very important and is essential to the work of the ILO. We regret that the Committee’s work did not culminate in conclusions at the choosing of the Workers. Nevertheless, governments are aware of the Committee’s opinions on the cases that concern them. The direction given to the governments with respect to the supervision of the cases remains clear and we expect them to take appropriate action. The governments concerned should report to the next meeting of the Committee of Experts by the deadline of 1 September. Disagreements are intrinsic to tripartism and it is appropriate that they be reflected from time to time. Tripartism is the ILO’s greatest strength and gives it relevance and credibility.

The process of adopting the list of cases is difficult and highly political. Long and difficult negotiations took place in the selection of cases for the final list. Even though broad – too broad – objective criteria exist in document D.1, the political dimension of this process is undeniable. Further steps are therefore needed to make the decision on the list less controversial and less challenging in the future. Ways need to be found to exclude, to the extent possible, political considerations and to base the selection only on the merits of the case. In addition to double footnote cases, other elements in the selection process could be of help. We need to deal with this issue as a matter of priority and to find a solution by March 2015. As for the conclusions, Employers expect that, unlike in previous years, the Committee on the Application of Standards should adopt short, clear and straightforward conclusions which clearly reflect what was said during the discussion. What is expected from governments in order to better comply with ratified Conventions should be clear and unambiguous. Conclusions should also reflect concrete steps agreed with the governments to address compliance issues.

While the conclusions should normally reflect consensus recommendations, any divergence of views of the Employers and Workers in the case must be transparent and must be reflected in the conclusions.

Deep problems will arise in the supervisory system if the conclusions of the Committee on the Application of Standards do not respect freedom of expression and record divergent views. It would mean that the outside world, and other supervisory bodies of this house, would not know when constituents disagree and it would mean that article 37 processes would never be initiated, since no disputes on interpretation would arise from the Committee’s conclusions. It would also undermine the standards review mechanism process.

In the general discussion of Part I of the report of the Committee of Experts on the Application of Conventions and Recommendations, we welcome once again the clarification of the mandate of the experts, as set out in paragraph 31 of the report. We trust this clarification will be made visible at the beginning of all future reports of the Committee of Experts, including the General Surveys.

We also made it clear that the role of the experts requires a certain degree of interpretation when formulating their non-binding guidance. This is logical. However, to reinforce the credibility of the whole supervisory system, it is crucial that the experts do not stray beyond their mandate to guide national authorities in their report. They cannot stray into indirect labour standards setting by adding further obligations to the Convention by means of expansive interpretations; or by filling in gaps that have appeared since the Convention was agreed; or by narrowing the flexibility of Conventions by providing subsequent restrictive interpretations.

Standard setting is vested solely with the ILO constituents. This is a principle that the Employers will resolutely defend. Voids in the international labour standards created by the continuing absence of an operational standards review mechanism cannot be filled. There is Governing Body consensus...
that we need a relevant and up-to-date body of ILO standards and we await the imminent proposal to commence the standards review mechanism. The experts’ non-binding opinion and recommendations are no substitute for a standards review mechanism. Any overstepping of their mandate undermines the supervisory system and hampers the work of the Governing Body.

The experts, in their report, recalled that they have set out, in detail, observations relating to the right to strike, taking into account the criteria applied by the Committee on Freedom of Association. This risks a critical misunderstanding. The Committee on Freedom of Association is neither a mechanism for supervising ILO Conventions, nor a tripartite standard-setting body. The work of the Committee on Freedom of Association is based on the call of the ILO Constitution to recognize the principles of freedom of association, and not freedom of association as set out in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Therefore, the decisions taken in relation to specific cases may not be elevated as general principles or general rulings with reference to Conventions Nos 87 and 98. The very simple fact that the Committee on Freedom of Association engages in the promotion of constitutional principles and is not bound by the application of any specific Convention allows workers and employers to make use of this special procedure with regard to member States that have not ratified the relevant Convention on freedom of association. For this reason, its recommendations cannot be deemed to be case law in the sense of an interpretation of the standards laid down in Conventions, nor does the Committee have any authority to deem it so.

Another important aspect is that the members of the Committee on Freedom of Association are members in their personal capacities only. They do not represent the ILO constituents, rather they are derived from those constituents.

The Employers have also highlighted the important rigidities and other difficulties in the application of Conventions Nos 87 and 144. In this context, the Employers are of the opinion that the Committee on the Application of Standards do not agree with an interpretation, the correct functioning of the credible supervisory system seems to require that the case be taken forward via article 37, if necessary. The need for visibility of disagreement in the conclusions is therefore at total odds with the position of the Committee on the Application of Standards.

The Employers have also noticed that, in a number of countries, trade unions are not in favour of ratification. The Employers would like to make comments on a number of problematic cases concerning the application of ratified Conventions. The following cases affect employers and present serious violations of fundamental rights of workers and their families, but also economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining high levels of employment.

The ratification prospects for Convention No. 131 do not seem to be overwhelming. A number of countries indicated that they have either not yet considered the possibility or they do not plan to ratify, in part because of concrete divergences between the Convention and national law and practice. I have also noticed that, in a number of countries, trade unions are not in favour of ratification. The Employers would like to make comments on a number of problematic cases concerning the application of ratified Conventions. The following cases affect employers and present serious violations of fundamental rights of workers and their families, but also economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining high levels of employment.

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The Employers would like to make comments on a number of problematic cases concerning the application of ratified Conventions. The following cases affect employers and present serious violations of fundamental rights of workers and their families, but also economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining high levels of employment.
the governance of labour and social policy, thus enabling them to find ways that, at the same time, promote adequate protection of workers and full employment through sustainable enterprises.

As I said earlier, the work of the Committee on the Application of Standards started constructively and we expected it to finish in the same vein. This was not the case, which is regrettable. A crisis in confidence is affecting the system; the status quo is no longer an option. A discussion about the ILO supervisory system needs to take place urgently. All parties need to reflect and ask themselves questions about the system and how its credibility and relevance to the outside world can be improved.

I would like to conclude by thanking the Officers for their support, in particular, Ms Doumbia-Henry. Special thanks go to our Chairperson, Ms Gaviria, for the fair parliamentary running of the Committee’s meetings this year. We thank our Reporter, Ms Mulindeti, who ensured that the Committee’s work is properly recorded. I also thank the Employers’ group, especially Ms Regenbogen, who could not be here today and who ably acted as Employer Vice-Chairperson in most sittings of the Committee. I would also like to thank Juan Mailhos, Chris Syder, John Kloosterman, Renate Hornung-Draus, Garance Pineau, Paul Mackay, Peter Anderson, Guido Ricci and Kaizer Moyane for their help in preparing and presenting their cases. I would like to express our gratitude for the support of Maria Paz Anzorreguy, Alessandra Assenza and Catalina Peraz, of the International Organisation of Employers and Christian Hess of the Bureau for Employers’ Activities. Lastly, I thank the Government members and Marc Leemans, Worker Vice-Chairperson, and his team for their collaboration.

Original French: Mr LEEMANS (Worker Vice-Chairperson of the Committee on the Application of Standards)

Allow me to begin by welcoming the good work that has been done in the other committees, particularly with regard to the adoption of a Protocol and a Recommendation attached to the Forced Labour Convention, 1930 (No. 29).

I think that everyone is aware that the work of the Committee on the Application of Standards took place in a very different context.

The Employers’ group, as it did in 2013, demanded that a statement be included in the conclusions for all those cases involving the right to strike. The statement would have noted that the Employers disagree with the Committee of Experts on whether the right to strike is included in the freedom of association enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

For reasons which I shall go into in a moment, and which I am sure the Employers must have been aware of, the Workers’ group was unable to accede to this request. We tried everything to find a solution to this problem, but we did not manage it. To put it plainly, we have become convinced that we are facing a deliberate attack on the ILO’s standards system. The Governing Body will have to continue to work to find a long-term solution to these difficulties that is acceptable to all of the constituents.

Initially, it was proposed that these issues would be discussed at the November 2014 session of the Governing Body, but we think that the Governing Body should begin to work on the question during its meeting tomorrow. This would enable the Direc- tor-General to present ideas that might be useful in finding a solution that could be made effective as of the 2015 session of the International Labour Conference. We do not want to discuss a revision of the system until this problem is solved. It has become clear that we need a third party to resolve the legal argument that has been raised by the Employers once and for all. This third party can only be the International Court of Justice.

I will elaborate on these two points shortly, but first let me celebrate the two satisfying outcomes of our work. Our Committee managed to propose unanimous conclusions on the General Survey concerning minimum wage systems. We hope that these conclusions will help the work to be done next year in the Committee for the Recurrent Discussion on Social Protection. However, we should not hide the fact that the unanimity of the conclusions masks deep differences. I am thinking, for example, of the relationship between wages and social protection, or the distinction between workers and young people in training. Perhaps the report puts it more succinctly, where it recalls that labour is not a commodity and that, therefore, wages are not merely a price set by the market.

We, like our entire Committee, welcome the fact that this preparatory discussion has been able to take place a year in advance. We hope that will give the Office the time to produce a well-argued report addressing the points of controversy as well as the essential points. We very much hope that the work done next year will be fruitful and far-reaching.

Our Committee has also been able to provide conclusions on the six cases that were given a double footnote by the Committee of Experts, meaning they were automatically considered by our Committee. We are pleased because these cases concern very important problems: child labour in Yemen, in the context of an armed conflict, and also more generally in the mining and construction sectors; child labour in Niger, where more than half of the country’s children work rather than benefiting from schooling; freedom of association in Belarus; labour inspection in Bangladesh, particularly in certain processing zones and in the construction sector – and the urgency of this problem has been highlighted recently by a tragic event; discrimination in the Dominican Republic against individuals from Haiti, and also against women; the social protection situation in Greece in the context of austerity programmes which have been imposed within the context of the European Union’s procedures.

