Conference Committee on the Application of Standards

Extracts from the Record of Proceedings
CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE RECORD OF PROCEEDINGS
INTERNATIONAL LABOUR CONFERENCE

ONE HUNDRED AND FOURTH SESSION
GENEVA, 2015

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
- Information and Discussion on Compliance by Certain Countries with Their Standards-related Obligations
- 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; (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.
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REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

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

Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

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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 234 members (122 Government members, eight Employer members and 104 Worker members). It also included six Government deputy members, 30 Employer deputy members, and 129 Worker deputy members. In addition, 32 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

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

   Vice-Chairpersons:  Ms Sonia Regenbogen (Employer member, Canada) and Mr Yves Veyrier (Worker member, France)

   Reporter:  Ms Cecilia Mulindeti (Government member, Zambia)

3. The Committee held 18 sittings.

4. In accordance with its terms of reference, the Committee considered: (i) the reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; (ii) the reports requested by the Governing Body under article 19 of the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers’ Organisations Convention, 1975 (No. 141), and the Rural Workers’ Organisations Recommendation, 1975 (No. 149); and (iii) the information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference.²

Opening sitting

5. The Chairperson of the Committee on the Application of Standards expressed her honour at being able once again to preside over this Committee, which was a cornerstone of the regular ILO supervisory system. It was the forum for tripartite dialogue in which the Organization debated the application of international labour standards and the functioning of the standards system. The conclusions adopted by the Committee and the technical work of the Committee of Experts, together with the recommendations of the Committee on Freedom of Association and the technical assistance of the Office, were essential tools for member States when implementing international labour standards. She trusted that, in the course of the two-week session of the Conference, the Committee would be able to work harmoniously and efficiently and in a spirit of constructive dialogue.

¹ For changes in the composition of the Committee, refer to Provisional Record No. 4. For the list of international non-governmental organizations, see Provisional Record No. 3-2.

6. The Worker members indicated that their priority objective was that the Committee on the Application of Standards could be able to do its work and reach operational conclusions, providing real prospects of progress for the tripartite constituents of the ILO. In a context of economic crisis and the deregulation of financial markets, which were hitting economic actors and leaving workers in an ever more precarious situation, social protection was essential to progress and social justice. It should therefore be reaffirmed that the role of international labour standards was to guarantee economic development aimed at improving the lives of men and women and preserving their dignity.

7. The Employer members noted that the Committee on the Application of Standards was the cornerstone of the supervisory system of the ILO. Therefore, they took their responsibility in the Committee very seriously. They reiterated their commitment to social dialogue. They were looking forward to productive discussions at this session of the Committee.

Work of the Committee

8. At the end of its opening sitting, the Committee adopted document C.App./D.1, which set out the manner in which the work of the Committee was carried out. At that occasion, the Committee considered its working methods, as reflected under the next heading below.

9. 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 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. A summary of the general discussion is found under relevant headings in sections A and B of Part One of this report.

10. The Committee then examined the General Survey concerning the right of association and rural workers’ organizations instruments. Its discussion is summarized in section C of Part One of this report.

11. Following these discussions, the Committee considered the cases of serious failure by member States to respect their reporting and other standards-related obligations. The result of the examination of these cases is contained in section D of Part One of this report. More detailed information on that discussion is contained in section A of Part Two of this report.

12. The Committee then considered 24 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

3 Work of the Committee on the Application of Standards, ILC, 104th Session, C.App./D.1 (see Annex 1).
Part I/5

Conventions. The result of the examination of these cases is contained in section D of Part One of this report. A summary of the information submitted by Governments, the discussions and conclusions of the examination of individual cases are contained in section B of Part Two of this report.

13. The adoption of the report and closing remarks are contained in section E of Part One of this report.

Working methods of the Committee

14. Upon adoption of document C.App./D.1, the Chairperson announced the time limits for interventions made before the Committee. 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.

15. The Worker members considered that the results of the last meeting of the informal tripartite working group on working methods of the Committee were very positive. With reference to the impact on the work of the Committee of a shortened duration of the Conference, they stressed that time was needed to discuss the General Survey, which was an important task of this Committee, not only because it allowed the application of the instruments concerned to be monitored, but also as General Surveys were an important part of the mechanism established under the follow-up to the 2008 ILO Declaration on Social Justice for a Fair Globalization (thereafter, the Social Justice Declaration). Time was also needed to examine the individual cases. The speaking time had already been reduced in the past and should not be restricted any further. Having dedicated sittings to adopt conclusions was a positive development. If it proved impossible to consider all cases in depth, reinstating a longer session of the Conference should be recommended when the two-week session was evaluated.

16. The Worker members noted that a particular effort would have to be made to ensure that the list of cases respected, as far as possible, a balance between fundamental, governance and technical Conventions, a geographical balance, and a balance between developed and developing countries. Examination 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), should never be taboo, nor should it be the case regarding the Employment Policy Convention, 1964 (No. 122). The Worker members stressed that the joint objective was to arrive at consensual conclusions and to reach conclusions on all the cases, avoiding any possible references to differences of opinion. Conclusions had to be short, clear and simple and give governments specific, unambiguous indications with regard to law and practice. They came within the sole responsibility of the Employer and Worker spokespersons.

17. The Employer members noted that the shortened duration of the Conference was a pilot project. There was a need to work in some new ways to meet the constraints. They were hopeful that the Committee would be able to work within the time allocated in a comprehensive manner. They considered it too early to predict how a two-week session of the Conference would proceed.

18. The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), indicated that GRULAC had taken note with satisfaction of the changes made to document C.App/D.1, which resulted from the work of the
informal tripartite working group on working methods. GRULAC underlined the need, when preparing the list of cases, to ensure balance between developed and developing countries, among the fundamental Conventions, and between the fundamental, governance and technical Conventions. GRULAC expressed support for a new meeting of the informal tripartite working group to be arranged during the November 2015 session of the Governing Body, with the new composition of 16 Government members, eight Employer members and eight Worker members. The speaker recalled that the results of this working group should be transmitted to the Working Party on the Functioning of the Governing Body and the International Labour Conference, as agreed during the November 2014 session of the Governing Body.

19. The Government member of Egypt stressed, in light of the fact that this session of the Conference was confined to two weeks, the need for efficient time management of the Committee’s work in order to ensure sufficient time for the discussion of individual cases while avoiding night work.

Adoption of the list of individual cases

20. During the course of the second sitting of the Committee, the Chairperson of the Committee announced that the list of individual cases to be discussed by the Committee was available. 4

21. Following the adoption of this list, the Worker members recalled that, for some years, choosing the list of individual cases had proved a very difficult exercise. Every effort had been made to ensure the timely adoption of the list, while respecting the balance sought between the fundamental, governance and technical Conventions, as well as geographical balance and balance between developed and developing countries. Over the years, they had explained the reasons why cases concerning Convention No. 87 were numerous. These cases had been placed on the list by common consent. The Worker members recalled the outcome of the February 2015 Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at the national level (thereafter, the February 2015 Tripartite Meeting), which had been endorsed by the Governing Body at its 323rd Session (March 2015). This demonstrated that consensus had prevailed over individual interests.

22. The Worker members indicated that, while the corresponding cases would not be discussed, certain serious events affecting the world of work could not pass without comment: this was the case in Colombia, Peru and the Islamic Republic of Iran.

23. At the end of the sitting, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

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4 ILC, 104th Session, Committee on the Application of Standards, C.App./D.5 (see Annex 2).
B. General questions relating to international labour standards

Statement by the representative of the Secretary-General

24. 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 Employer and Worker members 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 informal tripartite Working Group on Working Methods. This year’s document D.1 also reflected the recommendations adopted by the informal tripartite working group in March 2015. The informal working group was reconvened by the Governing Body in the context of the standards initiative to ensure the effective functioning of this Committee at the present session of the Conference. In reconvening the informal working group, the Governing Body requested it to prepare recommendations on the establishment of the list of cases and the adoption of conclusions. The informal working group also made recommendations on the effective functioning of this Committee during the current two-week session of the Conference. This shortened duration was a pilot project that was being tried out and would be analysed by the Governing Body at its November 2015 session. The representative of the Secretary-General considered that it would be important that this Committee contribute to this analysis by expressing its views in its report to the Conference.

25. The 2012 discussions in this Committee had sparked off a challenging but very useful dialogue in the ILO on its standards system. The further developments that took place in this Committee in 2014 influenced the solutions which ultimately enabled the 2015 March session of the Governing Body to move forward. The ILO was not a static organization but one that was regularly confronting issues. It was inspiring that after intensive tripartite exchanges, the ILO constituents were able to find a way to move forward together.

26. With respect to the discussion of the General Survey concerning the right of association and rural workers’ organizations instruments, the representative of the Secretary-General wished to highlight, in addition to the significance of this topical subject matter, that General Surveys were an important tool for the Organization. General Surveys and their discussion by this Committee were making an important contribution to the Office’s preparation of the recurrent discussions under the follow-up to the Social Justice Declaration. This year’s General Survey and its discussion by this Committee would therefore inform the recurrent discussion on the strategic objective of fundamental principles and rights at work to be held at the 106th Session (2017) of the Conference. It would also inform the work towards attaining the ILO’s goal of increasing the voice of rural people, as identified under the area of critical importance 5 (decent work in the rural economy) and outcome 5 of the Programme and Budget for 2016–17. In addition, this General Survey was intrinsically linked with the standard-setting item concerning the transition from the informal to the formal economy. The General Survey also referred to the Standards Review Mechanism (SRM) and covered the possibility of the Office conducting background work to explore the usefulness of consolidating the various agricultural and rural instruments and to promote their usefulness.

27. The representative of the Secretary-General indicated that the International Labour Standards Department had continued to upscale its assistance to member States and to the
social partners to enable them to effectively implement ILO Conventions and to respond to the comments of the ILO supervisory bodies. In particular, follow-up missions to the conclusions adopted by the Conference at its recent sessions were undertaken in a number of countries. The Information document contained a table detailing the technical cooperation provided by both the International Labour Standards Department and the field offices at the national and subregional levels, as well as the assistance provided by the International Training Centre, Turin.

28. With regard to the institutional context, the representative of the Secretary-General recalled that the objective of the standards initiative was to establish full tripartite consensus on the functioning of an authoritative standards supervisory mechanism and to enhance the relevance of international labour standards through a Standards Review Mechanism. She referred to a number of recent developments in this regard, including the February 2015 Tripartite Meeting, during which the Workers’ and Employers’ groups presented a joint statement concerning a package of measures intended to provide a constructive way forward for the questions that had arisen with respect to the role of the supervisory system. The Government group had also expressed its common position on these matters. At its 323rd Session in March 2015, noting the outcome and report of the Tripartite Meeting, the Governing Body took a comprehensive decision embracing all the matters that had been put on the table. It decided not to pursue for the time being any action in accordance with article 37 of the Constitution to address the interpretation question concerning Convention No. 87 in relation to the right to strike. The Governing Body also decided to establish a Tripartite Working Group under the SRM, which was due to report to the Governing Body at its 325th Session in November 2015. Finally, the Governing Body requested the Chairperson of the Committee of Experts and the Chairperson of the Committee on Freedom of Association (CFA) to jointly prepare a report, on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association. Preparations were under way for the presentation of the joint report to the 326th Session of the Governing Body in March 2016.

29. The representative of the Secretary-General also made reference to the Future of Work initiative, the objective of which was to enable a far-reaching reflection on the major trends impacting on the world of work, and what this meant for the ILO in the pursuit of its social justice mandate in its second century of existence. The Future of Work initiative must build on a vigorous implementation of the standards initiative with a marked tripartite engagement. As regards the Programme and Budget proposals for 2016–17 which were presented at the current session of the Conference, she stressed that international labour standards were addressed both as one of the ten policy outcomes but also as key cross-cutting policy instruments. Making reference to the various items on the agenda of this session of the Conference, the speaker indicated that she expected that these discussions and their outcome would in due course feed into the implementation of the SRM, bearing in mind that one of the SRM’s guiding principles would be to ensure a clear, robust and up-to-date body of standards for the purpose of protecting workers, while taking into account the needs of sustainable enterprises.

30. Finally, she made reference to a resolution adopted by this Committee in 1945 through which it contributed to the debate taking place at the time on the revision of the ILO Constitution to equip the ILO for a new international order. This resolution had far-reaching consequences for the constitutional architecture of the supervisory system. Most of the proposals contained in the resolution were endorsed by the Conference. In a similar fashion, this Committee could make a marked contribution to the celebration of the ILO centenary in 2019 which would take place in an international environment in which a solid, credible and authoritative ILO would be able to make a difference, particularly in the area of social standards.
Statement by the Chairperson of the Committee of Experts

31. 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 the right of association and rural workers’ organizations instruments. He stressed the importance of a solid relationship between the two Committees in a spirit of mutual respect, collaboration and responsibility.

32. The Chairperson of the Committee of Experts indicated that the Committee of Experts had duly noted that the statement of its mandate in its 2014 General Report had been welcomed by the Governing Body. The Committee of Experts had therefore decided to reiterate this statement in its 2015 General Report. It had also noted that divergences of views between constituents on certain matters had an impact on its work and required it to pay particular heed to abiding strictly by its mandate and its core principles of independence, objectivity and impartiality.

33. The speaker noted that consideration of its working methods by the Committee of Experts had been an ongoing process since its establishment, and, in this process, the Committee had always given due consideration to the views expressed by the tripartite constituents. In its reflection on possible improvements and the strengthening of its working methods, the Committee of Experts had directed its efforts towards identifying ways to adapt its working methods to better meet its challenges, in particular that of its workload and of better assisting the tripartite constituents in meeting their obligations in relation to international labour standards. More specifically, the Committee had addressed the issue of the streamlining of the content of its report. In this respect, the Committee had considered that there was a need to make clear that its objective was to ensure a better understanding and an enhanced quality and visibility of its work, which would not only facilitate the work of the Conference Committee, but also help the tripartite constituents, and in particular governments, to better identify and understand the requests of the Committee of Experts, implement them with a view to complying with their obligations in relation to international labour standards and report back effectively. To achieve this objective required striking the right balance. In particular, the Committee of Experts had discussed the importance of ensuring uniformity in carrying out its work, including in the application of the criteria to distinguish between observations and direct requests, and in the language used to formulate its views and requests. It had underlined that coherence in the supervision of the application of ratified Conventions was to be ensured not only by subject matter, but also by country.

34. The speaker also underlined the importance of the Committee of Experts being able to function with its full membership. He had been informed of the decision taken by the Governing Body in March 2015 to appoint, in order to fill three of the four current vacancies, three new experts as members of the Committee.

35. With regard to the General Survey, he indicated that the Committee of Experts had noted that the living and working conditions in the rural sector of many countries often appeared to be largely the same as they had been when Convention No. 141 was adopted in 1975 – and, in fact, in some places were not dissimilar from the conditions that had existed in 1921, when Convention No. 11 was adopted. The Committee of Experts had emphasized that legal and practical obstacles reported by member States and workers’ organizations were not insurmountable, and that the instruments covered in the General Survey were key to national economic and social development and integral to nation building, by allowing rural workers to participate fully in the development of their countries through organizations of their own choosing. Further, the Committee had noted that governments and social partners did not always appear to have fully understood the promotional nature
of Convention No. 141, which provided more than a rights-based, legislative framework for equal rights for rural and agricultural workers, but actually focused on the importance of taking active measures to associate their collective voice in the elaboration of economic and social policies related to rural development. The Committee of Experts had emphasized that Recommendation No. 149 contained a set of guidelines for constituents, that responded to many of the challenges described in member State reports. A number of governments and workers’ organizations had requested technical assistance from the Office on the application of the instruments in accordance with national circumstances, including capacity building, the compilation of good practices and exchanges of ideas and experiences across countries. The Committee of Experts trusted that the Office would be able to provide the technical and advisory support requested, to ensure that the full potential of these very important instruments was reached.

36. Finally, the Chairperson of the Committee of Experts reiterated that the Committee of Experts was looking forward to strengthening its relations with the Conference Committee, including by pursuing a meaningful dialogue, in the interest of an authoritative and credible ILO supervisory system and ultimately for the cause of ILO international labour standards and social justice worldwide.

Statement by the Employer members

37. The Employer members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of this Committee and in its discussion of the General Survey. They welcomed his comments that the Committee of Experts had always taken the proceedings of the Conference Committee into full consideration and on the importance of continuing to strengthen the relationship between the two Committees. They also welcomed his comments on the necessity for the Committee of Experts to consider divergences of views between constituents, as they had an impact on its work and required it to pay particular heed to abiding strictly by its mandate. These were important and timely comments. They looked forward to continued cooperation and collaboration with the Committee of Experts. Direct dialogue between the two Committees, along with the Office, was of the utmost importance to facilitate the Committee of Experts’ understanding of the realities and needs of the tripartite constituents. They trusted that possibilities for additional dialogue would be explored.

38. The Employer members welcomed the 2015 report of the Committee of Experts and highlighted a number of very positive elements in that report. First, the Committee of Experts had clearly defined its mandate in paragraph 29 of its General Report, which the Employer members trusted would be visibly reproduced in all future reports of the Committee of Experts. It made clear that the opinions and recommendations expressed by the Committee of Experts were not legally binding and that its observations were not judicial nor had legal authority. They were intended to guide the actions of national authorities and derived their persuasive value from the legitimacy and rationality of the work of the Committee of Experts. It was of crucial importance for the Committee of Experts to carefully take into account the realities in the countries and the perspectives of the tripartite constituents. In this regard, they welcomed paragraphs 24 and 26 of the General Report of the Committee of Experts. They noted with interest the increased focus on essential issues of application in the report. They assumed that the shortening of the report had, in essence, been achieved by more frequent use of direct requests instead of observations. They requested having more clarity on the respective use of those two forms of comments. With reference to paragraph 53 of the report, they considered that the criteria for distinction did not seem to be coherently applied to all instances in the report. Noting positively that the report identified further cases of progress, they recalled that they had previously proposed additional methods to measure overall progress in the implementation
of ratified Conventions and reiterated their readiness to discuss that important subject. They also noted with interest that the number of comments from the social partners considered for that year’s report had increased, which demonstrated the social partners’ greater interest in standard supervision and was an indicator for increased relevance of the work of the supervisory system. They trusted the Office would continue to provide capacity building to social partners for a better and more efficient contribution to the work of providing comments to the Committee of Experts.

39. Despite those very positive elements, the Employer members remained very concerned that the Committee of Experts continued to interpret the right to strike in the context of Convention No. 87. A major part of the Committee of Experts’ comments on Convention No. 87 concerned the right to strike, including in direct requests which were not different from observations in that they called upon governments to bring their law and practice in line with the Committee of Experts’ views on that issue. The Employer members wished to clarify that their concerns regarding this issue had not been settled by the visible clarification of the Committee of Experts’ mandate. They had repeatedly argued that the Committee of Experts’ findings could not be justified on the basis of the interpretation methods prescribed by the Vienna Convention on the Law of Treaties and had moved into the territory of standard setting. In their view, the rules developed by the Committee of Experts in relation to the right to strike were not balanced, which may be the result of the fact that they were not the outcome of a tripartite standard-setting process. This was a governance issue as well as an issue related to the credibility of the supervisory system. In that regard, the Employer members wished to draw attention to the Government group statement, adopted at the February 2015 Tripartite Meeting, which noted that the right to strike was not an absolute right and that the scope and conditions of this right were regulated at the national level. It was to be highlighted that the Government group did not state that the scope and conditions of the right to strike were regulated in Convention No. 87. Against that background, the Employer members urgently called upon the Committee of Experts to reconsider its interpretation on the right to strike, whether made in observations, direct requests or other documents of the Committee of Experts.

40. The Employer members concluded by reiterating that the 2015 report of the Committee of Experts contained a considerable number of positive elements to be commended and looked forward to any input they could make for further improvements. They remained concerned by the Committee of Experts’ interpretation of the right to strike in the context of Convention No. 87. They warmly welcomed the Committee of Experts’ comments in paragraphs 24 and 26 of its report, where that Committee expressed its willingness to contribute to resolving the current challenges and where it recalled that its existence and functioning was anchored in tripartism. The Employer members trusted that the Committee of Experts would consider at its next session the guidance provided in the February 2015 Tripartite Meeting and subsequent discussions in the March 2015 session of the Governing Body.

41. Finally, turning to the intervention of the representative of the Secretary-General, the Employer members expressed their appreciation for her comprehensive review of recent work on standards-related issues, as well as for her explanations concerning the roadmap on the work that lay before the Committee.

Statement by the Worker members

42. The Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee and in its discussion of the General Survey. They reiterated their appreciation of the climate of mutual respect,
collaboration and responsibility that had presided over the relations between this Committee and the Committee of Experts.

43. As regards the evolution of the report of the Committee of Experts, the Worker members noted that it appeared once again that a number of observations from organizations, in particular the International Trade Union Confederation, were not taken into account or were too shortened to be usable. Since a better report meant a more comprehensive report, the question arose of strengthening the human and technical resources allocated to the tasks involved in compiling the regular reports of the member States. Along the lines of the discussion launched on the strengthening of the supervisory system, there may be a need to conduct fresh discussions on the cycles and form of the reports and to contemplate collaboration with jurisdictional bodies belonging to regional systems on subjects covered by the ILO Conventions.

44. Concerning the respect by member States of their reporting obligations, they supported the Committee of Experts’ comments concerning the importance of submitting the reports regularly and in full, along with all useful and relevant documents. They placed particular emphasis on the need for the reports to be submitted by the deadline, without which the supervisory procedure could not function efficiently. This implied that labour administrations must be equipped with the appropriate resources and capacity. The Worker members were themselves requesting workers’ organizations to facilitate the work of the supervisory bodies by sending in any observations they deemed useful.

45. Making reference to the increase of inequality and the high rates of unemployment and job insecurity, the Worker members considered that the flexible employment and cost-cutting policies that had been pursued since the early 1980s had greatly contributed to these issues. At the same time, social protection networks had been badly hit by austerity policies. They were counting on the commitment of the members of this Committee to the ILO’s mandate to bring about social justice through the effective implementation of international labour Conventions. Recalling that, in 2014, the Committee had failed to adopt conclusions on 19 cases, they wished to make a new start, given that everyone was anxious to ensure that the ILO standards system regain its full strength. Tripartism was the best way of resolving the so-called “standards crisis”. In this regard, the Worker members recalled the major steps of the ongoing process in the framework of the Governing Body. First, the November 2014 session of the Governing Body, during which article 37 of the Constitution had been invoked but on which the Governing Body had chosen not to take a decision given the tripartite consensus that had been reached. And, secondly, the February 2015 Tripartite Meeting, the outcome of which was based on an important joint statement of the Workers’ and Employers’ groups, which had been endorsed by the Governing Body in March 2015. The Worker members appreciated the fact that, although the Employers’ group disagreed on the interpretation of Convention No. 87, it had recognized the workers’ right to take industrial action in support of their legitimate industrial interests.

46. The Worker members stressed the importance to demonstrate in 2015 that the joint statement made it possible for the ILO to resume its supervision of the application of international labour standards. The Workers’ group had not changed its position on the right to strike, which was a fundamental feature of democracy and an essential means of action for workers, protected by Convention No. 87. At the February 2015 Tripartite Meeting, the Government group had itself issued a most important statement recognizing that the right to strike is linked to freedom of association. There was also an explicit agreement on the mandate of the Committee of Experts, as contained in paragraph 29 of its 2015 report, which had been endorsed by the Governing Body at its March 2015 session. The Worker members therefore considered that there was no point in reverting to this matter during the discussion of the individual cases at this session of the Committee. They
were determined to conduct a normal examination of the cases and to reach, by consensus, meaningful conclusions that would have a genuine impact.

47. The Worker members emphasized that collective bargaining and social dialogue, based on freedom of association, had in some countries helped to mitigate the negative impact of the economic and employment crisis. However, they felt that that was much less the case in 2015, when social dialogue was looked upon as a cost factor. That was a serious mistake that had consistently ended in failure, including economic failure.

48. The Worker members were obliged to react to the statement made by the Employer members on the mandate of the Committee of Experts. The Worker members considered that it was contradictory to try to dictate the content of that Committee’s comments while, at the same time, recalling its independence. The Conference Committee was the appropriate forum to discuss the cases in a tripartite manner and agree on conclusions to be addressed to the governments. In the context of a global economy, which was often driven by competitiveness, this tripartite Committee had a role to play in ensuring social justice, by providing the necessary guidance to governments on the action that was needed to effectively implement international labour standards, in particular when many governments were constrained by commercial or financial institutions. Finally, the Worker members reaffirmed that they were determined to pursue the spirit of dialogue that had allowed the Governing Body to adopt a path for the resolution of the crisis.

Statements by Government members

49. The Government member of Cuba, speaking on behalf of GRULAC, highlighted the importance of the statements made by the Government group during the February 2015 Tripartite Meeting and expressed the expectation that the Committee of Experts, in preparing its next report, would take due account of the criteria agreed among Governments. GRULAC noted with satisfaction paragraph 9 of the General Report of the Committee of Experts, in which the Committee of Experts considered the importance of uniformity in the criteria of distinction between observations and direct requests and in the language used to formulate its views and requests.

50. The Government member of Belgium indicated that it was not up to this Committee to interpret the conclusions of the February 2015 Tripartite Meeting and of the 323rd Session (March 2015) of the Governing Body. His Government would actively contribute to the Committee’s work in order to ensure that it was successful and led to conclusions agreed by consensus.

51. The Government member of France stressed that it was not the mandate of this Committee to revisit the principles of the functioning of the supervisory system. As regards the mandate of the Committee of Experts, it was clarified in paragraph 29 of the General Report of the Committee of Experts. He called for steps to be taken to ensure that, in facing the current challenges, the Committee’s work paved the way in its conclusions towards shared social progress. His Government would continue to play an active role in the Committee’s work.

Reply of the Chairperson of the Committee of Experts

52. The Chairperson of the Committee of Experts recalled that the ongoing dialogue between the Committee on the Application of Standards and the Committee of Experts had an important impact on the methods of work of the Committee of Experts. The positive comments that had been made on the report of the Committee of Experts demonstrated that
this dialogue was an important component of the successful functioning of the ILO supervisory system. The Committee of Experts would continue to give careful consideration to the views expressed by the tripartite constituents. With respect to the comments of the Worker members that certain observations from workers’ organizations had not been taken into account in the last report of the Committee of Experts, he drew attention to paragraphs 78 to 84 of the General Report of the Committee of Experts, which set out its approach with regard to the treatment of observations received from employers’ and workers’ organizations, in particular those received in a non-reporting year. The Committee of Experts would continue to pay particular attention to this crucial matter, and it had always attached great importance to the contribution by employers’ and workers’ organizations to its work. The effectiveness of this contribution hinged not only on the support provided by the Office, in terms of capacity building and training, but also the outreach made by the Employers’ and Workers’ groups to national employers’ and workers’ organizations.

53. With reference to the comment of the Employer members concerning the distinction between direct requests and observations, he referred to the explanation contained in paragraph 53 of the Committee of Experts’ General Report. This explanation had been the result of that Committee’s discussion on its working methods at its session in 2014 and had been inserted to provide a clarification on the distinction between the two types of comments. The comments made by the Employer members highlighted the need for the Committee of Experts to keep the matter under examination.

54. In conclusion, he assured that he would transmit the comments made during this discussion to the members of the Committee of Experts for their due consideration, and report back to them on the outcome of this meeting of the Conference Committee.

Reply of the representative of the Secretary-General

55. The representative of the Secretary-General replied positively to the call for the continuation of the Office’s support to build the capacity of the social partners for a better and more efficient contribution to the work of the Committee of Experts. The Office would also pursue its support to governments in respect of the timely submission of reports containing the information requested by the Committee of Experts. Capacity building, both as regards the supervisory system and standards policy, was a priority for the Office under the Director-General’s Programme and Budget proposals for 2016–17 which were before the Conference at this session. This would include an enhanced collaboration with the Turin Centre which was expected to see the creation of a flagship academy on international labour standards and the supervisory system.

Concluding remarks

56. The Worker members noted that, following this general discussion, there was agreement between the Employer and Worker members on the interpretation and analysis of paragraph 29 of the General Report of the Committee of Experts, which was essential in the framework of the follow-up to the March 2015 session of the Governing Body. The joint statement of the Workers’ and Employers’ groups of February 2015 was important for the Committee’s work, not only as it reaffirmed the right to take industrial action by workers and employers in support of their legitimate industrial interests, but also as, together with the two statements of the Government group, it had paved the way for an effective and durable solution to the issues surrounding the ILO’s supervisory system. Consequently, at its March 2015 session, the Governing Body had called on all parties to
contribute to the successful conclusion of the work of the Conference Committee at this session. In the Worker members’ view, the Governing Body’s message would appear to have been weakened by the Employer members’ interpretation of the Government group’s position. The Employer members were once again raising the issues that had rendered the Committee’s work difficult since 2012. This reopened the question of the mandate of the Committee of Experts, as well as the agreement within the Governing Body. The Worker members had never maintained that the right to strike was absolute. They highlighted that the affirmation of the right to strike and its limitations had never appeared in the Committee’s conclusions. They wanted to work efficiently and were concerned about the current situation.

57. The Employer members welcomed the leadership and experience of the Chairperson of the Committee of Experts and looked forward to continued close collaboration. His commitment to continue to examine, with the Committee of Experts, the distinction between the use of direct requests and observations was appreciated. In response to the comments of the Worker members, the Employer members reiterated their commitment and support for the joint statement of February 2015. They would work in this Committee in a constructive and productive manner during the discussion of the individual cases and in dealing with conclusions for each case.

C. Reports requested under article 19 of the Constitution

General Survey concerning the right of association and rural workers’ organizations instruments

58. The Committee examined the General Survey carried out by the Committee of Experts on the right of association and rural workers’ organizations, which covered Conventions Nos 11 and 141, and Recommendation No. 149.

59. In accordance with the usual practice, the General Survey took into account information on law and practice provided by 110 governments 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 General Survey also reflected the comments received from 56 workers’ organizations and eight employers’ organizations in accordance with article 23 of the Constitution.

General remarks on the General Survey and its topicality

60. The Committee welcomed the subject matter of the General Survey, emphasizing its topicality and the need for a comprehensive approach to ensuring the implementation of basic labour rights for rural communities.

61. The Employer members observed that the high number of reports sent by constituents reflected a significant interest in the subject matter. Labour conditions in agriculture and rural employment deserved more attention than they currently received. The instruments examined in the General Survey encouraged development in rural employment by promoting rural workers’ organizations and giving a voice to rural workers. The promotion of rural workers’ organizations needed to be embedded in an overall strategy to improve living and working conditions in rural areas.
62. The Worker members noted the importance of this General Survey and recalled its importance for evaluating the relevance of instruments and facilitating ownership by constituents of those instruments. It will enrich the recurrent item discussion on fundamental principles and rights at work in 2017.

63. The Government member of Niger and the Worker member of South Africa said that the theme of the General Survey was highly topical, and of particular importance to the African continent. The Government member of Morocco noted that the General Survey underscored the importance of freedom of association in the rural sector and the need for strong and independent rural workers’ organizations. The Government member of Belgium referred to the significant proportion of the world’s population in the sector and their deplorable living and working conditions which, in part, reflected the lack of freedom of association and the lack of capacity of trade unions to have their voice heard. The Employer member of India believed that a study of the working conditions of rural workers, their education and skill profiles, and opportunities for employment and self-employment would have been useful.

**Importance and scope of the instruments covered by the General Survey: Conventions Nos 11 and 141 and Recommendation No. 149**

64. A number of members of the Committee commented on the value and relevance of the instruments covered by the General Survey and their potential to contribute to decent work in the rural economy.

65. The Worker members stated that the instruments were relevant and vital, and recalled that freedom of association was one of the ILO’s fundamental principles and that active steps in support were necessary in view of the particular challenges that rural workers faced.

66. The Employer members noted that Convention No. 141 and Recommendation No. 149 went beyond Convention No. 11, requiring a policy of active encouragement to rural workers’ organizations with a view to overcoming the obstacles to their establishment and functioning that are specific to this sector. The Employer members were of the view that this needed to be put into perspective and that the low rate of ratification of Convention No. 141 suggested that the countries that had ratified Convention No. 11 did not see much added value in Convention No. 141.

67. The Employer members raised a number of points of scope and definition. First, they considered that, from today’s perspective, the fact that the instruments only covered rural workers’ organizations, and not rural employers’ organizations, was a deficiency as rural development needed effort from all representative groups. Rural employers and their organizations may also require assistance for capacity building. Further, it should be noted that while cooperatives could be rural workers’ organizations pursuant to Convention No. 141, they could also be members of employers’ organizations.

68. The Employer members considered that, as “rights of association and combination” was not defined in Convention No. 11, it should be determined at the national level. The Employer members also noted that Convention No. 11 did not prescribe any special protection as regards the “rights of association and combination” for agricultural workers but only required equal treatment (“the same rights”) with industrial workers. In relation to external trade union representatives, the Employer members considered that access to workplaces normally was to be authorized by the employer. Neither Convention No. 11 or Convention No. 141, nor Conventions Nos 87 and 135, contained specific entitlements for trade union officers in this regard.
69. Further, the Employer members considered that Convention No. 141 derived its authority on freedom of association from its parent, Convention No. 87. Convention No. 87 did not provide a “right to strike” and neither did Conventions Nos 11 and 141. The Employer members believed that, in the absence of provisions in ILO Conventions regulating the “right to strike”, ILO member States were autonomous in determining their own laws and practices on this issue, including for rural workers. The Employer members observed that, given the acknowledged differences of view on the interpretation of a right to strike in Convention No. 87, it was unhelpful for the General Survey to make no mention of these differences when making statements about Conventions that derive their essence from Convention No. 87.

70. The Government member of Kenya, the Government member of Belgium and the Worker member of Senegal noted that the instruments captured the essential issues in relation to freedom of association in the rural sector and remained relevant even if their adoption dated back several decades. The Government member of Niger was encouraged to note that the legislation of most countries provided for trade unions and associations in the form of cooperatives and organizations of farmers and rural producers. The instruments, albeit complementary and interdependent, pursued different objectives, and further efforts were needed to ensure that rural workers enjoyed the fundamental rights enshrined in them and had a voice in economic and social development.

The rural economy: Practical obstacles to the full implementation of the instruments

71. A number of members of the Committee commented on the specificities of the rural economy and the way in which this impacted on the implementation of the instruments.

72. The Employer members emphasized that most of the obstacles were related to practical difficulties in organizing workers in the sector rather than legal obstacles. These practical difficulties often resulted in a vicious cycle in the inability of rural workers’ organizations to provide relevant services to members. In many countries, a significant proportion of work in the rural sector was undertaken outside the formal economy. Most employment in rural areas was self-employment, unpaid family work or employment in small and micro-businesses. Seasonality was a major factor in determining the nature of engagement of those working in agriculture, creating a need for flexibility in forms of engagement. The concept of full-time work or employment was not achievable in the way expressed in labour standards governing other areas of the economy.

73. The Worker members stated that rural workers and their organizations continued to face substantial challenges. While the means for resolving those challenges were effective in many industrial settings, this was rarely the case for workers in agricultural settings. Their representatives faced more discrimination, and they encountered greater difficulties in the world of work. Rural workers were affected by challenges in access to land, food sovereignty, and were often migrant workers. Globalization, global supply chains and the increased use of subcontracting made it difficult to identify the responsible economic actors. The issue of climate change and resulting land impoverishment disrupted production patterns, and the impact of HIV/AIDS and climatic degradation deepened inequalities to the detriment of rural workers. The informal nature of agricultural work and the diversity of labour relationships prevented effective protection of workers. Such workers participated very little in decision-making and struggled to assert their rights.

74. The Worker member of South Africa stated that structural changes and racial factors impacted on the working and living conditions of rural workers and their families. The Worker member of India stated that agriculture was now not only for consumption but also for profit with the ownership of lands concentrated in a few hands. The Worker members
of Colombia and the United Kingdom underlined that living and working conditions of rural workers remained dismal and that their situation had hardly improved in decades. The Government representative of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Armenia, Bosnia and Herzegovina, Republic of Moldova, Norway, Serbia, the former Yugoslav Republic of Macedonia and Turkey, explained that rural workers frequently were not fully covered by national labour law, nor were their rights recognized or enforced, even in the formal sector. The Government member and a Worker member of Colombia referred to very high levels of informality.

75. The Employer member of India pointed to a lack of education, training and cohesive organizational structure and the Worker member of Senegal noted that rural workers were often denied social protection. The Worker member of Canada indicated that migrant rural workers faced discrimination, were prohibited from enjoying collective bargaining and joining unions (except in British Columbia and Quebec), and had low or no wages, extensive hours of work and no health and safety protection; women migrant workers were vulnerable to sexual exploitation and rape. The Government member of Morocco underlined challenges due to the dependence on climate, fragmentation of farms, the lack of financial resources available to workers’ organizations and the lack of labour inspectors. The Worker member of the United Kingdom indicated that agricultural workers in the United Kingdom were often migrant or women workers, living in poverty, with poor language and literacy skills, working on seasonal or temporary arrangements, and often subject to employment arrangements that disguised a dependent relationship, depriving them of their rights.

National laws and practices

76. A number of members of the Committee provided information concerning the situation in their own countries.

77. The Government member of Egypt emphasized that a large number of trade unions represented rural workers in social dialogue forums. The Government member of Morocco referred to several rural sector trade union organizations and a number of recent collective agreements and memoranda of understanding. The Government member of Argentina said that the right to collective bargaining, previously reserved for certain agricultural activities, now applied to the whole rural sector.

78. The Government member of Brazil said that rural workers’ organizations in Brazil contributed to social dialogue within specific federal bodies and had played a substantial role in investments in infrastructure, rural credit, insurance and technical assistance. The Government member of Senegal indicated that there was a very dense network of trade union organizations and occupational associations or cooperatives in the country.

79. The Government member of the Republic of Korea enumerated a number of measures taken to improve the working conditions of migrant rural workers who were not adequately protected, while the Worker member of the Republic of Korea explained that migrant workers had limited ability to change workplace; national legislation did not apply to agricultural workers; and they did not enjoy the protection of fundamental principles and rights at work or promotional policies for rural workers’ organizations.

80. The Government member of Colombia emphasized that progress had been made in collective bargaining in the banana, sugar, floriculture and palm oil sectors. The Government, Worker and Employer members of Colombia referred to the agreement between the Government and the Director-General to cover this sector.
81. The Worker member of Canada indicated that the United Food and Commercial Workers Canada (UFCW) had worked with migrant workers’ organizations to assist migrant workers. The Worker member of the United States referred to the so-called Dunlop Commission, which established a private system of union recognition, dispute resolution and bargaining between corporations, growers and workers.

82. The Worker members of Benin and Niger indicated that any participation in a strike by rural workers would often result in their dismissal. The Worker member of Benin said that rural workers in the wood industry did not have any legal status as they were considered subcontractors. The Worker member of Mexico noted the internal migration of hundreds of thousands of seasonal migrant workers and mentioned a recent case which illustrated various violations of rural workers’ rights, including child labour, the exploitation of women workers, failure of compulsory social security registration, lack of training, low wages, lack of adequate housing, and excessive working hours.

83. The Worker member of Switzerland indicated that rural workers were not covered by national labour law and that it had not been possible to conclude a sectoral collective agreement. The Worker member of New Zealand commented on a recent labour inspection audit finding that the basic rights of migrant rural workers were not adequately safeguarded. The Worker member of the United Kingdom indicated that the tripartite Agricultural Wages Boards had been abolished by the Government in 2013.

Prospects for ratification

84. The Employer members recalled that the General Survey recorded that only one government reported concrete steps taken towards ratification of Convention No. 141, and only a few governments reported their intention to consider ratification of the Conventions. Other governments, for various reasons, did not seem to have ratification plans. The hesitation to ratify Convention No. 141 pointed to a lack of relevance. The Employers highlighted the fact that the instrument only considered “rural workers’ organizations” but not “rural employers’ organizations” and may be seen as somehow unbalanced by member States. It may be timely for these Conventions, along with others concerning freedom of association, to be reviewed for continuing relevance.

85. The Government member of Morocco confirmed that its ratification of Convention No. 141 was in its final phase.

86. Certain Worker members, including those from Colombia and Mexico, called on their governments to ratify and apply Conventions Nos 11 and 141 and/or the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Safety and Health in Agriculture Convention, 2001 (No. 184). The Worker member of Niger called for ratification of the relevant Conventions, thereby allowing for a global improvement in the working and living conditions of rural workers.

The way forward

National policies of active encouragement

87. Many members of the Committee commented on the need for active steps to be taken by governments to promote freedom of association, rural workers’ organizations, and their participation in economic and social development.

88. The Employer members supported the approach of Conventions Nos 11 and 141, and Recommendation No. 149 to promote the establishment and functioning of rural workers’
organizations as a means to facilitate rural development. However, as doing so in isolation held little prospect of success, they stressed the need for a comprehensive rural development strategy which also included assistance to rural employers’ organizations. Efforts to promote economic reforms, invest in rural infrastructure, improve efficiency and productivity, and attract modern food-processing enterprises were equally important in this context. A comprehensive strategy to improve working and living conditions in rural areas should promote a more conducive environment for entrepreneurship and for the transition from informal to formal work. The Employer members expressed some doubts about the relevance of collective bargaining in rural areas, except in the relatively rare case of big agricultural enterprises. The priority should be in ensuring that associations of workers and employers developed, as it was a prerequisite to collective bargaining.

89. The Worker members called for agricultural and rural workers to enjoy the same trade union rights as other workers in law and in practice. The promotion of freedom of association was essential for the composition and growth of strong and effective rural workers’ organizations which were capable of enabling those workers to really participate in economic and social development. The instruments protected the rights of rural workers’ organizations, including their right to strike.

90. The Worker members stated that freedom of association should be enjoyed by all rural workers, including entrepreneurs, informal workers and subsistence farmers. Referring to the Employment Relationship Recommendation, 2006 (No. 198), the Worker members noted that difficulties in establishing employment relationships created serious problems for workers, their families and society as a whole. Measures in favour of rural workers and agriculture in general that resulted in greater justice and a better distribution of wealth were to be welcomed. This was not just an issue for southern countries; post-industrial countries should address the issue of rural work in combination with that of migrant workers and international subcontracting. The situation could not improve if responsibility was placed on the shoulders of the workers’ organizations; governments had to assume their share of responsibility by establishing active national policies involving financial, educational and administrative measures to promote effective freedom of association for rural workers. Success also depended on a greater commitment from employers and their organizations.

91. The Worker members emphasized that organizations should subsequently play a leading role in the formulation of policy. Greater inclusion of rural workers and their organizations would enable crucial, but frequently overlooked, subjects, to be addressed in rural and national development.

92. The Government member of Senegal underlined the importance of the Committee taking advantage of the discussion of the General Survey to make strong recommendations to inspire States to formulate effective agricultural policy to encourage economic and social development. The Government member of Kenya indicated that the implementation of integrated national policies were needed to promote rural workers’ organizations that, in turn, would have a great impact on the socio-economic progress of countries. The growing number of fair trade initiatives that had an influence on global supply chains presented an important opportunity for action.