But the Committee was unfortunately not able to present conclusions on the 19 other cases which were put on the agenda following the proposals from the social partners. Who was responsible for this failure? I am not the one to try to answer this question. At this stage of the Conference, the questions of who was right and who was wrong are really not very useful. Our hope is that this failure will be the foundation for a new start.

When we set out to identify the causes of the failure, what we need to do is seek to improve the procedures to make sure that the standards system that we all believe in is strong and able to do its work. What do we, the Workers’ group, believe in? We believe that the ILO has a key role to play in promoting and achieving progress in social justice. We believe in the importance of fundamental rights such as freedom of association and the right to collective bargaining. We believe in social dialogue.
and the practice of tripartism by governments and employers' and workers' organizations. And, within the framework of tripartism, we believe in the ILO’s standards system. This standards system monitors the application of standards in law and in practice, and the supervision occurs through the interaction of the Committee of Experts on the Application of Conventions and Recommendations, the Committee on the Application of Standards and the Committee on Freedom of Association. Each of these bodies has its own legitimacy. They are complementary and none of them is hierarchically superior to any other. The Workers’ group attaches particular importance to this tripartite mechanism, which is unique in the United Nations system. We have heard the Employers express very much the same sentiment in their statements, so we hope that they, along with the other constituents, will contribute to determining the lessons to be learned from this failure. A number of governments have also taken the floor to reaffirm their support for the supervisory mechanism. So what are the reasons for the failure?

The disagreement that the Employers are expressing is not new. It was expressed for the first time at the beginning of the 1990s – in other words, at the end of the Cold War. But until 2011, this disagreement did not prevent our Committee from reaching conclusions. Quite simply, we got into the habit of not raising this point of discord. Explicitly identifying this disagreement in our conclusions would fundamentally modify our mandate and that has always been unacceptable to the Workers. What is our mandate? The mandate of our Committee relates to supervising the application of Conventions and Recommendations. To fulfill this mandate we need to discuss, the representatives of governments of member States, particularly by those who are included on the list of the 25 cases to be considered during the Conference. This list is established partly on the basis of whether the discussions will have a tangible impact on the relevant countries. As a number of governments have confirmed in their statements, conclusions only make sense if they are unanimous. By explicitly stating disagreements in the conclusions, we allow the governments concerned simply to draw their own conclusions. As I am sure you will remember, in 2012 the Employers’ position led to a total failure of the Committee on the Application of Standards, which was not even able to reach agreement on a list of cases to be considered. In 2013, in order to allow the process to proceed normally, the Workers’ group allowed the inclusion of a sentence demanded by the Employers. We said at the time that this was a one-off concession and not an admission of weakness; these were the words I said on this very podium at the same time last year. We allowed it, pending the resolution of the matter by the Governing Body. In March 2014, the Governing Body came to some decisions, and we believed, on the basis of the preliminary contact that we had in the run-up to the Conference, that these conclusions would enable us to move forward. We had hopes of progress but unfortunately these hopes have been dashed.

We are furious because the Committee on the Application of Standards, the very heart of this house, is no longer in a position to do its job. This is not a dispute between Employers and Workers; allow me to repeat what I have already said: this is a full-blown attack on the ILO standards system in the face of which governments cannot remain passive.

Why have we given up on conclusions on those cases where the right to strike was not involved? Well, first I would like to emphasize that this was not an easy decision to take, far from it. The majority of cases that were submitted to our Committee were included on the list at the request of the Workers. This is logical because it is principally workers who are most invested in compliance with labour standards. Our colleagues come to us, often from very far away, to talk about their difficulties. Those who have been present in this room can confirm that their words and testimonies have often been charged with emotion. I can assure you that these emotions were not in any way feigned, simulated or pre-arranged. They hoped that the Conference would offer a forum for them to express themselves, to explain their situations, but also to give them some guidelines to enable them to find a way out of their situations, in some cases with the help of technical assistance or a mission from the ILO.

In the three cases where the right to strike was involved, that was not the fundamental issue concerning the workers from the relevant countries. Their main concern was discrimination, often grave discrimination, against union activists or against organizations that the government did not look favourably upon. And in those cases where the right to strike was fundamental, it was not necessarily a question of whether or not the right existed in the country's legislation, but of its application by the legal or administrative authorities, who were not demonstrating the required qualities of independence and due procedure.

And today these workers are being held hostage by a dispute not of their own making. And what is true for the three cases concerned is also true for other cases that are very important for the Workers’ group. I am not going to mention all of the cases dealt with by our Committee, but I would like to underline the fact that they deal with such important matters as the protection of migrant workers against practices which are often tantamount to slavery, discrimination against union leaders, child labour, and employment policy in the context of European austerity policies. There are many, many important cases for the Workers’ group, but despite this, the Workers’ group decided not to adopt conclusions on them. Why?

Today, the Employers are challenging the experts’ interpretation of Convention No. 87 with regard to the right to strike. It is a longstanding disagreement, and it is a particularly sensitive subject for the Workers. But the Employers have clearly sent the message that, for them, consensual conclusions are a thing of the past. And not only with regard to the right to strike: we have also heard challenges to the experts’ interpretation of the concept of “public servants” in: the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); questioning of the legal scope of the Social Security (Minimum Standards) Convention, 1952 (No. 102); and the Employment Policy Convention, 1964 (No. 122); and many other questions. If we continue on this path, it will no longer be enough to challenge a certain interpretation of the standards; there will be fundamental challenges to the very existence and relevance of these standards. And in the case that we have before us and in the procedures of the ex-
isting framework, there is nothing that will enable us to overcome such a stumbling block.

The attitude of the Employers is an all-out attack against the standards supervisory mechanism. They want to put the experts in a subordinate role to the Committee on the Application of Standards. Now, as I said just a moment ago, these two bodies each have their own legitimacy, they are interdependent and not hierarchically subordinate one to the other. Why do we, the Workers, support the experts on the question of the right to strike?

I do not want to turn my statement into a lecture on law, but please allow me to emphasize that the Workers support the traditional interpretation of the Committee of Experts, not simply because it suits us, but because it is the only plausible construction of freedom of association in the ILO Charter and consequently in Convention No. 87. To put it another way, in international labour law, the ILO has enshrined the right of workers to organize, to form unions to negotiate their working conditions. The right to organize implies the workers’ right to collectively refuse to work under conditions which they believe not to be in line with their interests or the negotiated conditions. The Committee on the Application of Standards is not a court, nor is it a legal body; we understand that it would be a delicate, sensitive issue for employers’ representatives to recognize politically the right to strike. And that is why the Workers’ group has never insisted that our Committee’s conclusions affirm the right to strike, or the limits of the right to strike; we have never done that.

Coming back to the list of cases, it is clear that establishing this list is a difficult exercise; there is always some discontent. We know that there needs to be a certain balance in the list. It is not a question of identifying one specific kind of problem or ideology, still less, a certain group of countries; the key criteria must be the seriousness of reported failures, and one specific group should never be in a position to veto proposals made by others.

For example, the Workers’ group bitterly regretted not having been able to deal with the serious concerns with regard to freedom of association in Guatemala, Zimbabwe and Turkey. In the case of Guatemala, it was a question of following up cases of violations of freedom of association which have been outstanding for many years. The Governing Body established a roadmap and we are waiting to see the results at the next session of the Governing Body in November. Zimbabwe is also a case that has been discussed many times over recent years and unfortunately no real progress has been made. With regard to Turkey, the country could have responded in detail to the remarks made by the Committee of Experts, and perhaps have demonstrated progress in view of its desired accession to the European Union. The reasons why these cases were not included in the list remain opaque for us.

We find ourselves in a situation where the tripartite supervisory mechanism has been taken hostage by a systematic blocking, both with regard to defining the cases to be examined and with regard to adopting conclusions that encourage the countries concerned to improve their legislation and practice. And it is for this reason that the Workers’ group unanimously decided that it was time to grasp the nettle. I would repeat that, in doing so, our objective was not to undermine the tripartite supervisory system. On the contrary, by denouncing the problems we are dealing with at the moment, we hope to give rise to a process of reflection that will lead to the necessary reforms.

It is not my place, as the Worker Vice-Chairperson of the Committee, to anticipate the decisions of the Governing Body for them. However, I would like to say that the Committee on the Application of Standards, which is neither a court nor a forum for negotiating new standards, can only work effectively if all parties accept the rules. There are many rules that apply; allow me to mention some of them.

First, the cases submitted to the Committee should be chosen in accordance with their level of importance, not with regard to arbitrary positions taken by different parties.

Second, recommendations to governments should reflect the unanimous opinion of the social partners. During discussions we accepted a compromise solution; however, it was refused by the Employers. The compromise would have allowed disagreements to be identified in the report section that introduced the conclusions. More specifically, in the three cases where there was a divergence of opinion we would have included the following sentence, and I quote: “The Committee took note of the opinions expressed by the Employers’ group according to which it does not agree that the right to strike is recognized in Convention No. 87 and recalled that the question of the interpretation of Conventions is currently under discussion in the Governing Body.” But this concession, in our view, could not be included in the conclusions or the final recommendations, whatever we choose to call them. We wanted to put it before the conclusions and that proposal was refused.

Third, we cannot allow legal disputes on the interpretation of the scope of standards to go on forever. In our view, the authorized interpretation comes from the Committee of Experts, unless that interpretation has been clearly contradicted by an authorized legal authority. As the Committee of Experts noted in its General Survey of 2013, the acceptance of this concept is indispensable to the certainty of law required for the proper functioning of the ILO. If we find that the reports that we are considering are unfounded or insufficiently supported, we can request further justification, either in an additional written report, or in a hearing or some other way. Failing this, we would need a procedure to resolve legal disputes in accordance with article 37 of our Constitution.

For the moment, and as I said at the beginning of this statement, we believe that we should submit the question of the interpretation of Convention No. 87 to the International Court of Justice.

I could identify more specific problems, but they can be dealt with by the Committee’s Working Group on Working Methods. For example, it would be useful if the governments’ responses to the remarks of the Committee of Experts were communicated in advance. The debates, and maybe the conclusions, could be altered in light of this information. When we receive this information during the sittings it is not generally possible to substantiate it or ensure that it is relevant. We could also think about the possibility of establishing a group to substantially shorten the report of the Committee’s work, thereby giving a brief summary of the discussions that took place.
Allow me to close by expressing two hopes. Firstly, that the governments whose cases were discussed still take into account the debates that took place and report on progress. Secondly, that the Governing Body of the ILO swiftly find solutions that will enable the supervisory system to move forward as from the 2015 session of the Conference.

On behalf of the Workers’ group, I recommend the approval of the report of our Committee by the Conference. But before finishing, I would like to thank all of those involved in the Committee on the Application of Standards, beginning with our Chairperson, Ms Gaviria, our Reporter, Ms Mulindeti, as well as Ms Doumbia-Henry and Ms Curtis. I would also, of course, like to thank the Workers’ group and the Worker members of our Committee as well as our colleagues from the Bureau for Workers’ Activities for their excellent cooperation, their solidarity and the spirit of cohesion that they showed throughout this lengthy session. And of course, despite our disagreements, we would also like to thank, on behalf of the Workers’ group, the Employers, and more specifically their Vice-Chairperson. And finally, thank you to the staff of the Office and the interpreters who, as usual, did an excellent job, not only in our Committee but across the whole Conference.

Original Spanish: Ms GAVIRIA (Chairperson of the Committee on the Application of Standards)

I have the honour of taking the floor to make a few comments on the work of the Committee on the Application of Standards, which it has been my privilege to chair.

First, I noted with pleasure the interest shown by the constituents of this Organization in the work of the Committee and also the spirit of dialogue that allowed us to have discussions at a high technical level. An example of this was our examination of the General Survey concerning minimum wage systems prepared by the Committee of Experts. Members of the Conference Committee appreciated the quality of this General Survey, which referred to issues of vital importance in the world of work.

The Committee adopted consensual conclusions at the end of its discussions on the General Survey and it is hoped that the results of its work will be taken fully on board within the context of the recurrent discussion on social protection that will take place at the 104th Session of the Conference in 2015.

With regard to the examination of the individual cases, positive comment has been made on the fact that a list of 25 cases was adopted at the start of the Committee’s work, respecting time frames and also the programme of work, and this allowed us to have a discussion on all the cases. The cases were selected in relation to the application of fundamental, technical and promotional Conventions and they also reflected a regional balance. I would also like to emphasize the good will of the Governments that were invited to submit information to the Committee, which was apparent in their presentations and in their thorough collaboration in the discussions that took place.

In relation to six cases on the list, for which the Committee of Experts had asked the Governments concerned to report in detail to the 103rd Session of the Conference, the Committee reached consensus-based conclusions.

However, the Committee did not adopt conclusions in the other 19 cases. The discussions held on these cases reflected the positions of all the participants and, in many cases, there was some agreement on the measures that should be adopted to ensure compliance with the Conventions concerned. The issues still pending on some topics that were discussed thoroughly in 2012 remained unresolved and that prevented the adoption of consensual conclusions on these cases. However, the Committee has asked the Governments to continue to provide the necessary information.

Here I would like to encourage all the Governments and the representatives of the social partners to pursue their endeavours to intensify social dialogue in order to come up with appropriate solutions that will allow this supervisory body of the Organization to function properly. The ILO member States have underlined the vital importance of the supervisory system of the Organization for the promotion of universal human rights and international labour standards. From my own experience in my country, I can say that the conclusions adopted by the Committee, the technical work of the Committee of Experts, the recommendations of the Committee on Freedom of Association and the assistance of the Office are all efficient tools for tackling the challenges in the application of international labour standards.

The discussions within the Committee confirm that the international community is demanding an urgent solution to the issues concerned.

I would like to express my gratitude to Judge Koroma, the Chairperson of the Committee of Experts, for visiting the Conference Committee once again. The presence of the Chairperson of the Committee of Experts is a sign of the very solid relationship between the two Committees, based on a spirit of mutual respect, cooperation and responsibility.

I trust that the countries whose cases were examined will be able to draw from the discussions the necessary guidelines for finding solutions, with ILO technical assistance if necessary, to all the issues that were raised.

I would like to express special thanks to the President and Vice-Presidents of the Conference for visiting our Committee. It was a pleasure to receive them and this gesture was greatly appreciated. I would also like to thank the Committee’s Reporter, Ms Mulindeti, for her very efficient work. In addition, I would like to express my gratitude to the Employer Vice-Chairperson, Ms Regenbogen, and the Worker Vice-Chairperson, Mr Leemans, and their respective teams for the courtesy and collaboration that they displayed in their work with us. I would like to thank the representative of the Secretary-General, Ms Doumbia-Henry, and all the other members of the secretariat for the complex work that they accomplished. Lastly, I would like to thank the interpreters for their excellent work.

It only remains for me to invite you to approve the Committee’s report.

The PRESIDENT

I now open the floor for a general discussion of the report of the Committee on the Application of Standards.
On behalf of the Government group, I wish to express the Governments’ dissatisfaction and disappointment with the failure of the Committee on the Application of Standards to present conclusions for all the 25 cases that were heard this year.

The Government group reaffirms that, in order to exercise its constitutional responsibilities fully, it is essential for the ILO to have an effective, efficient and authoritative standards supervisory system, of which the Conference Committee on the Application of Standards is an essential component. Once again, we reiterate our full commitment to the supervisory system of the ILO, including the analysis of individual cases by the Conference Committee on the Application of Standards. We are therefore disappointed to be confronted, yet again, with the Committee’s failure to complete its work this year. We invest considerable resources in the proper functioning of the Committee and some of us have come from very far to present our cases before the Committee. We deeply regret that conclusions were not adopted in 19 cases, and we are concerned about the negative impact that this situation could have in the near future. We hope that it does not affect the process in which the Governing Body is engaged.

We had worked very positively within the framework of the Governing Body to address disputes or questions that might arise in respect of the interpretation of a Convention, and we had hoped that this would suffice to ensure a functioning Committee in the meantime.

This situation illustrates the urgent need for the rapid resolution of the difficulties surrounding the ILO supervisory system. We wish to express our full engagement and our commitment to the success of the process in which the Governing Body is engaged, and to the Director-General and others working to this end.

Mr Lewis (Government, Canada)

I am speaking on behalf of the group of industrialized market economy countries (IMEC). IMEC is profoundly disappointed that the Committee on the Application of Standards was not able to adopt conclusions in all the cases that it discussed this year. For the second time since 2012, the Committee on the Application of Standards was unable to complete its work. This is a troubling situation because it could cause serious and possibly irreparable damage to the strength and credibility of the ILO’s supervisory system, which heretofore has been cited as the most advanced and best functioning of the international system.

IMEC recalls its firm and enduring support for the ILO’s supervisory system, of which the Committee on the Application of Standards is an essential component, given the role that it plays in facilitating the implementation of, and adherence to, international labour standards. We continue to believe that maintaining the integrity, effectiveness and authority of the supervisory system is of fundamental importance to the Organization as a whole and is directly related to ensuring the relevance of international labour standards in the contemporary world.

The issues that so deeply divided the Committee on the Application of Standards in 2012 are now under consideration in the ILO Governing Body. IMEC had hoped that, while this work was under way, differences of opinion regarding the right to strike would not prevent the Committee on the Application of Standards from successfully fulfilling its appointed task. Indeed, last March, the Governing Body underscored the critical importance of the effective functioning of the Committee on the Application of Standards, in conformity with its mandate, at the 103rd Session of the International Labour Conference and called on all parties concerned to contribute to the successful conclusion of the work of the Committee in 2014. We welcomed the fact that a final list of country cases was negotiated by the Workers and Employers and was adopted on schedule by the Committee. This was an important accomplishment. However, it takes more than a list of cases to bring the Committee’s work to a successful conclusion.

Governments have no role in negotiating the conclusions in individual country cases; just as they have no role in determining the contents of the list of cases, but governments invest time and resources in supporting the process and we have a vested interest in seeing that the Committee on the Application of Standards successfully adopts conclusions in every single case that it discusses. Conclusions reflect the Committee’s deliberations and highlight the importance that the Committee attaches to the application of international labour standards in those cases. We had hoped that our Worker and Employer colleagues would find a solution that would allow for the adoption of conclusions with which both groups could live, while the Director-General and Governing Body address the underlying issues. We deeply regret that this was not possible. We understand that the two groups were diametrically opposed on the key issue in question. We also fully appreciate that each group was operating on the basis of a firmly held principle. Nonetheless, the outcome was extremely unfortunate.