93. The Government member of Morocco stressed the importance of education, training and technical assistance in order for freedom of association rights to be effectively enjoyed. The Worker members of Benin, New Zealand and the United Kingdom underlined the importance of appropriate language usage. The Worker member of Senegal underlined the necessity of ensuring a proper balance between rural and urban development and the importance of labour inspection. The Employer member of India stated that the exploitative nature of the work of rural workers, which included women, children and
migrant workers, should be addressed through policy interventions and appropriate instruments in order to ensure equitable, just and decent working conditions. The Employer member of Colombia indicated that rural policy should be aimed at strengthening the State’s presence throughout its territory and offering rural workers the same conditions as urban workers with respect to personal safety and food security.

Labour inspection

94. A number of members of the Committee highlighted labour inspection as a crucial element in the implementation of rights in the rural economy and deserving the particular attention of the ILO and its member States. The Worker members emphasized the importance of strengthening the powers, resources and mandate of the national labour inspectorates with a view to improving the real and practical application of legislation.

95. The Government member of Niger indicated that it was a source of concern that labour inspection, which was the only tool whereby the State ensured the observance of the legal provisions, had insufficient resources for taking action in the rural economy. Good governance presupposed the existence of effective inspection services having well-trained staff and the appropriate material and financial resources to enable better performance of their tasks throughout the national territory. The countries of Africa needed sustained support from the international community in this regard in order to ensure better protection and promotion of the fundamental rights of rural workers.

96. The Government member of Belgium indicated that labour inspection was fundamental to ensure respect of law. The low rate of ratification of Convention No. 129 had the effect of leaving a large number of these workers without protection. The Government member of Kenya recalled that effective implementation of these instruments was anchored in strong labour institutions and the possibility of labour inspectorates to reach workplaces in rural areas. The Worker member of India stated that relevant legislation should provide for inspection, without which implementation would be ineffective, and the Worker member of the United Kingdom noted that the various challenges for migrant rural workers meant that many workers relied on the existence of robust inspection regimes for protection.

Possible ILO action

97. The members of the Committee indicated possible action that the ILO could take in follow-up to the General Survey. The Government member of Egypt supported the conclusions contained in the General Survey and hoped that they would contribute to improving living and working conditions in the rural sector. A Worker member of Colombia stated that the situation of poverty and social exclusion of rural workers required urgent measures to be taken by the ILO constituents, in particular to tackle informality and combat child labour.

98. The Government member of Kenya emphasized that the extraordinary advances in new communication technologies could be used to have the voices of rural workers heard in innovative ways, as these technologies could be used in terms of awareness-raising and training initiatives, and could facilitate rural workers’ participation in economic and social development, through dialogue, consultation and programmes.

1. Standards-related action

99. The Employer members stated that a review of the standards applicable to the rural economy could draw on the comprehensive and successful review of the standards in the maritime sector resulting in the adoption of the Maritime Labour Convention, 2006 (MLC, 2006). As well as looking at agriculture-specific standards, account could also be taken of
a large number of ILO instruments on enterprise development, such as the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), or the 2007 resolution and conclusions concerning the promotion of sustainable enterprises. The Employer members stated that the proper body for dealing with this matter would be the SRM.

100. The Government representative of Latvia, speaking on behalf of the EU, its Member States and other associated States, likewise indicated that background work for the consolidation of agricultural standards should be done in the context of the SRM. The representative further stated that ratification and implementation of the ILO fundamental Conventions should be supported, and the Government member of Kenya called on the ILO to conduct the necessary background work to enable the consideration of the usefulness of the consolidation of the various instruments on agricultural and other activities in the rural sector. The Worker member of the Republic of Korea supported the possibility of consolidating instruments.

2. Technical cooperation and assistance

101. The Worker members believed that the ILO should carry out activities related to all the relevant instruments with a view to identifying the particular and general issues specific to rural workers, and the most effective programmes of action regarding equality, non-discrimination, health, the fight against HIV/AIDS, and the question of child labour and children’s access to education. The Worker members believed that ILO technical assistance could be valuable in relation to many issues. A compilation of good practices regarding the implementation of the instruments would be useful, as would an exchange of ideas and experiences between countries. Within the framework of decent work in the rural economy, these actions should consider safety and health in agriculture, migrant workers, women, and the implications of subcontracting and global supply chains.

102. The Government member of Colombia indicated that technical assistance from the ILO was essential to ensure training in the rural economy. Measures should be taken in line with the guidelines established in Recommendation No. 149. The Government representative of Latvia, speaking on behalf of the EU, its Member States and other associated States, encouraged the ILO to provide technical assistance in accordance with national circumstances, which could focus on women workers in terms of accessing jobs, land, finance, new technologies, health, childcare and other basic services; and on child poverty and social exclusion, given children’s exposure to forced labour, trafficking and hazardous work in the rural economy.

103. The Government representative of Latvia, speaking on behalf of the EU, its Member States and other associated States, also encouraged the Office to compile a collection of good practices concerning the implementation of the instruments and arrange for exchanges of ideas and experiences across countries, within the context of the area of critical importance on decent work in the rural economy. Acknowledging the need for interdisciplinary expertise, she called for a close coordination within the Office and in its partnerships with other international and intergovernmental organizations. The Government member of Kenya called on the ILO to compile good practices in respect of the implementation of the relevant instruments and arrange for exchanges of ideas and experiences across countries.

104. The Employer member of India considered that factors such as access to skills, finance and marketing institutions and promoting income-generating activities led to rural prosperity, and encouraged the ILO to focus on the promotion of creating an enabling environment for rural development. In this regard, successful employment-based rural development models, such as India’s Mahatma Gandhi National Rural Employment Guarantee Scheme, should be looked into.
105. The Government member of Belgium stated that the ILO should promote the establishment of workers’ organizations within the informal economy. International framework agreements between multinational enterprises and international trade union federations should be considered. ILO action was crucial to strengthen public awareness of the issue, particularly in cooperation with the Food and Agriculture Organization (FAO) of the United Nations (UN). The Government member of Brazil had supported the inclusion of rural employment among the areas of critical importance in the Programme and Budget for 2016–17 and called on the ILO to continue coordinating its activities with trade union organizations.

Concluding remarks

106. The Employer members noted consensus in relation to many of the issues discussed. In the first place, there was a common commitment to ensuring that rural workers and employers benefit from the fundamental Conventions, and the rural-specific Conventions, guaranteeing freedom of association. Secondly, given the reality in the rural economy, effective action was necessary on a wide range of fronts.

107. The Worker members stated that many points of consensus had emerged. The importance and quality of the analysis of the Committee of Experts contained in the General Survey had been widely stressed, as had the necessity and urgency that the issues identified were addressed. The breadth of the subject and the large numbers of workers concerned had been underlined, as had the difficulties that they encountered particularly with regard to recognition of their fundamental rights, their rights to occupational safety and health, access to housing and education, and their meagre income levels. There was a common recognition of the need to ensure that those workers enjoyed their rights to freedom of association and collective action, by taking steps to promote ratification of the relevant Conventions and application of Recommendation No. 149.

108. Many Worker members had referred to the difficulties connected with the exercise of the right to strike in the rural sector, which had its rightful place in the discussion of the General Survey. It had also been emphasized that the right to freedom of association gave rural workers a voice and that strong organizations contributed to the formulation of better policies, and helped to promote access to land for rural workers, a sensitive issue that related to the precarious situation of those workers. The problems stemming from the scale of informality and the relevance of Recommendation No. 198 had also been underlined, as had the problems of health and safety at work, especially the particular situation of women and their access to employment; the situation of children, including the risk to be involved in the worst forms of child labour and the problem of their access to education; and the vulnerability of migrant workers particularly in relation to seasonal work and the risk of exploitation and forced labour.

* * *

109. In reply to the discussion on the General Survey, the Chairperson of the Committee of Experts noted with particular interest the points made by many speakers as regards the situation of migrant workers in the rural economy in light of the forthcoming General Survey on labour migration instruments.

110. The representative of the Secretary-General noted that the members of this Committee had agreed on the need for the ILO to ensure that working women and men in the rural economy were able to benefit from freedom of association. In his opening address to this session of the Conference, the Director-General had referred to the General Survey and stressed the importance of the ILO addressing the situation of rural workers. Decent work in the rural economy was a major ILO priority. This Committee’s discussion had clearly
shown that the situation of rural workers cut across a broad range of issues and called for combined interventions together with existing means of action, including standards. With reference to the comments made during the discussion as regards potential future standard setting, the speaker considered those comments very useful in the perspective of the implementation of the SRM, in particular: the fact that rural or agricultural instruments could be a possible area for consideration by the SRM working group and the possibility to consider consolidation of existing standards taking into account the approach followed with the MLC, 2006. In this regard, the speaker indicated that, in her view, other areas of possible consolidation would include the working-time instruments, as well as the occupational safety and health instruments.

111. She noted that reference had also been made to the linkages to be considered between the different processes that would shape the ILO standards policy for the future, in addition to the SRM, such as the topicality of instruments for General Surveys, the related discussions by this Committee, and their coordination with the recurrent discussions provided for under the Social Justice Declaration. Finally, she indicated that the secretariat had taken due note of the need for technical assistance highlighted by a number of speakers and would follow up as appropriate.

Outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the right of association and rural workers’ organizations instruments

112. The Committee examined the draft outcome of its discussion of the General Survey concerning the right of association and rural workers’ organizations instruments.

113. The Committee approved the outcome of its discussion, which is reproduced below and which it wishes to bring to the attention of the Conference with a view to the recurrent discussion on fundamental principles and rights at work, which will take place at its 106th Session (2017).

Introduction

1. The Committee on the Application of Standards welcomed the opportunity, in the context of its examination of the General Survey on the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers’ Organisations Convention, 1975 (No. 141), and the Rural Workers’ Organisations Recommendation, 1975 (No. 149), to discuss the rural economy, a significant sector in the world of work.

2. The Committee’s discussion of this year’s General Survey, together with the outcome of this discussion and the General Survey itself, will feed into the preparation of the recurrent item report and discussion on the strategic objective of fundamental principles and rights at work to be held at the 106th Session (June 2017) of the Conference, and will further inform other ILO work, particularly in the context of outcome 5 of the Programme and Budget for 2016–17.

3. The Committee highlighted the fact that the right of association of agricultural workers and the involvement of organizations of rural workers in economic and social development are linked with other topical issues currently being tackled by the ILO, such as the transition from the informal to the formal economy, labour migration, economic development, poverty reduction, non-standard forms of employment, decent work in global supply chains, and significant environmental and climatic pressures.

4. The Committee noted the persistent obstacles to implementation of the instruments identified by the Committee of Experts and also the Experts’ comment that the dismal living and working conditions in the rural sector often appear to be largely the same as they were in 1975 and, in fact, in some places are not dissimilar from the conditions that existed in 1921.
The Committee reaffirmed its commitment to ensuring the application in law and practice of freedom of association for all workers and employers. Freedom of association is not only a fundamental right at work, but is also an enabling condition of particular importance to enable the attainment of the strategic objectives of employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work, as set out in the ILO Declaration on Social Justice for a Fair Globalization, 2008. As a result, the Committee stressed that agricultural and rural workers should enjoy full freedom of association in law and in practice, in common with other workers and employers.

**Core elements of the instruments**

5. The Committee recalled that Convention No. 11 aimed to ensure that agricultural workers had the same rights of association and combination as other workers. Convention No. 141 reaffirmed and built on the basic rights of freedom of association of rural workers, as a basis for giving rural workers a voice in economic and social development.

6. The Committee also recalled that Convention No. 141, beyond providing a framework for equal rights for rural and agricultural workers, required active measures to be taken to ensure that rural workers’ collective voice contributed to the elaboration and implementation of economic and social development. The Committee further noted that Convention No. 141 and Recommendation No. 149 set out a strategy to ensure that rural workers’ organizations were strong, independent and effective, so as to be able to participate in economic and social development.

**Contribution to the preparation of the recurrent discussion on the strategic objective of fundamental principles and rights at work**

7. 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 and technical cooperation and assistance.

8. In this regard, a number of issues are raised by the General Survey on rural workers’ organizations and its examination by the Committee.

**Realities and needs of member States**

9. The Committee recognized that there were a range of challenges in relation to freedom of association and collective bargaining in the rural economy. Rural workers often were not able to enjoy full freedom of association rights. While some obstacles to implementation of the instruments were legal, others were related to the nature of the rural economy such as geographical isolation, lack of access to technology and means of communication, lack of capacity in the labour inspectorate, low levels of skills and education, and the high incidence of child labour, forced labour, and discrimination.

10. The Committee considered that the vulnerable position of women and of migrants, both of which made up significant numbers of rural workers, was a particular challenge, and that the vulnerability of many rural workers to breaches of their fundamental rights was increased by the seasonal nature of agriculture. Recalling the high level of informality in the rural economy and the predominance of non-standard forms of employment, the Committee noted that there was sometimes a lack of clarity in labour relationships in rural areas. Globalization, global supply chains, and changes in land ownership and management had accentuated this challenge.

11. The Committee emphasized the need for integrated national policies to promote active steps to be taken for the establishment, growth and functioning of rural workers’ organizations. Organizations in the rural economy should be strong, independent and effective, so as to be able to participate in economic and social development. Such national policies would contribute to integrated national decent work strategies for the rural economy, addressing all of the ILO’s strategic objectives and intrinsically involving rural workers and employers in their development and implementation.

12. Reference was also made to the need for an overall strategy to include measures to promote investment, entrepreneurship, modernization of means and methods of production which reassures the conditions of an enabling environment for agricultural enterprises.
13. The Committee further stressed the importance of organizations of rural workers and employers as a means to ensure better resolution of many of the critical issues in the rural economy. Through representative organizations, rural workers and employers would be able to have their voices heard in the elaboration and implementation of law and policy, as well as contribute to the improvement of specific issues such as land, housing, occupational safety and health (including HIV/AIDS), sanitation, access to education, social protection and promotion of entrepreneurship and employment.

**ILO means of action**

1. **Standards-related action**

14. The Committee considered that the Office should conduct background work with a view to understanding better the barriers to ratification and implementation of the instruments and enabling a consideration of the up-to-dateness of instruments concerned to ensure that international labour standards effectively respond to the many and varied challenges for rural communities. An appropriate process could be undertaken with the Standards Review Mechanism to consider both instruments specific to agriculture and the rural economy, as well as other relevant instruments of broader application. This would include the clarification of the various forms of labour relationships in this context as well as the relationship between employment relationships and other forms of relationship such as collectives and partnerships.

15. In addition to a wider review within the context of the Standards Review Mechanism, and in recognition of the value of the instruments for promoting collective voice and representation for workers and employers in the rural economy, the Committee further considered that the Office should take the necessary steps to promote the ratification and implementation of Conventions Nos 11 and 141, and the effect given to Recommendation No. 149 by member States. The promotion of the ratification and implementation of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), should be included in any such promotion effort, given the critical role of labour inspection in ensuring the full implementation of the instruments in rural areas.

2. **Technical cooperation and assistance**

16. Acknowledging the references by a number of member States to the need for technical assistance in relation to the instruments, the Committee considered that the Office should provide the opportunity for member States to share experiences and information concerning the ways in which the instruments may be implemented in practice. The General Survey illustrated the variety of means and mechanisms that existed to facilitate the establishment and growth of strong and independent rural workers’ organizations to ensure participation of rural workers in economic and social development as set out in Article 4 of Convention No. 141. The Committee considered that, to enable a broad outreach of such exchanges of experiences, a compilation of global good practices could be disseminated. The Committee also considered that the Office should conduct capacity building to enable existing rural workers’ organizations to more effectively represent workers, in particular through collective bargaining.

17. The Committee further considered that the Office should undertake research to identify possible responses to the challenges in the rural economy, harnessing the potential of rural workers’ and employers’ organizations. In addition, the Office was encouraged to look into ways in which existing ILO capacity-building and awareness-raising tools could be adapted, in a short time frame, to the situation of the rural economy. Emphasizing the importance of labour inspection to facilitate and monitor the application of legislation and policy in rural areas, the Office should pay particular attention to the situation of labour inspection, in particular by addressing specific challenges such as resources and access by inspectors to isolated rural workplaces, or those workplaces that are also homes, ensuring the rights and obligations of all parties are respected. In this regard, the Committee noted that a training programme aiming to build knowledge among labour inspectors on freedom of association in the rural sector was recently pilot tested by the ILO and could be adapted for use in other countries.

18. The Committee further recorded its belief that the Office should take particular steps to investigate the use of new communication technologies in improving the effectiveness of its consultation, capacity building, awareness raising and training initiatives in rural areas.
19. The Committee requests the Office to take into account the General Survey on the right of association and rural workers’ organizations instruments and the outcome of its discussion of the General Survey, as reflected above, in the preparation of the report for the recurrent discussion on the strategic objective of fundamental principles and rights at work to be held at the 106th Session (June 2017) of the Conference, so that it can feed into the framework within which priorities are set for future ILO action. The Committee further requests the Office to ensure that the General Survey and outcome of its discussion of the General Survey will be taken into account in other relevant ILO work, particularly in the context of outcome 5 of the Programme and Budget for 2016–17.

D. Compliance with specific obligations

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

114. During a dedicated sitting, the Committee examined the cases of serious failure by member States to respect their reporting and other standards-related obligations. As explained in document C.App./D.1, part V, the following criteria are applied: failure to supply the reports due for the past two years or more on the application of ratified Conventions, failure to supply first reports on the application of ratified Conventions for at least two years, failure to supply information in reply to all or most of the comments made by the Committee of Experts, failure to supply the reports due for the past five years on unratiﬁed Conventions and Recommendations, failure to submit the instruments adopted for at least seven sessions to the competent authorities, and failure 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 Chairperson explained the working methods of the Committee for the discussion of these cases.

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

116. The Worker members expressed concern with regard to the still significant number of reports that had not been received. The situation constituted a major obstacle to the proper operation of the supervisory machinery. The failure of governments to fulﬁl their reporting obligations and to submit the instruments to the competent authorities was sometimes a result of negligence, sometimes an expression of a refusal to cooperate with the

5 Detailed information on the examination of these cases is contained in section A of Part Two of this report.
supervisory machinery, and in other cases a consequence of delays. The absence of submission to the competent authorities often reflected a regrettable negligence. The failure to send the requested reports as a demonstration of the refusal by certain governments to cooperate with the supervisory mechanisms was all the more serious as the purpose was often to cover up very serious violations of ratified Conventions. Persistent delays in sending reports also seriously undermined the proper functioning of the supervisory bodies. The slight improvement in the proportion of reports provided was insufficient.

1.1. Failure to submit Conventions, Protocols and Recommendations to the competent authorities

117. 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.

118. 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 at least seven sessions (from the 94th Session (Maritime, February 2006) to the 101st Session in June 2012), because the Conference did not adopt any Conventions and Recommendations during the 97th (2008), 98th (2009) or 102nd (2013) Sessions. This time frame was deemed long enough to warrant inviting Government delegations to the dedicated sitting of the Committee so that they may explain the delays in submission.

119. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. It noted the specific difficulties mentioned by certain delegates in complying with this constitutional obligation, and in particular the intention to submit shortly to competent authorities the instruments adopted by the International Labour Conference. Some governments have 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.

120. 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.

121. The Committee noted that 35 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, Angola, Azerbaijan, Bahrain, Comoros, Côte d’Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Guinea, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Mali, Mauritania, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Vanuatu. The Committee expressed the firm hope that appropriate measures would be taken by the Governments and the social partners to comply with this constitutional obligation, and avoid being invited to provide information to its next session.
1.2. **Failure to supply reports and information on the application of ratified Conventions**

122. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. Some governments have requested the assistance of the ILO. 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 to respect the scheduled deadline. It also reiterated the vital importance of the transmission of first reports on the application of ratified Conventions. Furthermore, it 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 recalled that the ILO could provide technical assistance to contribute to compliance with these obligations.

123. The Committee noted that, by the end of the 2014 meeting of the Committee of Experts, the percentage of reports received (article 22 of the ILO Constitution) was 70.95 per cent (72.52 per cent for the 2013 meeting). Since then, further reports had been received, bringing the figure to 77.25 per cent (as compared with 80.6 per cent in June 2014, and 78.9 per cent in June 2013).

124. The Committee noted that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Burundi, Dominica, France – French Southern and Antarctic Territories, Equatorial Guinea, Gambia, Haiti, San Marino, Somalia and Tajikistan**.

125. The Committee also noted that first reports due on ratified Conventions had not been supplied by the following countries for at least two years:

<table>
<thead>
<tr>
<th>State</th>
<th>Conventions Nos</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Since 2012: Conventions Nos 138, 144, 159 and 182</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>Since 1998: Conventions Nos 68 and 92</td>
</tr>
<tr>
<td>Ghana</td>
<td>Since 2013: Conventions Nos 144 and 184</td>
</tr>
</tbody>
</table>

126. The Committee noted from the Committee of Experts’ report that 39 governments had not communicated replies to the observations and direct requests relating to Conventions on which reports were due for examination in 2014, involving a total of 397 cases (compared with 476 cases in 2013). 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.

127. The Committee noted 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 2014 from the following countries: **Angola, Barbados, Belize, Burundi, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, France – French Southern and Antarctic Territories, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Ireland, Kyrgyzstan, Lebanon, Liberia, Mauritania, Nigeria, Saint Kitts and Nevis, Samoa, Saint Vincent and the Grenadines, Saint Lucia, San Marino, Sierra Leone, Solomon Islands and Tajikistan**.

128. The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Bahrain, Croatia, Jamaica, Kuwait, Mauritania, Pakistan, Saint Kitts and Nevis, Samoa, Suriname and Zambia**.
1.3. Supply of reports on unratified Conventions and Recommendations

129. The Committee noted that 220 of the 404 article 19 reports requested on Conventions Nos 11 and 141, and Recommendation No. 149 had been received at the time of the Committee of Experts’ meeting. This represented 54.45 per cent of the reports requested.

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

131. The Committee noted 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: Comoros, Congo, Democratic Republic of the Congo, Grenada, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Liberia, Libya, Kiribati, Marshall Islands, Solomon Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tuvalu, Vanuatu and Zambia.

1.4. Communication of copies of reports to employers’ and workers’ organizations

132. 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”.

1.5. Specific indications

133. The Government members of Afghanistan, Angola, Bahrain, Barbados, Comoros, Croatia, Democratic Republic of the Congo, Djibouti, El Salvador, Equatorial Guinea, France – French Southern and Antarctic Territories, Ghana, Guinea, Iraq, Ireland, Jamaica, Jordan, Kuwait, Lebanon, Mali, Mauritania, Mozambique, Nigeria, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sudan, Suriname, Uganda and Zambia have promised to fulfil their reporting and other standards-related obligations as soon as possible.

2. Application of ratified Conventions

134. The Committee noted with interest the information provided by the Committee of Experts in paragraph 68 of its report, which listed new cases in which that Committee had expressed its satisfaction at the measures taken by governments 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 34 such cases, relating to 29 countries; thus, the total number of cases where the Committee of Experts was led to express its satisfaction with progress achieved, since it began listing them in 1964, was 2,980. These results were tangible proof of the effectiveness of the supervisory system. In addition, the Committee of Experts had listed in paragraph 71 of its report cases in which measures ensuring better application of ratified Conventions had been noted with interest. It had noted 144 such instances in 82 countries.
135. At its present session, the Committee examined 24 individual cases relating to the application of various Conventions. 6

2.1. Specific cases

136. 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.

137. As regards the application by Kazakhstan of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee deplored the total absence of a Government representative during the discussion of this case, despite its accreditation and presence at the International Labour Conference.

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

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

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

- amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers’ organizations in Kazakhstan. The Committee requested the Office to offer, and urged the Government to accept, technical assistance in this regard;

- amend the provisions of the Trade Union Law of 2014 consistent with the Convention, including issues concerning excessive limitations on the structure of trade unions found in Articles 10 to 15 which limit the right of workers to form and join trade unions of their own choosing;

- amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union; and

- amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization.

6 A summary of the information submitted by governments, the discussion and conclusions of the examination of the individual cases are contained in section B of Part Two of this report.
141. As regards the application by **Mauritania of the Forced Labour Convention, 1930 (No. 29)**, the Committee took note of the oral information by the Government representative and the discussion that followed.

142. The Committee recalled that it had discussed the present case on six previous occasions and that a fact-finding mission had visited Mauritania in 2006, at the request of the Conference Committee.

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

144. The Committee noted the Government’s statement outlining laws and policies put in place to combat all vestiges of slavery. This included constitutional amendments as well as the adoption and implementation of Act No. 2007/48 which defined slavery for the first time and empowered human rights’ associations to report violations of the Act of 2007 and to assist victims. The Committee further noted the Government’s indication that a Bill was under review which would, amongst other things, provide for the setting up of a special court to deal specifically with offences related to slavery and slave-like practices. The Committee also noted the information on the various awareness-raising activities undertaken and programmatic measures targeted at reducing economic and social inequalities by improving means of existence and the conditions for the emancipation of the vulnerable social groups affected by slavery and its vestiges. Finally, the Committee noted the Government’s statement that it would continue to avail itself of ILO technical assistance in order to achieve tangible progress in the application of the Convention.

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

- strictly enforce the 2007 Anti-Slavery Act to ensure that those responsible for the practice of slavery be effectively investigated and prosecuted and, receive and serve sentences that are commensurate with the crime;

- amend the 2007 Anti-Slavery Act to grant third parties, including trade unions a locus standi to bring charges and pursue cases on behalf of victims, consider shifting the burden of proof, and increase the prison sentence for the crime of slavery to a period in line with international standards for crimes against humanity;

- implement fully the National Plan to Combat the Vestiges of Slavery (PES) and the roadmap for combating the vestiges of slavery, including comprehensive victim support and processes. This should include the following:
  - Reinforcement of the capacity of the authorities to prosecute and administer the justice system in relation to slavery.
  - Anti-slavery prevention programmes.
  - Specific programmes enabling victims of slavery to escape.
  - Awareness-raising programmes.
provide necessary resources to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun”, and ensure that its programmes include those aimed at addressing and combating slavery;

- develop and implement public awareness-raising campaigns for the general public, victims of slavery, police, administrative and judicial authorities and religious authorities;

- facilitate the social and economic integration of those formally subjected to slavery into society, in the short-, medium- and long-term, and ensure that Haratine and other marginalized groups affected by slavery and slavery like practices have access to services and resources;

- collect detailed data on the nature and incidence of slavery in Mauritania and establish procedures for monitoring and evaluating implementation of efforts to end slavery;

- avail itself of ILO technical assistance to implement these recommendations; and

- report in detail on the measures taken to implement these recommendations, in particular on the enforcement of Anti-slavery laws, to the next meeting of the Committee of Experts in November 2015.

146. As regards the application by Swaziland 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 and the discussion that followed.

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

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

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

■ release unconditionally Thulani Maseko and all other workers imprisoned for having exercised their right to free speech and expression;

■ ensure all workers’ and employers’ organizations in the country are fully assured their freedom of association rights in relation to the registration issue, in particular, register the Amalgamated Trade Union of Swaziland (ATUSWA) without any further delay;

■ amend section 32 of the IRA to eliminate the discretion of the Commissioner of Labour to register trade unions;

■ ensure organizations are given the autonomy and independence they need to fulfil their mandate and represent their constituents. The Government should refrain from all acts of interference in the activities of trade unions;

■ investigate arbitrary interference by police in lawful, peaceful and legitimate trade union activities and hold accountable those responsible;

■ amend the 1963 Public Order Act following the work of the consultant, and the Suppression of Terrorism Act, in consultation with the social partners, to bring them into compliance with the Convention;

■ adopt the Code of Good Practice without any further delay and ensure its effective application in practice;

■ address the outstanding issues in relation to the Public Services Bill and the Correctional Services Bill in consultation with the social partners; and

■ accept technical assistance in order to complete the legislative reform outlined above so that Swaziland is in full compliance with the Convention.

2.2. Continued failure to implement

150. The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee made no mention in this respect.

3. Participation in the work of the Committee

151. The Committee wished to express its gratitude to the 55 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their cases.

152. The Committee regretted that the Governments of the following States failed to take part in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: Azerbaijan, Burundi, Congo, Côte d’Ivoire, Gambia, Haiti, Kazakhstan, Kyrgyzstan, Liberia, Rwanda, San Marino, Sierra Leone, Somalia, Syrian Arab Republic and Tajikistan. 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 its usual practice.

153. The Committee noted with regret that the Governments of the following States, which were not represented at the Conference, were unable to participate in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: Belize, Dominica, Grenada, Guinea-Bissau, Guyana, Kiribati, Marshall Islands, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, Tuvalu and Vanuatu. It decided to mention these countries in the appropriate paragraphs of this report and to inform them, in accordance with its usual practice.

154. Finally, the Committee regretted that the government of Kazakhstan failed to take part in the discussion concerning the application by its country of Convention No. 87. This discussion is reflected in section B of Part II of this report and, in keeping with the practice, the case is mentioned in a special paragraph in section D of Part I of this report.

E. Adoption of the report and closing remarks

155. The Committee’s report was adopted as amended.

156. The Employer members emphasized that the work of the Committee had taken place in a constructive atmosphere, and in a spirit of open and positive dialogue. The Committee was the cornerstone of the ILO supervisory system, and the work this year had again demonstrated that it was the appropriate forum for tripartite constructive dialogue, where the application of international labour standards was discussed, on the basis of the report of the Committee of Experts. The short timeframe of two weeks had not impeded the work of the Committee, which had been achieved thanks to excellent time management. Some divergences with respect to the interpretation of international labour standards remained, but the Committee allowed the tripartite constituents to voice these divergences, in the spirit of continuous and constructive dialogue.

157. They highlighted that in line with the agreement that had been achieved in the February 2015 Tripartite Meeting, the Worker and Employer members had played an important role in the drafting of the conclusions. Real tripartite ownership of the outcome of the work of the Committee had been evidenced through the consensus recommendations contained in the conclusions. The conclusions were short, clear and straightforward in their requests to governments to take concrete measures. However, controversial issues of fundamental disagreement remained, in particular as to whether Convention No. 87 included the right to strike. That had not held up the process of the adoption of conclusions, as these issues would be reflected in the Record of Proceedings, and not in the conclusions. The Committee should be very proud of the active engagement of the social partners in that regard. They thanked their counterparts, the Worker members, for their efforts to ensure the adoption of conclusions in a constructive and positive spirit.

158. They also thanked the Chairperson and the Reporter for their contribution to the success of the work of the Committee. They also paid tribute to the Director of the International Labour Standards Department, Ms. Doumbia-Henry, for her technical competence, her commitment towards the functioning of the ILO supervisory system and her tireless efforts, which had been invaluable in assisting the parties to move forward.

159. The Workers members welcomed the successful work of the Committee, which had fulfilled its function in total accordance with the agreement approved by the Governing Body in March 2015, including the adoption of consensual and operational conclusions
offering real prospects of progress for the three groups of ILO constituents. They shared their first reflections on the assessment of the functioning of the Committee, and emphasized that the list of individual cases had been approved at its second session and had been adopted by consensus. They nevertheless still deplored the fact that, despite the many observations contained in the report of the Committee of Experts and the serious violations of workers’ rights revealed by the report, the Conference Committee had to confine itself to examining 24 cases. They therefore called on the Committee of Experts to pay particular attention to following up the effective implementation of the conclusions adopted by the Conference Committee. Indeed, the Conference Committee should be able to review and monitor their implementation over the course of its sessions. This point should be examined at one of the next meetings of the informal tripartite working group on the methods of work of the Committee. With regard to time management, in the context of a two-week Conference session, an effort had been made by speakers to comply with the time limits for speaking time. The management of conclusions had represented a major challenge, and improvements were still needed. The need to read a large number of conclusions following the discussion of the last individual case had not proved to be possible. Out of respect for governments, a special sitting should be reserved for the reading of the conclusions.

160. With reference to paragraph 29 of the General Report of the Committee of Experts, the Worker members noted the clear agreement on the mandate of the Committee of Experts and the scope of this mandate. As stated in paragraphs 24 and 26 of its General Report, the Committee of Experts paid heed to continuing to carry out its technical work in accordance with its principles of independence, objectivity and impartiality, while remaining anchored in tripartism.

161. The Worker members emphasized that the Committee needed to examine the most serious cases of violations of ILO standards. Although certain governments persisted, despite the Committee’s clear and repeated recommendations, in refusing to comply with standards, the cases of progress should be welcomed and should be given greater visibility. This point could be examined by the informal tripartite working group on the methods of work. The Workers members recalled that governments included on the list of individual cases could avail themselves of the possibility of providing written information to the Committee, which facilitated a better informed and fuller debate. In conclusion, they thanked all those who had contributed to the work of the Committee and paid tribute to the Director of the International Labour Standards Department, Ms Doumbia-Henry, and particularly to her commitment to standards and her great determination to find solutions to even the most difficult situations.

162. The Government member of Italy, speaking on behalf of the Government group, wished to express the profound satisfaction of the group for the fact that the Committee had successfully concluded its work and had been able to adopt consensual conclusions on all the cases under its consideration. The Government group wished to recall its common position expressed during the February 2015 Tripartite Meeting, as that position had been repeatedly quoted at the present session of the Committee. This common position read as follows: “The Government group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government group specifically recognizes that without protecting a right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers’ interests, cannot be fully realized. However, we also note that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level.”

163. The Government group, followed by several Government members, including those speaking on behalf of the Africa group, GRULAC and the European Union, wished to pay
tribute to the Director of the International Labour Standards Department for her immense contribution to international labour standards for over a decade and expressed their deep appreciation for her hard work, expertise and dedication to the work of the ILO supervisory bodies.

164. The Chairperson of the Committee expressed her appreciation for the enormous interest that the constituents had shown in the Committee’s work and for the constructive dialogue that had taken place within the Committee. She thanked all members of the Committee, particularly the Employer and Worker Vice-Chairpersons, for their contributions. Lastly, she commended the Director of the International Labour Standards Department, Ms Cleopatra Doumbia-Henry, for her dedicated work in the service of international labour standards over the last 15 years. Her commitment, professionalism, devotion and efforts had been vital to the Committee’s work.

165. The representative of the Secretary-General indicated, in her words of thanks to the Committee, that she felt truly privileged to have had the opportunity to work with the members of this Committee during the Conference and other meetings. She highlighted the progress that had been made in the implementation of ratified Conventions in many countries over the last few years and encouraged all the delegates to continue on this path. She also mentioned the major reform of the ILO standards system implemented by the tripartite constituents who had approved, in 2005, in the framework of the Governing Body, a coherent and strategic approach to the ILO standards system. She emphasized that the Committee of Experts and this Committee were vital to the goals of the ILO. She hoped to see the standards system strengthened even further through the implementation of the Standards Review Mechanism, a strengthened supervisory system, and the continuation of targeted reinforced assistance to countries requesting it. Indicating that it had been a pleasure and a privilege, she stated that she was leaving behind a well-trained and dedicated staff in the International Labour Standards Department as well as specialists in the field offices and she called on the Committee to continue to support the new Director in the same way.

Geneva, 12 June 2015  
(Signed)  Ms Gloria Gaviria Ramos  
Chairperson

Ms Cecilia Mulindeti  
Reporter
Annex 1

INTERNATIONAL LABOUR CONFERENCE C.App./D.1
104th Session, Geneva, June 2015
Committee on the Application of Standards

Work of the Committee

I. Introduction

This document (D.1) 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. The document reflects the results of the discussions and informal consultations that have taken place, since 2002, on the working methods of the Committee. In this regard, it may be recalled that an informal tripartite Working Group on the Working Methods of the Committee on the Application of Standards (hereinafter, the “Informal Working Group”) met 11 times between 2006 and 2011. Its recommendations have been reflected each year in document D.1 which, upon adoption by the Committee, has constituted the basis on which it has made certain adjustments to its working methods. The recommendations of the Informal Working Group have also been reflected in the Provisional Working Schedule of the Committee (document D.0), as appropriate.

The Informal Working Group has addressed a number of issues over the years including the elaboration of the list of individual cases to be discussed by the Committee, the preparation and adoption of the conclusions relating to these individual cases, time management and respect for parliamentary rules of decorum.

In March 2015, the Informal Working Group was reconvened at the request of the Governing Body, in the context of decisions made concerning the standards initiative. The Informal Working Group considered the issues of the establishment of the list of cases

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1 Since 2010, it is appended to the General Report of the Committee.

2 See below Part VI.

3 See below Parts VI (automatic registration, and supply of information) and IX.

4 See below Part X.

5 See GB.322/PV, para. 209(3). The Working Group was composed of: nine Employer representatives, nine Worker representatives and nine Government representatives. The Government representatives were from the following nine countries: Africa: Algeria and Egypt; Americas: Canada and Cuba; Asia and the Pacific: China, Japan and Jordan; Eastern Europe: Republic of Moldova; Western Europe: Austria. The meeting was also attended by a number of observers. The meeting was chaired by Mr Sipho Ndebele (Government representative, South Africa).
and the adoption of conclusions. It also examined the possible implications on the functioning of the Committee of the two-week session of the Conference. Account was taken during the discussions, of the Joint Statement of the Workers’ and Employers’ groups and the two statements from the Government group, which are attached to the Outcome of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, which contained elements relevant to the work of the Informal Working Group. The Informal Working Group adopted the following recommendations.

(i) Modalities for the establishment of the list of cases

The preliminary list of cases should be available no less than 30 days before the opening of the International Labour Conference (i.e. 1 May 2015).

The final list should be agreed upon by the Worker and Employer spokespersons on the Friday before the opening of the International Labour Conference (29 May 2015) and should be adopted no later than the second sitting of the Committee on the Application of Standards (CAS). The discussion of the individual cases would begin with double-footnoted cases.

Explanations will be given to governments immediately following the adoption by the CAS of the final list of cases.

(ii) Criteria for the determination of the list of cases

In the establishment of the list of cases, in addition to the criteria outlined in document D.1 (see below), the following should also be considered: balance between fundamental, governance and technical Conventions; geographical balance; balance between developed and developing countries.

(iii) Preparation and adoption of conclusions

There was consensus on:

– The importance of adopting conclusions on all cases. Conclusions should be reached within a reasonable time frame and should be short, clear and specify the action expected of governments, including the technical assistance to be provided by the Office, if applicable. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the CAS record of proceedings.

– Conclusions on the cases discussed should be adopted at dedicated sittings.

6 GB.323/INS/5/Appendix I.

7 These recommendations are reproduced in document GB.323/INS/5(Add.).
(iv) Functioning of the CAS in the context of the two-week session of the International Labour Conference in 2015

- Meetings should start on time.
- The provisional working schedule should take account of group meetings.
- Evening sittings should end at 9 p.m. and the sitting on the first Saturday of the Conference should end at 1 p.m.; if additional time is needed to complete the examination of the cases, evening sittings could be envisaged during the second week of the Conference.
- Four individual cases should be discussed per day to achieve 24 during the session.
- The report of the Committee should continue to be adopted by the Committee itself.

Finally, the meeting agreed to add the following points to the agenda of a future session of the Working Group:

- Composition of the Working Group, including the proposal made by the group of Latin American and Caribbean countries (GRULAC) that the composition should be a multiple of eight, with 16 Government representatives, eight Employer representatives and eight Worker representatives.
- A date for the next meeting of the Working Group should be set in advance.
- Consideration could be given to holding simultaneous sittings for certain matters (e.g. cases of serious failure by governments to respect their reporting and other standards-related obligations).

The recommendations of the Informal Working Group have been taken into account by the Office in preparing this revised version of document D.1.

II. Terms of reference and composition of the Committee, voting procedure and report to the Conference

Under its terms of reference as defined in article 7, paragraph 1, 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;

8 At its 323rd Session (March 2015), the Governing Body requested the Office to prepare for its 325th Session (November 2015) an analysis of the trialled format of a two-week session in June 2015, which would allow the Governing Body to draw the lessons of this experience and take the appropriate decisions as regards the format arrangements for the future sessions of the International Labour Conference.
(c) the measures taken by Members in accordance with article 35 of the Constitution.

In accordance with article 7, paragraph 2, of the Standing Orders of the Conference, the Committee submits a report to the Conference. Since 2007, in response to the wishes expressed by ILO constituents, the report of the Committee 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.

Questions related to the composition of the Committee, the right to participate in its work and the voting procedure are regulated by section H of Part II of the Standing Orders of the Conference.

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

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, and in Part Two, the observations of the Committee of Experts 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. At the beginning of the report there is an index of comments by Convention and by country.

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

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers’ Organisations Convention, 1975 (No. 141), and the Rural Workers’ Organisations Recommendation, 1975 (No. 149).

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. ¹⁰ Requests for consultation or copies of reports may be addressed to the secretariat of the CAS.

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¹⁰ See report of the Committee of Experts, Report III (Part 1A), Appendices I, II, IV, V and VI; and Report III (Part 1B), Appendix II.
C. Other information

The secretariat prepares documents (which are referred to, and referenced, as “D documents”) which are distributed during the course of the work of the Committee to provide the following information:

(i) reports and information which have reached the International Labour Office since the last meeting of the Committee of Experts; based on this information, the list of governments which are invited to supply information to the Conference Committee due to serious failure to respect their reporting and other standards-related obligations is updated; \(^{11}\)

(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. \(^{12}\)

The Information document on ratifications and standards-related activities (Report III (Part 2)), prepared by the Office to accompany the report of the Committee of Experts, provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, information on the ratification of Conventions, together with “country profiles” containing key information on standards for each country.

IV. General discussion

In accordance with its usual practice, the Committee begins its work with the consideration of its working methods on the basis of this document. The Committee then holds 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, which is primarily based on the General Report of the Committee of Experts.

It also holds a discussion on the General Survey prepared by the Committee of Experts on a group of Conventions and Recommendations decided upon by the Governing Body. The Committee’s discussion of this year’s General Survey, together with the outcome of this discussion and the General Survey itself, will feed into the preparation of the recurrent item report and discussion on fundamental principles and rights at work which will take place during the 106th Session (June 2017) of the Conference. \(^{13}\)

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\(^{11}\) See below Part V.

\(^{12}\) See below Part VI (supply of information).

\(^{13}\) It should be recalled that the subjects of General Surveys have been aligned with the strategic objectives that are examined in the context of the recurrent discussions under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008).
V. 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 dedicated sitting of the Committee. Governments that submit the required information before the sitting will not be called before the Committee. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.

The Committee identifies the cases on the basis of criteria which are as follows:

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

VI. Individual cases

The Committee considers cases relating to the application of ratified Conventions. These cases are selected on the basis of the observations published in the report of the Committee of Experts. The methods of work applied by the Committee are described below. They reflect, where appropriate, the recommendations made by the Informal Working Group at its March 2015 meeting.

14 Formerly known as “automatic” cases (see Provisional Record No. 22, International Labour Conference, 93rd Session, June 2005, para. 69).

15 These criteria were last examined by the Committee in 1980 (see Provisional Record No. 37, International Labour Conference, 66th Session, 1980, para. 30).

16 This year the sessions involved would be the 94th (February 2006, Maritime) to 101st (2012).
Preliminary list. Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. In March 2015, the Informal Working Group recommended, on the basis of the Joint Statement of the Workers’ and Employers’ groups of February 2015, 17 that the preliminary list of cases should be published no less than 30 days before the opening of the International Labour Conference (i.e. 1 May 2015). The preliminary list is a response to the requests from governments for early notification, so that they may better prepare themselves for a possible intervention before the Committee. It may not in any way be considered definitive, as the adoption of a final list is a function that only the Committee itself can assume.