If anything positive is to come out of this latest failure in the Committee on the Application of Standards, we hope that it will be a strong signal that the difficulties surrounding the ILO’s supervisory system must be resolved rapidly. That sense of urgency is clear to everyone involved. IMEC deeply regrets the situation this year, but we continue to have faith that the ILO can withstand the current challenges and move forward in a positive and constructive manner. Moreover, we continue to believe that tripartite dialogue, the ILO’s essence and its strength will prevail. We reiterate our strong support for the Director-General and the process that he has initiated towards a lasting solution to these challenges.

Ms Gkouva (Government, Greece)

I am speaking on behalf of the European Union and its Member States. The following countries aligned themselves with this statement: the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Ukraine and Republic of Moldova. We support the statement made by IMEC.

We would like to reiterate our view that the ILO’s supervisory system contributes to the promotion of universal human rights. This is important to us all, since we are engaged in the promotion and protection of human rights, whether civil, political, economic, social or cultural. We are seriously concerned by the situation that we face today, as we see a real risk to the ILO’s unique tripartite structure and its key activity of standards supervision. The failure to produce conclusions jeopardizes the cred-
ability of the ILO’s supervisory system. It also jeopardizes freedom of association, the elimination of child labour, the fight against discrimination and the abolition of forced labour – basic human rights.

It also affects the European Union, however. Some of our policies and instruments make reference to the promotion of international labour standards and to the results of their supervision. The conclusions of this Committee are important to us in assessing compliance with those standards. We attach great importance to having a functioning Conference Committee on the Application of Standards. It plays a key role in monitoring and promoting international labour standards. We need impartial supervision of the implementation of international labour standards.

We call on all constituents, in particular the social partners, to support the standards supervisory system and the work of the Governing Body and the Director-General in seeking a long-term and lasting solution to these disputes.

Original Spanish: Ms PRIETO (Government, Colombia)

The Government of Colombia is committed to international labour standards and has been implementing these both in legislation and in practice. In addition, tremendous effort is being made to comply with the commitments assumed by the ILO and the international community and we are very respectful of the control bodies of the Organization.

We consider it pertinent to recall that in Colombia the right to strike is enshrined in article 56 of the Constitution. This right is closely related to the principles of solidarity, dignity and participation, and to the achievement of a just social order, all of which are guaranteed by provisions of our Constitution. Regardless of any other consideration, the right to strike is considered in Colombia as a fundamental element of the process of collective bargaining.

Mr Garner (Government, Australia)

I make this statement on behalf of the Asia and Pacific group (ASPAG), which is extremely concerned that the Committee on the Application of Standards was not able to complete its work at this 103rd Session of the Conference owing to the failure to reach conclusions by consensus on all the individual country cases.

ASPAG does not apportion blame for this situation, but notes that it is the responsibility of the social partners to contribute to consensual conclusions by the Conference Committee and this has not occurred. This is now the second time in the past three years where the Committee has not functioned effectively. This is now the second time in three years where the Committee has not been able to fulfil its critical role in the ILO’s supervisory system. And this is the second time in three years where the Committee has not delivered on its responsibilities to provide certainty and clarity to governments, to workers and to employers in respect of important matters of labour and industrial laws as they relate to ILO Conventions.

The Conference Committee has once again failed our respective constituencies and failed those who need it most. Let me be very clear here: this is not acceptable to ASPAG.

Following the failure of the Conference Committee in 2012, the tripartite partners have gone to great lengths to address a range of issues, including in respect of the mandate of the Committee of Experts, whose members have contributed their views and reasoning on the matters in question.

As recently as its 320th Session in March, the Governing Body agreed on a way forward with regard to outstanding matters arising within the supervisory system. Most importantly, the Governing Body “called on all parties concerned to contribute to the successful conclusion of the work of the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference”.

It is self-evident that we, as a collective, the tripartite partners of the ILO, have failed to respond to this call in the manner required and we have therefore failed those who most need and rely upon the ILO’s supervisory system.

ASPAG wishes to place on record its appreciation for the efforts to date of the Director-General to encourage a resolution of this critical issue and ASPAG will continue to support the Director-General’s efforts in this regard.

ASPAG will continue to contribute to the determination of a way forward with the best interests of the ILO’s supervisory system and our constituencies in mind. Further discussion, with a view towards resolution of this issue at the 322nd Session of the Governing Body in November, will be of critical importance.
Ms LIEW (Worker, Singapore)

On this, the last day of the 103rd Session of the International Labour Conference, I would have liked to talk about the successful work of the Committee on the Application of Standards in reaching conclusions concerning some of the worst cases of labour rights violation.

As you all know very well by now, however, the reality cannot be further from the truth. I would like to take this opportunity to applaud the unanimous decision taken by the Employers' group last week to defend the integrity of the ILO’s supervisory mechanisms.

It is no secret that, last year, the Workers agreed to a one-off so-called “disclaimer” concerning conclusions relating to cases in which elements of the right to strike had been included. This was a one-off deal to make it possible to proceed with the work of the Committee in 2013. This good-faith offer was also made taking into account the bilateral meetings facilitated by the Government of Switzerland, on an initiative taken by the Director-General.

Consensus on the way forward was reached by the Governing Body in March 2014. The Governing Body adopted a comprehensive decision, based on full tripartite consensus. Under this decision, among other things, the Governing Body: first, underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference; second, requested the Director-General to prepare a document for its 322nd Session, in November 2014, setting out the possible modalities, scope and costs of action under articles 37(1) and (2) of the ILO Constitution to address a dispute or question that may arise in relation to the interpretation of an ILO Convention; third, requested the Director-General to present to the 322nd Session of the Governing Body, a time frame for the consideration of remaining outstanding issues in respect of the supervisory system and for launching the standards review mechanisms; and fourth, called on all parties concerned to contribute to the successful conclusion of the work of the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference.

Apparently, the decision must have fallen on deaf ears.

The Employers chose instead to insist on the disclaimer, even though the Workers had only agreed to it as a temporary fix for 2013. By doing so, they also attacked the fundamental principle of reaching conclusions by consensus.

In view of the opening up of new and shocking lines of attack by the Employers, suggesting among other things that the experts had exceeded their mandate in reaching conclusions on specific elements of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154), among others, statements such as: “Welcome to the new reality cannot be further from the truth. I would like to take this opportunity to applaud the unanimous decision taken by the Workers’ group and its Chairperson, Mr. Leemans, and also the ILO department led by Ms Dombia-Henry and her staff during this very challenging time.

Original Spanish: Mr. COLMENARES GOYO (Government, Bolivarian Republic of Venezuela)

On behalf of the Government of the Bolivarian Republic of Venezuela, we would like to make a statement on the report of the Committee on the Application of Standards. The report contains a summary of events which, once again, have signalled the failure of our current methods, pointing out the way forward for this Committee. These events are doubtless a consequence of the bi-partite dialogue between cliques which has dominated the Committee on the Application of Standards. Tripartism is the way forward, and I fully support this. In conclusion, I would like once again to salute the steadfastness of the Workers’ group and its Chairperson, Mr. Leemans, and also the ILO department led by Ms. Dombia-Henry and her staff during this very challenging time.

On behalf of the Government of the Bolivarian Republic of Venezuela, the problem is not the right to strike as such, because this right is enshrined in, guaranteed and protected by our Constitution and by all Venezuelan labour legislation as a part of collective bargaining. The workers of Venezuela have no need for any interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in order to be able to exercise the right to strike. The issue arising within this Organization is one of the excesses committed by those who have interpreted Convention No. 87 without a mandate to do so. Article 37(1) of the Constitution of the International Labour Organisation clearly and categorically puts forward a solution in this regard. The issue must be
referred to the International Court of Justice, so that, once and for all, the Court can interpret Convention No. 87 and issue a binding opinion in that regard. ILO officials and staff need to work effectively on this matter in a balanced and transparent way and to avoid falling victim to manipulation and becoming part of the problem rather than the solution, which lies in recourse to the International Court of Justice.

The Governing Body must adopt this approach and take the necessary measures without delay. In this regard, the Governing Body can count on the support of the Government of the Bolivarian Republic of Venezuela. Effective steps must be taken immediately to resolve this issue: if not, the governments will continue to be mere spectators in the bipartite game being played out by the cliques within the Committee on the Application of Standards. Let us not forget that the Director-General of the ILO has taken up the challenge of improving the ILO supervisory system. We offer him both encouragement and support in that regard.

Original Chinese: Mr DAI (Government, China)

The Chinese Government supports the statement made by the ASPAG delegate. The Committee on the Application of Standards is one of the most important committees in the ILO. The current report was made possible through the efforts of the tripartite constituents. The Chinese Government hopes that the Committee will be able to produce a report based on more consultations and a consensus, which will contribute to achieving the principles and the aims of this Organization.

The Chinese Government supports the ILO’s standards supervisory mechanism and respects the work of the Director-General and of the Committee of Experts on the Application of Conventions and Recommendations. We hope that our tripartite constituents will be able to continue engaging in consultation and dialogue in a spirit of openness and cooperation.

Original Spanish: Ms DUPUY (Government, Uruguay)

I would like to refer to the comments of the representative of the International Organisation of Employers (IOE) about a Uruguayan case presented under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which is apparently considered to be problematic.

The Government of Uruguay would like to reiterate that the countries’ legislation on collective bargaining emphasises the importance of tripartite social dialogue and provides opportunities for negotiation which, in the vast majority of cases, has led to consensual agreements being reached. This and other tools have helped us to achieve clear national economic goals, sustained economic growth since 2005, the lowest rate of unemployment in the country’s history, a significant increase in formal employment and decent wages, which have in turn contributed to greater economic activity and, of course, social justice.

As the ILO knows very well, Uruguay is a democratic State governed by the rule of law, with all the requisite guarantees, both in terms of inclusive social dialogue and the possibility of legislative reforms or recourse to justice, as deemed necessary.

The Government has also kept the Office and its International Labour Standards Department, the Committee on Freedom of Association and the Committee of Experts briefed throughout the last three years. We have informed the Office of the last years of consultations, which we considered to have been conducted in good faith, the results were blocked by Employer representatives. Given this impasse, the Government felt bound to reflect many of the recommendations received from the Committee on Freedom of Association and the Committee of Experts in a bill submitted to Parliament to bring in some improvements. The Government gave priority to the issue, which was duly submitted even though it was an election year. The relevant committee has already had consultations with the Labour Minister and will soon consult the social partners (employers and workers), to hear all parties and seek the best solution now through legislation.
Lastly, Uruguay once again reiterates its strong support for a robust and objective system for monitoring ILO standards.

Original Spanish: The PRESIDENT

Since there appear to be no further speakers, I am going to move to the approval of the report of the Committee on the Application of Standards.

(The speaker continues in English.)

May I take it that the Conference approves the report of the Committee on the Application of Standards as contained in Provisional Record No. 13, Parts One and Two? I see no objections.

(The report, as a whole, is approved.)

Before continuing with our agenda and concluding our general discussion, I should just like to take a moment to thank the Officers and the members of the Committee on the Application of Standards for their work, as well as the secretariat, which has been particularly diligent in supporting the Committee – a task which involved working very long hours, indeed occasionally throughout the entire night. Many thanks for all your efforts and I think that all the statements by the spokespersons, the Reporter and the representatives of governments and groups that took the floor will be taken into account, not only at the Conference, but also by the Governing Body and the Office, including the Director-General.

Coming to the programme of the Conference, I have a request for the floor. I understand that the Workers’ delegate from Denmark, Mr. Ohrt, wishes to make a statement on behalf of several Workers’ delegates to the Conference in relation to article 26 of the Constitution. I shall give him the floor now, but I do not intend to open a debate on this subject.

Mr. OHRT (Worker, Denmark)

I take the floor today to introduce a complaint under article 26 of the ILO Constitution against the Government of Qatar for widespread and systemic violation of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81).

There is no question that the nearly 1.5 million migrant workers in Qatar are today subject to a state system that facilitates forced labour, a fact that has been confirmed recently by: the UN Special Rapporteur on the human rights of migrants; the ILO supervisory system; human rights organizations such as Human Rights Watch and Amnesty International; and major media outlets around the world.

From the moment migrant workers begin the process of seeking work in Qatar, they are drawn into a highly exploitative system that facilitates forced labour by their employers, including practices such as contract substitution, procurement fees for which many take out large, high-interest loans, and passport confiscation. The kafala (sponsorship) system, which remains firmly in place today, prohibits workers in practice from changing jobs when subject to exploitation or leaving the country. The labour inspection system is inadequate for the enormity of the problem, and workers have no effective access to a complaints system that provides justice when their rights are violated. Indeed, workers are dying at an alarming rate in Qatar, trapped and without any right to associate and defend their own interests.

As the Government has yet to take any concrete actions to address this massive human rights crisis, we feel compelled to act. I therefore submit this complaint and call for the establishment of a commission of inquiry in Qatar without delay.

The PRESIDENT

I understand that this is a complaint of non-observance under article 26(4) of the Constitution of the ILO. It has been duly noted and it is not up to the Conference to prejudge it. It will be referred to the Officers of the Governing Body, as usual, for the appropriate action.

PROTOCOL TO THE FORCED LABOUR CONVENTION, 1930, RECOMMENDATION ON SUPPLEMENTARY MEASURES FOR THE EFFECTIVE SUPPRESSION OF FORCED LABOUR, AND AMENDMENTS OF 2014 TO THE CODE OF THE MARITIME LABOUR CONVENTION, 2006: SIGNING

The PRESIDENT

I now have a pleasant task in what has become almost an ILO tradition in recent years: the signing, with the Director-General, of newly adopted instruments.

It is my pleasure to invite the Director-General, Mr. Ryder, to accompany me to the desk to sign the new Protocol to the Forced Labour Convention, 1930, and the Recommendation on supplementary measures for the effective suppression of forced labour, as well as the amendments of 2014 to the Code of the Maritime Labour Convention, 2006.

(Signature of the instruments.)

The PRESIDENT

I am very proud to have put my name to these texts: the Protocol and Recommendation, which I have no doubt will prove strong and effective in the fight against forced labour, and the amendments of 2014 to the Code of the Maritime Labour Convention, 2006, which will ensure that an important Convention is up to date. Both of these matters on the agenda of this Conference are crucial.

CLOSING STATEMENTS

The PRESIDENT

It is now time for us to move to the closing ceremony. I invite my fellow Officers, in turn, to take the floor and address the Conference.

Ms. MUGO (Employer Vice-President of the Conference)

It gives me great pleasure to take the floor in my capacity as Employer Vice-President of the 103rd Session of the Conference.

I was honoured to serve under my distinguished colleague and friend, Daniel Funes de Rioja, who has chaired the session in an outstanding manner. I would like to thank Daniel and to wish him all the best in his new capacity as President of the International Organisation of Employers.

This has been the first session operating under the reforms adopted by the Governing Body aimed at having a shorter and more productive session. I have had the privilege to chair some sessions and I would like to thank all participants for their discipline and time management. This discipline will be all the more critical as we migrate to a two-week session next year.
The 103rd Session of the Conference has seen the adoption of very important instruments and conclusions. The adoption of a Protocol and Recommendation on forced labour is an important milestone, but at the same time accelerate the pace of job creation. As we have seen in North Africa, joblessness was responsible for the Arab Spring and has been described as a ticking time bomb.

Employers in Africa have set up an African Task Force on Employment and Employability, whose main objective is the exchange of ideas on how to bridge the gap between education, training and the needs of the job market and how to boost economic sectors that are job rich, such as agriculture.

I wish to congratulate the Credentials Committee for a job well done in making sure that, during the nomination of delegates to the Conference, member States abided by article 3(5), of the ILO Constitution. The foundation of this Organization is based on respect for the autonomy of groups. Employers were concerned that an interim administrator appointed by the judicial authorities attended the session as the Employers’ delegate of Togo. We must not let this happen, for we risk going against the principles on which our Organization stands. I would like to congratulate the Credentials Committee for upholding those principles in its conclusions.

The Committee has drawn our attention to the important issue of gender balance, which needs attention. As the only woman among the Vice-Presidents of the Conference, I speak on behalf of many women delegates when I appeal to member States to pay special attention to this issue this year and in future years.

Finally, we need to look at ways of overcoming the structural problems related to the functioning of the Committee on the Application of Standards. Different perspectives and opinions on the implementation of ILO Conventions should be properly reflected in the conclusions. Reinforcing the objectivity and transparency in the process of selecting the list of cases is also necessary. Let us see this as an opportunity to strengthen the credibility of the efficiency of the ILO supervisory system.

**Mr SAKURADA (Worker Vice-President of the Conference)**

It has been a great pleasure and honour for me to have been elected Vice-President of the 103rd Session of the International Labour Conference. I would like to express my sincere thanks to the Workers’ delegates for the trust they have placed in me.

I would also like to congratulate the President of the Conference, Mr Funes de Rioja from Argentina, the Government Vice-President, Mr Alexandris from Greece, and the Employer Vice-President, Ms Mugo from Kenya, for their excellent and fruitful cooperation.

Allow me briefly to address the various subjects discussed at our session this year. Let me start with the work of the Committee on the Application of Standards. The Committee met this year under difficult circumstances. Following the failure of the Committee to fulfil its mandate in 2012, the Workers last year made a one-time concession, in order to allow the Committee to carry out its work, by agreeing to include a sentence called for by the Employers’ on the right to strike in the conclusions of cases related to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), because of the differing views on the interpretation of the experts.

In the meantime, however, the Governing Body achieved significant progress, in particular at its
320th Session, in March 2014, where we all unanimously agreed on the mandate of the experts.

Workers came to the 103rd Session of the Conference in a spirit of constructive engagement. It is thus with deep concern that the Workers heard Employers stating that they expected the one-time concession of 2013 to be repeated this year and, moreover, stating that they were turning their attention to other Conventions, including the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Employment Policy Convention, 1964 (No. 122), the Minimum Wage Fixing Convention, 1970 (No. 131), and the Termination of Employment Convention, 1982 (No. 158).

It is an unfortunate and sad day for this Organization when we all have to witness tripartism and dialogue under attack. The time has now come to use the tools provided by the ILO Constitution and to refer the issue of the right to strike to the International Court of Justice.

Let me now turn to the many positive results of the Conference. The Committee on Forced Labour has done an excellent job and we are pleased that yesterday we were able to adopt the Protocol and accompanying Recommendation, which update one of the fundamental Conventions of the ILO. We sincerely hope that these two instruments will facilitate effective cooperation under attack. The time has now come to use the tools provided by the ILO Constitution and to refer the issue of the right to strike to the International Court of Justice.

The Protocol and Recommendation establish the link between forced labour and the phenomenon of human trafficking. They will facilitate effective coordination at all levels regarding human trafficking and also provide detailed guidance on how to address modern forms of forced labour.

These instruments apply the UN Guiding Principles on Business and Human Rights and significantly strengthen the regulatory framework on recruitment and employment agencies, as well as other specific prevention, protection and remedy measures.