Establishment of the list of cases. The list of cases regarding which countries will be invited to supply information to the Committee is established by the Committee’s Officers. The list of individual cases is then submitted to the Committee for adoption at the beginning of its work. 18 At its March 2015 meeting, the Informal Working Group made recommendations regarding the need for balance between fundamental, governance and technical Conventions, as well as geographical balance and balance between developed and developing countries. 19 Therefore, the criteria for the selection of cases should reflect the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote; 20
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers’ and workers’ organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact;
- balance between fundamental, governance and technical Conventions;
- geographical balance; and
- balance between developed and developing countries.

There is also the possibility of examining one case of progress as was done in 2006, 2007, 2008 and 2013. 21

17 See Part I above.

18 In March 2015, the Informal Working Group recommended that, in 2015, the list should be adopted no later than the second sitting of the Committee.

19 These elements were included in the Joint Statement of the Workers’ and Employers’ groups of February 2015 referred to above.

20 See paras 57–64 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for footnotes are also reproduced in Appendix I.
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.

**Automatic registration.** Since 2010, cases included in the final list have been automatically registered and 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. This year, the registration will begin with countries with the letter “Z”. Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which the Committee of Experts requested governments to submit full particulars to the Conference (“double-footnoted cases”). At its March 2015 meeting, the Informal Working Group has recommended that, as has been the practice since 2012, the Committee begins its discussion with these cases. The other cases on the final list are then registered by the Office also following the abovementioned alphabetical order.

Information on the agenda of the Committee and the date on which cases may be heard is available:

(a) through the *Daily Bulletin*;
(b) by means of letters sent to the representatives of the countries concerned by the Chairperson of the Committee;
(c) by means of a D document containing the list of individual cases and the working schedule for the examination of these cases, which is made available to the Committee as soon as possible after the adoption of the list of cases.

**Supply of information.** Prior to their oral intervention before the Conference Committee, governments may submit written information that will be summarized by the Office and made available to the Committee. These written replies are to be provided to the Office at least two days before the discussion of the case. They serve to complement the oral reply that will be provided by the government. They may not duplicate the oral reply nor any other information already provided by the government. 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. As recommended by the Informal Working Group, the conclusions should be short, clear and specify the action expected of governments, including the technical assistance to be provided by the Office, if applicable. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the CAS record of

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21 See paras 65–71 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for identifying cases of progress are also reproduced in Appendix II.


23 Since 2010, this document is appended to the General Report of the Committee.

24 See above Part III(C)(ii).
proceedings. Conclusions on the cases discussed will be adopted at dedicated sittings. The governments concerned will be informed of the adoption of conclusions by the secretariat including through the *Daily Bulletin*.

As per the Committee’s decision in 1980, Part One of its report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to: (i) cases of progress, where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee; (ii) certain special cases, which are mentioned in special paragraphs of the report; and (iii) cases of continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

**VII. Participation in the work of the Committee**

As regards failure by a government to take part in the discussion concerning its country, despite repeated invitations by the Committee, the following measures will be applied, in conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), and mention will be made in the relevant part of the Committee’s report:

- 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.

25 See footnote 15 above.


27 In November 2010, the Informal 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
VIII. 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. The time available to delegates to submit amendments to the draft minutes will be clearly indicated by the Chairperson when the draft minutes are made available to the Committee. 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.

IX. 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.

the importance of the questions raised. The Informal Working Group considered that no country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that it was accredited to the Conference. If a country on the preliminary list registered after the final list was approved, it should be asked to provide explanations (see Provisional Record No. 18, International Labour Conference, 100th Session, 2011, Part I/54).
In view of the above limits on speaking time, a government 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.

X. **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.

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28 See Part VI above.
Appendix I

Criteria developed by the Committee of Experts for footnotes

Excerpts of the General Report of the Committee of Experts (104 III(1A))

57. As in the past, the Committee has indicated by special notes (traditionally known as “footnotes”) at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2015.

58. 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.

59. 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.

60. 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.

61. 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 Convention
Appendix II

Criteria developed by the Committee of Experts for identifying cases of progress

Excerpts of the General Report of the Committee of Experts (104 III(1A))

66. 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 relates to the adoption of 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.

67. 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.

…

70. 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. 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.5

104th Session, Geneva, June 2015

Committee on the Application of Standards

Cases 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 document.

The text of the corresponding observations concerning these cases will be found in document C.App./D.5/Add.1.
# Index of observations regarding which governments are invited to supply information to the Committee

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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
Eritrea

(Ratification: 2000)

Articles 1(1) and 2(1) of the Convention. Compulsory national service. For a number of years, the Committee has been referring to section 3(17) of the Labour Proclamation of Eritrea (No. 118/2001), under which the expression “forced labour” does not include compulsory national service. The Committee noted that, under article 25(3) of the Constitution, citizens must complete their duty in national service. It also noted that, although the obligation to perform compulsory national service had been originally stipulated in 18 months (pursuant to the Proclamation on National Service, No. 82 of 1995), conscription of all citizens between the ages of 18 and 40 for an indefinite period was institutionalized with the introduction of the “Warsai Yakaalo Development Campaign” (WYDC), adopted by the National Assembly in 2002. In this connection, the Committee notes the Government’s statement that the obligation to perform compulsory national service is part of the normal civic obligations of citizens, and therefore falls within the scope of the exceptions provided for in the Convention, in particular: work or service exacted in virtue of compulsory military service laws and work or service exacted in cases of emergency.

With regard to the linkage between national service and work exacted under compulsory military service laws, the Committee notes the Government’s indication that any work or service exacted under section 5 of the 1995 Proclamation on National Service constitutes work of a purely military character. The Government states, however, that conscripts may also perform other duties, such as participating in the construction of roads and bridges. According to the Government, members of the national service have engaged in numerous programmes, mainly in reforestation, soil and water conservation, reconstruction, and activities aimed at improving food security. The Committee further notes that, according to abovementioned section 5, the objectives of national service include, inter alia, the creation of a new generation, characterized by love for work, discipline, ready to serve and participate in the reconstruction of the nation; and the development and strengthening of the economy by “investing in the development of peoples’ work as a potential wealth”.

In this connection, the Committee notes the statement in the report of the UN Special Rapporteur on the situation of human rights in Eritrea, of May 2014, that national service encompasses all areas of civilian life and is therefore much broader than military service. The UN Special Rapporteur highlights that national service is involuntary in nature, is of indefinite length and amounts to forced labour. According to the Special Rapporteur, the military police conducts periodic round-ups in homes, workplaces, public places and on the streets in search of deserters and draft evaders, as well as to recruit persons considered fit to serve (A/HRC/26/45, paragraphs 34, 38, 71 and 73).

The Committee recalls that, under Article 2(2)(a) of the Convention, compulsory military service is excluded from the scope of the Convention where conscripts are assigned to work of a purely military character. This condition, which aims specifically at preventing the call-up of conscripts for public works, has its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of forced or compulsory labour “as a method of mobilizing and using labour for purposes of economic development”. The Committee therefore draws the Government’s attention to the fact that work exacted from conscripts as part of national service, including work related to national development, is not purely military in nature. The Committee also recalls that, in specific circumstances, such as in cases of emergency, conscripts may be called to perform non-military activities. However, in order to respect the limits of the exception contained in Article 2(2)(d) of the Convention, the power to call up labour should be confined to genuine cases of emergency, or force majeure, that is, a sudden, unforeseen happening calling for instant countermeasures. Moreover, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation.

While noting the information provided by the Government, as well as its description of the factual situation in the country, which is referred to as a “threat of war and famine” situation, the Committee points out that the large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of the national service programme goes well beyond the exceptions provided for in the Convention. The extended obligations imposed on the population – as well as conscripts’ lack of freedom to leave national service, as stated by the Government – are incompatible both with Conventions Nos 29 and 105, which prohibit the use of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development. In light of the above considerations, the Committee urges the Government to take the necessary measures to amend or repeal the Proclamation on National Service, No. 82 of 1995 and the WYDC Declaration of 2002, in order to remove the legislative basis for the exactation of compulsory labour in the context of national service, and to address the incompatibility of these texts with both Conventions Nos 29 and 105. Pending the adoption of such measures, the Committee urges the Government to take concrete steps with a view to limiting the exactation of compulsory work or services from the population to genuine cases of emergency, or force majeure, and to ensure that the duration and extent of such compulsory work or services, as well as the purpose for which it is used, is limited to what is strictly required by the exigencies of the situation.

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

[The Government is asked to supply full particulars to the Conference at its 104th Session and to reply in detail to the present comments in 2015.]

Mauritania

(Ratification: 1961)

In its previous comments, the Committee urged the Government to take all necessary measures to combat slavery and its vestiges effectively, and to provide detailed and specific information on steps taken in this respect. The Committee notes with regret that despite specific requests in this regard, the Government did not provide a report in 2013 and 2014. It takes note of the observations of the Free
The Committee recalls that Act No. 2007/48 of 9 August 2007 criminalizing slavery and punishing slavery-like practices (hereinafter: Act of 2007) defines, criminalizes, and penalizes practices similar to slavery and makes a distinction between the crime of slavery and offences relating to slavery. These provisions state, inter alia, that "any person who appropriates the goods, products, and earnings resulting from the labour of any person claimed to be a slave or who forcibly takes that person’s money shall be liable to imprisonment ranging from six months to two years and a fine ranging from 50,000 to 200,000 ouguiyas” (section 6). The Act empowers human rights associations to denounce violations of the Act and to assist victims, with the latter entitled to judicial proceedings that are free of charge (section 15). The Committee notes that despite the Act having received considerable publicity with a view to promoting an understanding of the criminal nature of slavery, it would seem, from all the information available, that victims continue to face problems in being heard and asserting their rights with regard to both the relevant authorities responsible for law enforcement and the judicial authorities.

In its observations of 2013, the CLTM considered that the measures accompanying Act of 2007 remained a dead letter and that it was still extremely difficult for victims to bring their cases before the competent administrative and judicial authorities. In this respect, the Committee notes that in her 2014 report, the United Nations Special Rapporteur states that she remains concerned by the low number of judicial proceedings initiated on the basis of the Act of 2007 and stresses the need for institutions and parties concerned to apply the law, without preconceived ideas. The Committee points out that in the annual report of the National Commission of Human Rights of Mauritania (CNDH), published in May 2014 and available on this institution’s website, reference is made to the decision of the High Council of the Judiciary of 30 December 2013 to set up a special court dealing with crimes concerning slavery practices.

The Committee recalls that, under the terms of Article 25 of the Convention, States ratifying the Convention are obliged to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and strictly enforced. It emphasizes that victims of slavery are in a situation of considerable economic and psychological vulnerability which calls for specific action by the State. **Pointing out that only one case has led to a court conviction since the adoption of the Act of 2007, the Committee urges the Government to take the appropriate steps to ensure that victims of slavery are actually able to assert their rights, and that when complaints are brought before the administrative or judicial authorities, these authorities conduct investigations promptly, effectively, and impartially throughout the country, as required by the Act of 2007. Taking due note of the decision to establish a special court for examining slavery practices, the Committee hopes that measures will be taken to set up this court as soon as possible and ensure that it has the necessary means of action commensurate with the seriousness of the crimes with which it is concerned. Finally, the Committee asks the Government to indicate the number of cases of slavery reported to the authorities, the number of cases for which an investigation has been conducted, and the number of cases which have resulted in court proceedings.**

(b) Strategy and institutional framework to combat slavery

In its previous comments, the Committee emphasized that the required responses to the complexity of slavery and its various manifestations must form part of a comprehensive strategy covering all spheres of action, including awareness-raising, prevention, specific programmes enabling victims to leave the situation of economic and psychological dependence, reinforcement of the capacity of the authorities responsible for prosecution and for the administration of justice, cooperation with the civil society, and the protection and reintegration of victims. The Committee previously noted the measures taken in the areas of education, health, and the eradication of poverty in the context of the National Plan to Combat the Vestiges of Slavery (PESE) and emphasized the importance of adopting complementary measures targeting populations that are victims or at risk. The CLTM indicated in 2013 that the PESE was diverted from its original objective and did not reach the villages of former slaves.

The Committee notes that the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun) was created in March 2013 (Decree No. 048-2013). It notes that the CLTM, in both its observations of 2013 and 2014, considers that Tadamoun does not have the necessary means to act and that, one year after its creation, it has no results to account for in the area of combating the vestiges of slavery. In its reply, the Government states that Tadamoun’s mission is to design and carry out economic and social programmes in the field, by means of projects providing access to drinking water and basic services, and promoting housing and income-generating activities for the most vulnerable sectors of society with a view to curbing inequalities and encouraging social cohesion. Tadamoun is also authorized to denounce infringements to the Act of 2007 and provide assistance to the victims.

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The Committee also notes that, according to information contained in the aforementioned reports of the CNDH and the United Nations Special Rapporteur, the Mauritanian authorities have adopted the roadmap for combating the vestiges of slavery in March 2014. This roadmap, prepared with the participation of the public departments concerned and the support of the United Nations High Commissioner for Human Rights, contains 29 recommendations in legal, economic, and social areas, as well as in the sphere of awareness raising. The bodies responsible for implementing each recommendation have been identified and deadlines have been established.

The Committee welcomes the establishment of Tadamoun and the adoption of the roadmap, both of which constitute two important measures to advance efforts to combat slavery in Mauritania. **The Committee nevertheless considers that, in order for the roadmap to be an effective driving force to combat the vestiges of slavery, the Government must take appropriate measures to ensure that specific and rapid results may be noted in practice. The Committee trusts that the Government will not fail to provide, in its next report, detailed information on the implementation of the 29 recommendations contained in the roadmap to combat the vestiges of slavery. Noting that recommendations Nos 28 and 29 refer to the establishment of a committee to follow up the measures programmed and to assess them on a regular basis, the Committee requests the Government to indicate whether this committee**
has been set up and to specify the activities it has conducted. Finally, the Committee recalls the importance of research to enable an overview of the realities of slavery to ensure better planning of Government action and to guarantee that the activities carried out by Tadamoun target all victims and regions concerned, and it asks the Government to indicate the measures taken in this respect.

The Committee notes that, in its report, the CNDH emphasizes that "it is vital to launch programmes raising awareness about the illegality and illegitimacy of slavery and the Act of 2007, involving religious authorities, elected representatives and the civil society at the highest level". It also recommends that "this awareness raising must be conducted with the effective involvement of the religious authorities, whose positions and opinions on the matter must be unequivocal". The Committee requests the Government to continue taking measures to make the population and authorities responsible for enforcing the Act aware of the problem of slavery. Please also indicate the measures taken to strengthen the capacities of these authorities to ensure that they are able to better identify and protect victims.

In concluding, the Committee recalls that, in order to be able to evaluate adequately the policy carried out by the Government, it is essential that the Government communicate full and detailed information on this matter in the reports it is bound to submit under the Convention.

Qatar

(Ratification: 1998)

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

Articles 1(1), 2(1) and 25 of the Convention. Forced labour of migrant workers. The Committee notes that, at its 320th Session (March 2014), the Governing Body approved the report of the tripartite committee set up to examine the representation made by the International Trade Union Confederation (ITUC) and the Building and Wood Workers' International (BWI) alleging non-observance of Convention No. 29 by Qatar. This tripartite committee concluded that certain migrants in the country might find themselves in situations of forced labour on account of a number of factors such as contract substitution, restrictions on their freedom to leave their employment relationship or the country, the non-payment of wages, and the threat of retaliation. The tripartite committee considered that the Government should take further measures to fulfil its obligation to suppress the use of forced labour in all its forms, in accordance with Article 1 of the Convention. The Governing Body adopted the tripartite committee's conclusions and called upon the Government to:

- review without delay the functioning of the sponsorship system;
- ensure without delay access to justice for migrant workers, so that they can effectively assert their rights;
- ensure that adequate penalties are applied for violations.

(a) Functioning of the sponsorship system (kafala). The Committee notes that the recruitment of migrant workers and their employment are governed by Law No. 4 of 2009 regulating the sponsorship system. Under this system, migrant workers who have obtained a visa must have a sponsor. This sponsor must do all the necessary paperwork to obtain the residence permit for the worker and, once the procedures for this permit are completed, the employer is obliged to return the passport to the worker (section 19). The Law forbids workers to change employer, and the temporary transfer of the sponsorship is only possible if there is a pending lawsuit between the worker and the sponsor. Furthermore, workers may not leave the country temporarily or permanently unless they have an exit permit issued by the sponsor (section 18). If the sponsor refuses to grant the worker an exit visa, a special procedure is provided under the Law (section 12). The Committee notes the tripartite committee's observation that although some provisions of Law No. 4 of 2009 provide a certain protection to workers, their practical application raises difficulties, such as the requirement to register workers, which results in the confiscation of passports; it also noted the apparent infrequency of transfers of sponsorship. The tripartite committee also pointed out that a number of provisions of the Law, by restricting the possibility for migrant workers to leave the country or change employer, prevents workers who might be victims of abusive practices to free themselves from these situations. This also applies to the practice of withholding passports, which deprives workers of their freedom of movement.

The Committee takes due note of the Government's indication that a bill has been drafted to repeal the system of sponsorship and to replace it by work contracts. Under this bill, workers would be authorized to change employer when their limited contract expires or after five years in the case of permanent contracts. The Government points out that amendments are also being considered to allow workers to leave their employer after obtaining authorization from the competent government authority. It adds that efforts will be stepped up to ensure that workers' passports are not withheld and that employers who infringe this obligation are penalized as provided for under the Law.

The Committee trusts that the new legislation on migrant workers will be enacted in the near future, and will be drafted in such a way as to provide them with the full enjoyment of their rights at work and protect them against any form of exploitation, tantamount to forced labour. The Committee hopes that, to attain this objective, the legislation will make it possible to:

- suppress the restrictions and obstacles that limit these workers' freedom of movement and prevent them from terminating their employment relationship in case of abuse;
- authorize workers to leave their employment at certain intervals or after having given reasonable notice;
- review the procedure of issuing exit visas;
- guarantee access to rapid and efficient complaint mechanisms to enforce workers' rights throughout the country; and
- guarantee workers the access to protection and assistance mechanisms when their rights are infringed.

(b) Access to justice. The Committee notes the tripartite committee's observation that although the legislation provides for the
establishment of different complaints mechanisms, the workers seem to encounter certain difficulties in using them. The tripartite committee considered that measures should be taken to remove such obstacles, such as by raising the awareness of workers to their rights, protecting suspected victims of forced labour and reinforcing cooperation with labour-supplying countries. The Committee notes that, according to the Government, the bill stipulates that migrant workers should submit their complaint to the Labour Relations Department under the Ministry of Labour which will examine the matter immediately, and that workers will not be charged legal fees. This Department has been equipped with tablets to register complaints, available in several languages, and the number of interpreters has been increased. In addition, a free telephone line and email have been made available to workers so that they might lodge their complaints, which are dealt with by a team specially trained for this task. Finally, an office has been set up within the Court to help workers initiate legal proceedings and to assist them throughout the whole judicial process.

Duly noting this information, the Committee recalls that the situation of vulnerability of migrant workers requires specific measures to assist them in asserting their rights without fear of retaliation. The **Committee urges the Government to continue taking measures to strengthen the capacity of these workers to enable them, in practice, to approach the competent authorities and seek redress in the event of a violation of their rights or abuse, without fear of reprisal. The Committee also asks the Government to take the necessary measures to sensitize the general public and competent authorities on the issue of migrant workers subject to forced labour so that all the actors concerned might be able to identify cases of labour exploitation and to denounce them, and to protect the victims. The Committee requests the Government to take the necessary measures to ensure that victims receive psychological, medical and legal assistance, and to provide information on the number of shelters existing, the number of persons benefiting from this assistance, and on the bilateral agreements signed with the labour-supplying countries. Finally, the Committee requests the Government to indicate the measures taken from the legislative and practical standpoint to provide effective protection for domestic workers.**

(c) Application of penalties. **Penalties for infringements of the labour legislation.** The Committee notes that the tripartite committee observed the lack of information on the penalties imposed for infringements of the labour legislation and of the Law regulating the sponsorship system. It emphasized that the detection and remedying of such violations contribute to the prevention of forced labour practices. The Committee notes that the Government has provided statistics on the number of judicial proceedings and sentences concerning wage arrears, holiday pay and overtime. From January to June 2014, 448 proceedings were initiated and 379 sentences handed down. As regards the matter of wage arrears, the Government refers to a bill proposing to establish a special wage protection unit within the Labour Inspection Department, which would make it an obligation for employers to pay wages directly by means of a bank transfer. The Government also provides information on the measures taken to strengthen the labour inspection services, particularly by expanding its geographical coverage, increasing the number of labour inspectors, raising their status, and providing them with modern computer equipment. As a result, the number of inspection visits increased from 46,624 in 2012 to 50,538 in 2013. **The Committee strongly encourages the Government to continue strengthening mechanisms monitoring the working conditions of migrant workers and effectively applying penalties for the infringements registered. In this respect, it calls upon the Government to continue training the labour inspectorate and making it aware of the issues at stake, so that it might identify and put an end to practices that increase the vulnerability of migrant workers and expose them to forced labour, namely, the confiscation of passports, wage arrears, the abusive practices of placement agencies and, in particular, the matter of recruitment expenses and labour contract substitutions. The Committee also asks the Government to indicate whether the labour inspectorate cooperates with the Public Prosecutor's Office to ensure that the infringements registered give rise to prosecution. Finally, the Committee refers to the comments it makes under the Labour Inspection Convention, 1947 (No. 81).**

**Imposition of penalties.** The Committee notes that the tripartite committee called upon the Government to take effective measures to ensure that adequate penalties are applied to employers who impose forced labour, in conformity with Article 25 of the Convention. The Committee notes with concern that, although the Government refers to provisions in the national legislation that guarantee the freedom of work and penalize the imposition of forced labour (section 322 of the Penal Code and Law No. 15 of 2011 on combating trafficking in persons), it does not provide any information on the judicial proceedings initiated on the basis of these provisions. In this respect, the Committee notes that the situation of migrant workers in Qatar has been examined by many United Nations bodies, who have all expressed their considerable concern at the large number of migrant workers who are victims of abuse (documents A/HRC/26/35/Add.1 of 23 April 2014 and CEDAW/C/QAT/CO/1 of 10 March 2014). **Recalling that the absence of penalties applied to persons imposing forced labour creates a climate of impunity, likely to perpetuate these practices, the Committee expresses the firm hope that the Government will take all the necessary measures to ensure that, in accordance with Article 25 of the Convention, effective and dissuasive penalties are actually applied to persons who impose forced labour. The Committee asks the Government to ensure that, given the seriousness of this crime, the police and prosecution authorities act of their own accord, irrespective of any action taken by the victims. The Committee also asks the Government to provide information on the judicial proceedings instigated and the penalties handed down.**

The Committee also notes that, at its 322nd Session (November 2014), the Governing Body declared receivable the complaint alleging non-observance by Qatar of Convention Nos 29 and 81, made by delegates to the 103rd Session (2014) of the International Labour Conference, under article 26 of the ILO Constitution, and it asked the Government and employers and workers of Qatar to provide relevant information that will be examined at its next session (March 2015).

The Committee is raising other matters in a request addressed directly to the Government.  
*[The Government is asked to reply in detail to the present comments in 2015.]*
Honduras

(Ratification: 1983)

The Committee notes the observations made by the General Confederation of Workers (CGT), received on 1 September 2014, and the Government’s reply to those received on 27 October 2014.

Article 3(2) of the Convention. Functions of labour inspectors in the area of labour disputes. With reference to its previous comments on measures taken to guarantee that the conciliation or mediation duties undertaken by the labour inspectors do not interfere with the discharge of their primary duties, the Committee notes with interest the Government’s information that labour inspectors no longer participate in these duties. These now fall under the ambit of the Department for individual and collective conciliation and mediation of the Ministry of Labour and Social Security.

Articles 3(1), 7, 10, 11, 16 and 24. Adequate human, financial and material resources for the needs of inspection. In reply to its previous comments on measures taken to carry out a needs assessment of the labour inspection services in the areas of human resources and training, and financial and material resources, the Government indicates that the Civil Service Act regulates the selection and recruitment for public administration staff, the training for labour inspectors, and the budget earmarked by the central administration for labour inspection. It also states that the four vehicles allocated to the regional units are for the exclusive use of carrying out routine inspections. In its observations, the CGT emphasizes that the labour inspectorate is under-resourced, the number of inspectors is very low (120), and that the labour inspection services have little logistical support. In its reply to these observations, the Government considers that, while the General Labour Inspectorate may have little logistical support, this has not impeded its work, as shown by the statistics on inspections carried out between 2005 and 2013. The Government also denies that there are 120 inspectors as indicated by the CGT, specifying that there are currently 141 inspectors at the national level, 137 of whom have permanent positions and four are contracted as consultants. The Committee notes the information provided by the Government relating to the geographical distribution of the inspectors, and the statistics on inspections carried out between 2005 and 2013. The Committee regrets that since 2005, inspection activity has been focused on special inspections or on inspections as a result of complaints (in 2008, for example, there were 12,759 inspections based on complaints received and 2,033 routine inspections; in 2013, there were 11,506 inspections based on complaints received and 6,037 routine inspections). The Committee requests that the Government take the necessary measures to ensure that the workplaces liable to inspection under the Convention are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provision, in conformity with Article 16 of the Convention. It also requests the Government to provide information on the number and geographical distribution of the workplaces liable to inspection and of the workers employed therein, that it specifies the number of vehicles available to labour inspectors or the transport available to them for the performance of their duties and their geographical distribution, as well as any other useful information for the assessment, by the competent authority, of the needs of the labour inspectorate relating to human resources (inspectors and administrative staff), material resources, facilities and means of transport.

Articles 6 and 15(a). The need to ensure conditions of service which guarantee that labour inspectors have stability of employment and are independent of changes of government and of improper external influences. In its previous comments, the Committee once again requested the Government to provide information on the measures adopted or envisaged to complement national legislation by including specific legal provisions to guarantee inspection staff job security and independence in the event of any changes in government and of any other improper external influences. The Government refers firstly to the constitutional provisions stipulating that the civil service regime regulates employment and public services relations of public servants based on the principles of competence, efficiency and honesty, the administration of which is subject to the Civil Service Act. It also indicates that the Act regulates the conditions for entering public administration, promotions and advancement based on merit and qualifications, job security, transfers, suspensions and guarantees, remedies against decisions that affect them, and also establishes the independence of the public servants relating to changes in government. The Government also reports that at the end of 2013, structure of posts within the Integrated System for Human Resource Management (SIARH) was reviewed and updated, to assess their budgetary impact and create new categories (labour inspector, chief labour inspector and regional labour coordinator), which are currently being developed. The Committee draws the Government’s attention to paragraphs 201–216 of the 2006 General Survey on labour inspection where it states that it is vital that levels of remuneration and career prospects of inspectors are such that high-quality staff are attracted, retained, and protected from any improper influence. The Committee requests the Government to specify the measures adopted to ensure that all inspectors enjoy job stability, and guarantee that they have the necessary independence to perform inspection duties, and protect them from all improper influences (such as improvements in the levels of remuneration and career prospects). The Committee also requests that the Government report on the development of new categories of inspection staff positions and, where necessary, its impact on the independence of labour inspectors and the assurance that they are free from improper external influence.

Articles 18 and 21(e). Appropriate penalties and effective application. With reference to its previous comments, the Committee notes the Government’s indication that no agreement has been reached between the Government and the social partners on the draft review of the Labour Code, which includes a reform of section 625 setting out sanctions against the obstruction of the fulfilment of labour inspectors’ duties and the violation of the legal provisions that are not subject to any special penalty. In its observations, the CGT also states that workers have to pay for the intervention of an inspector if they are unfairly dismissed, but that most workers do not have the means to do so and offences go unpunished. In its reply, the Government does not refer to this question. In its observations, the CGT also states that there are managers who do not allow labour inspectors to enter enterprises, such as in the maquila industry, fast food outlets, security companies, restaurants, and sanitation companies. The Government states in its reply that while it is true that certain managers do not allow labour inspectors to enter enterprises, section 625 of the Labour Code provides for a fine for obstructing the fulfilment of labour inspectors’ duties without prejudice to any other corresponding criminal, civil or labour procedure. Labour inspectors must highlight this situation in their report so that the relevant procedure may be initiated and the penalty applied. In this respect, the Committee notes the decision issued by the General Labour
The Committee emphasizes that, according to statistics provided by the Government, the number of cases in which a sanction was applied between 2005 and 2013 is negligible in relation to the number of cases not sanctioned, and that there was a significant drop between 2005 and 2013. The Committee points out, as it did in paragraph 295 of the abovementioned General Survey, the importance of having sufficiently dissuasive fines, adjusted to take account of inflation. The Committee requests the Government to take the necessary measures to establish a suitable method to revise penalties provided for in the case of obstructing the fulfillment of labour inspectors’ duties and for non-compliance with labour legislation. It also requests the Government to ensure that those penalties are effectively applied and to provide in its next report statistics on violations of labour legislation reported by labour inspectors (indicating the legal provisions in question) and the penalties imposed.

Technical assistance. The Committee notes that the Government has requested ILO technical assistance for an audit on the functioning of the labour inspection system in Honduras. The Committee hopes that the requested technical assistance will be provided in the near future and requests the Government to inform it on any activities undertaken in this context.

The Committee is raising other matters in a request addressed directly to the Government. [The Government is asked to reply in detail to the present comments in 2016.]

India

(Ratification: 1949)

The Committee notes the observations made by the Centre of Indian Trade Unions (CITU) received on 4 November 2014 concerning, among other things, the proposed amendments to the scope of application of numerous labour laws, which according to the CITU would exclude a great number of workers from the basic labour laws currently in force. The Committee requests the Government to provide its comments in this respect.

Legislation. The Committee notes that the Office was requested to examine the recently elaborated draft Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014. It notes that the Office has communicated its comments to the Government, including with regard to labour inspection and occupational safety and health (OSH). The Committee requests the Government to provide information on the adoption of the Bill, as well as on any envisaged legislative reforms. It hopes that the Government will continue to avail itself of ILO technical assistance for this purpose.

Articles 10 and 16 of the Convention. Coverage of workplaces by labour inspection. 1. Labour inspection in the central and states sphere. The Committee previously noted the Government’s indications that the Ministry of Labour and Employment was considering the re-examination of labour laws in order to ensure a “hassle-free” industrial environment and reduce unnecessary interference of inspecting staff (“Ending Inspector Raj”), and that steps were being taken to make the system of inspection mostly complaints-driven. In this regard, the Government previously indicated that this did not mean that there was a lack of monitoring of the application of labour laws: labour inspections were actually carried out in the central sphere and, contrary to the CITU’s indications, most states did not have internal instructions preventing labour inspections. In this context, the Committee previously emphasized that measures taken to limit the number of labour inspections are not compatible with the main objective of labour inspection, which is the protection of workers, and Article 16 of the Convention which provides that workplaces or enterprises liable to labour inspection should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

The Committee notes the statistics provided by the Government in reply to the Committee’s previous request concerning labour inspection activities and their results in the central and state spheres. Concerning enforcement activities in the central sphere, the Committee notes that it appears from the statistical information provided by the Government that the number of labour inspections, violations detected, proceedings initiated, and convictions in relation to the supervision of a number of laws has decreased from 2010 to 2014. Concerning enforcement activities in the sphere of the states, the Committee considers that it is not able to properly assess the functioning of labour inspection in the states, as no information was provided on the number of workplaces and workers covered by labour inspection in each state, and as the statistical information concerning labour inspection in the states was only provided in relation to three laws. It is therefore unable to determine whether the Government has taken any measures to address the previously observed imbalance in the coverage of workplaces and workers liable to inspection from one state to the other. Recalling once again that, under Article 16, workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, the Committee requests that the Government take the necessary measures to ensure that full effect is given to this provision of the Convention. It requests the Government to continue to provide statistical information on the labour inspection activities and its results in the central and states spheres, which should be as detailed as possible, and also include information on labour inspection and the workers employed therein.

2. Labour inspection in special economic zones (SEZs) and the information technology (IT) and IT-enabled services (ITES) sectors. The Committee previously noted the Government’s indications, in reply to the allegations of the CITU and the Bharatiya Mazdoor Sangh (BMS), that very few inspections had been carried out in the SEZs and in the IT and ITES sectors. It further noted the Government’s indications that there are no separate labour laws for SEZs, and that SEZs are subject to labour inspection, except for dispensations provided to SEZ units such as the delegation of powers to the development commissioner under the Industrial Disputes Act, 1947. Furthermore, the Government indicated that the enforcement of labour laws in the IT–ITES sectors is carried out through returns submitted by the employers under various labour laws. The Committee notes that the Government has not provided a reply in relation to the Committee’s previous requests since 2007 on labour inspection and compliance with the legal provisions in these sectors. The Committee therefore once again requests the Government to specify the dispensations provided to SEZ units and the extent to which they have an impact on labour inspection; it would also be grateful if the Government would furnish detailed statistical information on: enterprises and workers in SEZs; labour inspectors who oversee them; inspections carried out; offences reported; penalties imposed; and industrial accidents and cases of occupational disease reported.
It further requests the Government to provide information on the number of returns submitted on the application of labour laws in the IT and ITES sectors, to forward copies of relevant examples, and to describe the process through which such returns are submitted and verified by the labour inspectors. The Committee also requests the Government to provide information on any amendments proposed under the Labour Laws (exemption from furnishing returns and maintaining registers by certain establishments) Act, 1988.

3. Introduction of self-certification schemes. The Committee previously noted the observations made by the CITU and the BMS with regard to the self-certification scheme implemented in 2008, in particular as to the absence of any mechanism for the verification by the labour inspectorate of information supplied through this procedure. The Committee noted the Government’s indications that under this scheme, employers employing up to 40 persons are required to provide only a self-certificate regarding compliance, while those employing 40 or more persons are required to submit a self-certificate duly certified by a chartered accountant. It further noted the Government’s indications that a new inspection policy was introduced in 2008, placing emphasis on inspections in newly covered units, employers in violation of the legal provisions and those not submitting self-certifications. The Committee notes the information in a publication of the Ministry of Labour and Employment that self-certification of employers is foreseen by 16 labour laws in the central sphere. The Committee notes that the Government has not provided a reply in relation to its previous requests since 2007 in this regard. The Committee therefore once again requests the Government to supply information on the impact of the self-certification system introduced in 2008, notably on the frequency, thoroughness and effectiveness of inspection visits, to indicate the sectors in which self-certification is most prominent and to describe the arrangements made for the verification of information supplied by employers in self-certification schemes, the handling of any disputes and the action taken with regard to violations that are identified.

Article 6. Independence and integrity of labour inspectors. The Committee previously noted the indications of the All India Manufacturers’ Organisation (AIMO), according to which any proposal to give substantial powers to labour inspectors may give rise to a problem of corruption, and that the Government had made the labour inspection system complaints-driven to reduce arbitrariness. The Committee notes that the Government has not provided any reply in relation to the Committee’s previous request. It once again recalls that, under Article 6, the conditions of service of inspection staff, notably their wages, should be such as to guarantee their independence vis-à-vis improper external influences. The Committee once again requests the Government to provide information on the pay scale of labour inspectors by comparison with the remuneration of comparable categories of public officers like tax inspectors.

Article 12(1)(a). Free access of labour inspectors to workplaces. The Committee notes that the Government has again not provided information in relation to the Government’s previous announcement of amendments to the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act so as to bring these laws into conformity with the requirements under Article 12(1)(a) of the Convention, i.e. to explicitly establish the right of labour inspectors to enter workplaces freely. It further notes that the Government has also not provided a reply in relation to the CITU’s previous allegations that in the State of Haryana no labour inspection can be carried out without the prior authorization of the Secretary of Labour, which is never given. In this context, the Committee also notes from the information in a publication of the Ministry of Labour and Employment that the Government plans to implement a computerized system, which will randomly decide which labour inspector will go to which factory. The Committee requests the Government to take the necessary measures aimed at amending the Factories Act (Powers of Inspectors) and the Dock Workers (Safety, Health and Welfare) Act without further delay, so that the right of labour inspectors to enter workplaces liable to inspection is guaranteed in law. It asks the Government to remove all restrictions in practice, where they exist, with regard to the principle of the free initiative of labour inspectors to enter any workplace liable to inspection. The Committee would also be grateful if the Government would provide information on the abovementioned plans to implement a computerized system to determine the workplaces to be inspected, and provide information on whether in this system, labour inspectors would also be authorized to enter any workplace liable to inspection on their own unimpeded initiative.

Article 18. Adequacy of penalties. The Committee previously noted the Government’s reiterated indications since 2008 that amendments enhancing the penalties under various provisions of the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, were under active consideration and that the relevant texts would be sent to the ILO, once adopted. The Committee notes that the Government, in its present report, has not provided information in this regard. It therefore once again urges the Government to take all necessary measures to have these amendments adopted without further delay so as to establish penalties that are sufficiently dissuasive to ensure the effective application of the legal provisions relating to conditions of work and the protection of workers, and to furnish copies of the final texts to the ILO.

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

[The Government is asked to reply in detail to the present comments in 2015.]
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Algeria

(Ratification: 1962)

The Committee takes note of the observations from the International Trade Union Confederation (ITUC) received on 1 September 2014 on the persistent violations of the Convention in practice and requests the Government to submit its comments in this respect. The Committee also notes the observations from the International Organisation of Employers (IOE) received on 1 September 2014.

Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014)

The Committee takes note of the discussion that took place at the Conference Committee on the Application of Standards, in June 2014, concerning the application of the Convention by Algeria.

Article 2 of the Convention. Right to establish trade union organizations. For many years, the Committee’s comments have focused on section 6 of Act No. 90-14 of 2 June 1990, which 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, and that foreign workers must also have the right to establish a trade union, the Committee therefore requested the Government to amend section 6 of Act No. 90-14. The Committee notes that the Government states once again in its report that the matter is being examined as part of the finalization of the Labour Code. The Committee trusts that section 6 of Act No. 90-14 will be amended without any further delay in order to ensure that all workers, without distinction as to nationality, have the right to form a trade union. It urges the Government to provide information on any new developments on this matter.

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. For many years, the Committee’s comments have referred to sections 2 and 4 of Act No. 90-14 which, read together, authorize the establishment of federations and confederations only in the same occupation or branch, and even in the same sector of activity. Recalling that, under the Convention, trade union organizations, irrespective of the sector to which they belong, should have the right to establish and join federations and confederations of their own choosing, the Committee has requested the Government to take the necessary steps to amend the Act along these lines. In its report, the Government reiterates that the criteria pertaining to the establishment of trade union federations and confederations will be specified at the finalization stage of the reformed Labour Code. The Committee draws the Government’s attention to the fact that legislation requiring members of the same organization to belong to identical professions, occupations or branches of activity imposes a restriction that is only acceptable if it applies to first-level organizations, and provided that the latter can freely establish interoccupational organizations or belong to federations and confederations of their choosing. Consequently, the Committee trusts that, as part of the ongoing legislative reform, the Government will take steps to amend section 4 of Act No. 90-14 without any further delay in order to remove any obstacles preventing workers’ organizations, irrespective of the sector to which they belong, from establishing federations and confederations of their choosing. It urges the Government to provide information on any progress achieved in this respect.

Application of the Convention in practice. The Committee notes that at the discussion held at the Conference Committee on the Application of Standards, in June 2014, the Government replied to some extent to the allegations previously made by the ITUC, Education International (EI), and the National Autonomous Union of Public Administration Personnel (SNAPAP) and the Autonomous National Union of Secondary and Technical Teachers (SNAPEST). As regards the alleged obstacles to registering trade unions, the Government stated that delays in the registration of a number of trade unions were due to the need to bring the by-laws of the organizations concerned into line with the legislation. As to the allegations of acts of intimidation and death threats made against union leaders and members, the Government stated that the allegations were not backed by any concrete evidence and that no complaints had been launched with the competent courts. The Committee nevertheless notes that the ITUC, in its 2014 communication, denounces serious acts of harassment against trade unionists on the part of the law enforcement authorities, as well as continuing difficulties for newly established trade unions to register their organizations. While requesting the Government to reply to the ITUC’s observations, the Committee emphasizes that the trade union rights of workers and employers organizations under the Convention can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of these organizations, and that it is the responsibility of the Government to guarantee the respect of this principle.

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

Bangladesh

(Ratification: 1972)

The Committee takes note of the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2014. The Committee takes note of the response of the Government to the 2013 ITUC observations and requests it to provide its comments on this most recent communication. The Committee takes note of the observations provided by the International Organisation of Employers (IOE) in a communication received on 1 September 2014.

In its previous comment, the Committee, noting the observations submitted by the ITUC alleging the murder of a trade unionist, a union leader and two striking workers, had requested the Government to provide detailed information on any pending investigations into the serious allegations of violence and harassment. The Committee notes the numerous additional allegations of violence against trade unionists set out
in the ITUC’s most recent communication. The Committee deprecates that the Government has not provided any information in relation to investigations planned or carried out in respect of these allegations and in particular has provided no information on the status of the investigations in respect of the trade unionist murdered in 2012. The Committee urges the Government to provide its comments on the recent allegations of violence and harassment and to report on the status of the investigations into the 2012 murder of a trade unionist.

Articles 2 and 3 of the Convention. The right to organize, elect officers and carry out activities freely. The Committee previously requested the Government, in light of the concerns raised by the ITUC that the progress made in registration in the ready-made garment sector (RMG) may not be seen in other sectors throughout the country, to continue to provide detailed information and statistics on the registration of trade unions by sector. The Committee notes the recent observations of the ITUC that, while there has been real progress in trade union registration, registered unions still only represent a small fraction of the 4 million workers in the RMG sector and there are a large number of registration applications that have yet to be acted upon while dozens have been rejected under the Director of Labour’s discretionary authority. The Committee once again requests the Government to continue to provide detailed information and statistics on the registration of trade unions and further requests it to respond to the issues raised in the ITUC’s observations.

Legislative reform. In previous comments the Committee took due note of the amendments made in July 2013 to the Bangladesh Labour Act (BLA) and the Government’s indication that the necessary steps may be taken to further amend the BLA in future on a tripartite basis considering the socio-economic condition of the country and that ILO assistance may be required in this regard. Regretting that no further amendments have been made to the BLA on certain fundamental matters, the Committee once again requests the Government to indicate the steps taken to review and amend the following provisions: scope of the law (sections 1(4), 2(49) and (65), and 175); restrictions on organizing in civil aviation and for seafarers (sections 184(1), (2) and (4), and 185(3)); restrictions on organizing in groups of establishments (section 183(1)); restrictions on trade union membership (sections 2(65), 175, 185(2), 193 and 300); interference in trade union activity (sections 196(2)(a) and (b), 190(e) and (g), 192, 229(c), 291 and 299); interference in trade union elections (sections 196(2)(d) and 317(d)); interference in the right to draw up their constitutions freely (section 179(f)); excessive restrictions on the right to strike (sections 211(f), (3), (4) and (8), and 227(c)), accompanied by severe penalties (sections 196(2)(e), 291, and 294–296); excessive preferential rights for collective bargaining agents (sections 202(24)(c) and (e), and 204); and cancellation of trade union registration (section 202(22)) and excessive penalties (section 301).

The Committee further deeply regrets that workers are still obliged to meet the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, and that unions whose membership falls below this number will be deregistered (sections 179(2) and 190(f)), while no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5)). The Committee wishes once again to emphasize that such a high threshold for merely being able to form and have a union registered violates the right of workers to form organizations of their own choosing provided under Article 2 of the Convention. The Committee requests the Government to take the necessary measures to amend the abovementioned provisions and to provide information on developments in this regard.

Observing the Government’s previous indication that a process is under way for the drafting of supplementary implementing rules for the amended BLA, the Committee trusts that Rule 10 of the Industrial Relations Rules (IRR) 1977 upon which it previously commented is no longer being applied and expects that new Rules will be issued without further delay and will ensure that the authority granted to the Registrar does not interfere with trade union internal affairs. It requests the Government to provide information on the progress made in finalizing these Rules and to furnish a copy once they have been approved.

Article 5. The right to form federations. The Committee once again requests the Government to review section 200(1) of the BLA so as to ensure that the requirement of the minimum number of trade unions to form a federation (now at five) is not excessively high and thus does not infringe the right of workers’ organizations to form federations and to amend this section so that workers may form federations of a broader occupational or interoccupational coverage and that there is no requirement for the trade union members to belong to more than one administrative division.

Right to organize in export processing zones (EPZs). Referring to its previous observation, the Committee recalls that it has commented in detail on the provisions of the EPZ Workers’ Welfare Associations and Industrial Relations Act 2010 (EWWAIRA) which needed to be amended in order to bring the Act into conformity with the Convention. This included the need to amend sections 6, 7, 8, 9, 12, 16 and 24, which excessively regulated the formation of Workers’ Welfare Associations (WWAs) or their higher-level organization in a manner contrary to the Convention, and sections 10, 20, 21, 24, 27, 28, 34, 38, 46 and 80, which permitted the Government’s interference in the internal activities of the WWAs. In its previous comments, the Committee noted information provided by the Government that an inter-ministerial committee had been formed to examine and prepare a separate and complete labour law as an international standard for EPZ workers. The Committee notes, however, the recent observations from the ITUC that the Cabinet tabled a draft of the Bangladesh EPZ Labour Act in July 2014, which was elaborated without consultation with workers’ representatives and which does nothing to address the concerns that had been raised under the Convention. The Committee urges the Government to carry out full consultations with the workers’ and employers’ organizations in the country with a view to elaborating new legislation for the EPZs which is fully in conformity with the provisions of the Convention. It requests the Government to provide detailed information in its next report on all progress made in this regard and to transmit a copy of the legislation once it has been adopted.

Recalling the critical importance which it gives to freedom of association as a fundamental human and enabling right, the Committee trusts that significant progress will be made in the very near future to bring the legislation and practice into conformity with the Convention on all of the abovementioned points.

[The Government is asked to reply in detail to the present comments in 2015.]

Belarus

(Ratification: 1956)
Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014)

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 2014 concerning the application of the Convention. It also notes the report transmitted to the Governing Body in March 2014 of the direct contacts mission (hereinafter, DCM) 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 notes the observations submitted by the International Trade Union Confederation (ITUC) received on 1 September 2014 on the application of the Convention. It further notes the observations submitted by the Belarusian Congress of Democratic Trade Unions (BKDP) received on 28 August 2014 alleging numerous violations of the Conventions, including denial to register trade union structures affiliated to the members of the BKDP (during the 2013–14 period, for example, registration of the Bobruisk regional primary union of the Radio and Electronic Workers' Union (REP) was allegedly denied on five occasions); and the adoption of the legislation affecting workers' rights and interests without prior consultation with the BKDP, member of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council).

The Committee requests the Government to provide detailed comments thereon. The Committee notes the observations submitted by the International Organisation of Employers (IOE) on 1 September 2014.

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 in this respect, that during its visit to Belarus, the DCM heard allegations of continued difficulties experienced by new trade union organizations with obtaining legal address, despite the widening of the possibilities as to the kind of premises which could satisfy the legal address requirement to include private houses and apartments. It further noted that although the legal address requirement was expanded, there were still considerable impediments for registration of new organizations. The DCM expressed disappointment that Decree No. 2 had not been amended and there were no proposals to amend it. The DCM further noted that, while according to the Government there were no outstanding requests for registration, the BKDP representatives indicated that registration impediments still existed and that independent trade unions generally had been discouraged from seeking to register because of the obstacles they had met. Moreover, the DCM received detailed allegations of serious difficulties faced by workers wishing to organize outside of the structure of the Federation of Trade Unions of Belarus (FTUB).

In view of the above, the Committee 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. It further regrets that the 10 per cent membership requirement for the establishment of a union at the enterprise level has not been revoked despite the Government’s suggestion that it would take steps to that effect made in its statement at the Conference Committee in June 2013. The Committee once again 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. The Committee requests the Government to indicate in its next report all progress made in this respect.

Further in this connection, the Committee recalls that in its 2012 and 2013 comments, it examined the situation at the “Granit” enterprise and, in particular, the allegation that the management of the enterprise refused to provide a primary organization of the Belarus Independent Trade Union (BNTU) with the legal address required, pursuant to Decree No. 2, for registration of trade unions. The Committee notes that the DCM had addressed at length the conflict which had arisen at that enterprise; that conflict had eventually been examined, but could not be resolved by the tripartite Council. The contradictory information received by the DCM strengthened its conviction as to the necessity of developing mechanisms to find an acceptable resolution of these kinds of disputes in the future, through fact finding, facilitation and mediation, with full respect of freedom of association principles. The Committee notes that in its report, the Government indicates that it 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 Government points out that one such activity is a workshop on dispute resolution and mediation. The Committee requests the Government to provide information on the results and concrete outcome of this activity.

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 BKDP, BNTU and REP to hold demonstrations and meetings. It further recalls that it had noted with concern the BKDP allegation that after the chairperson of the Soligorsk BNP 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 an administrative offence and fined. According to the BKDP, 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 Law on Mass Activities. The Committee had requested the Government to provide its observations on the facts alleged by the BKDP. The Committee deeply regrets that the Government provides no information in this respect. 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 requests the Government to ensure that the exercise of the right to assembly is protected effectively from intimidation and other arbitrary acts.

In this connection, the Committee recalls that for a number of years it had been requesting the Government to amend the Law 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, as noted by the DCM, no consideration is being given to amend the Law. The Committee is therefore bound to reiterate its previous request.
El Salvador

(Ratification: 2006)

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2014. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2014, on matters under examination by the Committee.

The Committee notes the Government’s reply to the observations of the ITUC of 2011 concerning the murder of Victoriano Abel Vega, Secretary-General of the Union of Municipal Workers and Employees of the Municipality of Santa Ana. The Government indicates that the case has been assigned to the Central Intelligence Division of the General Prosecution Office of the Republic and that it is currently under active investigation. The Committee deeply deplores and firmly condemns the murder of Victoriano Abel Vega, which is the subject of Case No. 2923 of the Committee on Freedom of Association. Recalling that the absence of judgments against those guilty of crimes against trade union leaders and workers creates a situation of impunity in practice which reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union activities, the Committee strongly urges the Government to take all the necessary measures without delay to identify those responsible and punish those guilty of this crime.

The Committee notes the Government’s reply to the 2013 observations of the National Business Association (ANEP) concerning the Bills which empower the President of the Republic to select the members representing employers on joint or tripartite executive boards, which is the subject of Case No. 2980 of the Committee on Freedom of Association. In this regard, the Committee notes the joint observations of the IOE and the ANEP received on 2 September 2014, denouncing the failure to give effect to the recommendations made by the Committee on Freedom of Association in that case. Recalling the importance, under the terms of Article 3 of the Convention, of guaranteeing the full autonomy of employers’ and workers’ organizations to select their representatives on joint and tripartite bodies, and for them to be consulted in depth on draft legislation covering this matter, the Committee urges the Government to take all the necessary measures to give full effect to this provision of the Convention.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing without prior authorization. Exclusion of various categories of workers from the guarantees of the Convention. In its previous comment, the Committee requested the Government to: (i) indicate whether the public employees and officials referred to in sections 4 and 73, second paragraph, of the Civil Service Act (LSC) enjoy the guarantees laid down in the Convention; and (ii) take the necessary measures to ensure that officials who are denied the right of association under articles 47, 219 and 236 of the Constitution enjoy the guarantees laid down in the Convention. The Committee notes the Government’s indication in its report that: (i) most categories of public employees referred to in section 4 of the LSC (and particularly officials responsible for collecting, paying and maintaining accounts, financial managers, storekeepers, caterers, auditors, contract personnel without decision-making authority and who are not in managerial or confidential positions) enjoy the guarantees laid down in the Convention; (ii) a preliminary draft amendment of the LSC was submitted on 24 May 2011, which was agreed to by the trade unions and includes the amendment of section 4 and the reduction in the categories of public servants excluded from the civil service; (iii) employees who do not enjoy collective labour rights are mainly those envisaged in section 73 of the LSC, read together with articles 47, 219 and 236 of the Constitution; and (iv) these provisions have not prevented the registration of two unions of employees in the judiciary.

While taking due note of the Government’s statement on the recognition of the right to organize for most categories of the workers referred to in section 4 of the LSC, the Committee recalls that, with the sole exception of the armed forces and the police, all workers without
undertaken from 8 to 11 September 2014, in relation to the follow-up to the “roadmap” adopted on 17 October 2013 by the Government of and workers’ organizations of Guatemala, and on the information gathered by the ILO mission (hereinafter, the mission) which was

Convention by Guatemala. The Governing Body’s decision was based on the information provided by the Government and the employers’

a number of worker delegates to the 101st Session (June 2012) of the International Labour Conference concerning non-observance of the

2015) the decision whether to appoint a commission of inquiry to examine the complaint submitted under article 26 of the ILO Constitution by

The Committee notes that at its 322nd Session (November 2014), the ILO Governing Body decided to defer until its 323rd Session (March

Waiting period for the establishment of a new union following a refusal of its registration. In its previous comments, the Committee requested the Government to amend section 219 of the Labour Code to eliminate the waiting period of six months required to try once again to establish a union. The Committee notes the Government’s indication that in practice internal procedures have been established which allow a social organization to file a further application on the day following the refusal of its registration. The Committee requests the Government to take the necessary measures to amend section 219 of the Labour Code, for example by providing explicitly that the Ministry of Labour will carry out the certification by checking the list of employees of the enterprise or establishment provided by the employer, and to report any developments in this respect.

Requirements for the acquisition of legal personality. In its previous comments, the Committee requested the Government to take measures to amend section 219 of the Labour Code, which provides that, in the process of the registration of the union, the employer shall certify that the founding members are employees. While noting the Government’s indication that it will seek alternative procedures in practice to verify that the members of a union are employees, the Committee once again requests the Government to take the necessary measures to amend section 219 of the Labour Code, and to report any developments in this respect.

Waiting period for the establishment of a new union following a refusal of its registration. In its previous comments, the Committee requested the Government to amend section 248 of the Labour Code to eliminate the waiting period of six months required to try once again to establish a union. The Committee notes the Government’s indication that in practice internal procedures have been established which allow a social organization to file a further application on the day following the refusal of its registration. The Committee requests the Government to take the necessary measures to amend section 248 of the Labour Code. The Committee requests the Government to report any developments in this regard.

Article 3. Right of workers’ and employers’ organizations to elect their representatives in full freedom. While noting that there have been no changes in this respect since its previous comments, the Committee once again requests the Government to take measures to amend article 47(4) of the Constitution, section 225 of the Labour Code and section 90 of the LSC, which establish the requirement to be “a national of El Salvador by birth” in order to hold office on the executive committee of a union, and to report any developments in this regard.

The Committee hopes that the Government will adopt the necessary measures, in consultation with the most representative workers’ and employers’ organizations, to amend the provisions referred to above. The Committee requests the Government to report on any developments in this respect and reminds it that it may have recourse to the technical assistance of the Office.

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

Guatemala

(Ratification: 1952)

The Committee notes the observations from the International Trade Union Confederation (ITUC), the General Confederation of Workers of Guatemala (CGTG), the Guatemalan Union, Indigenous and Peasant Movement (MSICG), and the Trade Union of Workers of Guatemala (UNSITRAGUA), received on 1, 3 and 22 September 2014. The observations refer to subjects which are already being examined by the Committee, in particular, allegations of extremely serious acts of violence which are affecting the trade union movement.

The Committee also notes the observations from the International Organisation of Employers (IOE), received on 1 September 2014. The Committee further notes the joint observations from the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and the IOE, received on 28 August 2014, in which the organizations express their concern at the climate of violence affecting the country but also express their appreciation of: (i) the measures adopted by the Public Prosecutor’s Office in this respect; (ii) the report of the International Commission against Impunity in Guatemala (CICIG) relating to the violent deaths of trade unionists and the outcome thereof; and (iii) the establishment of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining.

Complaint made under article 26 of the ILO Constitution concerning non-observance of the Convention

The Committee notes that at its 322nd Session (November 2014), the ILO Governing Body decided to defer until its 323rd Session (March 2015) the decision whether to appoint a commission of inquiry to examine the complaint submitted under article 26 of the ILO Constitution by a number of worker delegates to the 101st Session (June 2012) of the International Labour Conference concerning non-observance of the Convention by Guatemala. The Governing Body’s decision was based on the information provided by the Government and the employers’ and workers’ organizations of Guatemala, and on the information gathered by the ILO mission (hereinafter, the mission) which was undertaken from 8 to 11 September 2014, in relation to the follow-up to the “roadmap” adopted on 17 October 2013 by the Government of
Trade union rights and civil liberties. The Committee notes with regret that for a number of years, like the Committee on Freedom of Association (CFA), it has been dealing with allegations of serious acts of violence against trade union officials and members, and the related situation of impunity. The Committee again notes that, in the context of Cases Nos 2445, 2540, 2609, 2768 and 2978, the CFA notes with deep concern that the allegations are extremely serious and include numerous murders (58 murders have been examined so far by the CFA since 2004) and acts of violence against trade union leaders and members, in a climate of persistent impunity.

The Committee notes that the Guatemalan trade union federations indicated to the ILO mission that: (i) there is no significant progress in the investigations into acts of violence against trade unionists reported to the ILO; (ii) the situation of impunity with regard to the murders of trade unionists; (iii) the launch of the effective criminal prosecution of crimes against trade unionists, which had been discussed from 2013 onwards and agreed upon by the trade union committee and the Chief Public Prosecutor, has not taken place; (iv) the trade unions have not been called upon at any stage of the criminal proceedings relating to the murders of trade unionists, nor have they been able to appear as complainants in those proceedings; (v) the Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists in Guatemala, presented by the Ministry of the Interior in August 2014, does not mention trade unionists or trade union activities; (vi) on several occasions the Ministry of the Interior announced the launch of a hotline for reporting crimes against trade unionists but this has never become operational; and (vii) the CICIG report on the murders of 58 trade union officials and members brought to the attention of the ILO bears witness to the impunity that exists in Guatemala.

The Committee notes with deep concern that, according to the information provided to the mission by the Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala, 16 trade unionists were murdered between 2 January 2013 and 20 August 2014. The Committee notes that the Public Prosecutor’s Office informed the mission that all the cases are being investigated, that an arrest warrant exists with regard to one of them and that an arrest warrant is being requested in relation to another.

The Committee notes the Government’s statement that it is taking all possible measures to combat violence and impunity and that it refers in particular to the following:

- With respect to the list of 70 murders of trade union officials and members (58 cases examined to date by the CFA and 12 additional cases since 2013), the Public Prosecutor’s Office indicates that: 42 cases are under investigation; eight cases resulted in convictions; three cases resulted in acquittals; in 11 cases arrest warrants were issued; in two cases arrest warrants were requested; in two cases the criminal prosecution was discontinued; one case was dismissed; and in one case the hearing was awaited.

- Further to the collaboration agreement concluded with the Public Prosecutor’s Office in 2013, the CICIG submitted a report on 31 July 2014 entitled “Status of investigations into the deaths of trade unionists in Guatemala”, in which the CICIG reviewed the investigation files established by the Public Prosecutor’s Office. In relation to the content of the report, the Government emphasizes that: (i) the CICIG confined its analysis to 37 cases in which the files of the Public Prosecutor’s Office contained evidence of the trade union status of the victims; (ii) in six of the 37 cases, there are definite or probable links between the motive for the killing and the victim’s trade union activities; (iii) the CICIG made suggestions for improving the investigation methods of the Public Prosecutor’s Office; (iv) most of the deaths occurred in locations in the country that are known for being particularly violent; and (v) there is no proof, at least from the survey under consideration, of systematic elimination of trade union members in Guatemala.

- The Special Investigation Unit for Crimes against Trade Unionists has been strengthened (from five members in 2011 to 12 members in 2014). An order has been issued to transfer all cases of crimes against trade unionists which are under investigation in the country to this specialist unit.

- In line with the agreement signed on 30 August 2013 between the Public Prosecutor’s Office and the trade union organizations, the trade union committee at the Public Prosecutor’s Office has met on six occasions.

- Discussions are under way with the trade unions regarding a launch of the effective criminal prosecution of crimes committed against trade unionists.

- On 1 August 2014, Ministerial Agreement No. 550-2014 was issued, amending the previous agreement of 2013, which enables trade union officials and members to be participants, and not just observers, in the Standing Trade Union Technical Committee on Comprehensive Protection.

- Seven trade unionists have been granted protective measures, and three more requests for protection have been received.

- A total of 3 million Guatemalan quetzals (approximately US$384,000) have been allocated for the protection of trade unionists, and in 2015 a request will be made to increase the budget.

- In September 2014, a framework cooperation agreement was signed between the judiciary, the Public Prosecutor’s Office, the Ministry of the Interior and the Ministry of Labour and Social Welfare, which provides for the establishment of an inter-institutional coordinating group, whose function will be to expedite and exchange information on crimes committed against unionized workers.

- Collaboration is continuing with the ILO with regard to training for investigators and prosecutors at the Public Prosecutor’s Office in the area of international labour standards.

Lastly, the Committee notes that the mission interviewed a CICIG representative, who indicated that the CICIG merely reviewed, on the basis of available information, the investigations conducted by the Public Prosecutor’s Office and did not undertake investigations itself, and that the investigation criteria should be reviewed in order to determine whether the murders in question are linked to the victims’ trade union activities. Moreover, the Chief Public Prosecutor informed the mission that the CICIG report is not definitive and is merely an additional tool for use by investigators at the Public Prosecutor’s Office. While taking due note certain measures taken by the authorities to improve the effectiveness of the investigations into the murders of trade union officials and members (strengthening of the Special Investigation Unit for Crimes against Trade Unionists, coordination between the various ministries and public institutions), the
Committee strongly urges the Government to continue making every effort to: (i) investigate all acts of violence against trade union officials and members, including those reported in 2013 and 2014, with a view to apportioning responsibility and punishing the perpetrators, taking the victims’ trade union activities fully into consideration in the investigations; and (ii) provide prompt and effective protection for trade union officials and members who are at risk. The Committee requests the Government to continue providing information on all the measures taken and the results achieved in this respect.

Articles 2 and 3 of the Convention. Legislative issues. The Committee recalls that it has been asking the Government for many years to take steps to amend the following legislative provisions:

- section 215(c) of the Labour Code, which establishes the requirement for 50 per cent plus one of those working in the sector, in order to be able to establish sectoral trade unions;
- sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity, to be able to be elected as a trade union leader;
- section 241 of the Labour Code, under the terms of which, to be legal, strikes should be called by a majority of the workers and not by the majority of those casting votes; section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non-essential services and specifies other obstacles to the right to strike; and sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises.

In addition, the Committee has been asking the Government for many years to take measures to ensure that various categories of public sector workers (engaged under item 029 and other headings of the budget) enjoy the guarantees afforded by the Convention.

The Committee recalls that, by virtue of the 2013 “roadmap”, the Government undertook to submit to the Tripartite Committee on International Labour Affairs the necessary draft legislative reforms and indicated that the National Congress would adopt the corresponding legislation. The Committee notes the information provided by the Government and the mission report, which indicates that: (i) on 10 December 2013, the Government submitted three draft reforms to the tripartite constituents (the Government attached copies of the drafts to its report); (ii) the social partners presented their own proposals for reform; and (iii) in view of the impossibility of reaching tripartite agreement on the legislative reforms, the Government referred the social partners’ reform proposals and the relevant comments of the Committee to the National Congress. The Committee notes that the trade union organizations claimed to the mission that the Government had not submitted any draft legislation to bring national law into line with the Convention.

While observing that the bills drafted by the Government do not enable the legislation to be brought into line with the Convention, in respect of most provisions that are the subject of reform, the Committee notes that during the mission a Declaration of Intent was signed between the National Congress and the ILO International Labour Standards Department, which envisages activities relating to international labour standards and technical assistance in relation to the drafting of labour legislation. In view of the above information, the Committee expresses the strong hope that the National Congress will adopt as soon as possible the legislative reforms requested by the Committee. The Committee requests the Government to provide information in this respect.

Application of the Convention in practice. The Committee welcomes the establishment of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining, which was set up in the context of implementation of the roadmap with the assistance of the Special Representative of the ILO Director-General in Guatemala. The Committee trusts that this body, which is of a tripartite nature and is directed by an independent mediator, will contribute towards settling the numerous cases of violation of the Convention reported by the trade union organizations.

Registration of trade union organizations. The Committee notes the recurrent observations from the trade union organizations regarding obstacles to trade union registration. The Committee notes in particular: (i) objections to the labour administration’s practice of referring to the employer the list of founders of the trade union which is being established in order to verify that they belong to the enterprise; and (ii) reports of numerous cases in which registration is denied because the union membership includes public employees on precarious contracts. The Committee requests the Government to ensure that the aforementioned practices in the registration process are abolished and that the cases reported by the trade union organizations are examined in the context of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining, so that the issues can be settled quickly. The Committee requests the Government to provide information on the results achieved in this respect.

Maquila sector. The Committee recalls that for some years it has been noting the comments from trade unions concerning serious problems of application of the Convention in relation to trade union rights in the maquila (export processing) sector. The Committee notes the Government’s indication that there are three active enterprise unions in this sector. In view of the above, the Committee requests the Government to intensify its efforts to ensure full respect for trade union rights in the maquila sector. The Committee invites the Government, in the context of the awareness-raising campaign which it undertook to implement in 2013, to give special attention to the maquila sector and to continue providing information on the exercise in practice of trade union rights in this sector. [The Government is asked to reply in detail to the present comments in 2015.]

Kazakhstan

(Ratification: 2000)

The Committee notes the observations of the Confederation of Free Trade Unions of Kazakhstan (CFTUK) and the International Trade Union Confederation (ITUC) received on 3 and 8 September 2014, respectively. The Committee expresses the hope that the Government’s next report will contain detailed observations on the matters raised by these organizations.

The Committee further notes the observations on the application of the Convention by the International Organisation of Employers (IOE) received on 1 September 2014.
The Committee notes the adoption of the Law on the National Chamber of Entrepreneurs (2013) and of the Law on Trade Unions (2014), as well as the amendment of the Labour Code in 2012.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously requested the Government to take the necessary measures to amend its legislation so as to ensure the right to organize of judges (article 23(2) of the Constitution and section 114(4) of the Law on Public Associations). The Committee notes that in its report, the Government reiterates that article 23 of the Constitution and Law No. 380-IV on Law Enforcement Bodies prohibit employees of such bodies, including firefighters and prison staff to establish and join trade unions. The Committee emphasizes that the ratification of a Convention carries with it the obligation to give full effect to the rights and guarantees enshrined therein in national legislation and practice. The Committee recalls that while the armed forces and the police can be excluded from the application of the Convention, the same cannot be said for fire service personnel and prison staff. The Committee therefore once again requests the Government to ensure that these categories of workers are guaranteed the right to establish and join organizations for furthering and defending their interests and requests the Government to indicate the measures taken to that end.

Right to establish organizations without previous authorization. The Committee had previously noted that pursuant to section 10(1) of the Law on Public Associations, applicable to employers' organizations, a minimum of ten persons is required to establish an employers' organization, and had requested the Government to amend its legislation so as to lower this requirement. The Committee notes with regret that the Government provides no information on the measures taken to that end. The Committee therefore once again requests the Government to indicate measures taken or envisaged to amend its legislation so as to lower the minimum membership requirement in as far as it applies to employers' organizations.

Right to establish and join organizations of their own choosing. The Committee notes that sections 11(3), 12(3), 13(3) and 14(4) of the Law on Trade Unions require, under the threat of de-registration pursuant to section 10(3) of that Law, the mandatory affiliation of sector-based, territorial and local trade unions to a national trade union association within six months following their registration. The Committee recalls that the free exercise of the right to establish and join organizations implies the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure. In other words, the question as to whether to join a higher-level trade union is a matter which should be determined solely by the workers and their organizations. The Committee therefore requests the Government to take the necessary measures in order to amend the abovementioned legislative provisions accordingly and to provide information on the measures taken to that effect.

Article 3. Right of organizations to organize their activities and to formulate their programmes. Labour Code. The Committee had previously requested the Government to take the necessary measures in order to amend section 298(2) of the Labour Code (according to which a decision to call a strike shall be taken by a meeting (conference) of workers (their representatives) gathering not less than half the total workforce, and the decision was adopted if not less than two-thirds of those present at the meeting (conference) had voted for it), so as to lower the majority required to call a strike. The Committee notes with satisfaction that this provision has been amended so as to require a vote by the majority of the workers present at the meeting (conference). The Committee further notes that the requirement to indicate the duration of the strike (section 298(2)(2) of the Labour Code) has been repealed.

The Committee notes with regret that the Government's report contains no information on organizations carrying out “dangerous industrial activities” (section 303(1) of the Labour Code) and the categories of workers whose right to strike is restricted accordingly. The Committee therefore once again requests the Government to indicate which organizations fall into this category of organizations by providing concrete examples. It further once again requests the Government to indicate all other categories of workers whose right to strike can be restricted by other legislative texts, as stipulated in section 303(5) of the Labour Code, and to provide copies thereof.

With regard to rail and public transport, the Committee had previously noted that according to section 303(2) of the Labour Code, a strike may be held if the necessary range of services, as determined on the basis of a prior agreement with the local executive authorities, is maintained so that the users' basic needs were met or that facilities operated safely or without interruption. In this respect, the Committee had requested the Government to amend section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one and that workers' organizations can participate in its definition. The Committee notes with regret that the Government's report contains no information on the measures taken to that effect. The Committee therefore reiterates its previous request and asks the Government to indicate in its next report all measures taken or envisaged to that end.

Recalling that the prohibition of the right to strike should be limited to civil servants exercising authority in the name of the State, the Committee had previously requested the Government to indicate whether “administrative” civil servants can exercise the right to strike. The Committee notes the Government's indication that the prohibition to strike concerns only “civil servants” and excludes the “administrative civil servants” and “public servants” (teachers, doctors, bank employees, etc.).

Law on the National Chamber of Entrepreneurs. The Committee notes that pursuant to section 3(2) of the Law, the main aim of the Chamber is to consolidate the action of entrepreneurs in the country. Through the Chamber, entrepreneurs further and defend their rights and interests, including by engaging with various state bodies and participating in the development and drafting of the legislation affecting their
interests. Pursuant to section 9(1) of the Law, the Chamber represents the interests and rights of entrepreneurs in the various state bodies and international organizations. The Committee requests the Government to clarify whether this latter provision implies that only representatives of the Chamber are entitled to represent employers of Kazakhstan in the ILO and if that is the case, to take the necessary measures to amend section 9(1) of the Law so as to bring them in line with Articles 2 and 3 of the Convention.

The Committee further notes that according to section 5(1)(1) and (2) of the Law, the Government approves the maximum membership fees to be paid by the members of the Chamber, and establishes the procedure therefore. Pursuant to sections 19(2) of the Law, the Government participates in the work of the congress (supreme governing body) of the Chamber and has the right to veto its decisions. Furthermore, pursuant to section 21(1) of the Law, the presidium (governing body) of the Chamber is composed, among others, of the government representatives and 16 parliamentarians. If the Chamber of Entrepreneurs, as appears to be the case, is an employers’ organization in the sense of the Convention, the Committee considers that the abovementioned provisions restrict its freedom, as well as the freedom of its member organizations to administer the funds and establish overall control over the internal acts and decisions of the Chamber, thereby calling into question the independence of that structure from the Government and its capacity to effectively represent the interests of their members free from the Government’s interference. In light of the above, the Committee requests the Government to provide detailed comments on the matters raised with regard to the Law on the National Chamber of Entrepreneurs and take measures to amend the Law so as to bring it into conformity with the Convention. It reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations. The Committee had previously requested the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee notes that according to the Government, political parties and trade unions are associations which have a capacity to influence political opinion, the public and government policy in various areas of public life. The Government reiterates that for this reason, article 5(4) of the Constitution prohibits foreign persons, including international organizations, from funding political parties and trade unions. The Government considers that this provision guards the State’s interest’s values and security. The Committee recalls that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers, and that all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers, respectively, whether they are affiliated or not to the latter. The Committee therefore once again requests the Government to take the necessary steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift this prohibition, and to indicate the measures taken or envisaged in this respect.

The Committee notes that pursuant to section 13(2) of the Law on Trade Unions, a sector-based trade union must include no less than half of the total workforce of the sector or related sectors; or organizations of the sector or related sectors; or shall have structural subdivisions and members organizations on the territory of more than half of all regions, cities of national significance and the capital. The Committee considers that the requirement of excessively high thresholds to establish a higher-level organization (e.g. a sector-based trade union) conflicts with Article 5 of the Convention. Noting the CFTUK and ITUC observations in this respect, the Committee requests the Government to engage with the relevant trade union organizations, including the CFTUK, with a view to review and lower the thresholds set by section 13(2) of the Law on Trade Unions. It requests the Government to provide information on the measures taken to that end.

Mexico

(Ratification: 1950)

The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2014. The Committee also notes the observations of the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN) appended to the Government’s report in which CONCAMIN states the importance of ensuring that the State can guarantee continuity of public services without prejudice to the right of workers’ to appeal to court. The Committee also notes the observations of the National Union of Workers (UNT) received on 1 September 2014 relating to issues examined by the Committee. The Committee lastly notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2014, relating to issues examined by the Committee and condemning events that constitute infringements of union rights, including the assassination, on 16 November 2013, of Mr Juan Lucena Ríos and Mr José Luis Sotelo Martínez, peasant leaders from the community of El Paraíso. Regretting that the Government has not supplied its comments on the 2010 observations of the ITUC, the Committee requests the Government to conduct investigations into the allegations contained in the 2010 and 2014 observations of the ITUC and to provide information on the results of those investigations.

Article 2 of the Convention. Register of trade unions. The Committee notes the adoption on 30 November 2012 of the decree which reforms, complements and repeals various provisions of the Federal Labour Act. The Committee welcomes the adoption of a series of provisions intended to strengthen the transparent and democratic functioning of trade unions in compliance with their autonomy, including the new section 365bis of the Federal Labour Act which provides for compulsory publication of trade union registrations and rules by the Secretariat of Labour and Social Welfare and the conciliation and arbitration boards. In this regard, the Committee notes that the UNT points out that the legal obligation to publish registrations of trade unions is not fulfilled in any of the local boards in the 31 states in the country. The UNT adds that the fact that registrations are not published at the local level encourages the persistence of false trade unions (so-called protection unions) which impede the exercise of trade union rights in full freedom. Noting that within the framework of Case No. 2694 before the Committee on Freedom of Association, the Government has committed to engaging in dialogue with the trade unions to seek a solution to the phenomenon of protection unions, the Committee requests the Government to include in those discussions the effective application, at the local level, of the legislation relating to the publication of trade union registrations and to report on
any measures taken in this regard.

Articles 2 and 3. Trade union pluralism within state agencies and re-election of trade union leaders. The Committee recalls that for many years it has been commenting on the following provisions:

· (i) the prohibition of the coexistence of two or more unions in the same state agency (sections 68, 71, 72 and 73 of the Federal Act on State Employees);
· (ii) the ban on trade unionists leaving the union of which they have become members (an exclusion clause under which trade unionists who leave the union lose their jobs) (section 69 of the Federal Act on State Employees);
· (iii) the ban on unions of public servants joining trade union organizations of workers or rural workers (section 79 of the Federal Act on State Employees);
· (iv) the extension of the restrictions applying to trade unions in general to the Federation of Unions of State Employees (section 84 of the Federal Act on State Employees, the only recognized federation);
· (v) the imposition by law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act to regulate article 123(XIIIbis)(B) of the Constitution); and
· (vi) the ban on re-election in trade unions (section 75 of the Federal Act on State Employees).

The Committee notes that the Government once again indicates that, in accordance with the case law of the Supreme Court of Justice and of the Federal Conciliation and Arbitration Tribunal, based on the Federal Constitution, the above legislative restrictions to freedom of association of public servants are not applicable. The Committee also notes the Government’s indication that, under the constitutional reform concerning human rights adopted in 2011, ratified international treaties acquire direct applicability. The Committee requests the Government to take the necessary measures to amend the Federal Labour Act accordingly and to report on any developments in this regard.

Article 3. Right of workers’ organizations to organize their activities and to formulate their programmes. The Committee recalls that for many years it has been asking the Government to amend the legislation that recognizes the right to strike of state employees – including employees in the banking sector and those of many decentralized public bodies such as the National Lottery or the Housing Institute – only if there is a general and systematic violation of their rights (section 94, Title four, of the Federal Act on state employees, and section 5 of the Act to regulate article 123(XIIIbis)(B) of the Constitution). The Committee considers that, without prejudice to the limitations on the right to strike which may be applicable to workers engaged in essential services in the strict sense of the term or in services of critical importance, employees – including employees in the banking sector – who do not exercise authority in the name of the State should be able to exercise the right to strike irrespective of whether there is a general and systematic violation of rights. The Committee once again requests the Government to take the necessary measures to amend the Federal Labour Act and to report on any developments in this regard.

Furthermore, the Committee recalls that several laws and regulations affecting the public service (the Act to Regulate Railways, the Act respecting National Vehicle Registration, the Act on General Channels of Communication and the Rules governing the Ministry of Communications and Transport) contain provisions for the requisitioning of staff where the national economy could be affected. While it notes the Government’s indication that in practice no requisitioning has been carried out in any of the channels of communication mentioned, the Committee recalls that the forced requisitioning of workers on strike would be justified only for the purpose of ensuring the operation of essential services in the strict sense of the term. The Committee therefore once again requests the Government to amend the legislation accordingly and to report on any developments in this regard.

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

[The Government is asked to reply in detail to the present comments in 2015.]

Swaziland

(Ratification: 1978)

The Committee notes the observations received on 1 September 2014 from the International Trade Union Confederation (ITUC). The Committee also notes the observations received on 1 September 2014 from the International Organisation of Employers (IOE).

The Committee notes that the Government has provided updated information in relation to the outstanding issues in the framework of the ILO high-level fact-finding mission to Swaziland which took place in January 2014, as well as to the Committee on the Application of Standards (CAS) of the International Labour Conference in June 2014.

Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014)

The Committee notes the discussion which took place in the Conference Committee in June 2014, particularly with regard to the revocation of the registration of the Trade Union Congress of Swaziland (TUCOSWA) by the Government and the denial of its right to fully exercise its trade union rights. With regard to the amendment of the Industrial Relations Act (IRA) to allow for registration of federations, requested by the ILO supervisory bodies for two years, the Committee takes note of the written communication provided by the Government to the CAS whereby it specified that Parliament was dissolved on 31 July 2013 and Cabinet was fully constituted on 4 November 2013.
Parliament officially opened again on 7 February 2014. This situation reduced parliamentary activity by seven months and left the Government with five months to comply with its undertakings before the International Labour Conference. It 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 IRA were passed into law.

**Registration of workers' and employers' federations.** The Committee notes with [concern](http://example.com) the Government's recent press statement No. 12/2014 issued in October 2014 according to which, pending the amendment of the IRA by Parliament, all federations should stop operating immediately. All memberships of the federations in statutory boards were also terminated. The Committee observes that the statement affected not only the TUCOSWA and other workers' federations seeking registration but also the Federation of Swaziland Employers and Chambers of Commerce (FSE–CC) and the Federation of Swaziland Business Community (FESBC), which were also deregistered; and the Committee deplores this governmental decision which to all intents and purposes eliminates all voices of social partnership in the country and is a serious breach of Articles 2, 3, 5 and 6 of the Convention.

The Committee, however, notes that in November 2014 the Government reported on the adoption by the Parliament of the Industrial Relations (Amendment) Act, 2014 (Act No. 11 of 2014 published in the government Gazette of 13 November 2014), introducing provisions concerning the registration of employers' and workers' federations as well as amending provisions on the criminal and civil liability of trade unions. The Committee notes the Government's indication that the amendment Act is a product of tripartite consensus and is operational with immediate effect.

The Committee welcomes the latest developments leading to the adoption of Act No. 11 of 2014 which now allows for the registration and recognition of workers' and employers' federations under the law. **While noting the Government's statement that it stands ready to handle applications for registration so that freedom of association is given full effect, the Committee trusts that the authorities will immediately register and recognize the legal personality of the TUCOSWA, the FSE–CC and the FESBC as soon as they present their applications for registration in order to fully comply with Articles 2, 3 and 5 of the Convention. The Committee requests the Government to provide information on the progress made in this regard.**

In the meantime, the Committee urges the Government to ensure that all the workers' and employers' federations working within the country are fully assured of their freedom of association rights until their effective registration under the amended law, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests, and to prevent any interference or reprisal against their leaders and members.

The Committee, noting the conclusions and recommendations of the Committee on Freedom of Association (CFA) in Case No. 2949 (373rd Report of the CFA, November 2014), observes with [deep concern](http://example.com) that the TUCOSWA's lawyer, Mr Maseko, was arrested and sentenced to an especially long term in prison while defending the union's constitutional challenge to its de-registration. The Committee also notes that the latest observations from the ITUC also relate to the situation of Mr Maseko who remains in jail. **The Committee, as the CFA has already done, urges the Government to ensure Mr Maseko's immediate and unconditional release and to provide information on any developments in this regard.**

**Legislative issues.** In its previous comments, the Committee had requested the Government to amend the IRA such as to recognize the right to strike in sanitary services. The Committee notes with [satisfaction](http://example.com) the deletion of sanitary services from the list of essential services through the publication in the government Gazette of legal notice No. 149 of 2014. The Committee further takes due note of the information provided by the Government on the status of its long standing requests concerning amendments and modifications to the following legal texts:

- The Public Service Bill: The Committee notes that the Bill was reviewed by the Labour Advisory Board and is now with the Ministry of Public Service for adoption. Thereafter, it will be submitted to Cabinet for approval and publication and brought to Parliament for processing.
- The IRA: In relation to the Committee's previous recommendations concerning the civil and criminal liabilities of trade union leaders, the Committee notes the Government's amendment to paragraph 40 in its latest reply.
- The 1973 Proclamation and its implementing regulations: In relation to the status of this Proclamation, the Committee notes the Government's reiteration that the Proclamation was superseded by the Constitution which is now the supreme law of the land. As such, the exercise of all executive, judicial and legislative power and authority is guided by the Constitution and not at all by the 1973 Proclamation.
- 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 Public Order Act so as to ensure that the Act could not be used to repress lawful and peaceful strike action. The Committee notes that the Government has referred to a shortage of expertise at the national level in this regard and has requested the Office to assist it. Terms of reference were given to the ILO Subregional Office in Pretoria in April 2014 and the drafting process is due to commence as soon as the legislative drafter has been identified.
- The Correctional Services (Prison) Bill: In relation to the recognition of the right to organize for prison staff, the Committee notes that the Labour Advisory Board has finished debating the Bill 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.
- The Code of good practice for protest and industrial action: The Committee notes that the Code 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 Office.

**The Committee trusts that the Government will endeavour to provide in its next report detailed information on concrete and definite progress on these legislative and administrative matters in order to move towards compliance with the provisions of the Convention.**

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

[The Government is asked to reply in detail to the present comments in 2015.]
Venezuela, Bolivarian Republic of

(Ratification: 1982)

The Committee notes the observations of the Independent Trade Union Alliance (ASI), the International Trade Union Confederation (ITUC) and the National Union of Workers of Venezuela (UNETE), received on 30 August, 1 September and 24 September 2014, respectively. The Committee notes the Government’s comments on the observations of the ASI and the UNETE, and on UNETE’s observations of 2013.

The Committee and associations also note the joint observations of the International Organisation of Employers (IOE) and the Federation of Chambers of Commerce and Production of Venezuela (FEDECAMARAS), received on 1 September 2014, which refer in part to matters that are already under examination by the Committee, and which denounce cases of violations of the Convention in practice. The Committee notes the Government’s corresponding comments. Finally, the Committee notes the additional joint observations of the IOE and FEDECAMARAS, received on 31 October 2014, and on 28 November 2014 denouncing further violations of the Convention, and particularly: (i) the detention for 12 hours of the President of CONINDUSTRIA, Mr Eduardo Garmendia; the following and harassment of the President of FEDECAMARAS, Mr Jorge Roig; (ii) the increased intensity of the verbal attacks on FEDECAMARAS by senior state figures in the media; and (iii) the adoption by the President of the Republic in November 2014 of 50 legislative decrees on important economic and production-related issues without consulting FEDECAMARAS. The Committee notes these allegations with concern and requests the Government to provide its comments in this regard.

The Committee notes that, by decision of the Governing Body, a high-level ILO tripartite mission (hereinafter, the mission) visited the Bolivarian Republic of Venezuela from 27 to 31 January 2014 with a view to examining all the pending issues relating to Case No. 2254 of the Committee on Freedom of Association (relating to acts of violence and intimidation against employers’ leaders, serious deficiencies in social dialogue, including the lack of consultation on labour and social legislation, the promotion of parallel organizations, etc.). The Committee notes the report of the mission and the subsequent discussion of the report by the Governing Body at its 320th Session in March 2014, when the Government expressed its points of view relating to the outcomes of the mission. The Governing Body (GB.320/INS/8):

(a) took note of the information contained in the report of the high-level tripartite mission to the Bolivarian Republic of Venezuela (27–31 January 2014) and thanked the mission for its work;
(b) urged the Government of the Bolivarian Republic to develop and implement the plan of action recommended by the high-level tripartite mission, in consultation with national social partners, and requested the (ILO) Director-General to provide the required assistance to that end; and
(c) submitted the report of the high-level tripartite mission to the Committee on Freedom of Association for its consideration in the framework of the next examination of Case No. 2254 at its meeting in May–June 2014.

The Committee notes that, following the mission, the Committee on Freedom of Association examined once again in June 2014 Case No. 2254 (372nd Report, approved by the Governing Body at its 321st Session in June 2014). The Committee notes the conclusions and the recommendations of the Committee on Freedom of Association.

Trade union rights and civil liberties. Murders of trade union leaders and members – Detentions in the context of protest action. The Committee recalls that in its previous comments it noted allegations concerning the murder of trade union leaders and members, especially in the construction sector. The Committee notes that in its 2013 observations, UNETE denounces six violent attacks which occurred between November 2008 and January 2010 in the context of protests and which are reported to have caused the death of six trade union leaders and three workers. In addition, the Committee notes that in its 2014 observations UNETE refers to a report by the Venezuelan Observatory of Social Disputes of September 2012, which enumerated 65 murders of trade union members during that year, especially in the construction sector, while trade unions continue to denounce a high level of impunity in relation to all aspects of anti-union violence.