In short, these instruments allow us to take the fight against forced labour into the twenty-first century and adopt strategies to eradicate forced labour from our global economy more effectively. We are hoping for the wide and rapid ratification of the Protocol and effective implementation along the lines of the Recommendation to end forced labour once and for all.

The Committee on Transitioning from the Informal Economy had a good first discussion this year. The vast majority of workers who undertake economic activities in the informal economy do not do so by choice, but because there are no decent jobs available. An effective international instrument has the potential to lift millions of people out of poverty and help empower workers in the informal economy.

The discussion in the Committee has now set the framework for drafting an instrument in 2015 that will provide guidance to member States and the social partners on a comprehensive and practical agenda to transform informal economy activities into formal economic activities. It covers the economic, social and legal issues that affect the informal economy and focuses on governance, workers' rights and employment relationships. We look forward to the second part of the discussion next year with a view to adopting a strong Recommendation.

Last but not least, the Committee for the Recurrent Discussion on Employment has provided us with a comprehensive and ambitious policy framework for freely chosen, full and productive employment and decent work.

As governments, social partners and the ILO, we all need to step up our efforts to address the severe unemployment crisis and provide decent jobs for all by implementing this framework in each of our countries, based on social dialogue and with the involvement of all the relevant ministries.

Unfortunately, as we have not been able to make a real difference in the last four years, a political will to do so is going to be critical. The work programme for the ILO is ambitious and we look forward to the implementation of the various items we agreed upon, in particular the establishment of a voluntary peer review mechanism on national employment policies; analytical work on economic, tax and industrial policies impacting on employment and inequality; assistance and capacity building to constituents for the implementation of the framework at the national level; and last but not least, efforts to address job insecurity.

We also look forward to the promotion by the Office of the comprehensive policy framework at the international level, with the G20 and the International Monetary Fund (IMF) in particular.

Let me conclude by thanking the Secretary-General of the Conference, the ILO staff and the interpreters, who all worked tirelessly to ensure the success of this Conference, as well as my Worker colleagues who did an excellent job in the various committees.

Mr ALEXANDRIS (Government Vice-President of the Conference)

As Government Vice-President of the Conference, it is an honour for me and for the Government of my country, Greece, to say a few words regarding the Conference. Let me start with my first and perhaps strongest impression. I gather from the report of the Credentials Committee that, this year, 5,254 persons were accredited to the Conference. Not a record perhaps, but nevertheless a figure that shows the interest that the Conference generates. Aside from the interest in the topics on the agenda, we had the visits, during the World of Work Summit, of two Prime Ministers, of Jordan and of Mongolia, as well as a message of support from His Holiness Pope Francis.

The International Labour Conference remains a unique Conference, especially under the challenging economic and social circumstances faced by the world today. It brings together hundreds of people from all over the world and from different social strata and backgrounds. They are called upon, in a tripartite context, to agree to multilateral solutions on diverse and pressing issues, and so they did this year too.

Vast international gatherings like the International Labour Conference require correspondingly enormous amounts of organization and preparation, including the setting up of the agenda itself. The relevance of the agenda of the Conference and the issues that have been addressed are of universal importance and touch our everyday lives.

The question of forced labour is, unfortunately, a scourge that is still all too prevalent in modern times. By the same token, issues surrounding formalizing the economy constitute an essential task.
that must be taken up urgently by governments across the world, both in developing and developed countries. Concerning the pressing discussion of employment, as the Director-General pointed out in his opening statement to the World of Work Summit, around 200 million new jobs will be needed over the next five years, simply to keep pace with the growing working-age population in emerging and developing countries. With record-levels of unemployment in many regions of the world, what subject could be more important or pertinent?

The Director-General’s Report Fair migration: Setting an ILO agenda also covers a question that requires the serious attention of countries of origin and of destination. The economic and financial crisis, coupled with political and social turmoil in many regions of the world, has increased the flows of migrants, as people are forced to leave their native homes because of a lack of any opportunity to earn a decent livelihood in a safe environment. I felt that many contributions and much information were provided on this vexing and multifaceted question in the general discussion in the plenary. I am sure that the Director-General will take full note of this when setting the strategy of the ILO, which has an important role to play in counselling governments in this field. The Prime Minister of the Hashemite Kingdom of Jordan also spoke eloquently on this issue, which affects his country for various reasons.

Looking at the work of the committees, I should like to conclude these remarks, as the two Vice-Presidents have done, the Committee on Forced Labour. The Protocol to the Forced Labour Convention, 1930, and the accompanying Recommendation were adopted by record vote yesterday, receiving wholehearted support. It is, therefore, not surprising that everyone I have spoken to has responded positively to these two crucial instruments. Forced labour is a global challenge and concern. The ILO has made abundantly clear its belief that labour is not a commodity and, of course, the Forced Labour Convention, 1930 (No. 29), is one of the Organization’s fundamental texts.

I understand that there was very strong tripartite debate throughout the discussion in this Committee, with all issues being placed on the table before the decision was taken and, when it was taken, it was by consensus. The task was indeed an arduous one, but, all the same, I believe that the resulting choice by consensus reflects the strong commitment and determination of the Organization's member States, and there were 298 plenarystory speeches delivered. I think, therefore, that we should be in no doubt about the significance of our Conference. There is no comparable capacity to convene the world of work and its tripartite actors. That remains, as it has always been, remarkable and an asset that our Organization must jealously preserve even, or especially, as we move forward in the process of Conference reform as of next year.

Looking at the work of the committees, I should like to conclude these remarks, as the two Vice-Presidents have done, the Committee on Forced Labour. The Protocol to the Forced Labour Convention, 1930, and the accompanying Recommendation were adopted by record vote yesterday, receiving wholehearted support. It is, therefore, not surprising that everyone I have spoken to has responded positively to these two crucial instruments. Forced labour is a global challenge and concern. The ILO has made abundantly clear its belief that labour is not a commodity and, of course, the Forced Labour Convention, 1930 (No. 29), is one of the Organization’s fundamental texts.

The Committee on Transitioning from the Informal Economy also deserves our gratitude for its hard work. Once again, the level of tripartite participation was exemplary. The report provided a valuable source of information and experience, and reflects the strong commitment and determination of all three groups to take up the subject seriously. Naturally, the informal economy differs greatly from one region to another. As a result, in order to achieve the sustainable enterprise and employment that, I must emphasize, can only come with formality, we must seek innovative solutions taking into account the diversity and the idiosyncrasies of given situations and circumstances. I feel the Committee has taken up the task set by the Conference, albeit ambitious, and laid a firm foundation for the second discussion next year, which I hope will result in the adoption of a Recommendation.

The Committee for the Recurrent Discussion on Employment also enjoyed lively debates, again, with strong tripartite involvement, on another subject central to the ILO’s work. This was the second discussion under the follow-up to the Declaration on Social Justice for a Fair Globalization of 2008 on employment and the conclusions build on the basis provided by the first discussion. Broad agreement was expressed concerning the need for a comprehensive policy framework and proactive employment-centred inclusive growth strategies at both the global and the national levels.

There is no politician in the world who underestimates the importance of employment. The Committee’s conclusions are intended to give guidance to the ILO, but also to member States and their governments. I invite you to give the appropriate weight and importance to these conclusions by taking them back to your home administrations and putting them into effect.

Regrettably, the Committee on the Application of Standards has encountered difficulties in its functioning in recent years and its wide-ranging discussions this year bore witness to the persistent problems. In particular, for the second time since 2012, the Committee was not in a position to complete its work. The Director-General has been mandated by the Governing Body to rapidly find solutions to the challenges surrounding the ILO’s supervisory system and I am confident that all three groups will play a part in achieving this goal.

These are my impressions of the Conference. I have benefited from the support of my fellow Officers of the Conference, the Employer Vice-President Ms Mugo, the Worker Vice-President Mr Sakurada and the President himself, Mr Funes de Rioja. I am grateful to them all, as well as to the secretariat, which has done everything to help me in my new tasks. I am proud to have been of service to the Conference.

Ambassador Alexandris, thank you for your intervention. It is now my privilege and pleasure to give the floor to the Secretary-General of the Conference, the Director-General of the Office, Mr Guy Ryder.

The PRESIDENT

As we approach the end of the 103rd Session of the International Labour Conference, I think it is fitting that we take this moment to reflect on the work that we have done and to draw from the experience of these last three weeks some general messages that can serve us in the future.

The final tally of participants who actually registered at the Conference stands at 4,457, from 165 of the ILO’s member States, and there were 298 plenary speeches delivered. I think, therefore, that we should be in no doubt about the significance of our Conference. There is no other place like it and there is no comparable capacity to convene the world of work and its tripartite actors. That remains, as it has always been, remarkable and an asset that our Organization must jealously preserve even, or especially, as we move forward in the process of Conference reform as of next year.

In my opening remarks I said that the three criteria for measuring the success of our Conference
would be that we must discuss the right issues, that we organize our work efficiently and that we produce results. So how does this session of the Conference stand up against those benchmarks?

Firstly, I think that we can all agree that we have been dealing here with an agenda that really matters and we have all seen, and you are no doubt all now feeling, the effects of an extraordinary amount of hard work, a real demonstration of staying power as our Conference committees have grappled with issues which are difficult but which are important, precisely because they are difficult. In terms of efficiency, I have to say that I believe that we have also done well.