The Committee notes that, in reply to the 2013 observations of UNETE, the Government indicates that: (i) in five of the six cases denounced, the police investigation showed that the murder was not related to the trade union activities of the victims; (ii) with regard to the last case of the death of two workers following a police intervention in a protest, all those responsible for the acts were brought to court, convicted and given appropriate sentences, and compensation was provided to the family members of the victims; and (iii) it is surprising that UNETE waited between three and five years to denounce such cases, especially when considering that between 2008 and 2010 UNETE represented Venezuelan workers at the International Labour Conference. The Committee also notes the Government’s denial once again in its 2014 report of the existence of anti-union murders and its suggestion that the trade unions concerned be requested to provide specific information on the trade union status of the victims. Under these conditions, recalling that in previous reports the Government referred to the murder of 13 trade union members and two workers, and the detention of those presumed to be responsible, and to the conclusions of a high-level tripartite round table of 2011 on violence in the construction sector, the Committee requests the Government to report the action taken as a follow up to the tripartite round table and the results of the prosecutions relating to the 13 murders referred to above. The Committee trusts that the trade unions will provide the names of trade union victims of murders in 2012 and full particulars, to the extent possible, on the circumstances of their murders, including any indication of their anti-union nature.

Denunciation of a policy of criminalizing trade union activities. The Committee notes that the ITUC, ASI and UNETE denounce numerous cases of trade union leaders (150 according to ISI and UNETE) who have been subjected to criminal charges for engaging in trade union activities, and the conviction and imprisonment of a number of these leaders. In addition to the situations examined by the Committee on Freedom of Association (see Cases Nos 2727, 2763, 2968 and 3082), the trade unions denounce: (i) the criminal prosecution of four workers of Sintra Callao for participating in the stoppage at the Mina Isidora, under charges of the crimes of criminal association, incitement to commit a crime and the obstruction of work; (ii) the detention of 11 workers of Petróleos de Venezuela in the Anaco section for a peaceful occupation of the Ministry of Labour and ten workers from the metropolitan authorities of Caracas for demonstrating in front of the Supreme Court of Justice; and (iii) the criminal prosecution with detention of eight workers of CIVETCHI charged with criminal association and extortion in...
organizations and has also refused the updating of the statutes of existing trade unions, as well as the respective financial accounts of unions, establishment of the national register of trade unions in May 2013, the labour administration has refused the registration of most new Committee once again requests the Government, in consultation with the representative social partners, to take the necessary observations of UNETE in 2014 on this matter in which it emphasizes that there are means by which the representativeness of trade union the trade union membership of workers should not be communicated to either the employer or the authorities except in cases where the Act on labour and men and women workers (LOTTT) maintains the non confidentiality of union membership, the Committee considers that found guilty will correspond to the gravity of the crime. The Committee requests the Government to provide information on this positions in the country through the media against FEDECAMARAS and its leaders, accusing them of engaging in an “economic war” against the country, and including attacks of a personal nature. The Committee notes that the IOE and FEDECAMARAS call on the Government to stop using FEDECAMARAS as a political weapon by accusing it of being responsible for the economic situation and the scarcity of products experienced by the country. The Committee notes the Government’s indication that: (i) it is the actions of FEDECAMARAS, and not the statements of the Government, which have given rise to a climate of violence, intimidation and fear; and (ii) in view of acts such as the direct participation in the coup d’état of 2002, the organization of an unlawful stoppage by employers and sabotage of the oil industry to persuade the constitutional President to step down, and public support for the action of landowners who caused the death of hundreds of rural leaders at the hands of paramilitary groups, a public apology and an act of contrition by FEDECAMARAS are necessary to achieve a climate of confidence. In this regard, the Committee notes the conclusions of the mission in relation to the above allegations: The mission noted with concern, firstly, the information recently received on the use of the media to make serious personal allegations against leaders of FEDECAMARAS, CONSECOMERCIO and VENAMCHAM to the effect that they are waging an “economic war” against the Government, and, secondly, the fresh allegations of acts of violence against the headquarters of FEDECAMARAS by certain Bolivian organizations and the Government’s incitement to vandalism and to the sacking of supermarkets and businesses. In this regard, the mission highlights the seriousness of these acts and that a climate free from intimidation, threats and excessive language is essential for the effective exercise of trade union rights and freedom of association. This is the only way to achieve normality in the organizations’ activities and solid and stable industrial relations. The Committee expresses deep concern at the serious and varied forms of stigmatization and intimidation reported by the mission. In the same way as the Committee on Freedom of Association, the Committee once again draws the Government’s attention to the fundamental principle that the rights of workers’ and employers’ organizations recognized by the Convention can only be exercised in a climate free from violence, intimidation and fear. The Committee therefore firmly urges the Government to take all the necessary measures to avoid this type of acts and statements against persons or organizations engaged in the lawful defence of the interests of employers within the framework of the Convention. Article 2 of the Convention. Provision of lists of trade union members to the public authorities. Having previously noted that the new Basic Act on labour and men and women workers (LOTTT) maintains the non confidentiality of union membership, the Committee considers that the trade union membership of workers should not be communicated to either the employer or the authorities except in cases where the members decide voluntarily to provide their data for the purposes of the deduction of their trade union dues. The Committee notes the new observations of UNETE in 2014 on this matter in which it emphasizes that there are means by which the representativeness of trade union organizations can be assessed objectively without it being necessary to provide a list of trade union members to the authorities. The Committee notes the Government’s indication that it does not understand the alleged reprisal for having tried to establish a trade union. With regard to the CIVETCHI case, the Committee notes the Government’s indication that: (i) the CIVETCHI case is totally unrelated to the exercise of freedom of association; (ii) various persons were detained, some unconnected with the enterprise, for attempting to engage in extortion; (iii) the trial involves certain workers who have identified themselves as trade union members; and (iv) the trade union activities of all the workers in CIVETCHI are continuing unaffected. The Committee requests the Government to provide information on the prosecutions in relation to this case, and requests it to conduct investigations into the other cases denounced by the trade unions, and to report their outcome. In general, noting with concern the conclusions and recommendations of the Committee on Freedom of Association in the context of Cases Nos 2727, 2763 and 2968, the Committee recalls that the peaceful exercise of the rights of protest and of strike should not give rise to detentions or penal sanctions and requests the Government to ensure full compliance with this principle. The Committee is addressing the legislative aspects of this matter below. Acts of violence and threats against FEDECAMARAS and its leaders. With regard to the abduction and attacks using firearms against four leaders of FEDECAMARAS on 27 October 2010 (Noel Álvarez, Luis Villegas, Ernesto Villasmil and Ms Albis Muñoz), which resulted in the trade union leader Albis Muñoz being injured by several bullets, the Committee notes the mission’s report: While it notes that the hearing in the case of the attack against Ms Albis Muñoz is scheduled to take place on 17 March 2014, the mission emphasizes the importance of concluding the legal proceedings resulting from the various acts of violence mentioned above in the very near future in order to determine responsibilities and to issue severe punishments to the culprits. The Committee also notes that the IOE and FEDECAMARAS indicate that the hearing for the opening of the prosecution was postponed on two occasions due to the absence of the defendant, and that the fixing of a third date for the hearing is awaited. In this regard, the Committee also notes the Government’s reiteration that the nature of the violence against the leaders of FEDECAMARAS as a common criminal act was investigated within a few days of its occurrence. Under these conditions, while noting with concern that more than four years after the detention of the alleged perpetrators of the attack of 27 October 2010, no court ruling has yet been handed down, the Committee reiterates the firm hope that the prosecution will be completed in the very near future, that it will determine responsibilities and identify and punish the perpetrators and instigators of the acts, and that the sentences imposed on those found guilty will correspond to the gravity of the crime. The Committee requests the Government to provide information on this subject. The Committee also notes the observations of the IOE and FEDECAMARAS concerning the verbal attacks by persons in the highest positions in the country through the media against FEDECAMARAS and its leaders, accusing them of engaging in an “economic war” against the country, and including attacks of a personal nature. The Committee notes that the IOE and FEDECAMARAS call on the Government to stop using FEDECAMARAS as a political weapon by accusing it of being responsible for the economic situation and the scarcity of products experienced by the country. The Committee notes the Government’s indication that: (i) it is the actions of FEDECAMARAS, and not the statements of the Government, which have given rise to a climate of violence, intimidation and fear; and (ii) in view of acts such as the direct participation in the coup d’état of 2002, the organization of an unlawful stoppage by employers and sabotage of the oil industry to persuade the constitutional President to step down, and public support for the action of landowners who caused the death of hundreds of rural leaders at the hands of paramilitary groups, a public apology and an act of contrition by FEDECAMARAS are necessary to achieve a climate of confidence. In this regard, the Committee notes the conclusions of the mission in relation to the above allegations: The mission noted with concern, firstly, the information recently received on the use of the media to make serious personal allegations against leaders of FEDECAMARAS, CONSECOMERCIO and VENAMCHAM to the effect that they are waging an “economic war” against the Government, and, secondly, the fresh allegations of acts of violence against the headquarters of FEDECAMARAS by certain Bolivian organizations and the Government’s incitement to vandalism and to the sacking of supermarkets and businesses. In this regard, the mission highlights the seriousness of these acts and that a climate free from intimidation, threats and excessive language is essential for the effective exercise of trade union rights and freedom of association. This is the only way to achieve normality in the organizations’ activities and solid and stable industrial relations. The Committee expresses deep concern at the serious and varied forms of stigmatization and intimidation reported by the mission. In the same way as the Committee on Freedom of Association, the Committee once again draws the Government’s attention to the fundamental principle that the rights of workers’ and employers’ organizations recognized by the Convention can only be exercised in a climate free from violence, intimidation and fear. The Committee therefore firmly urges the Government to take all the necessary measures to avoid this type of acts and statements against persons or organizations engaged in the lawful defence of the interests of employers within the framework of the Convention. Article 2 of the Convention. Provision of lists of trade union members to the public authorities. Having previously noted that the new Basic Act on labour and men and women workers (LOTTT) maintains the non confidentiality of union membership, the Committee considers that the trade union membership of workers should not be communicated to either the employer or the authorities except in cases where the members decide voluntarily to provide their data for the purposes of the deduction of their trade union dues. The Committee notes the new observations of UNETE in 2014 on this matter in which it emphasizes that there are means by which the representativeness of trade union organizations can be assessed objectively without it being necessary to provide a list of trade union members to the authorities. The Committee once again requests the Government, in consultation with the representative social partners, to take the necessary measures to amend section 385 of the LOTTT as indicated. Articles 2 and 3. Registration of organizations and trade union statutes. The Committee notes the 2014 observations of UNETE, in which it indicates that: (i) the requirement to align trade union statutes with section 367 of the LOTTT, which imposes upon unions duties and purposes which are foreign to their nature, is an overwhelming means of burdening the trade union movement; and (ii) since the establishment of the national register of trade unions in May 2013, the labour administration has refused the registration of most new organizations and has also refused the updating of the statutes of existing trade unions, as well as the respective financial accounts of unions, all in flagrant violation of trade union independence. The Committee notes the Government’s indication that it does not understand the alleged
difficulties caused by the national register of trade unions, as the LOTTT has merely reproduced the content of the Labour Act of 1936 and the Basic Labour Act of 1991. In this regard, the Committee once again notes the overly broad nature of the purposes of trade union organizations (and employers’ organizations) set out in sections 367 and 368 of the LOTTT, which include many responsibilities that properly rest with the public authorities. In this respect, the Committee once again requests the Government to take the necessary measures, in consultation with the representative workers’ and employers’ organizations, to amend sections 367 and 368 of the LOTTT as indicated above, and to report any developments in this regard. The Committee also requests the Government to provide information on the number of registrations and renewals of registration accepted and refused, with an indication of the reasons for such refusals.

Article 3. The freedom to elect trade union representatives and the role of the National Electoral Council (CNE). The Committee recalls that for many years it has been requesting the Government to bring an end to the intervention of the CNE in trade union elections. The Committee notes the observations of the ITUC and UNETE on the persistence of acts of interference in trade union elections, consisting of: (i) the refusal of the public administration to deal with organizations that it considers to be in “electoral abeyance”; (ii) the maintenance of the requirement by the Ministry of Labour for trade unions to provide certification of their elections from the CNE to be able to lawfully conclude a collective agreement; and (iii) the long delay in the certification of the elections of various trade unions while awaiting legal advice by the CNE, despite the fact that they complied with the electoral rules of the CNE. In this regard, the Committee notes the Government’s indication that: (i) the electoral authority is independent of the executive authorities and its constitutional role consists of guaranteeing the electoral rights of workers and of all citizens; (ii) the participation of the CNE in elections is optional, although the CNE must be notified that there will be an executive board election; (iii) the results of trade union elections have to be documented by the CNE so that trade unions can exercise their statutory rights; (iv) it is only in cases when the executive board has not been duly registered that it has to prove its lawful status when concluding an agreement; (v) this procedure is intended to protect members against situations in which an executive board that has not been recognized tries to negotiate on their behalf; (vi) in cases in which trade unions negotiate a collective agreement “privately”, the verification of its lawfulness is more strict as in such cases even the members are not aware of the content of the agreement; and (vii) section 420 of the LOTTT respecting “electoral abeyance”, which prohibits the collective representation of members by an executive board of which the term of office has expired, and which has refused to organize elections, merely protects the democratic rights of workers.

While noting the information provided by the Government, the Committee once again reiterates that trade union elections are an internal matter for the organizations themselves, in which the authorities, including the CNE, should not interfere. The Committee therefore once again requests the Government to take measures to: (i) establish in the provisions in force that appeals relating to trade union elections shall be decided by the judicial authorities; (ii) eliminate the principle that “electoral abeyance” incapacitates trade unions from collective bargaining; (iii) eliminate the requirement to notify the CNE of the electoral schedule; and (iv) eliminate the requirement to publish the results of trade union elections in the Electoral Gazette as a condition for their recognition. The Committee also once again requests the Government to take measures to amend the following provisions of the LOTTT, which restrict the right of trade unions to organize the election of their representatives freely: (i) section 387, which makes the eligibility of leaders conditional upon having convened trade union elections in due time when they were leaders of other organizations; (ii) section 395, which provides that the failure of members to pay their trade union dues shall not invalidate their right to vote; (iii) section 403, which imposes a system of voting that includes the “uninominal" election of the executive board and proportional representation; and (iv) section 410, which imposes the holding of a referendum to remove trade union officers. The Committee requests the Government to report any developments in this regard.

The Committee finally notes that the Government has not provided information on the specific reasons why the Congress of the Confederation of Workers of Venezuela (CTV) was declared invalid by the CNE, as alleged by the ITUC in 2011. The Committee once again requests the Government to provide its comments on this subject.

Article 3. Right of workers’ organizations to organize their activities in full freedom and to formulate their programmes. The Committee notes that UNETE and ASI once again denounce the adoption of laws and regulations which prohibit the right to strike, penalizing its exercise with heavy prison sentences. The Committee notes the Government’s indication that: (i) the right to strike is enshrined in the Constitution and the laws of the country; (ii) there is no law which prohibits the right to strike; and (iii) no case is known in which the exercise of the right to strike has been restricted once the statutory procedures set out in the LOTTT have been fulfilled. In this regard, the Committee notes that the Committee on Freedom of Association drew its attention to the legislative aspects of Case No. 2727 in relation to the impact of the Act for the defence of persons in accessing goods and services. The Committee notes with concern that sections 68 and 140 of the Act provide in very broad terms for prison sentences for acts or omissions which directly or indirectly obstruct the production, manufacture, import, storage, transport, distribution or marketing of goods. The Committee also notes with concern that section 55 of the Act on fair costs and prices establishes prison sentences for similar acts.

The Committee recalls that the prohibition of the right to strike in the case of public servants is only acceptable in relation to public servants exercising authority in the name of the State, in essential services (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in cases of acute national or local emergency (situations in which the normal conditions of society no longer apply, such as serious conflicts, rebellion, and natural, sanitary or humanitarian emergencies). The Committee also recalls that no penal sanctions should be imposed on workers engaged in peaceful strike action and, accordingly, under no such circumstances should sentences of imprisonment or fines be imposed. Such penalties are only acceptable if, during the strike, acts of violence are committed against persons or property, or other serious offences set out in the criminal legislation (for example, in the event of the failure to assist a person in danger, or deliberate injury or damage to persons or property). The Committee therefore requests the Government to take the necessary measures to amend sections 68 and 140 of the Act for the defence of persons in accessing goods and services and section 55 of the Act on fair costs and prices in accordance with these principles. The Committee requests the Government to report any developments in this regard.

The Committee also recalls its previous comments on the need for either a judicial or an independent authority, and not the Peoples’ Ministry of Labour, to determine the areas or activities which may not be subject to stoppage during a strike on the grounds that they prejudice the production of essential goods or services which would cause damage to the population (section 484 of the LOTTT), and that the
system for the appointment of the members of the arbitration board in the event of a strike in essential services should guarantee the confidence of the parties in the system as, under the current legislation, if the parties are not in agreement, the members of the arbitration board are selected by the labour inspector (section 494). The Committee requests the Government to report any developments in this regard.

Social dialogue. The Committee recalls that for many years it has been requesting the Government to ensure that: (i) any legislation adopted concerning labour, social and economic issues which affects workers, employers and their organizations should be the subject of genuine in-depth consultations with the independent and most representative employers’ and workers’ organizations, and sufficient efforts should be made, in so far as possible, to reach agreed solutions; and (ii) taking into account the allegations of discrimination made by FEDECAMARAS and various workers’ organizations, the Government should be guided exclusively by criteria of representativeness in its dialogue and relations with workers’ and employers’ organizations, and should refrain from any form of interference or favouritism, in accordance with Article 3 of the Convention.

In this respect, the Committee notes the conclusions of the mission:

The mission highlights that the inclusive dialogue recommended by the Constitution of the Bolivarian Republic of Venezuela is fully compatible with the existence of tripartite social dialogue bodies and that any negative experience of tripartism in the past should not compromise the application of ILO Conventions concerning freedom of association, collective bargaining and social dialogue, or undermine the contribution made by tripartism in all ILO member States.

… Recalling, in keeping with the views expressed by the Committee on Freedom of Association, the need for and the importance of establishing structured bodies for tripartite social dialogue in the country and noting that no tangible progress has been made in that regard, the mission considers it essential for immediate action to be taken to build a climate of trust based on respect for employers’ and trade union organizations with a view to promoting solid and stable industrial relations. The mission considers that it is necessary for the Government to devise a plan of action that includes stages and specific time frames for its implementation and which provides for:

… The establishment of a tripartite dialogue round table, with the participation of the ILO, that is presided over by an independent chairperson who has the trust of all the sectors, that duly respects the representativeness of employers’ and workers’ organizations in its composition, that meets periodically to deal with all matters relating to industrial relations decided upon by the parties, and that includes the holding of consultations on new legislation to be adopted concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives. The criteria used to determine the representativeness of workers’ and employers’ organizations must be based on objective procedures that fully respect the principles set out by the ILO. Therefore, the mission believes that it is important for the Government to be able to avail itself of the technical assistance of the ILO to that end.

The Committee also notes UNETE’s indication in its observations of September 2014 that the Government has not given effect to the conclusions of the mission or the corresponding recommendations of the Governing Body, and that there is no will to establish any tripartite bodies. The Committee also notes that the IOE and FEDECAMARAS in their observations of September 2014 indicate that: (i) the mission facilitated the re-establishment of contacts between FEDECAMARAS and the Government after they had been suspended for over 15 years; (ii) in April 2014, the Deputy Minister of Labour received the President of FEDECAMARAS in his office and FEDECAMARAS participated in the so-called “Peace Conference” at the invitation of the President of the Republic; (iii) in this framework, an economic round table was established in which the various employers’ organizations made proposals to endeavour to resolve the principal obstacles to the national economic situation; (iv) nevertheless, five months after this initiative, no further results have been observed, the meetings have been sporadic and have only resulted in certain improvements in specific sectors, such as food; (v) in practice, the Government has not given effect to the mission’s recommendation to establish structured social dialogue bodies; (vi) the Government continues to maintain that it is sufficient to engage in broad consultations, without taking into consideration the representativeness of the actors consulted; and (vii) FEDECAMARAS has not been consulted to discuss legislative matters affecting the world of work, such as the Bill on the workers’ council and the Bill on first jobs.

In this regard, the Committee notes the Government’s indication that: (i) there exists in the country broad inclusive dialogue, as recognized by the mission, which constitutes important progress in relation to the dialogue between confederations which prevailed previously; (ii) FEDECAMARAS has been invited to participate in innumerable dialogue round tables; (iii) FEDECAMARAS has always refused to participate as part of its political strategy, which has not prevented hundreds of employers’ organizations affiliated to FEDECAMARAS from participating in dialogue; (iv) the President of FEDECAMARAS participated in the National Peace Conference in April 2014; (v) the process of consultation continues with a broad range of organizations on the establishment of the social dialogue round table referred to in paragraph 54(2) of the mission’s report; and (vi) it is not the responsibility of a tripartite dialogue round table to engage in consultations on laws, which would be in open violation of the national legal and constitutional framework.

The Committee had already indicated, in the same way as the mission, the need and importance for structured tripartite social dialogue bodies to be established in the country, which is fully compatible with the inclusive dialogue recommended by the Constitution of the Bolivarian Republic of Venezuela. While noting all the information provided, the Committee urges the Government, in accordance with the decision of the Governing Body in March 2014, to take immediately the necessary measures to establish the tripartite dialogue round table referred to in paragraph 54(2) of the mission’s report and to ensure that its composition duly respects the representativeness of workers’ and employers’ organizations. In this respect, the Committee reminds the Government that it can request technical assistance from the Office. While awaiting the establishment of the dialogue round table, the Committee requests the Government to hold substantive consultations with representative organizations of workers and employers on all draft regulations on matters within the competence of the parties. The Committee requests the Government to report any developments in this respect.

[The Government is asked to supply full particulars to the Conference at its 104th Session and to reply in detail to the present comments in 2015.]
Mauritius

(Ratification: 1969)

The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2014, the observations from the International Organisation of Employers (IOE) and the Mauritius Employers’ Federation (MEF) received on 21 July 2011 and 1 September 2014, and the observations of the General Workers Federation (GWF) and four unions of the sugar industry received on 22 August 2013. The Committee requests the Government to conduct the necessary inquiries into allegations of anti-union discrimination made by the ITUC and, in any cases in which the allegations are found to be substantiated, to ensure the application of sufficiently dissuasive sanctions.

Articles 1–3 of the Convention. Sanctions against anti-union discrimination and interference. The Committee welcomes the Government’s indication of increases in the maximum fines able to be imposed in cases of anti-union discrimination or interference through the Employment Relations (Amendment) Act 2013, introducing amendments to sections 31, 103 and 104 of the Employment Relations Act, 2008 (ERA).

Article 4. Collective bargaining. In its previous observation, the Committee requested the Government’s comments on an allegation that the number of collective agreements signed in 2009 had reduced by 70 per cent; to indicate any concrete measures undertaken to promote collective bargaining in export processing zones (EPZs), the textile sector and for migrant workers; and to provide information on the establishment of a new tripartite mechanism. The Committee notes that the Government indicates that statistics are not available allowing it to comment on the alleged reduction in collective agreements. The Committee welcomes the Government’s indication that the National Tripartite Forum has met four times since its establishment in September 2010 and the possibility of establishment of a conciliation service at the request of parties to a dispute (section 79A of the ERA). The Committee notes that the Government reports that 43 collective agreements were registered for the period June 2010–May 2014. Noting that the Government reiterates that there is no legislative impediment to collective bargaining in EPZs, the textile sector or for migrant workers, the Committee requests the Government to provide information on any concrete measures taken or envisaged to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, in EPZs, the textile sector and for migrant workers. So as to be able to review the operation of collective bargaining in practice, the Committee requests the Government to take measures in order to compile statistical information on collective agreements in the country (number of agreements in the public and private sectors, subjects dealt with and number of workers covered) and on the use of conciliation services.

Interference in collective bargaining. The Committee notes the observations from the IOE and the MEF alleging that the Government intervened in the collective bargaining process in the sugar industry by referring the 21 issues that could not be resolved during the collective bargaining process to the National Remuneration Board (NRB). According to the Government, the NRB is an independent body able to make recommendations and the referral was made after lengthy negotiations that had reached a deadlock. The Committee notes the Government’s indication that the dispute has been resolved and the court proceedings lodged by the MEF in this regard have been withdrawn.
Follow-up to the discussion in the Conference Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in May–June 2014, including the written information provided by the Government.

Articles 1 and 2 of the Convention. Migrant workers. For a number of years, the Committee has been drawing the Government’s 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, the Committee noted previously that migrant workers are generally covered by the labour and anti-discrimination legislation, and it welcomed the changes made to the Employment Permit System to allow foreign workers unlimited workplace changes if they are subject to “unfair treatment”, defined as including unreasonable discrimination by the employer. At the same time, the Committee noted that it is not clear how jobcentres “objectively recognize” a victim of discrimination, which would allow the foreign worker concerned to request an immediate change of workplace. It requested the Government to keep the applicable legislation governing migrant workers and related measures under regular review. The Committee notes that foreign workers can submit a complaint to the National Human Rights Commission of the Republic of Korea (NHRCK), the outcome of which can be forwarded to jobcentres. The Committee also notes that, during the discussions on the application of the Convention at the Conference Committee, the Government indicated that the burden of proof does not lie solely with the worker and that, in the absence of sufficient evidence, the local jobcentre would try to gather the facts to deal with the case. The Government further indicates in its report that, in the event of such an investigation, the worker is placed in a new job while the case is pending. The Government also provides general information on the number of workplaces inspected in 2013 and the total violations of the labour legislation found. The Committee requests 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 to provide information in this respect. Please provide information on the number of migrant workers who have applied to jobcentres for a change of workplace on the basis of “unfair treatment by the employer”, the nature and outcome of those cases and the manner in which the jobcentres “objectively recognize” a victim of discrimination. The Committee requests the Government to continue monitoring the situation to ensure that the legislation protecting migrant workers from discrimination is fully implemented and enforced, and to provide information on the nature and number of the violations detected, and the remedies provided, as well as the number, nature and outcome of complaints brought before labour inspectors, the courts and the NHRCK.

Discrimination based on sex and employment status. The Committee recalls that in the Korean context, the term “non-regular workers” refers to part-time, fixed-term and dispatched workers, and that many of these workers are women. The Government indicates in its report that following the adoption in November 2011 of the Measures for Non regular Workers in the Public Sector, 30,392 non-regular workers engaged in permanent and continuous work have become workers with open-ended contracts, and that the amendment of the Act on the Protection, etc. of Dispatched Workers in 2012 resulted in 3,800 workers being hired directly by their employers in 2013 in accordance with government orders. The Government also indicates that in 2014 further revisions were made to both the Act on the Protection, etc. of Dispatched Workers and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, to introduce a punitive monetary compensation system as a measure to address repeated or wilful discrimination. Starting in 2014, employers with 300 or more workers will be required to announce the status of workers’ employment. The Government also plans to introduce a guideline on employment security of non regular workers and their conversion to regular status, which will promote the voluntary conversion of non-regular workers to regular status. The Committee further notes that in 2013 the NHRCK conducted a survey on non-regular women workers (Annual Report 2013, Seoul, April 2014, page 72). While welcoming these initiatives, the Committee urges the Government to review the effectiveness of the measures taken regarding non-regular workers to ensure that they do not in practice result in discrimination on the basis of sex and employment status, contrary to the Convention. In particular, the Committee asks the Government to provide information on the practical application of the measures for non-regular workers in the public sector and on the revisions made to the Act on the Protection, etc. of Fixed-Term and Part-Time Employees and the Act on the Protection, etc. of Dispatched Workers, including any penalties imposed for violations. The Committee requests the Government to take steps to ensure that any information gathered on workers’ employment status is disaggregated by sex, and it requests the Government to provide information in this regard. Please also provide information on the results of the survey by NHRCK on non-regular women workers, including any follow-up action taken.

Equality of opportunity and treatment for men and women. The Committee recalls the low labour force participation rate of women and the measures taken by the Government to promote women’s employment through affirmative action schemes. The Committee notes the Government’s indication that the participation rate of women increased from 54.5 per cent in 2010 to 57.2 per cent in 2014. The Committee notes with interest that the Government has taken further legislative measures to ensure the effective application of affirmative action schemes. It notes in particular the amendments adopted in December 2013 to the Enforcement Decree of the Act on Equal Employment and Support for Work-Family Reconciliation with a view to increasing the minimum proportion of women employees and managers through affirmative action requirements. The Government also indicates that the Act on Equal Employment and Support for Work-Family Reconciliation was amended in November 2014 to introduce a system for denouncing companies that fail to comply with affirmative action requirements starting in 2015. The Government has also implemented the target set for women managers in public institutions (set at 18.6 per cent in 2013) and indicates that a performance evaluation will be conducted in 2015. The Government adds that career counselling, job placement and vocational training services are provided by 82 jobcentres affiliated with the Ministry of Employment and Labour (MEOL) and 130 jobcentres affiliated with the Ministry of Gender Equality and Family. With respect to the civil service, the Government reports that since
the introduction of the affirmative action schemes, the women’s employment rate increased to 37.09 per cent in 2014, and that women represent 18.37 per cent of persons in managerial positions. Regarding honorary equal employment inspectors (a person recommended by both labour and management among the workers concerned in the workplace), the Government indicates that 5,000 such inspectors are performing duties in workplaces throughout the country. The Committee requests the Government to continue providing information on the measures taken, in consultation with workers’ and employers’ organizations, to promote women’s access to a wider range of employment opportunities and high-quality employment in the public and private sectors, including at the managerial and decision-making levels, and to report on the results achieved. The Committee also requests the Government to indicate the impact of the expanded affirmative action schemes on the participation of women in the labour force. Please provide additional information on the activities of honorary equal employment inspectors and their impact on addressing sex-based discrimination in employment and occupation.

Discrimination on the basis of political opinion. In its previous comments, the Committee expressed concern regarding the prohibition of elementary, primary and secondary school teachers from engaging in political activities and noted the Government’s references to articles of the Constitution respecting the right to education, the political neutrality of government officials and the political neutrality of education, as well as related rulings of the Constitutional Court. The Committee notes the Government’s indication that in August 2014 the Constitutional Court ruled that applying the ban on political activities only to teachers at the elementary and middle-school levels did not amount to unreasonable discrimination. The Government adds that disciplinary action has been taken with respect to teachers who joined or donated funds to particular political parties. The Committee once again recalls that protection against discrimination based on political opinion applies to opinions which are either expressed or demonstrated, and that exclusionary measures based on political opinion should be objectively examined to determine whether the requirements of a political nature are actually justified by the inherent requirements of the particular job (see the General Survey on the fundamental Conventions, 2012, paragraph 805). The Committee 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, including by establishing 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. Please provide full information on the progress made in this regard. The Committee also requests the Government to provide information on the number of teachers against whom disciplinary action has been taken, and the outcome of these cases, and to provide a copy of the ruling of the Constitutional Court referred to by the Government.

Enforcement. The Committee notes the general information provided by the Government on the number of workplaces inspected and the overall number of violations detected by labour inspectors. The Committee further notes that according to the information provided by the Government to the Conference Committee, 589 violations of the Act on the Protection, etc. of Dispatched Workers and 213 violations of the Act on the Protection, etc. of Fixed-Term and Part-Time Employees were recorded in 2013. The Committee notes the Government’s indication to the Conference Committee that 37 support centres and one call centre have been established to provide free services to migrant workers, such as counselling on labour laws. The Committee notes from the 2013 Annual Report of the NHRCK that it received 615 complaints concerning discrimination in employment, most of which related to recruitment, hiring and wages, although it is not clear to what extent these were filed by migrant workers. The Committee requests the Government to continue providing information on the number and nature of the violations detected by or reported to labour inspectors concerning the non-discrimination legislation, the Act on the Protection, etc. of Dispatched Workers and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, the sanctions imposed and the remedies provided. Please indicate the number, nature and outcomes of the relevant complaints handled by the NHRCK, as well as complaints brought by migrant workers to the National Labour Relations Commission and the courts, and provide copies of relevant judicial decisions.

The Committee is raising other matters in a request addressed directly to the Government.
The Committee requests the Government to provide an evaluation of the measures adopted in the context of the Youth Employment and Entrepreneurship Strategy 2013–16, with the participation of the social partners, to reduce youth unemployment and facilitate the long-term entry of young workers into the labour market, with particular emphasis on the most vulnerable categories of youth.

Education and vocational training policies and programmes. The Government indicates in its report received in November 2013 that individual entitlement to training is recognized by the granting to workers of annual paid leave of 20 hours for training related to the enterprise activity, which can be accumulated over a period of up to five years. The Government indicates that the public employment services have created individual training accounts, associated with the social security number, which will record the training received throughout a worker’s career. The Government also emphasizes that through the labour reforms the possibilities have been extended for training contracts and apprenticeships. The CCOE assesses positively the establishment in May 2013 of a tripartite social dialogue forum on the future of vocational training.
training for employment. The CECO recalls that, since 1992, successive national training agreements have been reached and expresses its readiness to renew and adapt the current agreements to the new and difficult situations that are threatening the economy and employment. In its report on the application of the Human Resources Development Convention, 1975 (No. 142), received in September 2013, the Government describes the measures and programmes promoted in the context of education policy. The Committee notes the efforts made since November 2012 to make progress with dual vocational training based on an increase in the training provided in enterprises. The Committee requests the Government to provide updated information in its next report on Convention No. 122 on the measures adopted to improve skill levels and to coordinate education and training policies with potential employment opportunities. Please also include information to enable the Committee to assess the manner in which, through social dialogue, guidance and training systems have been established which cover the skills and vocational training needs of enterprises, specific categories of workers and the regions most affected by the crisis.

Italy

(Ratification: 1971)

Articles 1, 2 and 3 of the Convention. Measures to alleviate the impact of the crisis. Employment trends. The Committee notes the report provided by the Government in October 2013 which includes information on the measures adopted towards combatting informal employment and the transition from education to the labour market. Measures adopted in 2013 were directed towards four priorities: (i) the creation of employment through open-ended contracts; (ii) the promotion of self-employment; (iii) attracting young people who are neither in employment nor in education or training (the ‘NEET’ group) to the labour market through apprenticeships; (iv) the fight against extreme poverty. The Committee notes the 2012 labour market reform measures under Law No. 92/2012 which aims to achieve a comprehensive and dynamic labour market, capable of contributing to the creation of jobs, in terms of quantity and quality, to social and economic growth and to the permanent reduction of the unemployment rate. Information from the 2014 annual report of the National Institute for Statistics (ISTAT) shows that the only type of employment that has increased when compared to 2008 employment figures is part-time employment. ISTAT data also indicates that unemployment reached 12.6 per cent in May 2014, an increase of 0.5 percentage point when compared to the same period in 2013. The number of unemployed persons was measured at 3,222,000 persons, an increase of 127,000 over a one-year period. Moreover, the Committee notes in the ISTAT 2014 annual report the continued differences in employment and unemployment rates between northern and southern regions of Italy. The unemployment rate in Italy was 12.2 per cent in 2013 (5.4 percentage points higher than in 2008 and 1.5 higher than in 2012) with unemployment reaching 19.7 per cent in southern Italy. The Committee previously noted the difference in occupation levels registered for both women and men. ISTAT data shows that the employment rate of men was measured at 65 per cent in July 2013 and 46.8 per cent for women. In view of the increase of unemployment that has occurred since the 2012 observation, the Committee requests the Government to indicate the manner in which Article 2 of the Convention is applied, namely whether a regular review is undertaken of the measures and policies adopted for attaining the objectives of the Convention specified in Article 1. The Committee also requests the Government to provide information on the effects of the measures adopted on closing the gap of employment levels between the various regions of the country and on addressing the gap between employment levels of women and men. Please also provide information on the manner in which the experience and views of the social partners have been taken into account in the implementation and evaluation of employment policy measures (Article 3).

Youth employment. The Committee notes the high youth unemployment affecting all regions in Italy. It notes in this regard from ISTAT that unemployment among young people in the 15–24 age group was measured at 43 per cent in May 2014, an increase of 4.2 percentage points when compared to the previous year. The Committee notes the youth employment measures which include one that is to be implemented until June 2015 and is directed at the creation of open-ended employment contracts for young people up to the age of 29 by providing cost reductions to hiring enterprises during an 18-month period. In this regard, Law Decree No. 76/2013, converted into Law No. 99/2013, provides for a budget of €794 million for the 2013–16 period for incentives to employers when hiring young workers under an open-ended contract (€500 million for regions of southern Italy and €294 million for other regions). The Government indicates that that interventions under the legislation adopted in 2013 are only the first step in its strategy to promote employment, particularly youth employment, and social cohesion. A second group of measures will be defined as soon as the European institutions have approved the rules for the use of structural funds for the period 2014–20 and those for the Youth Guarantee. The Committee requests the Government to provide information that will enable it to examine the outcome of the measures taken to reduce youth unemployment.

Education and training policies and programmes. The Committee notes the information included in the Government’s detailed report on the application of the Human Resources Development Convention, 1975 (No. 142), received in November 2013, indicating that, as of the 2013–14 academic year, Permanent Territorial Centres will be established in provincial centres for adult education to provide structured training for levels of learning aimed at achieving qualifications. The Committee requests the Government to provide information on the impact of education and training measures, including apprenticeship programmes, in terms of obtaining lasting employment for young persons and other groups of vulnerable workers.

Cooperatives. In reply to the Committee’s previous comments, the Government indicates that the number of cooperatives has increased from 70,029 in 2001 to 79,949 in 2011, employing over 1.3 million workers. During the economic crisis, the growth continued and reached 80,844 in the third quarter of 2012. The Committee refers to the Promotion of Cooperatives Recommendation, 2002 (No. 193), and invites the Government to continue to provide information on the measures taken to promote productive employment through cooperatives.
Bolivia, Plurinational State of  
(Ratification: 1997)

The Committee notes the observations of the International Trade Union Confederation (ITUC), which were received on 31 August 2014, as well as the Government’s reply, received on 26 November 2014.

Article 2(1) of the Convention. Minimum age for admission to employment or work. The Committee recalls its previous comments which noted that, under section 126(1) of the Children’s and Adolescents’ Code, the minimum age for admission to employment or work was 14 years, and that section 58 of the General Labour Act prohibited work by children of less than 14 years, which was in keeping with the minimum age specified by the Government on ratifying the Convention.

The Committee notes the observations submitted by the ITUC concerning the Government’s adoption of the new Children’s and Adolescents’ Code on 17 July 2014, which amends section 129 of the previous Code to lower the working age for children to 10 years for self-employed workers and to 12 years for those in an employment relationship, under exceptional circumstances. The ITUC alleges that these exceptions to the minimum age of 14 years are incompatible with the Convention’s exceptions to the minimum age which are permitted for light work under Article 7(4), and which do not permit children under the age of 12 years to work. The Committee also notes the ITUC’s statement that allowing children to work as from the age of 10 years will inevitably affect their compulsory schooling, which in the Plurinational State of Bolivia is up to 12 years of schooling, that is to at least 16 years of age. Additionally, the ITUC alleges that, by distinguishing between the minimum age for light work carried out by self-employed children (10 years) and those in an employment relationship (12 years), the Code discriminates between the two groups of children, who should enjoy the same level of protection.

The Committee notes the Government’s indication, in both its report as well as in its reply to the ITUC’s allegations, that the new exceptions to the minimum age of 14 years, set out under section 129 of the Code, must be registered and authorized only on condition that such work does not threaten the children’s right to education, health, dignity or integral development.

The Committee strongly deplores the recent amendments to section 129 of the Children’s and Adolescents’ Code, discussed above, which permit the competent authority to approve work for children and adolescents aged 10–14 years in self-employment and allow children and adolescents aged 12–14 years to work for a third party. The Committee emphasizes that the objective of the Convention is to eliminate child labour and that it allows and encourages the raising of the minimum age but does not permit the lowering of the minimum age once specified. The Committee recalls that the Plurinational State of Bolivia specified a minimum age of 14 years when ratifying the Convention and that the derogation from the minimum age for admission to employment under section 129 of the Children’s and Adolescents’ Code is not in conformity with this provision of the Convention. Moreover, the Committee notes with deep concern the distinction between the minimum age for children who are self-employed, at 10 years, and for children who are in an employment relationship, at 12 years. As the Committee noted in its 2012 General Survey on the Fundamental Conventions (paragraphs 550 and 551), it is of the firm view that self-employed children should be guaranteed at least the same legislative protection, particularly in view of the fact that many of these children are working in the informal economy in hazardous conditions. The Committee therefore strongly urges the Government to take immediate measures to ensure the amendment of section 129 of the Children’s and Adolescents’ Code of 17 July 2014 to fix the minimum age for admission to employment or work, including self-employment, in conformity with the age specified at the time of ratification and the requirements of the Convention, to at least 14 years.

Article 7(1) and (4). Light work. The Committee notes that sections 132 and 133 of the Children’s and Adolescents’ Code of 17 July 2014 permit children under the age of 14 years to work, with due authorization by the competent authority, under conditions which limit their working hours, are not hazardous to their life, health, integrity or image and do not interfere with their access to education. The Committee recalls that, pursuant to the flexibility clause under Article 7(1) and (4) of the Convention, national laws or regulations may permit the employment or work of persons 12–14 years of age in light work which is not likely to be harmful to their health or development, and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee notes, however, that sections 132 and 133 of the Children’s and Adolescents’ Code do not set a lower minimum age of 12 years, as required under Article 7(4). It urges the Government to take immediate measures to ensure the amendment of sections 132 and 133 of the Children’s and Adolescents’ Code of 17 July 2014 to establish a lower minimum age of 12 years for admission to light work, in conformity with the conditions of Article 7(1) and (4) of the Convention.

Article 9(3). Keeping of registers. In its previous comments, the Committee noted that the national legislation does not contain provisions giving effect to the obligation of the employer to keep registers. The Committee notes that, pursuant to section 138 of the Children’s and Adolescents’ Code, registers for child workers are now required in order to obtain authorization for such work. While the Committee notes the Government’s efforts to prescribe registers, it notes with regret that these registers include authorization for children aged 10–14 years to work. In this respect, it draws the Government’s attention to its comments under Article 2(1), according to which authorization to work should not be permitted for children below the age of 14 years. Furthermore, it reminds the Government that, in accordance with Article 9(3) of the Convention, national laws shall prescribe the registers which shall be kept and made available by the employer containing the names and ages or dates of birth, duly certified, of persons whom he/she employs or who work for him/her and who are less than 18 years of age. The Committee therefore requests the Government to take the necessary measures to bring this provision of the Children’s and Adolescents’ Code into conformity with the Convention on these two points, and to provide recent statistics on child labour, disaggregated by age and gender.

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

[The Government is asked to supply full particulars to the Conference at its 104th Session and to reply in detail to the present comments in 2015.]
Turkey

(Ratification: 2005)

The Committee notes the observations made by the Confederation of Turkish Trade Unions (TÜRK-İŞ), the Confederation of Progressive Trade Unions of Turkey (DISK) and the Confederation of Public Employees’ Trade Unions (KESK), all received on 1 September 2014. The Committee also notes the observations made by KESK, TÜRKi-İŞ and the Confederation of Turkish Real Trade Unions (HAK-İŞ), as well as the observations submitted by the Turkish Confederation of Employers’ Associations (TISK), annexed to the Government’s report and received on 3 November 2014.

The Committee further notes that referring to the observations made by TÜRKi-İŞ and KESK, received on 1 September 2014, the Government indicates, in a communication received on 12 November 2014, that at that stage, it has no comments to provide thereon.

The Committee also takes note of the observations made by the All Municipality Workers Trade Union (TUM YEREL-SEN), received on 30 October 2014. The Committee requests the Government to provide its comments on these observations.