Mr President, with your team of Vice-Presidents you have achieved with your customary elegance that elusive goal of making the plenary run on time, without bruising the sensitivity of delegates excessively. Committees were chaired with skill and with professionalism, and you will allow me, I hope, to express my own pride in a Conference secretariat that made sure that you got the room, you got the documents and you got the interpretation that you needed to get your jobs done, and that they combined that hard work with good humour throughout. I want to thank them.

We will, as always, of course, analyse the experience of this Conference and draw the lessons learned as we prepare for a two-week session of the Conference next year. Obviously your feedback will be extremely useful in that process.

Then the third yardstick, the most important, what about the results that we have achieved? President, I believe that this Conference session, the one that you have led, will be remembered above all for the adoption, by an overwhelming majority, of the Protocol to the Forced Labour Convention, 1930, and its accompanying Recommendation. It is the fruit of our collective determination to put an end to an abomination which still afflicts our world of work and to free its 21 million victims. It is a demonstration of our capacity to adopt international labour standards, to meet real needs, and in this case to supplement what means to define and promote fundamental principles and rights at work. As you said at the moment of adoption, President, with this Protocol we are giving a very clear answer to global society.

The task of opening the road from the informal to the formal economy has indeed, as we might have expected, proved formidable. It is not just the magnitude of the challenge, but the complexity of the phenomenon of informality and the very different forms that it takes around the world that we have had to confront. As the Conference worked hard on very basic questions of concept and of definition, delegates have felt sure that we have been conscious of the ground-breaking nature of what we have been doing, and for my part I was impressed by the fact that representatives of no less than 110 countries participated, and participated actively and energetically in the Committee’s work.

I think that shows that this transition truly matters to us all, no matter from where we come, and listening to what was said in plenary yesterday left me very confident that the seeds planted this year will allow us to harvest a valuable and much-needed Recommendation at next year’s session of the Conference.

Our recurrent item discussion, which was on employment this year, under the terms of the follow-up to the 2008 Declaration on Social Justice for a Fair Globalization, moved remarkably smoothly to a successful conclusion, and I am encouraged by it for two quite distinct reasons.

The first reason is that the experience this year does seem to indicate that we are learning, we are learning from past experience with these recurrent item discussions, and we are finding the right way for them to meet the objectives set in the 2008 Declaration, and in particular that delicate balance between policy discussion, on the one hand, and internal ILO guidance issues, on the other. This matters greatly because at the current moment we are moving towards the evaluation of the impact of the Declaration that is on the agenda of the 105th Session (2016) of the Conference.

The second reason is that we have produced a comprehensive policy framework for the ILO on the all-important strategic objective of employment. It has strong tripartite endorsement and it will serve us very well in the future.

Let me as well express appreciation to delegates for their very substantive contribution to the discussion of my own Reports to the Conference. Its aim was to elicit from you, your reactions and your views on the usefulness of constructing an ILO agenda for fair migration, on what such an agenda might look like and how it should fit in with the activities of our sister organizations in a multilateral system. I want to thank you for rising to that challenge. What was clear from the debates was that the issue of labour migration resonates very clearly with you all, and that realizing the undoubted economic potential of migration depends very heavily on making it fair, and that means adopting the rights-based approach which is still more frequently talked about than it is applied.

So let me say simply at this stage, that this Conference has transmitted a very strong message to our own Governing Body which in November will be called upon to begin the job of determining an ILO Strategic Policy Framework from 2016 onwards.

In the light of the discussion which has taken place, my intention will be to include an agenda for fair migration in my proposals to the Governing Body. If this finds favour, we will need to draw on your inputs to this Conference discussion so as to identify the key areas for action. I will not anticipate that debate now, but would simply remind you of some of the issues which emerged from your contributions with particular clarity: fair recruitment processes, for example; the design of temporary migration schemes; a tripartite forum for migration; the effectiveness of the ILO’s existing normative framework on migration; and policy coherence in the international system on migration. These are some of the issues and we will need to return to them and to others.

In addition to migration issues, our plenary heard as well repeated calls for continued and intensified ILO support to bring about improvements in the situation of workers of the occupied Arab territories. This is in the light of the very disturbing developments outlined in my Report on the subject.

I simply want to assure the Conference, as I was able to assure the Palestinian tripartite representation here at the Conference, with whom I was able to meet, that the ILO will do all that it can to play the role that it must, notwithstanding the difficulties that continue to prevail, and I take this as a respon-
sibility that flows naturally and directly from our mandate for social justice.

Our Conference received important messages from Prime Minister Ensour of the Hashemite Kingdom of Jordan and from Prime Minister Altankhuyag of Mongolia, both within the framework of what I think was a successful World of Work Summit that took place last Monday. We thank them both. We thank them for their visit and we thank them as well for their testimony of the centrality of the Decent Work Agenda to the challenges being taken up in their own countries.

In the same vein, His Holiness Pope Francis sent us all a powerful message, from which I cite one short quotation. He said, he reminded us that, and I quote: “Future sustainable development goals must therefore be formulated and carried out with generosity and courage so that they can have a real impact on the structural causes of poverty and hunger, attain more substantial results in protecting the environment, ensure decent work for all and provide appropriate protection for the family.”

This is an important day. It is the World Day Against Child Labour, and that being so, let me recall what Prime Minister Ensour told us – that 70 per cent of child labourers in his country, Jordan, are Syrian refugees. It is also an important day because it is the opening day of the World Cup in Brazil, so let me join with Pope Francis in raising the Red Card to Child Labour. We do not want to see too many of these in Brazil, but we do want to see child labour sent off, once and for all, from our field of the world of work.

I hope it will not try your patience beyond its limits if I close by reminding the Conference again of another remark that I made at the opening when I spoke to you all of the twin responsibilities of delegates coming to our Conference.

The first was the responsibility to represent the views and the interests of those that you represent. The second responsibility is to come together with a genuine commitment to forge tripartite consensus from these different interests. If this combination of responsibilities is not assumed from the outset, then the ILO cannot and will not work as we want it to work and as it should work.

I made those remarks with this moment already in my mind and they give me the opportunity to say the following: that for the most part, the exercise of these twin responsibilities has been such as to produce the remarkable results of which we know this Conference to be capable; a Protocol, which offers hope to millions who are victims of the cruelest of abuses; Conclusions, which can open the way to basic protection that is offered by formality at work; a framework for the ILO to deliver its contribution to overcoming some of the defining features of our time, the crisis of mass unemployment. These are the objectives which bring thousands of delegates to Geneva, to which they dedicate their energy, their talent and their commitment, and their capacity for representation and consensus. I think all of us can take justifiable pride in all of that, but it is unfortunate that these same responsibilities have not been exercised or have not been sufficiently exercised to permit the Conference to produce comparable, positive results in the application of standards.

The fact that the Conference has only been in a position to adopt conclusions on six individual cases in this area and has made no progress in overcoming known and serious differences in respect of the application of standards, stands, let us face it, as a major failure in which we all share. I want to join with others in expressing deep regrets and profound concern about this situation, and I think we have to be very clear that the expectations and the commitments made at the Governing Body last March have not been met. Nobody’s interests have been served by the continuing differences and stalemates to which we have borne witness, and if anybody thinks that they have, I believe they are wrong. It is more appropriate to have in mind the interests of those, and they are millions, who would have benefited from the adoption of conclusions on matters which have real importance and those millions who might justifiably feel let down by what has happened here. It is their judgement on our efforts, which is perhaps the most telling.

So let me say the obvious, I have said it before and I may need to say it again, that the ILO must have a strong, authoritative standards system enjoying full tripartite support. Nobody has, to my knowledge, dissented from that view. But not enough has been done to act on that expressed commitment, and I think that needs to change, I think it needs to change now. My own efforts and those of my colleagues in the Office as a whole will be directed, as they must and above all else, to facilitating progress in this area and we can start tomorrow, initially in preparation of the crucial Governing Body discussion in November. We will consult everybody widely, we will be energetic, we will be creative, we will be responsible, but ultimately the solutions lie with you, our tripartite constituents, nobody else, so I want to appeal to each and every one of you, to put your genuine efforts to the task of ensuring that we do not find ourselves in the same or similar circumstances at this point next year.

Let me close by recalling that it is customary for the Secretary-General to end his remarks by expressing thanks to the person who has presided over the Conference and to the team of Vice-Presidents. It is customary to convey appreciation for the efficiency, the courtesy and the skill with which the Conference proceedings have been managed, but I want to do all of those things and in so doing I am sure that I translate to you the sentiments of all the delegates in the room. But on this particular occasion, I think something more needs to be said beyond the customary niceties because it is exceptional for an Employer representative to be elected to the Presidency of the Conference. Your selection and the way that you have led us does honour to the Employers’ group, and since this Conference is a culmination of no less than 38 years of your attendance and your outstanding contribution to the work of our Organization, your Presidency is also a profound tribute to the manner in which you have marked the history of the ILO. So, dear Daniel, as our President, as a leader of the Employers in this house for so many years, as a colleague and, if you will allow me, as a friend, I want to thank you on behalf of everybody here. Thank you very much.

Original Spanish: The PRESIDENT

And now, with your permission, I shall make a few closing remarks of my own.

As we conclude the activities of this session of the Conference, which you have given me the honour of presiding over, I would like to take this opportunity to convey not just my impressions concerning
the content of the agenda and the conclusions, but also to reflect upon the future.

In particular, and as I said before, I believe that we have dealt with topics of great relevance to the future of the Organization. We have had debates and produced conclusions which will undoubtedly help the Governing Body and the Office to construct specific programmes of action, paying special attention to the guidance provided by you, the constituents.