Articles 1 and 2 of the Convention. Scope of application. Exclusions. The Committee notes the observations made by KESK, according to which the Occupational Safety and Health Act No. 6331 of 2012 (OSH Act No. 6331) excludes from its scope of application a number of activities and persons and that the application of sections 6 and 7 of this Act is postponed to July 2016 as regards public employees. In its observations, TISK indicates that Regulation No. 28710 on safety and health measures to be taken at the workplace, adopted pursuant to the OSH Act No. 6331, does not cover means of transport used outside of the undertaking and means of transport used at the workplace for temporary or mobile construction, mining, oil and gas industries, fishing boats and agricultural and forestry zones. TISK considers that these provisions are in line with Articles 1(2) and 2(2) of the Convention. The Committee notes that these exclusions do not seem to correspond to those indicated in the Government’s first report. It recalls that under Articles 1(3) and 2(3) of the Convention, member States may exclude particular branches of economic activity in respect of which special problems of a substantial nature arise, or limited categories of workers in respect of which there are particular difficulties, only in their first report, giving the reasons for such exclusions, and shall indicate in subsequent reports any progress made towards wider application. In its direct request of 2005, the Committee noted the Government’s indication that a new draft bill would include all branches of economic activity and all the workers therein. The Committee requests the Government to ensure that exclusions provided under the OSH Act No. 6331 and its Regulations are not broader in scope than those indicated in its first report and to provide detailed information thereon. The Committee also requests the Government to describe the measures taken to give adequate protection to workers in excluded branches and to indicate any progress towards wider application.

Article 4. Formulation, implementation and periodical review of the national policy on OSH, in consultation with the most representative organizations of employers and workers. Article 8. Measures to be adopted, including legislation, in consultation with the representative organizations of employers and workers, to give effect to the national policy. In its observations, TÜRK-İŞ refers to the National Occupational Safety and Health Policy for 2014–18, submitted to the National OSH Council, and identifies several areas of action which would need to be addressed or improved: activities aimed to promote the implementation of the OSH Act No. 6331; training and promotional activities in the field of OSH, effective workplace inspection visits; and decreases in the number of workplace accidents, in particular in the mining, construction and metal sectors. Furthermore, the Committee notes that according to DISK, the social partners are underrepresented within the National OSH Council and that it is not convened often enough to ensure its functioning (currently twice a year). In their observations, DISK, TÜRK-İŞ and KESK allege that OSH Act No. 6331 was adopted without the agreement of the social partners and did not meet their expectations. According to DISK, a number of amendments were introduced in other general laws and regulations with negative effects on the implementation timeframe of the OSH Act No. 6331. The Committee also notes that the national OSH policy framework under Articles 4 and 7 of the Convention, implies a dynamic and cyclical process and requires regular review to ensure that the national OSH policy and measures, adopted in line with Article 8 of the Convention to give effect to the national OSH policy, are appropriate and adequate and remain constantly updated. The Committee invites the Government to take measures to ensure that the national OSH policy is formulated, implemented and periodically reviewed in consultation with the social partners, as required by Article 4 of the Convention. In view of the ongoing process of legislative reform, the Committee requests the Government to ensure effective consultation of the social partners in this process and to provide detailed information on the consultations held and their results.

Articles 5(a) and (b), and 16. Workplace safety and health. The Committee notes, on the one hand, the concerns expressed by TISK regarding the obligation to recruit occupational physicians and occupational safety experts (OSEs) in all undertakings classified as dangerous or very dangerous, irrespective of the number of workers employed. According to TISK, such provisions result in a heavier burden on employers in small and medium-sized enterprises (SMEs). On the other hand, KESK recalls that the OSEs are not vested with any powers in respect of which there are particular difficulties, only in their first report, giving the reasons for such exclusions, and shall indicate in subsequent reports any progress made towards wider application. In its direct request of 2005, the Committee noted the Government’s indication that a new draft bill would include all branches of economic activity and all the workers therein. The Committee requests the Government to clarify the different roles and responsibilities of employers and the OSEs in ensuring safety in workplaces and the working environment and to provide information in this respect. The Committee also refers the Government to its comments under the Occupational Health Services Convention, 1985 (No. 161).

Article 7. Periodical review of the situation regarding OSH either overall or in respect of particular areas. Subcontracting, mining, metal and construction sectors. In its observations, DISK refers to an evaluation report on the OSH situation prepared by the Ministry of Labour and Social Security in 2005, according to which a number of deficiencies were identified in the OSH system, in particular concerning the...
prevention of occupational hazards; the lack of supervision of the working environment; and the absence of recognition and notification of work-related diseases. DISK considers that, despite the adoption of new OSH legislation, these issues still persist. As for TÜRK-İŞ, it identifies the mining, construction and metal sectors as priority sectors in the development of an OSH policy aimed to prevent occupational accidents and to ensure workplace inspections. In this connection, TÜRK-İŞ also points out the unhealthy and insecure working conditions of workers of subcontracting companies, denounces the absence of effective labour inspection, and recalls that, according to official statistics, the number of workers employed by subcontracting companies would be 1 million. In addition, KESK considers that official data underestimate the phenomenon and that these workers would be as many as 2 million. The Committee refers to paragraph 78 of its 2009 General Survey on occupational safety and health which states that “the review of the national policy provided for in Article 4 of the Convention depends on, and should be informed by, the review of the national situation provided for in Article 7”. This revision allows the evaluation of the situation of OSH in practice. The Committee requests the Government to continue its efforts, in consultation with the social partners, with a view to identifying major issues, developing effective methods to address them, defining priorities of action and evaluating results achieved, in line with Article 7 of the Convention, and to provide information in this respect, including in the mining sector.

Article 9. Enforcement of laws and regulations by an adequate and appropriate system of inspection and adequate penalties. In its observations, DISK considers that there are not enough labour inspectors in the country. It adds that sanctions are not properly enforced. In the same vein, HAK-İŞ considers that measures should be taken to strengthen labour inspection and to ensure that sanctions are effectively enforced. KESK points out to the inefficiency of the labour inspection related to various forms of precarious work in the context of privatisation, de-unionization, unregistered labour and subcontracting. The Committee refers the Government to its comments on the application of Labour Inspection Convention, 1947 (No. 81).

Article 11(c). Establishment and application of procedures for the notification of occupational accidents and diseases, and production of annual statistics on occupational accidents and diseases. According to the observations sent by KESK and DISK, Turkey allegedly ranks very high as regards the incidence of work-related accidents. In this connection, KESK calls into question the decrease in the number of fatal occupational accidents announced by the Government and points out that 9 million workers are undeclared in the country and that as a consequence, the actual number of fatalities is bound to be much higher. KESK also questions the accuracy of national statistics on the incidence of occupational diseases, estimated at 0.05 per thousand, while average data worldwide varies between four and 12 per thousand. According to KESK, the definition of occupational diseases, their registration and notification pose a serious problem in the country. In this regard, it points out deficiencies in the detection of occupational diseases in the private sector due to a lack of monitoring of the workers’ health. KESK further claims that in the public sector, occupational accidents and diseases are not recognized as such. In its observations, KESK and TÜRK-İŞ call for action to collect data on occupational accidents and diseases, and to improve the national system of identification and detection of occupational diseases so as to evaluate the situation in the country. The Committee requests the Government to provide its comments on the issues raised by the trade unions, including underreporting and subcontracting issues, and to provide information on the application in practice of procedures established for the notification of occupational accidents and diseases, and the production of annual statistics. It requests the Government to provide information on the measures taken to improve these procedures (including their definition and registration), in consultation with the social partners, in the framework of the national OSH policy.

Recent developments and technical assistance. The Committee notes that the majority of the observations received refer to issues which pre-date the OSH Act No. 6331 and that these observations indicate that the Act has not resolved these issues in practice. The Committee also notes that a number of observations refer to an increase in work-related accidents in the mining sector and to the Soma mine accident which claimed the lives of 301 miners. The Committee notes that following this accident, the Office has been engaged in providing technical assistance on OSH issues. The Committee further takes note of the ILO press release of 17 October 2014, according to which the Government, workers’ and employers’ representatives and other relevant stakeholders agreed on the main elements of a roadmap on how to improve OSH in mines at the “National Tripartite Meeting on Improving Occupational Safety and Health (OSH) in Mining”, hosted by the Ministry of Labour and Social Security on 16–17 October 2014 in cooperation with the ILO. The Committee notes that while the workshop focused on the mining sector, the elements of the roadmap developed are broader in scope as they address OSH issues in general and not only those relevant to the mining sector. In this regard, it notes that among other elements, the issue of subcontracting is addressed and that, according to the press release, it was also agreed that a research institution would carry out further research on OSH on the context and extent of subcontracting arrangements in certain high risk sectors in Turkey. The Committee also notes that in its report on the application of the Underground Work (Women) Convention, 1935 (No. 46), the Government informs the Office and the Committee that a draft bill assenting the ratification of Safety and Health in Mines Convention, 1995 (No. 176), was submitted by the Government to the National Assembly of Turkey on 23 September 2014 for its approval.

Furthermore, the Committee takes note of the Government’s announcement, made on 12 November 2014, concerning the introduction of a series of occupational safety measures in the mining and construction sectors with the specific aim of reducing the incidence of fatal occupational accidents and enhancing safety standards at the workplace. Finally, the Committee notes that on 21 November 2014, the Turkish Parliament has endorsed the ratification of the Safety and Health in Construction Convention, 1988 (No. 167).

The Committee welcomes the ongoing efforts made by the Government and the social partners to improve safety and health at work and their intentions demonstrated during the national tripartite meeting to overcome the issues identified in a comprehensive and sustained way with, as appropriate, the support of the Office. The Committee requests the Government to provide detailed information on any progress achieved concerning the issues and developments noted above and on the implementation of the elements of the roadmap concerning the improvement of OSH.

Other issues. In its previous comments, the Committee raised the following issues which are also relevant to the improvement of the prevention of work-related accidents and diseases in the country. Articles 13 and 19(f). Serious and imminent danger. The Committee notes the Government’s reference to section 13 of the OSH Act No. 6331 which provides, in its first paragraph, that workers exposed to serious and imminent danger are required to file an application with the OSH committee, or in its absence with the employer, to request that the hazard be identified and emergency measures be adopted. Section
13(3) of the OSH Act No. 6331 also provides that in the event of serious, imminent and unavoidable danger, workers are entitled to leave their work situation or dangerous area without following the abovementioned notification procedure. The Committee emphasizes that this provision does not give full effect to Articles 13 and 19(f) of the Convention. It recalls that Articles 13 and 19(f) do not envisage the notification to a committee or the employer as a precondition to removal. In this connection, the Committee refers to paragraphs 145–152 of its 2009 General Survey on occupational safety and health and underscores that Articles 13 and 19(f) do not appear to be adequately reflected “where the right of workers to remove themselves, while not entailing undue consequences, is conditional on a decision by a safety officer or another person in a supervisory position”. As regards the preconditions set out in section 13(3) of the OSH Act No. 6331, the Committee understands that the condition of “unavoidability” of the danger means that an accident must occur. The Committee draws the Government’s attention to the fact that to benefit from the protection of Article 13 of the Convention, it is not necessary that the accident be unavoidable, but it is sufficient that the worker has reasonable justification to believe that the work situation presents an imminent and serious danger to his or her life or health, whether the accident occurs or not. The Committee therefore requests the Government to take the necessary steps to modify its legislation in order to give full effect to Articles 13 and 19(f) of the Convention and to supply information in this respect.

Article 17. Collaboration between two or more undertakings engaged in activities simultaneously at one workplace. In its report, the Government refers to provisions made to ensure the joint liability of the main employer and the subcontractor regarding the obligations provided under the Labour Act No. 4857. It adds that section 22 of the OSH Act No. 6331 now provides for the establishment of a joint safety and health committee to ensure cooperation and collaboration between the main employer and the subcontractor wherever the duration of the outsourcing contract exceeds six months. The Committee recalls that the prescribed collaboration of employers must be implemented from the start of the work and is not subject to their duration. The Committee also notes that section 23 of the OSH Act No. 6331 sets out a duty to cooperate for employers carrying out activities in the same work environment with a view to preventing, protecting from, and informing workers on, occupational risks. The Committee wishes to draw the Government’s attention to Paragraph 11 of the Occupational Safety and Health Recommendation, 1981 (No. 164), which provides that, in appropriate cases, the competent authority should prescribe general procedures for this collaboration. The Committee requests the Government to take the necessary measures to ensure that when two or more employers are engaged simultaneously in activities in one workplace, the prescribed collaboration is not subject to any period of time and to provide information in this regard, including information on the application in practice. The Government is also requested to provide information on any measures taken or procedures adopted by the authority to ensure this collaboration.

The Committee is also raising other matters in a request addressed directly to the Government. [The Government is asked to reply in detail to the present comments in 2015.]
Philippines

(Ratification: 1998)

Legislation. The Committee notes the information provided by the Government regarding the entry into force of the Department of Environment and Natural Resources Administrative Order (DAO) 2010-21 (hereinafter DAO 2010-21), which gives effect to Article 12 of the Convention (section 144(b)). The Committee asks the Government to continue to provide information on legislative measures undertaken with regard to the application of the Convention.

Article 5(5) of the Convention. Plans of workings. In response to its previous comment, the Committee notes the Government’s indication that pursuant to section 144 of DAO 2010-21, all mine operators are required to submit an Annual Safety and Health Program (ASHP), to be used during all mine activities, which must include numerous elements including organizational rules and environmental risk management. However, the Committee notes that the legislative provision to which the Government refers does not include the requirement for employers to prepare plans of workings. The Committee therefore once again asks the Government to provide further information on the measures taken, in law and in practice, to ensure that the employer in charge of the mine prepares appropriate plans of workings before the start of the operation, and that these plans are brought up to date periodically in the event of any significant modification.

Article 7(a). Safe design and construction of mines and provision of electrical, mechanical and other equipment. The Committee notes the Government’s indication that section 150 of DAO 2010-21 requires that a permit, issued by the regional director, be obtained before electrical and/or mechanical installations can be undertaken in mining operations, and that rules 21.20 (section 5) and 989 (section 68) of the Mine Safety and Health Standards 2000 (hereinafter “DAO 2000-98”) require employers to maintain inspection systems to detect safety hazards in the operation and to verify the safety of electrical wiring and equipment. The Committee notes, however, that the legislative provisions to which the Government refers do not impose the responsibility upon employers to ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment, including a communication system, to provide conditions for safe operation and a healthy working environment. The Committee therefore once again asks the Government to provide information on the measures taken, in law and in practice, to ensure that employers fulfill the responsibilities provided for in this Article of the Convention.

Article 10(c). Measures and procedures to establish a recording system of the names and probable location of all persons who are underground. The Committee notes the information provided by the Government, according to which the employer must establish guard posts at the main access of underground mines and that daily time records are maintained for every worker. It also notes the Government’s indication that the “Chapa” system is used in most underground mining operations in order to know if all workers are accounted for following the end of their work shift. However, the Committee notes that no information is provided on the manner in which probable location of workers in the mine is recorded, and the absence of details on the “Chapa” system does not enable it to assess whether full effect is given to this Article of the Convention. The Committee therefore once again asks the Government to provide further information on how effect is given, in law and in practice, to this Article of the Convention, including specific references to relevant legislation. It also asks the Government to provide detailed information on the “Chapa” recording system.

Article 13(1)(a) and (2)(f). The right of workers and their representatives to report accidents, dangerous occurrences and hazards to the competent authority and to receive notice of accidents and dangerous occurrences. The Committee notes that the provisions of DAO 2000-98 referred to by the Government, namely rules 23.1 and 24 (section 6), give effect to Article 13(1)(b) and (2)(b)(i) of the Convention. The Committee notes, however, that the Government does not provide information on the legislative provisions which give effect to Article 13(1)(a) and (2)(f). The Committee therefore once again asks the Government to indicate measures undertaken or envisaged, in law and in practice, to ensure that workers and their representatives have the right to report accidents, dangerous occurrences and hazards to the employer and to the competent authority, and for worker representatives to receive notice of accidents and dangerous occurrences relevant to the area for which they have been selected.

Application of the Convention in practice. The Committee welcomes the statistical information provided by the Government on accidents in the mining industry for the 2012–13 fiscal year, disaggregated by mining operation methods and companies. The Committee notes that, in line with the number of employees in the mining sector having increased from 44,397 in 2011–12 to 93,091 in 2012–13, the number of accidents also considerably increased during this period, with the number of non-fatal accidents with no loss of working time increasing from 725 to 1,226, the number of non-fatal accidents with loss of working time increasing from 54 to 69, and the number of fatal accidents increasing from six to 17. The Committee asks the Government to provide information on measures taken or envisaged to respond to the increase in work accidents in the mining industry. It also asks the Government to continue to provide information on the application of the Convention in practice, including extracts from inspection reports and information on the number of workers covered by the legislation, the number and nature of the contraventions reported, and the number, nature and cause of accidents reported.

[The Government is asked to reply in detail to the present comments in 2016.]
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Albania

(Ratification: 2001)

Article 3(a) of the Convention. Sale and trafficking of children for commercial sexual exploitation. The Committee previously observed that, although the trafficking of children for labour or sexual exploitation was prohibited by law, it remained an issue of concern in practice. It noted the Government’s information concerning the National Anti-Trafficking Strategy as well as the various measures implemented to prevent child trafficking. Nevertheless, the Committee expressed its concern at the continued prevalence of the trafficking of children under 18 years of age in Albania.

The Committee notes the Government’s information concerning its recent measures taken in the framework of the National Anti-Trafficking Strategy, including the establishment of standard operating procedures on the identification and referral of victims and potential victims of trafficking (SOPs), which were approved in 2014 and which enable the coordination and comprehensive identification, referral and protection of trafficking victims. The Government indicates that the implementation of the SOPs has enhanced the capacity of the law enforcement personnel, social security providers and the State Labour Inspectorate in this respect.

The Committee additionally notes the adoption of Act No. 10347 of 11 April 2014 which prohibits the sale and trafficking of children under sections 3(e) and 24. The Government indicates that, under this Act, and to achieve the objectives of its Action Plan for Children (2012–15), the Child Protection Unit (CPU) has been established and is collaborating with labour inspectors in municipalities and communes to strengthen sanctions for violations as well as to enhance the capacity of labour inspectors to identify children at risk. Finally, the Committee notes Act No. 144 of 2 May 2013, which has modified the Penal Code to increase the penalties for crimes against children, including crimes related to trafficking.

The Committee takes due note of the Government’s legislative and programmatic measures to protect children from trafficking. It observes, however, that the Committee on the Rights of the Child (CRC), in its concluding observations on the combined second to fourth periodic reports of Albania (CRC/C/ALB/CO/2-3, paragraphs 17 and 82) in 2012, expressed serious concern that Albania continues to be a source country for children subjected to sex trafficking and noted the lack of available data concerning these children. The Committee accordingly urges the Government to intensify its efforts, within the framework of the National Anti-Trafficking Strategy and the implementation of the SOPs, to combat the trafficking of persons under 18 years of age, and to ensure that thorough investigations and robust prosecutions of persons who commit this offence are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. The Committee requests the Government to provide data on the number of children subject to sex trafficking, to the extent possible, disaggregated by age and gender.

Article 3(c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. Further to its previous comment, the Committee notes with satisfaction the adoption of Act No. 10347 of 11 April 2014 on the protection of children’s rights which, under section 23, read in conjunction with section 3, prohibits the involvement of children under the age of 18 in the use, production and trafficking of drugs and narcotics. The Committee requests the Government to provide information on the application in practice of this new Act, including the number and nature of violations detected.

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Street children and children from minority groups. In its previous comment, the Committee noted that significant numbers of Albanian boys and girls are engaged in begging, starting as early as 4 or 5 years, and that most children involved are from the Roma or Egyptian communities. It further noted the Government’s statement that the major issues with regard to the Roma community are low levels of education (with high illiteracy and low numbers of pupils enrolled), poor living conditions, poverty, and high levels of trafficking and prostitution and that, although it took measures to increase attendance in schools by Roma children, the possibility of teaching the Roma language in schools had not yet been fully implemented.

The Committee notes the Government’s information concerning a 2014 inter-institutional initiative entitled “Support for families and children living on the street”, which aims to ensure the protection of children against all forms of abuse, exploitation and neglect. The Committee further notes the Government’s references to the Action Plan for Children (2012–15) and the Action Plan for the Decade of Roma Inclusion (2010–15), both of which aim to, among others, register and increase the attendance and participation of Roma children in kindergarten and compulsory education. The Committee notes, in this connection, the Government’s information contained in its written reply to the CRC on the combined second, third and fourth periodic reports (CRC/C/ALB/2-4) of 2012, which lists the various legislative and institutional reforms that have been carried out concerning the admission and attendance of Roma children, as well as its programme of cooperation with UNICEF to provide incentives to Roma children to attend education. The Committee further notes the Government’s statistical information, which indicates that for the 2012–13 school year, 664 Roma children attended preschool, 3,231 Roma children attended compulsory education, and all Roma children received full reimbursement for their textbooks.

While taking due note of the Government’s measures to protect children from living on the street and to enhance the opportunities for Roma children to attend education, the Committee also notes that the CRC, in its concluding observations (CRC/C/ALB/CO/2-3, paragraph 70), observed that, contrary to the law, minority children, and in particular Roma children, have limited possibility to be taught in their own language and learn their history and culture within the framework of the national teaching curricula and called for the Government to provide minority-language education, particularly for Roma children. It further takes into account the 2012 assessment report carried out by the National Inspectorate of Pre-University Education (IKAP), with UNICEF assistance, on the implementation of the “The Second Chance” programme for the education of students who have dropped out of school, which found that, despite the Government’s programmes to increase school attendance, the number of Roma children who attend school still remained at very low figures. The Committee accordingly requests the Government to intensify its efforts to take effective and time-bound measures, including within the framework of Action Plan for Children (2012–15), the Action Plan for the Decade of Roma Inclusion (2010–15), and in cooperation with UNICEF, to ensure the protection of Roma children against the worst forms of child labour, particularly trafficking, forced begging and work on the streets. It also requests the Government to provide information on the implementation of the “Support for families and children?
Cambodia

(Ratification: 2006)

Articles 3(a), 7(1) and 7(2)(a)–(b) of the Convention. Sale and trafficking of children and penalties. Effective and time-bound measures for prevention, assistance and removal. The Committee previously noted the Government’s measures to combat the sale and trafficking of children, but further noted the high number of women and children who continued to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour.

The Committee notes the Government’s reference to the National Plan of Action on Trafficking and Sexual Exploitation of Children (NPA–TIPSE) (2011–14), as well as its indication that 125 children have been prevented from becoming victims of trafficking for sexual and labour exploitation or have otherwise been removed and reintegrated into education and society. The Committee notes, however, the concluding observations of the Committee on the Elimination and Discrimination against Women on the combined fourth and fifth periodic reports of Cambodia (CEDAW/C/KHM/CO/4-5, paragraph 24) in 2013, which observes that the implementation of anti-trafficking legislation remains largely ineffective, and that trafficking of girls for purposes of sexual exploitation continues.

The Committee further notes the UN Office on Drugs and Crime entitled Victim Identification Procedures in Cambodia report (page 24), which notes that additional information is needed on the nature and extent of trafficking in the country and calls for consistent and standardized approaches to victim identification, together with a systematic approach to data collection and analysis. The report (page 14) also notes that, while the Government has taken measures to coordinate national efforts to combat trafficking, further work is needed to convert those efforts and policies into concrete and financially-supported action. In this respect, the report refers to the lack of financial resources that have been provided for law enforcement agencies to conduct investigations and have proper equipment and training. The Committee strongly encourages the Government to strengthen its efforts to combat the sale and trafficking of children through the effective implementation of its anti-trafficking legislation, including by taking measures to ensure that thorough investigations and robust prosecutions of offenders are carried out, particularly by enhancing the capacity of the law enforcement agencies, including financial capacity. It requests the Government to provide information on the progress made in this regard, as well as on the number of investigations, prosecutions, convictions and penal sanctions applied. Finally, it requests the Government to continue to provide information on the number of children who have been prevented from becoming victims of trafficking for sexual or labour exploitation, and the number of child victims of trafficking who have been removed from sexual or labour exploitation as well as the number of children who have been rehabilitated and socially integrated.

Article 3(a). Compulsory labour exacted in drug rehabilitation centres. The Committee refers to its 2014 observation to the Government under the Forced Labour Convention, 1930 (No. 29), concerning work exacted in drug rehabilitation centres, in which it notes that the majority of persons in drug rehabilitation centres in Cambodia are not admitted voluntarily; they are often admitted following legal procedures, on the request of their families, or simply following arrest; and there have been reports of persons in drug rehabilitation centres engaged in compulsory labour. The Committee notes with concern, in this respect, that according to the Committee on the Rights of the Child (CRC), in its concluding observations (CRC/C/KHM/CO/2-3, paragraph 38) in 2011, the mistreatment of persons in drug retention centres extends to children. The Committee requests the Government to indicate what safeguards exist, both in law and in practice, to ensure that children below the age of 18 years detained in drug rehabilitation centres, who have not been convicted by a court of law, are not subject to the obligation to perform work. The Committee also requests the Government to provide copies of the relevant texts governing children detained in drug rehabilitation centres.

Article 7(2)(a). Effective and time-bound measures. Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted the Government’s Education for All (EFA) National Plan for 2003–15, which aimed to ensure equitable access to basic and post-basic education, enable quality and efficiency improvement, and build capacity for decentralization.

The Committee notes the new National Strategic Development Plan (2014–18) which aims to expand access to early childhood, secondary and post-secondary education as well as non-formal, technical and vocational education. It also notes the Government’s recent information concerning the efforts of the Ministry of Education, Youth and Sport under the Education Strategic Plan to ensure its effective implementation of its anti-trafficking legislation, including by taking measures to ensure that thorough investigations and robust prosecutions of offenders are carried out, particularly by enhancing the capacity of the law enforcement agencies, including financial capacity. It requests the Government to provide information on the measures taken in the context of the National Strategic Development Plan (2014–18) to raise the school attendance rate and reduce the school drop-out rate, particularly in secondary school.

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

[The Government is asked to supply full particulars to the Conference at its 104th Session and to reply in detail to the present comments in 2015.]
Cameroon

(Ratification: 2002)

Articles 3(a), 5 and 7(1) of the Convention. Sale and trafficking of children, monitoring mechanisms and sanctions. The Committee previously noted that, in addition to the monitoring carried out by the vice squad established in the Interpol National Central Bureau in Yaoundé, a telephone number has been made available to encourage the public to make anonymous denunciations. In addition, three contact officers are on permanent standby to carry out investigations at any time. The Committee however noted that the Committee on the Rights of the Child expressed regret at the low level of implementation of Act No. 2005/015 of 20 December 2005 to combat the trafficking and smuggling of children, and at the absence of data and remedial action.

The Committee notes the Government’s indication that the telephone number made available to the public is indeed operational and that those responsible and with shared responsibility for trafficking have been prosecuted and penal sanctions imposed on those convicted. In this respect, the Committee notes that, according to the report of the Ministry of Justice on the human rights situation in Cameroon in 2012, two cases have been decided by the courts concerning cases of trafficking in persons, involving a total of five children.

While noting this information, the Committee notes with deep concern that, according to the study prepared jointly in 2012 by the Government and the “Understanding Children’s Work” programme (UCW, 2012), the incidence of trafficking of children appears to be very high in Cameroon, with the estimates contained in the study varying from 680,000 to 3 million child victims. Children are often relocated for the exploitation of their labour, particularly in domestic work, agricultural undertakings, unregulated industrial activities, construction sites and commercial sexual exploitation. One of the characteristics of trafficking of children is that it is based on well entrenched traditional customs in Cameroon cultures, such as the informal fostering (confiage) of children and labour migration traditions. The Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out of persons engaged in the sale and trafficking of children under 18 years of age, in particular by reinforcing the capacities of the authorities responsible for the enforcement of Act No. 2005/05, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the measures adopted in this respect and on the results achieved.

Article 3(b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities. In its previous comments, the Committee observed that the national legislation does not contain provisions prohibiting the use, procuring or offering of children under 18 years of age for the production of pornography or for pornographic performances. The Committee notes the Government’s indication that the prohibitions referred to above will be taken into account in the draft Child Protection Code.

The Committee again notes with regret the Government’s indication that the Child Protection Code is still in the process of being adopted. Noting that the Government has been referring to the adoption of the Child Protection Code since 2006, the Committee urges the Government to take the necessary measures for the adoption of the Code in the very near future and to ensure that it contains provisions prohibiting the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances, and for illicit activities, in particular for the production and trafficking of drugs. Accordingly, penalties for these offences must also be established.

Article 6. Programmes of action and application of the Convention in practice. National Plan of Action for the Elimination of the Worst Forms of Child Labour (PANETEC). The Committee notes that, according to a study prepared jointly in 2012 by the Government and the UCW, 2012, over 1,500,000 children between the ages of 5 and 14, or 28 per cent of this age group, are engaged in work in Cameroon, often under hazardous conditions. Furthermore, 164,000 children between the ages of 14 and 17 are engaged in dangerous types of work.

The Committee notes that with ILO collaboration, within the framework of the ILO–IPEC Global Action Plan to Eliminate Child Labour (GAP11) project, the PANETEC 2014–16 has been adopted. The general objective of the PANETEC is to eliminate the worst forms of child labour by 2016, while reinforcing the institutional framework and mechanisms for the abolition in the long term of all forms of child labour. For this purpose, the PANETEC is based on six strategic priorities, including the harmonization of the national legislation with international labour standards and the strengthening of law enforcement; the promotion of education; and the improvement of the social protection system.

However, as it is seriously concerned at the large number of children engaged in hazardous types of work and other worst forms of child labour, the Committee urges the Government to take immediate and effective measures to ensure the effective implementation of the PANETEC in the very near future and to provide information on its impact on the elimination of the worst forms of child labour.

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. 1. HIV/AIDS orphans. In its previous comments, the Committee noted with concern that the number of children who are HIV/AIDS orphans appeared to have increased from 300,000 in 2007 to 327,600 in 2009. The Committee also noted the scarcity of care structures and other forms of alternative care for children without families.

The Committee notes the Government’s indication that it has created care structures for children affected by or infected with HIV/AIDS. It also notes that, in the framework of the PANETEC, it is envisaged to take measures for the adoption of the Family Protection Code, which could provide solutions to improve the care provided for certain categories of vulnerable children, including orphans, and in particular HIV/AIDS orphans. However, the Committee notes that, according to UNAIDS estimates for 2013, there are approximately 510,000 children who are HIV/AIDS orphans in Cameroon. Expressing once again its deep concern at the increase in the number of children who are HIV/AIDS orphans, the Committee urges the Government to intensify its efforts to ensure that these children are not engaged in the worst forms of child labour. It requests the Government to provide information on the measures taken and the results achieved in the framework of the PANETEC, and particularly with regard to the adoption of the Family Protection Code, and the number of child HIV/AIDS orphans taken in by care institutions established for them.

2. Child domestic workers. The Committee notes that, in the context of the GAP11, a consultation was held in 2014 to assess and remedy shortcomings in social services and to propose relevant solutions for the protection of child domestic workers. The study prepared for this purpose shows that there is a clear predominance of girls (70 per cent) over boys (30 per cent) in domestic work. The child domestic workers...
who were met were between 12 and 18 years of age (on average 15). The study also indicates that 85 per cent of the children questioned said that they work both day and night according to the wishes of their employer, and 85 per cent of child domestic workers do not have a daily break at a fixed hour or of a specific length. They work on average between 12 and 15 hours a day, and only 20 per cent of such children have a specific rest day. The report of the consultation indicates that, although social services exist in Cameroon, the absence of an overall policy, aggravated by the lack of statistics, makes it difficult to assess precisely the impact of these services on child domestic workers. The shortcomings identified include the absence of public or private structures specifically dedicated to the protection of child domestic workers and of a global child protection strategy, or more precisely a strategy for the elimination of child labour in domestic work.

Considering that child domestic workers are particularly exposed to the worst forms of child labour, the Committee requests the Government to take effective and time-bound measures to protect children engaged in domestic work from the worst forms of child labour, and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration, particularly in the context of the ILO IPEC GAP 11 project. It requests the Government to provide information on the results achieved.

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

[The Government is asked to supply full particulars to the Conference at its 104th Session and to reply in detail to the present comments in 2015.]
REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

INFORMATION AND DISCUSSION ON COMPLIANCE BY CERTAIN COUNTRIES WITH THEIR STANDARDS-RELATED OBLIGATIONS
Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART TWO

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

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

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

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

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

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

A Government representative of Barbados reaffirmed his country’s commitment to fulfilling its obligations under the ILO Constitution. The failure to submit reports in reply to the comments of the Committee of Experts was due to difficulties recently experienced by the national tripartite committee responsible for producing reports. These difficulties were being addressed, and the reports would soon be submitted. Moreover steps would be taken to ensure such failures were avoided in the future.

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

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

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

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

A Government representative of El Salvador said that her Government was drawing up a step-by-step workplan for the submission of the relevant instruments to the competent authorities. Meanwhile, administrative arrangements had been made to submit requests for the ratification of the Indigenous and Tribal Peoples Convention, 1989.
A Government representative of Ireland indicated that measures were being taken in order that all the information and reports that were due would be submitted to the Office by the end of June 2015 at the latest. The information that it had requested would be furnished with a view to the adoption of the new Labour Code, which would provide technical assistance of the ILO on labour matters.

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

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

A Government representative of Jamaica said that her Government had taken initial steps to submit the ILO instruments to Parliament and that the delay was due to the fact that the Ministry of Labour and Social Security had been in a phase of transition in recent times. Her Government intended to enact new legislation on occupational safety and health prior to the ratification of the respective Conventions. ILO technical assistance had been requested to strengthen the capacity of the Government in drafting the new legislation and she hoped that this fruitful cooperation would advance the Decent Work Agenda in her country.

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

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

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

A Government representative of Mali said that measures had already been taken to ensure full respect for the obligation of submission to the competent authorities. A copy of the acknowledgement of receipt of 15 instruments by the National Assembly would be sent to the Office before October 2015. Furthermore, the Government was in the process of ratifying the Employment Service Convention, 1948 (No. 88), the Occupational Safety and Health Convention, 1981 (No. 155), and its Protocol, and the Private Employment Agencies Convention, 1997 (No. 181). However, Mali sincerely hoped that its Government would continue to count on the ILO’s support in achieving the Decent Work Agenda in her country.

A Government representative of Mauritania said that the law concerning the Committee of Experts had been adopted in 2014 and it was willing to submit the relevant instruments to Parliament when they had been processed. She indicated that the Ministry of Labour had submitted the instruments required inputs from other stakeholders, including consultations with other government ministries and departments.
The responses were being processed and would be submitted before the end of the current session of the International Labour Conference.

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

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

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

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

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

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

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

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

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

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

The Committee recalled that the transmission of reports on the application of ratified Conventions was a fundamental constitutional obligation and the basis of the system of supervision. The Committee stressed the importance that the transmission of reports constituted, not only with regard to the transmission itself but also as regards the scheduled deadline. In this respect, the Committee recalled that the ILO could provide technical assistance in helping to achieve compliance with this obligation.
In these circumstances, the Committee expressed the firm hope that the Governments of Burundi, Dominica, France – French Southern and Antarctic Territories, Equatorial Guinea, Gambia, Haiti, San Marino, Somalia and Tajikistan which, to date, had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

Failure to supply first reports on the application of ratified Conventions

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

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

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

- Afghanistan – since 2012: Conventions Nos 138, 144, 159 and 182;
- Ghana – since 2013: Conventions Nos 144 and 184;

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

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

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

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

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

The Committee took note of the information provided.

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

The Committee insisted that all member States should fulﬁl their obligations in this respect and expressed the firm hope that the Governments of Comoros, Congo, Democratic Republic of the Congo, Grenada, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Liberia, Libya, Kiribati, Marshall Islands, Solomon Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tuvalu, Vanuatu and Zambia would comply with their future obligations under article 19 of the ILO Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

Submission of instruments adopted by the Conference to the competent authorities

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

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

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

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

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

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

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

1 The list of the reports received is in Appendix I.
Brunei Darussalam. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee’s comments.

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

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

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

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

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

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

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

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

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

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

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

Uganda. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee’s comments.
B. INFORMATION AND DISCUSSION ON THE APPLICATION OF RATIFIED CONVENTIONS (INDIVIDUAL CASES)

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

**Forced Labour Convention, 1930 (No. 29)**

**ERITREA (ratification: 2000)**

A Government representative expressed the view that the national laws were compatible with the requirements of the Convention. Compulsory national service was an exception to the term of forced labour under section 3(17) of the Labour Proclamation of Eritrea (No. 118 of 2001). Not only compulsory national service, but also normal civic obligations, compulsory labour as provided for in the Penal Code, communal services and services rendered in case of emergency could not be considered as forced labour. The Committee of Experts had indicated that, under the Convention, compulsory military service was excluded from the scope of the Convention only where conscripts were assigned to work of a purely military character. The Proclamation on National Service (No. 82 of 1995) was also designed for a military purpose. Furthermore, sections 6 and 8 of the Proclamation, which provided that Eritrean citizens who had attained the age of 18 and above had the obligation to render national services for 18 months, were compatible with the Convention, as Article 2(2)(b) provided that forced or compulsory labour should not include any work or service which formed part of the normal civic obligations of citizens. The Government of Eritrea agreed with the comment of the Committee of Experts according to which in specific circumstances, such as in cases of emergency, conscripts might be called upon to perform non-military activities. The Government also agreed with the indications of the Committee of Experts that the power to call up labour should be confined to genuine cases of emergency or force majeure, that is a sudden and unforeseen happening as provided for in Article 2(2)(d) of the Convention. However, the Conference Committee should understand the peculiar and genuine cases of emergency and the current situation in the country. The ongoing border conflict and the absence of peace and stability had been affecting the labour administration of the country. In view of the “no peace, no war” status, it was not possible to implement the final and binding decision of the Boundary Commission, and the international community was not playing its appropriate role in this regard. Moreover, there were unpredictable weather conditions which further contributed to a “threat of war and famine”. In view of these specific circumstances, the exception in Article 2(2)(d) of the Convention relating to cases of emergency applied. This justified the prolongation of the duration of national service beyond the stipulations in the Proclamation on National Service and the adoption by the National Assembly in 2002 of the Warsai Yakaalo Development Campaign (WYDC). Compulsory services were strictly limited to the requirements of the current situation and community interests, and were not used for the benefit of private companies or individuals. The relevant post-war development campaign programmes were related mainly to labour in the areas of reforestation, soil and water conservation, as well as reconstruction activities and food security. Concerning the implementation of the Proclamation on National Service, the Government had no problem with conscripts leaving the service upon completion of their service of 18 months during peacetime, and in fact, before the start of the Eritrean–Ethiopian border conflict in 1998, there had been demobilizations. However, because of that border conflict, conscripts could not leave their service upon completion of the 18 month period. Contrary to the view expressed by the Committee of Experts, there were no large-scale and systematic practices of imposing compulsory labour on the population for an indefinite period of time within the framework of the national service beyond the exceptions provided for in the Convention. Hence, no forced or compulsory labour had been carried out in Eritrea in violation of the Convention. The Government had no intention of using national service in all-round activities or of extending the duration of such service indefinitely. Despite the threat of war and famine, the Government was demobilizing conscripts due to health and other social issues, and was planning in the near future to de-mobilize conscripts, in accordance with the Proclamation on National Service. However, these positive measures taken by the Government would not be able to achieve a lasting solution unless the major cause that affected the labour administration was tackled. He therefore called upon the ILO and the international community to play their role to influence the implementation of the final and binding decision of the Boundary Commission.

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

In accordance with Article 2(2)(a) of the Convention, as not to constitute forced labour, work exacted in the framework of compulsory military service had to be of a
purely military character, in order to prevent conscripts from being assigned to public works. That limitation had its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibited the excision of forced or compulsory labour “as a means of mobilising and using labour for purposes of economic development”. It also envisaged prosecution in the event of violation. The Government of Eritrea went well beyond the context of the exception envisaged by Convention No. 29 as they allowed conscripts not only to be used for ordinary public works, but also in the private sector. Persons who did not comply with the requirement to perform national service were liable to severe penalties of up to five years of imprisonment and the suspension of other rights. Indeed, a military police force had been created for that purpose. Those who nevertheless managed to escape from national service left the members of their families at enormous risk, as they were considered by the Government to be guilty “by association” and liable to a fine of ERN50,000 (around US$3,350). If they could not pay that sum, family members were detained. Other reprisals, such as the non-renewal of commercial licenses, were also exacted. The situation was made worse by the inhuman and degrading prison conditions, overcrowded prisons, unhealthy and inadequate cells, and inadequate and insufficient food. As a result, many detainees fell ill, and medical services were inadequate. In addition, torture and ill-treatment were common. Contacts between detainees and their families were difficult, as families were not informed of the place of detention of their relatives, nor the reasons or length of detention. In view of the heavy prison sentences imposed in cases of refusal to perform national service, the conditions of detention and the reprisals against families, there could be no doubt that the work performed in the framework of national service was undertaken under the menace of penalties and that the persons concerned did not offer themselves for such work voluntarily. The Worker members also expressed concern with regard to the incidence of such practices in the case of women and children. Various reports had shown that almost one third of new conscripts at military training centres were under 18 years of age. Students during their last year of secondary school were required to engage in intensive military training in Sawa and students in their 12th year of school received military training before being transferred directly to the national service programme. In the case of women, who were also subject to compulsory military service, they were particularly vulnerable to the risk of harassment and sexual violence. They were asked to carry a token addition to their military functions. In view of the forced and indefinite conscription, tens of thousands of Eritrean nationals were fleeing their country, often at the risk of their lives, whether to Sudan or in an attempt to reach Europe, as illustrated by the Lampedusa tragedy, where the immense majority of the 359 victims were from Eritrea. As emphasized by the Committee of Experts, the present case was particularly serious and worrying. Eritrea was more of a penal colony than a State. The exaction of forced labour in the framework of national service was not only characterized by terrible abuses and the flagrant exploitation of workers, but also a humanitarian crisis, of which women and children were the principal victims. The Government needed to repeal with immediate effect the Proclamation on National Service and bring an end to the WYDC.

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

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

The Employer member of Eritrea emphasized that the country was fighting not only for its independence, but also to ensure social justice. After Eritrea had gained independence in 1991, the Government had begun to demo-
bilize ex-fighters and had initiated several economic and social programmes aimed at ensuring their capacity to earn their living. Unfortunately, a border war had been undermining these efforts. As a result, thousands of lives had been lost and tens of thousands of people had been displaced. Following the mediation by the international community, the government had maintained leading to the decision of the Boundary Commission, which was final and binding. Nonetheless, that decision had not been implemented for the past 13 years, resulting in a situation of “no peace, no war”. Until those conditions improved, the defence and sovereignty of the country had to remain a priority, requiring a compromise with respect to some national proclamations and ILO Conventions. The international community should play its role in the implementation of the decision taken by the Boundary Commission, which would solve the real cause of the problem.

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

The Worker member of Sweden said that some of the reasons for the desperate and dangerous decisions taken by Eritrean migrants were forced labour, prolonged military conscription, arbitrary arrests, torture, appalling detention conditions, disappearances and severe restrictions on freedom of movement in the country. She recalled that many victims of the Lampedusa disaster had been Eritreans who had run away from servitude-like conditions. Furthermore, according to the United Nations High Commissioner for Refugees (UNHCR), an average of 5,000 Eritrean refugees, including unaccompanied minors, arrived in Italy every month, with a large number of these migrants are non-registered migrants, many of whom resorted to smugglers and traffickers to leave the country in order to avoid the heavy sanctions imposed for unauthorized travel. Eritrean migrants were reported to be victims of massive extortion, kidnapping, sexual assault, and the trafficking of body parts. Although the country should have shown the necessary responsibility to bring this situation to an end, the regime had continued to deny entry to the United Nations Special Rapporteur on the situation of human rights abuses in Eritrea. In her 2014 report, she had indicated that the refugee exodus was being fuelled by alleged abuses, including extrajudicial executions, torture and forced military conscription of indefinite duration. Finally, she had called on the Eritrean regime to act responsibly on the issue, cooperate with partners committed to eradicating such abuses and to progressively review procedures and practices regarding refugees and migration issues.

The Worker member of Canada addressed the issue of the use of national compulsory service for non-military economic development, and indicated that the ruling party owned a national construction company which employed forced labour to build roads, housing and other earthworks throughout the country. This had been confirmed by examining the activities of the company conducted in association with large foreign multinationals from Australia, Canada, China and the United Kingdom which were exploiting some of Eritrea’s substantial mineral deposits. She referred in particular to a Canadian-owned company which had been operating leading to the decision of the Boundary Commission, which was final and binding. Nonetheless, that decision had not been implemented for the past 13 years, resulting in a situation of “no peace, no war”. Until those conditions improved, the defence and sovereignty of the country had to remain a priority, requiring a compromise with respect to some national proclamations and ILO Conventions. The international community should play its role in the implementation of the decision taken by the Boundary Commission, which would solve the real cause of the problem.

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

The Employer members once again thanked the Government for the information provided. They wished to make clear that they were sensitive to the difficult context and the challenges relating to the border conflict and the specific circumstances referred to by the Government. However, they indicated that it was important for the Government to understand the very serious concerns they had concerning the reiterated explanations provided by the Government in relation to the application of the Convention. In this regard, they remained concerned that the Government did not fully appreciate the comments of the Committee of Experts concerning the issue of forced labour which continued to exist in the framework of national laws.

The Employer members said that the Government was willing to work together with the ILO to understand more fully its obligations under the Convention, which were applicable despite the current context. They therefore recommended that the Government should accept ILO technical assistance in order to achieve the objective of eradicating forced labour in the context of national service, as well as measures to amend or repeal the Proclamation on National Service and the Warsai Yakaalo Development Campaign of 2002.

The Worker members said that, while they understood the difficulties Eritrea faced, the fact remained that the population was directly affected as a result and was suffering. The response to these difficulties should not be to force the population to work and, moreover, to do so in terrible conditions. The excessive militarization of society had created a situation in which human rights violations stemmed from legislation and the policies and practices adopted by the Government. A large proportion of the population was forced into this situation. He once again emphasized the importance of the “no peace, no war” status, it was not possible to implement the final and binding decision of the Eritrea–Ethiopia Boundary Commission. Moreover, there were unpredictable weather conditions which further contributed to a “threat of war and famine”. In view of these specific circumstances, the exceptions in Article 2(2) of Convention No. 29 relating to cases of emergency applied, which justified the prolongation of the duration beyond the stipulations in the Proclamation on National Service of 1995 and the Warsai Yakaalo Development Campaign of 2002. The discussions had also highlighted that workers who refused to carry out work within the framework of the national service were faced with arbitrary arrest and detention and imprisonment in inhumane conditions.

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

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

The Government representative said that he could not accept the allegations and misinformation concerning alleged child soldiers and extortion. He urged the ILO and the international community to assist in implementing the
binding decision of the Eritrea–Ethiopia Boundary Commission.

**Mauritania (ratification: 1961)**

A Government representative, after commending the work of the Committee, indicated that the Government had been steadfastly committed for several decades to combating the vestiges of slavery, ill-treatment and exploitation, particularly through legal and institutional reforms and the implementation of social and economic development programmes to combat the vestiges of slavery. Serious and audacious legal and institutional reforms had been adopted in 2012. Pursuant to Constitutional Act No. 2012-015 of 20 March 2012, article 13 of the 1991 Constitution was amended to define slavery as an imprescriptible crime against humanity and was punished accordingly. This Act strengthened Act No. 2007/48 of 9 August 2007, which defined as an offence slavery and slavery-like practices. The 2007 Act thereby defined for the first time a slave and slavery, and provided for the possibility for any legally recognized human rights association to report crimes detected and to offer assistance to victims. This was a significant step forward, which exposed those who might go against the law to public condemnation. In addition to the measures that had been taken to support the law, Parliament was examining two bills based on the Act. The second bill, to control torture, would repeal and replace Act No. 2013-011 of 23 January 2013 prohibiting the crimes of slavery and torture as crimes against humanity. The second bill presented to Parliament concerned Decree No. 2006.05 of 26 January 2006. It would allow persons with insufficient financial resources, which was the situation for victims of the vestiges of slavery, to defend their rights before the courts. In addition, the Government had adopted a roadmap for combating the vestiges of slavery following consensus among a number of participating departments. This strategy was coupled with an action plan which was central on legal and socio-economic priorities, and on awareness raising. An interministerial committee chaired by the Prime Minister and encompassing all the relevant departments had been set up and met on a regular basis to follow up on the implementation of this strategy. The evaluation of the stages carried out in May 2013 showed that real progress had been made in the socio-economic sphere, particularly by the Tadamoun agency, established in March 2013 to combat the vestiges of slavery and to promote integration and poverty reduction. The efforts of this agency had given rise particularly to the building of schools, clinics, health posts, and social housing, and to the distribution of rehabilitated land and access to drinking water in areas inhabited mainly by persons who suffered the vestiges of slavery. The Government would communicate to the ILO all the statistics on the activities of the agency and their impact on the reduction of the vestiges of slavery. Furthermore, the Government had launched an information campaign on these issues. A Fatwa prohibiting slavery had been adopted by the Assembly of Ulemas and had been widely disseminated. The speaker indicated that the efforts of this policy could no longer continue to deny the existence of slavery. The Government would continue its efforts to ratify modern ILO instruments, and a set of recommendations had been adopted in 2012. Pursuant to Constitutional Act No. 2007/48 criminalizing slavery and punishing slavery-like practices had been ratified by Mauritania in 1961 and since then the case had been examined many times by the Committee. In the wake of the Committee’s discussions in 2002 and 2003, a number of missions had taken place to the country (in 2004 and 2006) and a set of recommendations had been formulated. In 2010, while welcoming certain elements, the Committee had urged the Government to play a key role in awareness raising, and to make the public and the authorities understand that it was essential to eradicate slavery. They had also called for the adoption of a national plan for combating slavery, in close collaboration with the social partners and civil society organizations. The Government was due to take measures to provide victims with recourse to the judicial authorities and the police and report on the measures taken, including providing reliable quantitative and qualitative information on the characteristics of slavery and its vestiges. At the present time, Mauritania was one of the last countries in the world where traditional forms of slavery persisted. The Worker members pointed out that the Committee of Experts had noted with regret the absence of reports in 2013 and 2014. Moreover, according to the United Nations Special Rapporteur on contemporary forms of slavery, despite the abolition of slavery in 1981, its definition as a crime against humanity in 2012, and the announcement of the creation of a special court for prosecuting crimes of slavery, the relevant laws and policies were not fully applied and the lack of reliable information was a particular source of concern. The Worker members declared that slavery simply could not continue, that Mauritania must embark on a path of change without delay. Even though, according to the Committee of Experts and the Special Rapporteur, Act No. 2007/48 criminalizing slavery and punishing slavery-like practices had been widely publicized, victims continued to face problems in asserting their rights vis-à-vis the competent authorities, which were failing to take action on complaints. It should also be recalled that it was just in the presence of a complaint that an investigation could be launched, and yet the law did not authorize human rights organizations to bring complaints on behalf of victims of slavery. Furthermore, the police either refused to conduct inquiries into allegations of slavery or, at best, such inquiries merely took the form of a face-to-face meeting between the parties in which the victims, who were in an extremely vulnerable position, had no choice but to amend their statements, after which the case was reclassified as a labour dispute or one involving exploitation of minors. The judicial authorities also refused to prosecute those suspected of engaging in slavery-like practices. Despite the prosecutor having the obligation to notify the complainant of the decision whether or not to prosecute within eight days, numerous complaints had remained pending without the prosecutor effort. The first, on the elimination of child labour, had led to the drafting of a national action plan for the elimination of child labour in Mauritania (PANET-RIM) which had been adopted by the Council of Ministers on 14 May 2015. The second also aimed to eradicate the vestiges of slavery and would be prepared before the end of the year, and would provide for an oversized support for institutional strengthening, capacity building for the implementation of the law, research, awareness raising and support for victims. He mentioned that, despite this significant progress, Mauritania was once again part of the individual cases relating to the application of this Convention, owing to outdated or incomplete information submitted to the Committee. He concluded by reaffirming the Government’s determination to permanently eradicate the vestiges of slavery.

The Worker members expressed regret at the fact that the information provided by the Government had not been reproduced in a written document. The Convention had been ratified by Mauritania in 1961 and since then the case had been examined many times by the Committee. The second bill, to control torture, would repeal and replace Act No. 2013-011 of 23 January 2013 prohibiting the crimes of slavery and torture as crimes against humanity. The second bill presented to Parliament concerned Decree No. 2006.05 of 26 January 2006. It would allow persons with insufficient financial resources, which was the situation for victims of the vestiges of slavery, to defend their rights before the courts. In addition, the Government had adopted a roadmap for combating the vestiges of slavery following consensus among a number of participating departments. This strategy was coupled with an action plan which was central on legal and socio-economic priorities, and on awareness raising. 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providing the complainant with information. Complaints rarely led to a trial because the legal deadlines were systematically missed. SOS-Esclaves highlighted the reluctance of judges, most of whom originated from the Beidan community, to convict slave owners and award compensation to victims, out of fear of being ostracised by their own community. Even though the Committee had shown understanding with regard to the weight of traditions, culture and beliefs, the conclusions that it had formulated in 2010 had not been acted upon. Victims of slavery were still unaware that their situation was illegal or unjust and lived in acceptance of their inferior status. For that reason it was difficult for them to make use of the Act of 2007.

With regard to the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency), the creation of which was welcomed in 2013, the Committee of Experts questioned its institutional and financial capacity to implement the roadmap for combating the vestiges of slavery adopted in 2014. It would appear to have done nothing to tackle the issues of slavery and its mandate seemed to be limited to dealing with the vestiges of slavery and not with persistent slavery-like practices, which showed a lack of will on the part of the authorities in this respect. The roadmap represented a positive step forward but did not provide for specific victim protection measures, did not confer locus standi on third parties and continued to impose the burden of proof on the victim. However, it did make provision for the setting up of an emergency fund designed to bring socio-economic assistance to persons removed from slavery and for positive actions in favour of the descendants of slaves. The one-year implementation time frame was unrealistic in view of the situation. The Worker members also highlighted the situation of children kept in servitude, who worked for a master from early youth and had no access to education. Considered as the master’s property, they could be hired out, loaned, given as a wedding present or left as a legacy to the master’s descendants. The descendants of slaves who were no longer under the control of their master generally had limited access to education owing to their marginalization. They therefore failed to acquire the skills that would enable them to undertake work other than domestic work or activities in stockbreeding or agriculture. The trade unions had campaigned actively against slavery-like practices. However, in January 2015, the Mauritanian authorities had intervened to prevent the Free Confederation of Mauritanian Workers (CLTM) from conducting a campaign to raise public awareness of the existence of slavery. The Employer members observed that the main difficulty was that the Government had explained that the Act of 2007 enabled the victims (e.g. rehabilitation centres, skills development programmes and financial assistance) and poverty eradication programmes; and (4) awareness-raising activities aimed at nurturing a common understanding that slavery was not acceptable in today’s society, and at facilitating victims and civil society members in reporting cases anonymously and dealing with the victims’ trauma. The Employer members indicated that the Government could not be allowed to choose not to report on the application of Conventions. They recalled that a sizeable number of people in Mauritania were suffering from slavery as this Committee was meeting, and that the exchange of diplomatic discourses was no longer sufficient.

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

Another Worker member of Mauritania expressed his total disagreement with the Worker and Employer members, as the situation they described in no way reflected the reality in the country. Slavery was a crime that should be condemned but a conspiracy surrounding the issue so far been convicted under the Act. It was clear that the Government’s will to apply and enforce the Act was missing, contrary to the provision of Article 25 of the Convention. The Employer members observed that the main difficulties in the effective application of the Convention were due to cultural obstacles and reluctance of the public administration to deal with the cases of slavery. For that reason, from the abovementioned case of conviction of one person, all other cases had not been pursued due to the absence of evidence or the pressure exerted on the victim to withdraw the claim, resulting in the absence of justice, equality and freedom since Mauritania’s ratification of the Convention in 1961. While they were satisfied to hear at this Committee the explanations by the Government on steps taken since last year, they indicated that the Government was not only obliged, but had a deep human duty to act now, and called upon the Government to adopt a comprehensive strategy to combat slavery and slavery-like practices. Such strategy would include: (1) as a matter of priority, the reinforcement of the administration of justice in relation to slavery through a specialized court, inspectorate, and prosecutors as well as centres for victim care; (2) prevention through legislation; (3) safety nets for victims centres, skills development (CLTM) from conducting a campaign to raise public awareness of the existence of slavery. The Employer members observed that the main difficulty was that the Government had explained that the Act of 2007 enabled
existed within international bodies. This issue was always raised to put pressure on countries. Even though the vestiges of slavery persisted, the shocking stories that had been told with regard to Mauritania could not be accepted. Slavery in Mauritania had affected all sectors of the population. The Government was making efforts and those who were victims of slavery were invited to approach the authorities. Mauritania had come out of slavery and henceforth references should be made to the vestiges of slavery. The speaker concluded by objecting to the manner in which Mauritania had been treated within the present Committee.

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

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Armenia, the Republic of Moldova, Montenegro, Norway, Serbia and the former Yugoslav Republic of Macedonia, recalled the commitment made by Mauritania under the Cotonou Agreement to respect democracy, the rule of law and human rights principles which included those provided for in the Convention. While legal measures had been taken, especially Act No. 2007/48, criminalizing slavery and practices similar to slavery, and Act No. 2007/48, had also been enacted. The Act classified slavery as an imprescriptible crime against humanity for which there was no statute of limitation and that this Committee would take due note of what had been achieved in this respect.

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

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

The Government member of Mali took note of the information provided by the Government on the steps that had been taken to ensure the application of the Convention, to eliminate forced labour in general and more specifically, to combat the vestiges of slavery. The Government’s efforts and determination over the past few years to resolve the issue of slavery should be recognized and encouraged, with particular reference to the following measures: (1) the adoption of a constitutional act criminalizing slavery; (2) the bill against torture; (3) the bill on legal assistance; (4) the establishment of a special court to clamp down on crimes related to slavery and to provide training for judg-
(5) the adoption of a roadmap to combat the vestiges of slavery; and (6) the setting up of different programmes with the support of the ILO. The speaker encouraged the Government to be tireless in continuing its efforts and to request the Office to provide additional assistance and cooperation.

The Government member of France stressed the need to be consistent. She recalled that, as part of the Economic Partnership Agreement (EPA) between the West African States, the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU), on the one part, and the European Union (EU) and its Member States, on the other part, Mauritania would have to do away with 75 per cent of its import duties. It would thus lose a considerable slice of its budgetary income, which was vital for the local population. That kind of aggressive trade policy, which rendered local farms and small industries less competitive, placed additional pressure on the economy, and might well perpetuate the very forms of slavery that were denounced by trade unions and civil society organizations alike. The EU must not enter into trade agreements that were liable to institutionalize forced labour and, at the same time, expect the Government, as it did in a European Parliament resolution of December 2014, to continue its efforts to eliminate contemporary forms of slavery. The resolution also stated that human rights activists were being persecuted. Three activists belonging to the Mauritanian Initiative for the Resurgence of the Abolitionist Movement (IRA) (Mr Brahim Jaddou, Mr Yacoub Inalla and Mr Salar Ould Housein) had in fact been sentenced to several months’ imprisonment and Mr Biram Dah Abeid, an emblematic anti-slavery advocate who was recognized as such in the country, had in January 2015 been sentenced to two years’ prison and now faced the death sentence for having organized anti-slavery meetings. In its resolution the European Parliament called on the Government to free Mr Biram Dah Abeid and “to permit anti-slavery activists to pursue their non-violent work without fear of harassment and intimidation”. It was essential that the important laws that had been passed in 1981 and 2007 be implemented in the Government, as it did in a European Parliament resolution, to continue its efforts to eliminate contemporary forms of slavery. The resolution also stated that human rights activists were being persecuted. Three activists belonging to the Mauritanian Initiative for the Resurgence of the Abolitionist Movement (IRA) (Mr Brahim Jaddou, Mr Yacoub Inalla and Mr Salar Ould Housein) had in fact been sentenced to several months’ imprisonment and Mr Biram Dah Abeid, an emblematic anti-slavery advocate who was recognized as such in the country, had in January 2015 been sentenced to two years’ prison and now faced the death sentence for having organized anti-slavery meetings. In its resolution the European Parliament called on the Government to free Mr Biram Dah Abeid and “to permit anti-slavery activists to pursue their non-violent work without fear of harassment and intimidation”. It was essential that the important laws that had been passed in 1981 and 2007 be implemented in practice, and that meant freeing all the human rights activists who were engaged in combating slavery. The Government member of Morocco pointed out that the Committee of Experts’ comments related to the effective application of legislation on forced labour and the strategic and institutional framework for combating slavery. The Government had provided information in reply to those comments indicating that the legal and institutional reforms to the existing framework were intended to criminalize slavery and any other form of human servitude. Two bills were planned to cover the fight against torture and the right of those suffering the effects of slavery to take legal action. In addition, programmes and projects had been introduced with the help of the United Nations. These measures demonstrated the Government’s will to harmonize its national legislation and practice with the provisions and principles of the Convention. Its efforts should therefore be supported and it should be given more time to reply to the outstanding requests.

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

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

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

The Government representative recalled that he had informed the Committee of his Government’s efforts to work with the ILO and other organizations. He was surprised by the statement from the Employer members, whose lack of respect towards Mauritania was tantamount to provocation and did nothing to help matters. As for the indictment from the Worker members, they were simply false statements that failed to take into account all that had been achieved. The truth was that a great deal had been achieved, both in juridical terms and through the implementation of effective programmes and public awareness campaigns, to combat the phenomenon. The discussions had also mentioned the important role of the religious authorities. He congratulated the Mauritanian employers and workers on their recognition of the positive measures that had been adopted. He assured them that the Government would do everything to ensure that they were able to engage in the ongoing dialogue, in which he invited them to participate. Freedom of the press was guaranteed in Mauritania, where a series of debates had been organized. It was also possible to hear people claim that Mauritania was full of slaves whose only prospect was to emigrate to Europe. Many Mauritanians did emigrate to Europe, but they amounted to fewer than one in a thousand. As to enforcing the law, 26 cases had been brought to trial. Those were genuine efforts that ought to be highlighted. The roadmap was a concerted exercise in which the social partners had been involved. In fact, the United Nations Special Rapporteur on contemporary forms of slavery had returned to Mauritania as a consultant under ILO technical assistance, proof enough that she believed it was useful to continue supporting the Government’s efforts. The Government’s attitude showed that it was genuinely determined to put an end to the practices that had been denounced. In conclusion, he thanked all those – including the ILO – who had supported Mauritania in its programmes and court the road to implementation.
Act that criminalized slavery, the National Plan to Combat the Vestiges of Slavery (PESE) and the roadmap, by providing comprehensive victim support and processes through the reinforcement of the capacity of authorities in prosecuting and administering the justice system in relation to slavery, prevention programmes, specific programs to protect victims to be presented from pressure if raising programmes, including those targeted at the general public, the central authorities, judges and religious authorities; (2) provide the resources necessary for PESE and promote the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency) to work properly; (3) avail itself of ILO technical assistance, and (4) report in detail on the improvement of enforcement measures at the Committee of Experts’ November 2015 meeting.

The Worker members thanked the Government for the information provided but stressed the importance of submitting the report that was due to the Committee of Experts. In the absence of that report, analysis of the situation could only be based on information that existed elsewhere, such as in the report of the United Nations Special Rapporteur on contemporary forms of slavery. Discussing it would paradoxically reveal an extremely serious situation where slavery-like practices were protected or even encouraged by the Government. The important thing for the Committee on the Application of Standards was that the Haratines represented not an isolated group but a majority of the population. The problem was a threat to national unity and cohesion. Those workers were both exploited and discriminated against in all areas of working and civilian life, in terms of: deprivation of social, cultural and economic advancement; denial of the right to property; lack of basic infrastructure to the detriment of workers (including schools, health centres, roads and wells). The Government had to take the necessary steps to ensure the social and economic integration of former slaves into society. The Government may have taken some measures, but the problems that existed needed to be highlighted. The Government was obstructing the action of workers’ organizations in Mauritania in general and of the CLTM in particular, whereas the latter was seeking to denounce the facts and conduct awareness campaigns. The Committee had asked the Government to conduct such campaigns in 2010, but the Government had not sufficiently done so. It was time that the perpetrators as well as their victims and the administrative and judicial authorities were made aware of the inhuman nature of slavery-like practices. The Government had to understand that its inertia, which had long been, was no longer excusable, particularly after the follow up to the initiatives of this Committee and the ILO. The Committee’s goal was to find constructive solutions to eradicate the scourge of slavery. The Worker members asked the Government to collect detailed data on the nature and impact of slavery in Mauritania and to supply it to the Committee of Experts before its next session. It must ensure the rapid and effective handling of complaints relating to slavery, in connection with the Act of 2007 and the 2012 reform of the Constitution. Independent magistrates needed to be appointed to the special tribunal responsible for dealing with slavery-related complaints, and the tribunal needed procedures to ensure free and easy access for the complainants and all the representative organizations assisting them. Victims protected would be exposed to a risk of slavery if third parties were authorized to represent the victims of slavery. Furthermore, the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency) should be allocated the necessary financial and human resources to enable it to effectively discharge its mandate, which should be re-oriented towards action against the damage resulting from slavery. The roadmap of 2014, which provided a reference point, should contain a specific section on the protection of victims and the issue of the burden of proof, which should not fall on the complainant victims. The Worker members asked the Government to introduce amendments to the Act of 2007 to make it possible: (a) to give third parties the right to act and bring accusations on behalf of the victims; (b) to ensure that the burden of proof did not fall on any person presumed to be a slave; and (c) to impose stiffer prison sentences for the crime of slavery, to bring them into line with international standards and the jurisprudence on crimes against humanity. The Government should see the point of cooperating more systematically with the trade unions – which had demonstrated their capacity for taking action and conducting well-structured awareness campaigns – instead of interfering in their activities. The Worker members asked for a direct contacts mission to take place, since that was the measure most likely to generate solutions and activities for raising awareness of the fight against slavery and to compensate for the damage that it caused. The Worker members called for the release of Mr Biram Ould Dah Abyd, who had been sentenced to two years imprisonment and was at risk of the death penalty. In view of the persistence of the case and the blatant lack of progress for many years, they also requested that the present case be inserted in a special paragraph of the Committee’s report.

Conclusions

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

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

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

Taking into account the discussion that took place, the Committee urged the Government to:
strictly enforce the 2007 Act to ensure that those responsible for the practice of slavery be effectively investigated and prosecuted and, receive and serve sentences that are commensurate with the crime;

amend the 2007 Act to grant third parties, including trade unions a locus standi to bring charges and pursue cases on behalf of victims, consider shifting the burden of proof, and increase the prison sentence for the crime of slavery to a period in line with international standards for crimes against humanity;

implement fully the National Plan to Combat the Vestiges of Slavery (PES) and the roadmap for combating the vestiges of slavery, including comprehensive victim support and processes. This should include the following:
- Reinforcement of the capacity of the authorities to prosecute and administer the justice system in relation to slavery,
- Anti-slavery prevention programmes,
- Specific programmes enabling victims of slavery to escape,
- Awareness-raising programmes.

provide necessary resources to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun”, and ensure that its programmes include those aimed at addressing and combating slavery;

develop and implement public awareness-raising campaigns for the general public, victims of slavery, police, administrative and judicial authorities and religious authorities;

facilitate the social and economic integration of those formally subjected to slavery into society, in the short-, medium- and long-term, and ensure that Haratine and other marginalized groups affected by slavery and slavery-like practices have access to services and resources;

collect detailed data on the nature and incidence of slavery in Mauritania and establish procedures for monitoring and evaluating implementation of efforts to end slavery;

avail itself of ILO technical assistance to implement these recommendations; and

report in detail on the measures taken to implement these recommendations, in particular on the enforcement of anti-slavery laws, to the next meeting of the Committee of Experts in November 2015.

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

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

**QATAR** (ratification: 1998)

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

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

**Forced Labour Convention, 1930 (No. 29)**

Qatar (ratification: 1998)
national level. He emphasized that the inclusion of this case in the list of individual cases discussed at the Committee was not justified, and that the progress made and the findings of the report of the high-level mission in February 2015 had not been taken into account in this decision. Sufficient time should be granted for the completion of any new measures the Government had committed to introduce in order to ensure respect for the rights of migrant workers, and relevant information would be provided in the report to be submitted to the Governing Body in November 2015.

The Worker members stated that many migrant workers continued to be subjected to forced labour in Qatar, as borne out by numerous reports from different sources, including the United Nations. Workers were victims of practices including: the obligation to obtain an exit permit for passports; major obstacles encountered in having access permission to leave Qatar to attend family funerals and experienced by Nepal as a result of the earthquake, numerous porteur on the independence of judges and lawyers had experienced by the Government's indications, that number was still insufficient for the Government to ensure that the police and prosecution authorities acted of their own accord, regardless of any action undertaken by victims. With regard to recruitment costs, a report prepared by the Qatar Foundation in 2014 showed that Qatari employment agencies passed on the costs of recruitment to the workers. The problem did not therefore derive solely from the country of origin of the workers and the Government should also be called upon to take action in that respect. The Government had indicated giving its support for a high-level tripartite mission during discussions in the Governing Body in March 2015, but no action had been taken to follow up on the proposal. The Government had long been stating its intention to carry out a series of reforms but they were slow to materialize. The Committee should make it quite clear to the Government that there was no more time to lose.

The Employer members indicated that the situation in Qatar was very complex and that the country had been under increasing international scrutiny with regard to its labour and human rights practices. In addition to the examination of the case in the framework of the ILO supervisory mechanisms, UN Special Rapporteurs on the human rights of migrants had also dealt with the case, along with other non-governmental organizations (NGOs), such as Amnesty International and Human Rights Watch. They recalled that the Committee had examined the application of the Labour Inspection Convention, 1947 (No. 81), in 2014, and deplored that no conclusions had been adopted. The submission of a complaint under article 26 of the ILO Constitution concerning Conventions Nos 29 and 81 had led to a high-level mission in February 2015. The report of that mission had been examined by the Governing Body in March 2015, which had decided to postpone any further action until the next session of the Governing Body in November 2015. While they understood that the Government believed that the Committee of Experts and this Committee did not take account of the information exchanged in the mission report of February 2015, the Employer members emphasized that they had thoroughly read the report and agreed with its conclusions and recommendations. Despite the fact that the case of Qatar was already being dealt with under the article 26 procedure, it was nevertheless appropriate that this Committee dealt with it, as these were two separate mechanisms. Not wanting to minimize the seriousness of the
case, they stated that media coverage was often one dimensional and did not take into account the complexity and context of the case. The reasons for the great attention received of the case were also linked to the exorbitant growth of the country since its independence in 1971 that was also fuelled by migrant workers, which made up the overwhelming majority of the population of the country. Since the ratification of the Convention, the population of the country had grown from about 100,000 people to 2 million, 1.7 million of which were migrant workers. Migrant workers were now represented in all parts of the economy and society, and could be found to be working as CEOs of companies and in domestic households, i.e. migrant workers were not only unskilled.

While the issues discussed in the framework of the article 26 complaint gave background to the discussion, the discussion in the Committee had in principle to be limited to the observations of the Committee of Experts. These observations related to the kafala system, access to the judiciary and adequate penalties for violations of the law. In this regard, both the legislation and its application in practice had to be considered. In this context, they also recalled that the Government had commissioned a private law firm to prepare a report that contained some interesting conclusions, including critical ones. With regard to the kafala system, they called on the Government to pace up the procedure for the amendment of the relevant legislation. It was not acceptable that the legislation provided that: each migrant worker had to have a sponsor (generally their employer) to arrange for their resident permit, which required the sponsor to hold the worker’s passport, even though it had to be returned as soon as possible; it was prohibited to change employer unless there was a pending lawsuit; and workers were not allowed to leave the country unless they had an exit permit issued by the employer. Concerning practical problems, they referred to the witholding of the worker’s passport and the additional requirement for an exit permit. In this regard, they recalled the suggestions made by the law firm in relation to the kafala system, which had suggested that the existing visa system be reformed, and the legislation be amended to grant migrant workers the right to apply to the relevant ministry to exit the country. They hoped that these suggestions would soon be implemented. Concerning access to justice, further measures had to be taken in practice. Language barriers remained an issue, even though the Government was committed to the measures taken, e.g. the possibility to submit complaints through special cases in seven offices in the country, and the possibility to make direct deposit payments in bank accounts. Concerning the imposition of penalties, while the law provided for adequate penalties, not much information was available on their application in practice. The Employer members agreed with the Worker members that the withholding of the worker’s passport had caused working conditions to offer. Their presence had induced the authorities to revise its immigration laws and regulations so as to ensure that their labour rights were respected and that they were protected against abusive treatment. Qatari employers were aware of all that the Government had done to that end. However, certain problems had already arisen in the migrant workers’ country of origin, specifically regarding the substantial fees charged by placement agencies, which was both unacceptable and illegal. For employers and the national authorities, it was however not easy to take appropriate action. Since the Governing Body had examined the case in March 2015 on the basis of the report of the mission that visited the country in February 2015, it was to be discussed in the plenary session of the Conference. That said, the Qatari employers would continue to do everything they could to cooperate with the authorities in protecting the rights of migrant workers.

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

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Armenia, Bosnia and Herzegovina, Montenegro, Serbia and Republic of Moldova and Ukraine, explained that the EU supported the universal ratification and implementation of the eight fundamental Conventions as part of the EU Strategy on Human Rights. The EU attached great importance to human rights, including the abolition of forced labour, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. Compliance with the fundamental Conventions was not to disappear but required that stability in any country and an environment conducive to dialogue and trust between employers, workers and governments contributed to creating a basis for solid and sustainable growth and inclusive societies. The EU was ready to work with the Government in its implementation efforts regarding ILO Conventions. She recalled that the Committee of Experts had urged the Government to take
measures to strengthen the capacity of migrant workers to approach the competent authorities and seek redress in the event of a violation of their rights or abuse, without fear of reprisal; and to strengthen mechanisms monitoring the working conditions of migrant workers. The EU shared the Committee of Experts’ view that the application of effective and dissuasive penalties to prevent forced labour were necessary to prevent a climate of impunity. Welcoming the Government’s commitment to replace the kafala system by work contracts in 2015, the EU expected the Government to enact the relevant bill and draft it in such a way as to provide effective protection for migrant workers. More information would be welcomed in this regard on the measures taken, both in legislation and in its implementation. Noting that the number of inspection visits had increased in recent years, the Government was encouraged to continue strengthening the labour inspectorate. The Government’s announcement of electronic payment measures to be implemented by August 2015 was also welcomed. The EU expected the Government to continue its efforts in securing the fundamental rights of migrant workers and in fully applying the Convention. The EU encouraged the Government to cooperate with the Office in this regard.

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

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

The Worker member of the United Kingdom indicated that despite the existence of a number of complaint mechanisms, the reality for workers in Qatar fell well short of ensuring that all complaints were properly examined by the authorities. Barriers to justice were numerous, including, for example, the requirement of a compulsory expert’s report, which typically involved the victim paying a fee of around 600 Qatari riyals. Resolutions were often taken a year or more and during that time workers might be subjected to retaliation from their employer, while wages remained unpaid, or workers were evicted from accommodation, without being able to work elsewhere due to the kafala restrictions. Independent reports showed examples of workers being forced to borrow money, receive support from sending countries’ embassies or work illegally in order to – literally – survive the legal process. Given that many labour complaints were in response to systematic non-payment of wages, this placed a significant financial burden on those workers. Some seen during the mission had been imprisoned for their labour activism. The Worker member also questioned the adequacy of the sanctions and the commitment of the authorities to give adequate protection to workers. The EU noted that some elements of the kafala system had been removed in the Government’s commitment to implement measures to address the rights of workers in Qatar.

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

The Government member of New Zealand recalled that, even though Article 25 of the Convention provided for an obligation on ratifying States to ensure that penalties for forced labour were adequate and strictly enforced, migrant workers in Qatar continued to face high hurdles in their access to justice. While welcoming the steps taken by the Government to strengthen the labour inspectorate, he emphasized that much more had to be done, including the further recruitment and training of labour inspectors and the provision of interpretation services. As the Committee of Experts pointed out in its last comments under Convention No. 81, the failure to enforce adequate penalties created a climate of impunity, which perpetuated forced labour. It was therefore deeply concerning that Qatar had not supplied any information on prosecutions for the labour justice码, under the 2009 Act prohibiting trafficking in persons. He therefore concurred with the Committee of Experts in calling on the Government to take all the necessary measures to ensure that effective and dissuasive penalties were actually applied and that the police and prosecution authorities acted of their own accord, irrespective of any action taken by the victims. Taking into account the 2014 comments of the
UN Special Rapporteur on the independence of judges and lawyers, he further pointed out that a key weak link in the enforcement system might be the Qatari justice system, which was influenced by high-level persons and powerful businesses and completely arbitrary as to whether cases had to be pursued. Significant allegations about lack of impartiality, bias and improper behaviour by judges, including allegations of discrimination against migrants in favour of Qatars. He therefore called on the Government to reform the judicial system as recommended by the Special Rapporteur. Finally, publically naming employers convicted of forced labour might assist in dispelling a climate of impunity, as it was observed by the UN Special Rapporteur on the human rights of migrants regarding the Government’s initiative to blacklist employers who committed multiple workers’ rights violations.

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

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

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

The Worker member of Libya denounced the conditions suffered by domestic workers in Qatar. As they were excluded from the scope of labour legislation, there were no regulations protecting them in terms of working time or minimum wages. Deprived of their passports and freedom of movement and often victims of physical and verbal assault, many were accused of fornication and immoral behaviour by judges, including allegations of discrimination against migrants in favour of Qatars. He therefore called on the Government to reform the judicial system as recommended by the Special Rapporteur. Finally, publically naming employers convicted of forced labour might assist in dispelling a climate of impunity, as it was observed by the UN Special Rapporteur on the human rights of migrants regarding the Government’s initiative to blacklist employers who committed multiple workers’ rights violations.

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The Government member of Sri Lanka commended the considerable efforts made by the Government to protect the rights of the workers. Therefore, he stated that the case should not have been discussed again by the Committee. He concluded by encouraging the Government to enhance the rights of migrant workers in the country.
France had passed a law on the extraterritorial responsibility of multinational corporations. Furthermore, the 21 November 2013 resolution of the European Parliament on forced labour convention, 1930 (No. 29) Qatar (ratification: 1998), France had passed a law on the extraterritorial responsibility of multinational corporations. Furthermore, the 21 November 2013 resolution of the European Parliament on the situation of migrant workers was “calling for the responsibility of European construction companies involved in the building of stadiums and other infrastructural projects” to ensure that their recruitment practice would be “in respect international standards on human rights”. Trade unions and civil society groups had taken note of these developments, and the Qatari construction industry, in which thousands of migrant workers were employed by, among others, large state-owned companies of international repute, presented ample opportunity for utilizing these means in order to hold companies accountable. She concluded by recalling that the ILO supervisory bodies’ comments had also highlighted violations of freedom of association principles and other Conventions in Qatar.

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

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

The Government member of Norway, speaking on behalf of the Nordic countries, recalled that human rights were universal and encouraged the universal ratification and implementation of the eight ILO fundamental Conventions. She expressed deep concern for the numerous and well-documented cases of unacceptable working and living conditions of migrant workers in the country, especially with regard to exploitation and forced labour associated with the kafala system. She deplored the practices of contract substitution, limitation of the possibility of resignation, non-payment of wages, threat of retaliations and she emphasized the difficult situation of women domestic workers. She recalled that, during the discussion on the complaint against the Government at the Governing Body’s 323rd Session in March 2015, her Government had, with regard to its enforcement of the dissuasive penalties for forced labour practices, decided that if a worker moved, inter alia, grant migrant workers full freedom of movement and work mobility, particularly when subjected to workplace abuse or threats of retaliation. She urged the Government to immediately undertake the measures to combat forced labour enumerated in the comments of the Committee of Experts and other supervisory bodies, including the enactment of new legislation, the imposition of dissuasive penalties for forced labour practices, the conducting of public awareness-raising campaigns on forced labour, and the initiation of partnerships with governments of migrant-sending countries to prevent exploitative practices in the labour recruitment process. Until adequate changes were made to both law and practice in Qatar, this case ought to continue to receive urgent atten-
tion from the Committee and the other supervisory bodies of the ILO.

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

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

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

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

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

The Government member of Cuba said that his Government rejected forced labour in all its forms and encouraged its eradication. The tripartite committee that had examined the complaint against the Government concluded that it should adopt additional measures. The Government reported that it had drafted a bill to repeal Act No. 4 of 2009, which provided solutions that should address the issues raised by the tripartite committee. He trusted that the Government would continue to make efforts to adopt the necessary measures.

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

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

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

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

The Government member of Canada expressed concern over the situation of labour rights in Qatar, particularly those of low-income migrant workers. While noting that the Government was considering changes to the labour law to address violations of migrant workers’ rights, he observed that these changes had yet to be implemented. Moreover, while other protective legislation existed, such as Act No. 14 of 2004 providing for maximum working hours, paid annual leave, and safety and health standards, further measures were clearly necessary as reports of abuses continued to mount. Reform of the kafala system was especially necessary, as this system tied migrant workers’ legal residency status to their employer. The kafala system was at the centre of many abuses suffered by migrant workers, including the late payment or non-payment of wages, restrictions on mobility, onerous levels of debt, and inhumane working and living conditions. He urged the Government to implement the reforms envisaged so as to establish a legal framework offering strong protection for migrant workers and hold accountable those individuals and companies responsible for violating the rule. The allegations contained in the complaint did not take into account the conclusions of the high-level mission that continued to exist. The kafala system had yet to be addressed, not only by the ILO supervisory bodies but by the UN Special Rapporteur on the Human Rights of Migrants and various human rights organizations as well. Forced labour in Qatar, moreover, resulted from a system which deprived migrant workers of their fundamental rights and access to justice. The Government could not claim a lack of resources or of access to technical assistance in addressing this issue. Steps to address the forced labour situation could have been taken a long time ago; indeed Qatar had the potential, and still did, to be a model of humane labour migration management. Instead, it remained a model for all that was wrong and deplorable about labour migration today. They welcomed the commitment the Government had made to address the various factors contributing to forced labour, but stressed that these commitments had to be urgently realised. The Government had done far too little, far too slowly, particularly in view of the sheer magnitude of the forced labour problem that continued to exist. The kafala system had yet to be eliminated, for instance, although the Government had promised to do so in 2014.

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

The Employer members appreciated the robust discussion. While acknowledging the annoyance of the Government to deal with two procedures concerning substantially the same case, they noted that the ILO Constitution allowed for this to happen. They commended the Government for the concrete steps taken to address a number of cases. However, many legal reforms were envisaged so as to establish a legal framework offering strong protection for migrant workers and hold accountable those individuals and companies responsible for violating the rule. They expressed concern with regard to the law’s implementation. In that regard, several elements of the report of the ILO mission of February 2015 referred to the amendment of the labour code, the labour complaints mechanisms and the effective enforcement of labour laws. While commending the Government for the initiatives taken so far, notably the reform of the legislation, they called on the Government to do more and without further delay. They expected that the improvements in the legislation and practice would lead to social progress and economic development in the country.

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

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

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

Conclusions

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

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

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

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

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

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

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

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

Labour Inspection Convention, 1947 (No. 81)

Honduras (ratification: 1983)

A Government representative described the progress made by the Government in relation to the observations of the Committee of Experts. Regarding the function of inspectors in labour disputes, he said that they no longer carried out conciliation or mediation duties, which were now undertaken by a specialized service. On the adequacy of human, financial and material resources, the Government was implementing an action plan to strengthen inspection, which included a strategy, instruments and logistics to reinforce the inspection plan in line with the requirements of the Convention. A further 94 inspectors would be added by 2016 to the current number of 141. Concerning vehicles, although they were not for the exclusive use of the inspectorate, they were utilized on a priority basis to carry out these actions, and the action plan provided for the strengthening of this logistical as-
pect. With regard to the need to ensure appropriate conditions of service, employment stability and independence of inspectors, the job security of inspectors had been guaranteed, with over 50 per cent having worked for the inspectorate for between ten and 25 years. Moreover, a system was in place which divided inspectors into three categories, supervisors, senior inspectors and inspector supervisors, and the provisional draft of the new legislation provided for selection criteria including competitive examinations, educational qualifications and seniority. Regarding independence from improper influences, several instruments were applicable, such as inspection protocols and the Civil Service Act. With respect to adequate and effectively enforced penalties, the planned legislative reform provided for the strengthening of enforcement capacity to prevent violations of labour laws. The obstruction of labour inspection was considered very serious, and the offending enterprise was penalized on the basis of the minimum wage and the number of workers affected. Violations of labour legislation recorded by inspectors had totalled 3,082 in 2014, and exceeded 5,357 in the first quarter of 2015 alone. As labour inspection was an essential component of the Government’s efforts to ensure that its work with labour of a group of ILO experts. He reiterated the Government’s commitment to reinforce the labour inspectorate through an action plan introduced within the framework of the tripartite monitoring and follow-up commission, within a time frame of 2015–16 and budget already approved by the Office of the President. The action plan, which took into account the observations of the Committee of Experts and the need to strengthen the inspectorate, comprised seven main areas and over 15 activities to be carried out in 12 months. The outcomes and progress achieved would be included in the 2016 report on the application of the Convention.