It is no coincidence that we have been dealing simultaneously with topics which are interlinked, such as migration, employment and making employment sustainable, the transition to the formal economy and the effective eradication of all forms of forced labour. The responses proposed by the Conference to these issues will undoubtedly create a virtuous circle promoting human dignity and sustainable development with social progress. This is the kind of globalization to which we all aspire, and we cannot conceive of any other form that does not respect human dignity.

These matters are pertinent not only because of their content, but also their immediate applicability. The international community is awaiting a response and thus the Conference is acting accordingly by providing concrete and effective answers.

The Report of the Director-General, 

Fair migration: Setting an ILO agenda, sent a very direct message to trigger interaction with the tripartite constituents, which produced almost 300 responses. As the Director-General stated, those will feed into the Office’s strategy in the future.

The reaction has been not only immediate, but also effective. It has prompted this dialogue, which is such an important part of the Conference. You have all taken part in the debate, rising to the challenge to form opinions, share experiences and provide guidance.

Furthermore, finding solutions for the huge challenge of creating jobs for the younger generation is a matter of urgency, as was underlined in the message from His Holiness Pope Francis. He said that this is “particularly disheartening for young people, who can all too easily become demoralized, losing their sense of worth, feeling isolated from society. In working for greater opportunities for employment, we affirm the conviction that it is only ‘through free, creative, participatory and mutually supportive labour that human beings express and enhance the dignity of their lives.’”

The Appendix to the Report of the Director-General, The situation of workers of the occupied Arab territories, unfortunately highlights the difficult conditions prevailing there. As the Prime Minister of Jordan, Mr Abdullah Ensour, stated, the Report notes that there is increasing pessimism because of a lack of progress in the peace process. I believe that we must unite our voices and our efforts and support the Office’s work on this matter.

On the subject of informality and the transition to the formal economy, it is clear that we are facing a wide-ranging and complex challenge, which has elicited interest and prompted commitment.

The once blurred issue of the informal world or the shadow economy has now become an integral part of the ILO agenda. The path towards formalization and the necessary actions to achieve this objective are undoubtedly vital steps on the route to development, particularly for those of us from the developing world. Development cannot be achieved unless we find solutions to address informality.

And as I have said repeatedly, there can be no sustainable development without decent work and sustainable enterprises. This link is now part of the ILO agenda as well. It is one of the responsibilities of the constituents: their ability to translate this political message into specific action which can guide the process of the transition to the formal economy, while respecting regional and national circumstances, and to contribute to the definition of effective policies to achieve goals and produce measurable results. This Conference has commenced that work, and the next session will be of fundamental importance. In both cases, cooperation is of paramount importance.

With regard to employment, the ILO agenda now overlaps with that of the G20. The interaction between the ILO and the G20, and between the social partners and the G20, highlights the relevance of the need to create employment and to close the current education and vocational training gap.

I would like to take this opportunity to echo the Prime Minister of Mongolia, Mr Noroviin Altankhuyag, in expressing my thanks to the ILO for having organized the World of Work Summit. It produced a very useful and highly enriching discussion here, and the question and answer session with delegates will, I am sure, strengthen the ILO’s own work and that of the international forums in which it participates.

The joint decision to place the Protocol to the Forced Labour Convention, 1930, in a new framework addressing the new circumstances which offend human dignity and run counter to any transparent and honest labour relations system resulted in the adoption of the instrument, which will be welcomed from both a normative and an ethical perspective. I would like to convey to my colleagues, who honoured me by appointing me President, that it has been a matter of great satisfaction for me to have been able to sign this Protocol and the related Recommendation, together with the Director-General.

By addressing the topic of human trafficking, the ILO is responding to the appeal of the Pope, himself reflecting worldwide concern, to provide a response which highlights that “human trafficking is a scourge, a crime against the whole of humanity. It is time to join forces and work together to free its victims and to eradicate this crime that affects all of us, from individual families to the worldwide community.”

It is for this reason that we urge member States to ratify the Protocol forthwith so that the obligations arising from this basic principle are embodied within the framework of fundamental rights at work. In particular, we would like to draw your attention to Article 6, which requires that the necessary measures to apply the Protocol be determined by national laws or regulations or the competent authority, after consultation with the organizations of employers and workers concerned.

Once again, tripartism and social dialogue are achieving results in reaching effective agreements in the world of work, and the strength of consensus is proof of the high degree of political significance of the ILO’s mandate. The Conference derives its authority not just from its constitutional mandate, but also – and this is something I myself strongly believe in – from tripartism.
Moreover, I am quite sure that the reform of the Governing Body and the Conference, and the strategic redesign of the content of discussions, has placed the ILO at the forefront of progress, in order to respond effectively and with indisputable legitimacy to globalization. I include in such progress the procedure implemented for the adoption of the amendments of 2014 to the Code of the Maritime Labour Convention, 2006, as a means of improving and updating our instruments.

In the light of these developments, the ILO should commit to an active role in the multilateral system as an important means of advancing its specific agenda on migration, and that of the system as a whole.

In its work on migration, the ILO should ensure that it highlights the role of tripartism, embodies it in all activities and promotes it in the work of others.

In addition, and in line with one of the general objectives of the reform process in the Organization, the ILO will need to reinforce its statistics and knowledge base in respect of migration. That base can then be used as a foundation for improved research and analytical work, which in turn should contribute to improved, evidence-based policy advice.

Now please allow me to share with you some brief thoughts on the outcome of the Committee of the Application of Standards.

I remain convinced of the relevance of the ILO’s standards supervisory machinery, as well as of the relevance of the normative role of our house, which clearly differentiates the ILO from other multilateral institutions. The ILO has a unique and effective system to monitor member States’ compliance with international labour standards.

The effectiveness of the system derives from the diversity of its supervisory mechanisms, the gradual, combined approach, and especially its function as a moral sanction, including the application of article 33 of the ILO Constitution, which provides for concrete and effective measures to secure compliance.

Clearly, there are some aspects of the system that have been called into question, justifying the establishment of special procedures within the framework of the Governing Body, in close cooperation with the Office.

Each part of the process has crucial importance and should be maintained, as difficulties arising from the adoption of the list of individual cases and the way in which these cases are discussed, and particularly the drafting of conclusions of such debates, require the Governing Body and the Office to make further efforts to find the path to consensus.

I was a member of the Committee on the Application of Standards for many years and spent over 20 years serving on the Governing Body. Nothing is easy, but nor is it impossible. Our work together, which allowed us to find a way forward with regard to the problems arising from the experts’ mandate, is proof of that. It is not a question of anybody giving in, but of reconciling differing positions. The tripartite mandate of the Governing Body makes this possible. It is my firm belief that the joint responsibility of the constituents means that tripartism is the only way forward. Consensus is not the product of apathy, disinterest, lack of conviction or even complacency; it is construction through dialogue, the participants’ responsible contribution and their will to find a common path. I sincerely hope that today’s frustration will be transformed into opportunity tomorrow.

Finally, I would like to congratulate my fellow Officers of the Conference, Ambassador Alexandris from Greece, Vice-President of the Government group; Mr Sakurada from Japan, our Worker Vice-President; and Ms Mugo from Kenya, Employer Vice-President and the only woman among the Officers. Allow me to say that they have been excellent colleagues and working together in close cooperation with them has proven to be extremely positive. I sincerely thank them for the support they have given to me as President of this Conference.

I would like to thank the Director-General of this house, Mr Ryder, for his ongoing support and friendship. I would also like to congratulate him for the excellent work done by his secretariat, which enables us to conduct our work during the Conference and to achieve such important outcomes. As you mentioned, Guy, you have good reason to be proud of your team.

I would also like to thank the Clerk of the Conference, Mr Ramos, as well as Mr Perrin, Director of the Official Meetings, Documentation and Relations Department.

I also want to thank especially Mr Vines, Deputy Director-General for Management and Reform.

Their support in the various aspects of my work, both at the Conference and as a member of the Governing Body, has been very valuable. And as for my colleagues, the spokespersons of the Workers’ group, Mr Cortebeeck, and the Employers’ group, Mr Ronnest, many thanks to you for your friendship throughout the years, and to the Chairperson of the Governing Body as well.

I would also like to say a special word about my direct colleagues, Mr Yuren, Assistant to the President, and Ms Ruefli, Secretary to the President. I would also like to thank all the translators and interpreters for the services that they have provided, especially given someone who jumps from Spanglish to Spanish and then on to French, or some such.

I would like to end in the same way as I began, in echoing the first Argentinian who, in 1928, occupied this seat, Mr Saavedra Lamas, who said that there is nothing in the world superior to the secular energy which man draws from within and which, when it is spread throughout the world, is called truth, justice and law, giving rise to the fundamental virtues which are ultimately the mainstay of civilization.

The SECRETARY-GENERAL OF THE CONFERENCE

At the end of our work, it is one of the very, very nice traditions of this Conference that we present to the President, as a symbol of his or her authority, but also as a token of our great gratitude and respect for everything that you have done, this, the gavel of the Conference.

Original Spanish: The PRESIDENT

The work of the 103rd Session of the International Labour Conference has now been concluded. This brings to an end my term as a member of the Governing Body and it is the last time that I shall be attending the Conference. I would like to thank each and every one of you for your contributions to our work, for the way in which you have interacted with me and respected the Officers of the Conference,
and for the outcomes achieved, for better or for worse. I hope that the positive results can be built on and that the divergences and difficulties can be overcome.

And with this gavel, which the Secretary-General has so kindly presented to me, I declare the 103rd Session of the International Labour Conference closed.

(The Conference adjourned sine die at 1.35 p.m.)