The Worker members considered that Honduras had failed at all levels to guarantee compliance with the Convention owing to a series of problems in law and practice, which had left workers with no protection and without any effective remedy for the violation of their rights. This had been confirmed in February 2015 by a report of the United States Department of Labor in response to a complaint submitted by 26 Honduran trade unions and civil society organizations. The report revealed that for some years the Government had been failing to enforce labour legislation through labour inspection and the justice system. The Worker members therefore concluded that the Government had little political will to ensure the effective implementation of labour laws. There were several key areas of non-compliance with the Convention. The number of inspectors (119 full-time employees) was insufficient and was concentrated in the capital and the country’s main business centre. Inspectors were frequently prevented from entering factories, they rarely sought the assistance of the police, and the Ministry of Labour did not resort to the tribunals to oblige employers to authorize them to carry out inspections. They were not adequately paid, which prevented inspectors from carrying out their tasks were subject to a fine of only between US$2.40 and $240), fines were rarely imposed and the penalties had not been reviewed since 1980 (for example, the fine for not paying the minimum wage was between $4.80 and $48, and the figure was not multiplied by the number of workers concerned), and where fines were imposed and paid, the file was closed without investigating whether the cause had been rectified (for example, an agricultural undertaking, due to not paying the minimum wage, owed a total of $129,818, a fine of $240 had been assessed and following payment the file had been closed regardless of the fact that salaries were still being paid below the minimum wage). When inspectors were conduit, the performance of the labour inspectorate, and the first meeting had been held with the consultant appointed by the Office in May 2015, which had led to the start of a general planning phase. The audit, which was scheduled to begin in the last week of June 2015 and for which a technical support committee had been established, would be based on the rigorous work of a group of ILO experts. It appeared that the Government had taken a clear decision not to establish an adequate labour inspection system to protect workers with the aim of creating a favourable climate for trade and investment based on the exploitation of a cheap workforce. The case was particularly serious. Effective measures needed be taken to ensure that Honduras achieved compliance with the Convention as soon as possible.

The Employer members expressed their deep concern at the inadequate application of the Convention in Honduras and emphasized the importance of maintaining an effective system of inspection. They took note of the observations of the Committee of Experts and the Government’s replies concerning in particular: measures taken to ensure the adequate penalties; and problems relating to transport and the conduct of inspections in commercial and industrial workplaces. The labour inspectorate had been established in 1959, and no changes had been made to it since then. There were deficiencies in the selection and training of inspectors. Inspectors were expected to act in the country, for which several million US dollars had been spent. It appeared that the Government had not established an adequate labour inspection system to protect workers with the aim of creating a favourable climate for trade and investment based on the exploitation of a cheap workforce. The case was particularly serious. Effective measures needed be taken to ensure that Honduras achieved compliance with the Convention as soon as possible.
with a view to creating the appropriate conditions for formalizing the latter.

The **Worker member of Honduras** said that labour inspection was a fundamental means of guaranteeing the free exercise of the rights enshrined in international Conventions and domestic labour law, and that the Government members of Honduras were committed to the appropriate steps to ensure compliance with the law by employers. With regard to the authority of inspection services to impose penalties, the Ministry of Labour and Social Security was failing to exercise the power to impose administrative penalties for violations of labour legislation provided for in section 625 of the Labour Code. When levied, fines were not commensurate with the offence committed. The maximum fine was 5,000 lempiras, equivalent to US$228. He emphasized that penalties should serve as an example. The total number of inspectors was too low, as there was only one inspector for approximately 24,000 workers. Furthermore, inspection activities focused mainly on complaints, and much less on routine inspection. In general, inspection activities were confined to carrying out poor investigations without imposing penalties on employers. No priority was given to full inspections at workplaces that would give the State a real overview and allow it to address labour violations that workers were usually afraid to report for fear of losing their jobs. For example, in maquila enterprises, export processing zones did not allow labour inspection by threatening to close down and lay off thousands of workers. Notwithstanding section 624 of the Labour Code, which provided that an inspector could not abandon an investigation without higher level authorization, workers were frequently left with their labour disputes unresolved. Moreover, inspectors would request workers to pay inspection costs, including transport, as a condition for dealing with their complaints. Workers were also charged for receiving any official documents. The Employer member of Honduras said that national labour legislation dated back to 1959 and there had been no substantial reform of the provisions respecting labour inspection since then, even though the country had ratified the Convention in 1983. However, it was a governance Convention that was being examined by the three social partners in Honduras, which had asked for ILO collaboration for an audit of its labour inspection system. The findings of the audit would be communicated to the social partners through the Economic and Social Council. The employers of Honduras were committed to a complete overhaul of the Labour Code and were in favour of the revision and adoption of a new Labour Inspection Act, that should guarantee the professionalism of labour inspectors, their multi-tasking and their specialization according to the economic areas or activities, as well as the creation of a career in labour inspection. The reform would have to clarify inspection procedures and ensure that the penalties imposed on those who violated the labour legislation were commensurate with the type of infraction committed and were established objectively and with due regard for the right to legal defence and protection for all the parties concerned. Even taking into account Honduras’ BACEN agreement, the number of labour inspectors, of approximately 112 for a population of 8 million, was still low. A graduated budget should therefore be introduced as from 2015 that guaranteed not just the payment of salaries, but also the necessary logistical support for inspectors to travel in official vehicles, instead of private vehicles belonging to those who requested their services. Honduran employers were determined to work with their tripartite partners to bring about a legal instrument that could guarantee their objectives in compliance with the roadmap that had been approved. The new instrument would be adopted in Honduras’ Economic and Social Council, before being submitted to the National Congress.

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

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

The **Government member of Nicaragua** endorsed the statement by GRULAC and called on Nicaragua to give high priority to the international standards that it had ratified for those standards to be properly implemented, account nevertheless needed to be taken, not only of the...
resources required, but also of specific national circumstances. Honduras’ commitment to respect workers’ rights and the positive steps taken relating to labour inspection, as well as the action plan for its consolidation, were encouraging. She also emphasized the technical assistance provided by the ILO for an audit of the functioning of the labour inspectorate which she hoped would have a positive effect. Although the State was primarily responsible for protecting workers’ rights, the spirit of the Organization was tripartite participation. Honduras should be encouraged to continue its efforts on behalf of the people, and the Conference Committee should take a favourable view of the steps that were being taken to give effect to the Convention.

The Worker member of the United States said that it was not possible to comply with the commitments under a trade agreement to protect workers’ rights without a functioning labour inspectorate. Yet, this was what Honduras and the United States had done since the Central American Free Trade Agreement (CAFTA) had entered into force in 2006. He recalled that unions in Honduras and the United States had filed a complaint in 2012 concerning the failure of Honduras to enforce its labour laws and ILO Conventions under CAFTA. The Government of Honduras had not formally responded to the complaint for three years, despite ongoing documentation of violations and failures relating to inspection. The Government of the United States had finally responded to the complaint, found “serious concerns” and announced a series of technical cooperation programmes to increase the labour inspectorate’s capacity, but no unions had been consulted in designing the programmes. After years of inaction, the Government of Honduras had made a series of announcements concerning its intentions to comply, with descriptions of programmes and legislative proposals that were being launched. Those announcements were welcome, but had been made before. As in the Guatemalan case, it seemed that three years of complete inaction was acceptable. Meanwhile, mechanisms to defend the interests of investors and multinational corporations adopted decisions that included remedies in dozens of cases each year. The Conference Committee should note with concern the Government’s ineffectiveness in defending workers’ rights through the use of ILO Conventions in trade agreements. He recalled that the Committee had heard the case of Honduras two years ago, and his organization’s remarks at that time had focused on the same employer violations that continued today. The Government had failed to take note of the mentioned infringements to almost all inspection programmes and legislative reform. In February 2015, they had jointly pledged to work together to address issues of labour law enforcement, including the establishment and implementation of a monitoring and action plan. Her Government was committed to fully implement the planned reforms, including through the allocation of sufficient resources to the inspectorate to conduct regular and thorough inspections of workplaces and apply effectively dissuasive penalties for non-compliance with the labour legislation, in accordance with the Convention. Her Government was committed to continued collaboration with the Government of Honduras, particularly for the implementation of the planned reforms on labour law enforcement.

The Worker member of Brazil said that the situation in Honduras was urgent. Although the Convention was technical, its importance was immeasurable and it was closely related to other Conventions. If a country violated the present Convention, there was a danger that it would fail to observe all of the others. The report of the Committee of Experts described the seriousness of the situation: the number of inspectors was insufficient; inspectors lacked the material resources to perform their duties; and penalties were inadequate and inefficiently applied. In addition to a very limited number of inspectors, other obstacles hampered the performance of their functions, as was evident in the report of the Committee of Experts. Workers had no pay for the hours they worked and had failed to enforce laws or ensure the compliance of the trade agreement with the ILO Conventions that it had ratified. And yet Honduras, and the company in question, continued to enjoy trade benefits. There were also employers in the country which complied with obligations regarding labour inspection and, in the same way as those in violation, such companies should be recognized. Many workplaces in Honduras, especially in the agricultural sector, were privately inspected and certified. That presented a conflict of interest, as the auditor profited by providing services to suppliers, and wanted more business opportunities. In a country such as Honduras, these private compliance initiatives further perpetuated the governance gap.

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

The Worker member of Spain said that in Honduras melon production represented 11 per cent of agricultural exports, and this work was carried out mainly by women, representing two-thirds of the workforce in the country. They were mainly young women without family support, with four or five children, and employed in temporary jobs. Women workers were paid 70 per cent less than the national minimum wage, were not paid overtime and had long working hours. Although accidents at work and health problems caused by the intensive use of agrochemicals were common, most workers lacked access to social security protection, including health services, and there was no response to the numerous requests to inspect these violations. The critical situation in the field of labour inspection in Honduras directly affected the human rights of workers and their families. The Government was not responding to the needs of inspecting compliance with labour legislation, particularly in the agricultural sector.

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

An observer representing the World Federation of Trade Unions (WFTU) noted with deep concern the violation of
the Convention by Honduras, its inability to cope with the situation and the lack of budgetary resources. He called on the ILO to supervise rigorously the implementation of the Convention and expressed solidarity with Honduran workers.

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

The Worker members welcomed the fact that, in the light of the recent report of the United States Department of Labor, the Government of Honduras had developed an action plan and accepted technical assistance of the United States, which would be overseen by a tripartite committee. They also welcomed the fact that the Government was planning to draft a new general labour inspection act. They hoped that those initiatives would succeed in overhauling the labour inspection services, which had failed to implement labour legislation effectively due to corruption and indifference. While endorsing the need for technical assistance, the Worker members emphasized that it must be supported by political will and that the Government must give the labour inspection services a sense of mission to be undertaken with professionalism and respect for the rule of law. In order to ensure that workplaces were inspected as regularly and thoroughly as necessary to ensure the effective application of legislation, the Worker members urged the Government to substantially increase the number of labour inspectors, particularly in areas that were currently grossly neglected, and to ensure that they had the material resources needed to carry out their work, including vehicles; to formulate a proactive labour inspection plan targeting sectors where there were serious and systematic labour legislation violations, including the maquila, agricultural and other sectors; to ensure that labour inspectors received the relevant training and take all necessary steps to guarantee their independence; to increase fines for violations of the law immediately and review the method used to calculate them to ensure that they were sufficiently dissuasive; and to introduce procedures for labour inspectors to carry out repeat inspections in order to verify that orders were complied with and enforce their implementation. The ILO should offer, and the Government of Honduras should accept a direct contacts mission to assess the current situation, verify technical capacity needs and help in coordinating the various initiatives.

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

Conclusions

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

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

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

- consider including the following among its planned reforms: professionalizing labour inspection staff; making inspection tasks more specialized; pursuing a multidisciplinary approach; increasing the wage budget and improving logistics; and ensuring that penalties for breaking the law are increased so as to be dissuasive and are determined through pre-established, objective procedures that guarantee all parties the right to a fair hearing;

- substantially increase the number of inspectors, particularly in areas which are underserved at present, and ensure that they are provided with the material resources needed to carry out their work;

- develop a proactive inspection plan to focus on sectors where there are regular violations of labour legislation, including the informal sector, agriculture and maquilas;

- continue receiving technical assistance from the ILO in order to overcome the remaining legal and practical obstacles in applying the Convention, and propose to expand the coverage of the system, but is intended to mean an end of maladministration, transparency so that its effectiveness and consequently the compliance of labour laws can be improved. The Government is giving full effect to the provision of the Convention. The Government reiterates its commitment to the obligations contained in the Convention that workplaces shall be inspected as often and as thoroughly as necessary. There is no intent either to dilute this principle in theory or practice, or to relax the enforcement of the rule of law. Factories in all states are governed by the Factories Act and there is a similar set-up in all states under a chief inspector of factories. The statistics show that there has not been any drastic decline in the past few years, nor have there been serious imbalances in the number of inspections in the states. For instance, in 2014–15 under the provisions of the Contract Labour (Regulation and Abolition Act) 1970, a total of 2,729 inspections were carried out in the central sphere up to December 2014, and these inspections resulted in 1,634 prosecutions and 1,510 convictions. Similarly, 4,852 inspections were carried out under the Minimum Wages Act, 1948, which led to the detection of 179,958 irregularities in the payment of minimum wages and, consequently, 1,790 prosecutions were launched which resulted in 1,041 convictions.

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

With regard to the observation by the Committee of Experts concerning the self-certification system introduced in 2008 in the State of Haryana, the Government indicates that self-certification is fundamentally a support system to help employers ensure compliance with labour laws on their own and then to support the labour inspector at the time of inspection. This scheme does not entail any relaxation of statutory inspections by labour inspectors. The Government emphasizes that this self-certification is an additional requirement to the system of statutory labour inspections and is in no way a substitute to the main work of labour inspection. The Committee of Experts has sought information on the pay scales and code of conduct of labour inspectors. In India, the texts, employees’ liability, inspectors are notified in the Gazette and inspectors are deemed to be public servants, governed by relevant service conditions and conduct rules, and they take an oath of allegiance to the Constitution of India. All inspectors under the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, in major ports are appointed by a notification in the Official Gazette and as such their pay scales are the same as those applicable to other public officials such as tax inspectors. The pay scale of the inspector staff in all these organizations is 9,300 Indian rupees (INR) to INR34,800 + INR4,600 (GP) plus dearness allowance and other allowances as may be applicable. With regard to the observations of the Committee of Experts not writing to inspectors to a workplace and the recommendation of the Committee of Experts to amend the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, so that the rights of inspectors to enter workplaces freely is guaranteed in law, the Government indicates that section 9 of the Factories Act, 1948, and section 4 of the Dock Workers (Safety, Health and Welfare) Act, 1986, already guarantee powers to inspectors to enter freely in workplaces and dockyards, etc. Thus amendment to the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, do not seem necessary. The Committee of Experts has further suggested removing all restrictions in practice, where they exist, with regard to the principle of the free initiative of labour inspectors to enter any workplace liable for inspection. The existing labour laws guarantee this power to inspectors already. In practice, too, the right and power of the labour inspection authority has not been curtailed by the Government. As regards the inspection system in state governments, the Central Government does, from time to time, advise state governments to enforce labour laws effectively and to have effective enforcement mechanisms. The Government has recently launched a major good governance initiative to improve labour enforcement mechanism in terms of transparency, accountability and ease of compliance with the ultimate aim of promoting industrial peace and harmony. The Government reiterates that the rights of the inspection authority have not been curtailed. The observation of the Committee of Experts also concerns the inadequacy of penalties under the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, and the delay in making the necessary amendments to these Acts to enhance penalties. The Government indicates that under the current provisions of these Acts, penalties consist of a fine or imprisonment, or both, depending on the nature of the violation. The Government is in the process of making certain amendments to the Factories Act, 1948, which, among others, include amendments with respect to provisions concerning penalties. Based on the inputs received from the stakeholders, the proposed amendments are under re-examination in the Ministry. The bill could not yet be passed due to a lack of consensus among various stakeholders on the proposed amendments. The Government is committed to the cause of labour in the developmental process and ensuring efficiency and transparency in the world of work. It reiterates its commitments towards international labour standards, as prescribed by the ILO, and particularly the Convention. It remains open to any technical assistance from the ILO as needed.

In addition, before the Committee, a Government representative said that the enforcement of the various labour laws was secured through a system of labour inspectors, at both the state level and the central level, and included prosecution in the criminal courts. As a founding member of the ILO, India deeply respects the fundamental rights of all its citizens, as set out in the Constitution. The mandate of Labour Ministry of India is to safeguard the interests of the working class, while promoting a conducive working environment for inclusive growth and industrial harmony. The review and updating of labour laws was a continuous process and the Government was guided by tripartite consultations. In its report to the Committee of Experts, his Government would provide detailed statistics on the enforcement of labour laws
from 2011 to 2014, as requested. He nevertheless empha-
sized that a decline in the number of inspections did not
indicate a lack of enforcement of labour laws. During the
periods 2012 to 2013 and 2013 to 2014, the number of
convictions under the Contract Labour (Regulation and
Abolition) Act had increased from 2,913 to 3,259, and the
number of convictions under the Minimum Wages Act
had increased from 4,954 to 5,074. Those statistics
demonstrated that the Government was placing emphasis
on quality and effectiveness of inspections. Concerning
labour inspection in SEZs, the Government would provide
detailed statistics regarding inspection activities, as re-
quested by the Committee of Experts. The Government
had recently launched a major good governance initiative
to improve labour enforcement mechanisms in terms of
transparency and accountability and, under a computer-
ized inspection system, the selection of establishments for
inspection would be based on transparent and intelligent
criteria to avoid malpractices. That system was being
designed to improve compliance with labour laws, and the
rights of the inspection authority had not been curtailed.
In conclusion, he expressed the commitment of his Gov-
ernment to the cause of labour in the developmental pro-
cess and to the need for a high regard for ILO labour stan-
dards. That was why he expressed appreciation for the ILO’s
technical support.

The Worker members welcomed the opportunity to dis-
cuss this case as workers’ rights were poorly enforced in
India in practice, in both the formal and the vast informal
economy. Even in the formal economy, inspection in some
areas was essentially non-existent. The Worker members
were of the view that labour inspectors were often unable or unwilling to monitor compliance with
national labour laws. In many cases, labour inspection bodies continued to be extremely understaffed. Labour
inspectors were also prevented from entering factories,
and collusion with employers was frequent. Labour in-
spection was thus largely incapable of ensuring respect
for workers’ rights. The new laws proposed by the Gov-
ernment did not resolve those issues and instead threat-
ened to worsen the situation by weakening labour inspect-
ion. As of 2014, the Government had introduced legisla-
tive bills which had implications not only for the content
of substantive rights, but also far-reaching consequences
for labour inspection. The draft Wages Bill was just one
example. The Worker members believed that section 47
of the Wages Bill would profoundly change the system of
labour inspection in a manner that was fundamentally
inconsistent with the Convention. The primary concern
with the introduction of this section was that it deter-
mined the powers of inspectors, with significant new limitations on inspection powers compared with
existing Indian labour law. Finally, section 49(3) of the
Bill envisaged that penalties would only be imposed after
an inspector had issued a written order and given the em-
ployer additional time to comply. While that might be
appropriate in some circumstances, penalties were re-
duced in all cases where violations were detected
immediately, particularly in cases where violations were intentional or repeated, or where violations were serious
or affected a large number of workers. The decision to
name inspectors as facilitators also led to the belief that
enforcement was not part of the objectives of labour in-
spection.

In 2008, the SEZs Act had established a flexible legal
framework as a means of attracting foreign direct invest-
ment. In India, SEZs were known for anti-union discrimi-
nation, with unions being strongly discouraged and thus
rare. Moreover, workers were frequently not paid mini-
mum wages, worked very long hours in order to meet
stringent and unrealistic production targets, and were sub-
jected to dismissal without justification or compensation.
Health and safety in SEZs was frequently poor, which
was in part due to the outsourcing of labour inspection.
The SEZs Act provided that its provisions could not be
invoked to amend labour legislation. However, although
labour law could not be modified, state governments had
in fact made substantial modifications through notifica-
tions and other administrative measures. For example, the
Government of Punjab had delegated the powers of the Labour Commissioner, who was responsible for the en-
forcement of labour laws outside SEZs, to the Develop-
ment Commissioner. It had also decided that a self-
certification system would be applied in respect of labour
laws. In addition, all units set up in SEZs were declared
“Public Utility Services” under the Industrial Dispute Act,
which made the exercise of the right to strike nearly im-
possible. Normally, Indian labour legislation vested the
Labour Commissioner with the authority to enforce la-
bour laws. In SEZs, this authority was vested with the
Development Commissioner, whose central function, un-
like that of the Labour Commissioner, was to ensure that
SEZs were able to attract investment and generate earn-
ings. In addition, for inspections relating to health and
safety, units in SEZs could obtain inspection reports from
an accredited agency that had previously been deter-
mined to worsen the situation by weakening labour inspec-
tion. The system would allocate work places for
inspection randomly and the employer would be notified
in advance of the inspection. Inspection systems based
entirely on self-assessment and complaints were ineffec-
tive, as enterprises could provide false information and
workers were unlikely to complain because of fear of re-
prisals. Instead, risk-based inspections, as part of a coor-
dinated system, were essential to ensure that cases of
non-compliance were detected where self-certification
and complaints-based inspections were inadequate. Tar-
geted inspections should therefore be given priority over complaints-based inspections. Furthermore, unannounced
visits were an essential element of labour inspection, as
companies that were notified of inspections could make
efforts to appear to comply only on the day of the inspec-
tion. At the same time, if inspection was outsourced to private actors, the Worker members feared this would increase the likelihood of industrial
disasters. The Worker members were of the view that the
current legal reforms posed significant concerns in rela-
tion to compliance with the Convention and risked un-
dermining compliance with national labour laws. Fur-
thermore, over a decade of experience of SEZs provided
ample evidence that the fact that the legal framework al-
lowed the zone authorities rather than the Labour Com-
misioneer, to enforce the law meant that violations of la-
bour legislation in SEZs had predictably become rife,
with little possibility of remedying such violations. Fur-
ther reliance on self-certification schemes would only
further weaken the enforcement powers of the Govern-
ment and leave workers without effective recourse. The Worker members urged the Government, in consultation
with the ILO and the social partners, to review the impact
of these various schemes and to make the necessary re-
forms in law and practice to ensure that workplaces were
inspected effectively in accordance with the Convention.

The Employer members indicated that this case was fun-
damentally one of a Government not providing the Com-
mittee of Experts with the necessary statistics and infor-

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

The Employer members welcomed the detailed information provided by the Government, which provided a basis for moving forward with the introduction of a system of labour administration and inspection which might form of labour administration with investment in its regulatory structures and, in that regard, to draw upon the country’s wealth of expertise in its renowned IT sector. They also expressed a further note of caution. One of the responsibilities of state labour inspectors was the enforcement of the Child Protection (Prohibition and Regulation) Act 1986, which prohibited employment under the age of 14 in hazardous occupations. This Act formed one of the cornerstones of the present legal regime on child labour in India. The Employer members were therefore very concerned that no information had been made available to the Committee of Experts on the number of inspections and prosecutions under this extremely important Act at the state level. To be clear, the Employer members were not saying that state labour inspectors were not seeking to enforce the Act, as they were not aware of any complaint from the Worker members in this regard. They urged the Government to give priority to the compilation of statistics on child labour inspections. Finally, they urged the Government to have particular regard to child labour issues in building the capacity of the labour inspection system and to fulfilling its reporting obligations under the Convention.

The Worker member of India said that the Government had enacted the SEZs Act in 2005 and had then introduced the policy on National Manufacturing Investment Zones under which areas were specified where labour laws would not be implemented or enforced. In those areas, one development commissioner would be specially empowered to deal with labour problems at his discretion, while there would not be inspectors, conciliation proceedings, tribunals or labour courts. This in turn had raised the fear that the role of trade unions would cease, and in fact, only a few unions had been registered in these areas and the existence of work relationships was not recognized. However, more and more anti-union practices by both the Government and employers had been stopped by trade unions. Such situations had led to the forming of the Joint Front of Central Trade Union Organizations comprising all the central trade unions, a historical development in the history of the Indian labour movement. The Government had intended to amend unilaterally almost all the important labour laws relating to wages, industrial relations and social security, without tripartite consultation. The withdrawal of labour inspection was proposed, in violation of Articles 10 and 16 of the Convention and self-certification had been proposed, in violation of Articles 6, 12(1) and 18 of the Convention. These proposals had given rise to strong protests by the Joint Front of Central Trade Union Organizations throughout the country. The Government claimed that it had taken initiatives to amend the labour legislation in order to allow for rapid industrialization, employment generation and the attraction of foreign direct investment. All such acts were contrary to the 2002 recommendations made by the 2nd National Commission on Labour, which was a tripartite body. Following strong protests by trade unions, the Government had started discussions in tripatri-
tite forums and had given assurances that it would not be taking any unilateral action. He called on the Government to refrain from amending any laws that would result in the violation of Convention No. 81 or other Conventions, to strongly punish employers for any violation of labour laws and any exploitation of workers, and to ensure that job security, wage security and social security were guaranteed.

The Employer member of India indicated that Indian enterprises were subject to multiple labour laws, cumbersome and time-consuming compliance procedures and high-handedness by the inspectorate. There were ongoing efforts to reduce avoidable administrative burdens such as the amendment of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, was one such example. Similarly, in order to check high-handedness by inspectors, some of the state governments only allowed visits with the prior permission of senior officials. He considered that the requirements of Convention No. 81 had not been compromised or diluted in any way. The Government had started to take several measures to boost the industrial sector in order to improve the country’s competitiveness and value addition. That followed a number of measures, such as amending the Apprentices Act, 1988, the Factories Act, 1948, and the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, the drafting of the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, and the launching of the Shram Suvidha Portal, which enabled inspectors to track compliance by units in their area. He indicated that the hallmark of these measures was to facilitate industrial activity and to protect workers. He was of the view that, while the excessive power enjoyed by inspectors might have increased the chances of corruption, as mentioned in the All India Manufacturers’ Organisation (AIMO) communication, their independence and integrity, as envisaged under Article 6 of the Convention, could not be guaranteed by higher pay scales. It was true that the adequacy of remuneration and the equivalence of pay scales with those in compatible categories of other public services was important. Referring to Article 12(1)(a) of the Convention, which conferred unfettered powers to enter the workplace, he recalled that absolute power corrupted absolutely. Moreover, the requirements of compliance could be fully met if visits were regulated by senior officials in the ministry. The advancement of technology had brought about a reduction in the complexity of the inspection system. Despite the complexity of the Indian labour law system, it appeared that the Government was committed to the enforcement of such laws, including through criminal prosecution. He emphasized that the Government had also expressed its willingness to receive ILO technical assistance in order to ensure the compliance of its legislation with ILO Conventions. He called upon the Committee to give time and space to the Government to undertake reforms of its labour inspection system and encouraged the Government to avail itself of ILO technical assistance.

The Worker member of France believed that one could agree that labour inspection was essential for labour law compliance at the workplace and to protect workers, while promoting economic growth and the creation of decent jobs. The Worker member of Indonesia indicated that respect for and the implementation of labour rights were fundamental in creating decent working conditions. Due to the multiplicity of labour laws, the existence of a poorly integrated inspection system, the absence of an effective transport and communications facilities, and the geographical spread of establishments, inspection coverage was hugely difficult. Based on Indian Labour Bureau data on the 2012 Annual Review of the implementation of the Minimum Wage Act, 1948, inspectors had been expected in 2012 to cover an estimated 2,428 establishments each. He observed that labour inspection was thus largely incapable of ensuring workers’ rights. With regard to regulation, he indicated that a self-certification system had been introduced in a few states (such as Punjab, Gujarat and Maharashtra), making inspection mandatory every five years under a clutch of labour laws, provided that the employer had self-declared compliance with those labour laws. Self-certification had been implemented in certain sectors, such as the SEZs, IT and ITES, and National Manufacturing and Investment Zones (NMIZs). Moreover, in the case of SEZs, government responsibility had been shifted from the Labour Department (specialized) to the Development Commissioner, which was responsible for ensuring that attracted sufficient investment and generating economic growth and the creation of decent jobs. For the implementation of labour rights were fundamental in creating decent working conditions. Due to the multiplicity of labour laws, the existence of a poorly integrated inspection system, the absence of an effective transport and communications facilities, and the geographical spread of establishments, inspection coverage was hugely difficult. Based on Indian Labour Bureau data on the 2012 Annual Review of the implementation of the Minimum Wage Act, 1948, inspectors had been expected in 2012 to cover an estimated 2,428 establishments each. He observed that labour inspection was thus largely incapable of ensuring workers’ rights. With regard to regulation, he indicated that a self-certification system had been introduced in a few states (such as Punjab, Gujarat and Maharashtra), making inspection mandatory every five years under a clutch of labour laws, provided that the employer had self-declared compliance with those labour laws. Self-certification had been implemented in certain sectors, such as the SEZs, IT and ITES, and National Manufacturing and Investment Zones (NMIZs). Moreover, in the case of SEZs, government responsibility had been shifted from the Labour Department (specialized) to the Development Commissioner, which was responsible for ensuring that attracted sufficient investment and generating economic growth and the creation of decent jobs.

Labour Inspection Convention, 1947 (No. 81)

India (ratification: 1949)
erated profits. She said that labour inspection was non-existent in SEZs, and that no legal action could be taken against an employer in the event of occupational injury or illness. Safety and health laws did not apply to SEZs. The system of self-certification, which over-simplified administrative procedures, prevented any supervision by the labour inspectorate. The situation was not without consequences for working conditions and unionization in SEZs. According to a report published jointly by the Centre for Research on Multinational Corporations and the India Committee of the Netherlands entitled Flawed Fabrics, occupational illnesses were increasing, wages were very low and the working week was 50 to 70 hours. The problem included psychological and sexual harassment, as well as dismissals without justification or compensation. Maternity protection was non-existent in SEZs, workplaces were unhealthy and workers were sometimes beaten. These conditions amounted in practice to modern slavery. Workers who were ill were fired without compunction and replaced by healthy workers. Workers had no written contract and subcontracting practices were widespread. In order to remain competitive on the global market, labour costs were being cut and the pressure to obtain orders from multinational enterprises in global supply chains was being transferred to workers, who were assigned daily production targets that were ever more demanding. Despite the proclamation in the ILO Constitution that labour was not a commodity, the fact that it was impossible to supervise working conditions in Indian SEZs seemed to suggest that that was exactly the premise on which global trade operated via supply chains. The Government of India had introduced reforms aimed at increasing the efficiency and transparency of the labour inspection system. He welcomed the information provided by the Government that laws also applied to SEZs. He expressed his satisfaction with regard to the cooperation of the Government with the ILO and trusted that this cooperation would continue.

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

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

The Government member of the Islamic Republic of Iran indicated that the detailed information and statistics provided by the Government showed that considerable achievements had been made with regard to the labour inspection system. The Government had proposed a series
of legislative reforms with the aim of creating an enabling environment for economic growth and job creation. He welcomed the fact that the Government had been working closely with the ILO to ensure that the legislative reforms were consistent with ILO Conventions. He endorsed the measures taken by the Government to improve its legislation and to ensure that the Government continued on that path. In conclusion, he hoped that the information and clarifications provided by the Government would be taken into account by the Committee.

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

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

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

The Government representative reiterated the Government’s commitment to complying with the Convention. Its intention to engage in ILO technical assistance was essentially to ensure that the legislative process remained consistent with the Convention. India was also participating in an ILO study on enhancing labour administration performance specifically focussing on the capacity of labour administration to promote compliance with labour laws. Many of the observations made during the discussion were more apprehensions than actual facts. Turning to the proposed bills, which were still under consultation, he emphasized that inputs and advice from various stakeholders had been considered at the time of finalizing the bills. He gave assurances that the obligations arising out of the Convention would be fully taken into consideration when finalizing the bills. In relation to labour inspection in SEZs, he said that SEZs were not void of labour inspection. For example, during the labour inspection conducted in the SEZs of Noida, which consisted of 27 units, the labour inspectors had detected 15 violations of labour issues and penalties had been imposed on ten units in SEZs. Referring to the allegation of the conflict of interest concerning the duties of the Development Commissioner in SEZs and his inspectorates, he clarified that they were government officials whose duty was not only to ensure investment in SEZs, but also to maintain industrial relations and to ensure compliance with legislation.

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

The Worker members indicated that this was an important case, as many workers were affected by the decisions of the Government on the functioning of the labour inspection system. It was clear that self-certification schemes were not effective and constituted a flagrant violation of the Convention. The elimination of the so-called “Inspector Raj” had resulted in the suppression of many labour inspectors. Turning to SEZs, they observed that labour inspections in international labour standards were delegated to zone authorities which did not have an interest in enforcing labour laws. SEZs had therefore become union free zones where fundamental rights and labour standards were violated and impunity reigned. They added that in some SEZs health and safety inspections had been privatized, which gave rise to concern about the adequacy of inspections and the risk of industrial catastrophes. While recognizing the Government’s efforts to attract foreign direct investment, it could not be tolerated that the method adopted was based on a promise not to enforce labour laws effectively, which had already been the strategy of previous governments. The message was therefore sent out to workers that their fundamental rights were not worth protecting. This was something of an invitation to other governments to take inspiration from this approach. In conclusion, the Government should be urged to ensure that the amendments made to the labour laws were in full compliance with the Convention and were developed in consultation with the social partners. To this effect, it should avail itself of ILO technical assistance. The Government should provide a comprehensive report to the 2015 session of the Committee of Experts.
The Employer members observed that this discussion demonstrated the fundamental need for social dialogue covering the concerns addressed by the Committee of Experts with regard to the impact of the self-certification scheme; the guarantee that workplaces could be inspected as often and as thoroughly as necessary to ensure effective application of the legislation, including the protection and promotion of the principle of the free initiative of labour inspectors to enter any workplace liable to inspection; labour inspections in SEZs and the impact of dispensations conceded by the development commissioner on labour inspection; and the needs of the informal sector. To this effect, the Government should avail itself of ILO technical assistance for the development of a system of labour inspection as set forth in the Convention, taking into consideration the federal government structure of the country. In this regard, special attention should be paid to the implementation of Articles 10 and 16 of the Convention concerning the adequacy of the number of inspectors and the frequency of inspections. The Government should be requested to provide to the 2015 session of the Committee of Experts information on relevant statistics, including SEZs, in order to show whether the number of inspectors at the disposal of the central and state government inspectorates was sufficient to ensure compliance with the Convention. It should also provide information on the current proposals for amendments to labour legislation and its regulations, as well as information on all laws and regulations, including those relating to health and safety, that required inspection of workplaces covered by the Convention.

Conclusions

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

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

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

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

- Review, with social partners, the extent to which delegation of inspection authority from the labour commissioner to the development commissioner in SEZs has affected the quantity and quality of labour inspections.

- In consultation with the social partners, ensure that the amendments to the labour laws undertaken at the central or state level comply with the provisions of the Convention, making full use of ILO technical assistance. Additionally, provide detailed information explaining all current proposals to labour laws and regulations that impact upon the system of labour inspection at the central and state level.

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

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Algeria (ratification: 1962)

A Government representative recalled that, by ratifying 59 ILO Conventions, Algeria had clearly demonstrated its will to use international labour standards for its economic and social development. Algerian labour laws and regulations were based on the principles set forth in those Con-
ventions and the national Constitution. Trade union rights were guaranteed, and the social partners were represented in all sectors of activity at the national level. The registration of trade unions took place in accordance with the law, through simple formalities without constraints. As a result, 95 workers’ and employers’ organizations, in both the public and private sectors, had been registered during the previous two years. The national legislation had also created an environment that was conducive to collective bargaining and enabled the economic and social partners to standardize social and labour relations. The Algerian experience of social dialogue, as presented to the ILO Governing Body, had received favourable feedback and encouragement. A draft Labour Code had been forwarded to the social partners for their opinion, and to the ILO. The policy adopted was therefore clear and all the procedures had been followed in a context of total transparency. The drafting or amendment of a Labour Code was a process that might appear long, but it had to respect the various stages of consultation and exchange to achieve consensus between the parties. The ILO was aware of the stages embarked on for the reform of the Labour Code, which had been the subject of a tripartite meeting in July 2014, and it had received the constructive comments made by the Conference Committee. A programme of work had been drawn up together with all the parties, which was being followed methodically and without any pressure. He pointed out that the report of the Committee of Experts contained some inaccurate information. The Algerian Government had no problem with the National Autonomous Union of Public Administration Personnel (SNAPAP), nor with the Autonomous National Union of Secondary and Technical Teachers (SNAPEST), the leadership of which had been confirmed by court decisions that had to be respected by everyone. Algeria was a State of law and open to social dialogue. An economic and social pact concluded in 2006 between the Government and the economic and social partners had been renewed in 2010. Another economic and social growth pact had been concluded in February 2014. The allegations were therefore unacceptable since they were merely a repetition of part of what had been asserted in June 2014, whereas explanations had been provided demonstrating compliance with the Convention. The Committee should ensure that the allegations made were well founded, as Algeria was setting an example in terms of consultation and negotiation, as recognized by various ILO departments after on-site visits to Algeria. In conclusion, every effort would be made to promotion of development of social dialogue and the social partners, in compliance with the decisions taken by the competent jurisdictions and in conformity with the laws and regulations in order to preserve the rights of the parties without any interference.

The Worker members recalled that the Committee on the Application of Standards had discussed the case in 2014, specifically with regard to the points concerning Article 30 of the Convention, which dealt with the right to establish trade unions and the right of workers to establish and join organizations of their own choosing. Since the same criticisms had been made for over ten years, it had been hoped that the Government would amend national law and practice and would report back on the steps it had taken with respect to freedom of association. The report of the Committee of Experts’ in 2015 pointed out that the Government had not registered the existing nine federations and confederations of the social partners to improve national labour legislation. They recalled that this was a follow-up to the case examined by the Conference Committee in 2014 and understood that since then the Government had worked on completing a draft Labour Code. The Employer members encouraged the Government to continue the exercise of drafting the new Labour Code in consultation with the social partners. Unfortunately, the Conference Committee did not have a copy of the draft Labour Code and was thus limited in the views it expressed. Nevertheless, the Employer members encouraged the Government to provide detailed infor-
ination on the new Labour Code to the Committee of Experts so that it could be analysed and considered in respect of the observation. The Employer members were cautiously optimistic about the developments and considered that they contributed progress. They hoped that the new Labour Code would address the issues relating to the treatment of trade unionists and the participation of the social partners, and that it would give a positive review of the amendments to the Labour Code. Those measures should be acknowledged.

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

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

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

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

Another Worker member of Algeria, speaking on behalf of the ITUC and the CGATA, reviewed the situation of trade unions in Algeria over the past 20 years. The Government had adopted repressive laws aimed at stifling freedom of expression and suppressing trade union and social movements. A letter sent by the CGATA to the Government of Algeria, prior to the 104th Session of the International Labour Conference, for the purpose of reviewing its labour legislation, particularly the provisions relating to the procedures for the establishment of trade unions, federations and confederations, and the rights of foreign workers to form unions. The Government had also undertaken to take into consideration the comments of the ILO in order to comply with the relevant Conventions. All these factors, which demonstrated the good faith and political will of the Algerian Government, should be encouraged.

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

The Government member of Ghana emphasized that freedom of association was a basic human right and was an essential concern of the ILO, as it was the pillar that formed good industrial relations practice in any country. It should be recalled that the issues relating to Algeria had been raised by the Committee of Experts in the comments of the ILO in order to comply with the relevant Conventions. All these factors, which demonstrated the good faith and political will of the Algerian Government, should be encouraged.

The Worker member of the United States, also speaking on behalf of workers and being seated in the section 6 of Act No 90-14. It was encouraging that the new Labour Code had been developed with inputs from the social partners, and the Government’s initiative in seeking ILO assistance. He appreciated the Government’s development of the new Labour Code with emphasis on addressing the gaps in the previous Act.

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

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

The Government member of Mali commended the Algerian Government for the information provided and the efforts made to ensure a more effective application of the Convention. He also welcomed the legislative reform that was under way, particularly the revision of Act No. 90–14 on procedures for the exercise of trade union rights, and the statement that the revision process would be continued until the law was adopted. He called on the Committee to take into account the willingness of the Algerian Government to apply the Convention, encourage it in that regard and afford it the necessary technical assistance.

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

The Government member of Mozambique welcomed the exhaustive reply given by the Government of Algeria and observed that the Algerian authorities were committed to ensuring that its legislation in conformity with ILO Conventions. He also emphasized that Algeria was one of the five African countries that had ratified the largest number of ILO Conventions; given how long it had been a Member of the ILO, there was no doubting its political will or its efforts to bring its legislation into conformity with the Convention, in consultation with the social partners. The Committee should give Algeria sufficient time to revise its legislation so as to ensure that the final product reflected consensus and contributed to the country’s economic growth.

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

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

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

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

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

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

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

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

**The Government member of Kenya** said that Algeria had made tremendous progress with regard to this case since the discussion the previous year. He noted the ongoing Labour Code review process with the social partners, with the technical assistance of the ILO, and was of the opinion that Algeria was firmly on the road towards respecting and implementing the Convention. In conclusion, he indicated that, in view of the legislative and governance reforms taking place, support should be provided to Algeria to ensure full compliance with the Convention. He invited the ILO to consolidate its technical assistance in Algeria as a sustainable platform for a successful review.

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

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

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

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

**Conclusions**

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

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

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

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

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

**BANGLADESH (ratification: 1972)**

A Government representative indicated that trade unions were protected under the Bangladesh Labour Act, 2006 as amended in 2013, and that acts of discrimination against trade unions were subject to legal action. In accordance with the Labour Act, the Department of Labour received complaints and dealt with them in due time. Between January and April 2015, a total number of 182 complaints had been brought before the Department of Labour, all of which had been investigated, 177 settled and five had been filed as criminal cases. In addition, in March 2015 a telephone helpline had been launched, initially to enable the workers in the Ashulia area to present their claims. This telephone line would be expanded to be operational nationwide. With regard to export processing zones (EPZs), 60 counsellors and inspectors were engaged to deal with labour disputes. Furthermore, EPZ labour courts had been created in 2011, before which 160 cases had been brought, of which 70 had been settled. Referring to the allegations of harassment against trade unionists and trade union leaders, he indicated that in 2012 a case of homicide against a trade unionist had been referred for investigation to the Criminal Investigation Department (CID). The Government had brought this case under the ambit of “sensitive cases” to ensure its regular monitoring and expeditious trial. Turning to the registration of trade unions, he indicated that 7,495 trade unions were registered with the Department of Labour. Thus, the Labour Act in 2013 had given rise to a significant number of registrations of trade unions. Moreover, the Department of Labour had established an online registration system in order to simplify the process of registration. With regard to the process of the amendments to the Labour Act, which encompassed 83 provisions, he explained that the modifications introduced were the result of a tripartite consultative process, with the technical assistance provided by the ILO. The major amendments of the Labour Act were: the abolition of the provisions providing for the submission of the list of workers to the factory management before creating a trade union; the incorporation of a provision for the formation of workers’ participatory committees through direct election by workers; the incorporation of a provision for obtaining support from external experts for collective bargaining; as well as the strengthening of a provision on workers’ safety following the adoption of the amendments to the Labour Act, the Government had undertaken the formulation of implementing regulations and ordinances. To this effect, intensive consultations had been held between April and May 2015 with the social partners. The Draft Regulations had subsequently been submitted to the Tripartite Consultative Council (TCC) on 2 June 2015, which had discussed them and reached consensus on their content. The Draft Regulations were now being sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting and publication in the Gazette. In addition, he indicated that the Industrial Relations Rules, 1977, had been repealed and were therefore no longer applicable. With regard to the elaboration of a comprehensive EPZ Labour Act, he indicated that it had been drafted, and consultations on the draft EPZ Labour Act had been held with the workers’ representatives of EPZs, investors and other relevant stakeholders. The opinions expressed during the consultations had been addressed as far as possible in the light of the relevant ILO Conventions. The draft EPZ Labour Act had been adopted by the Cabinet in July 2014 and subsequently sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting and submission to Parliament for adoption. In order to safeguard the right of freedom of association the Government, had also focused on strengthening institutional capacity building. To this effect, the Department of Inspection for Factories and Establishments had been provided with more staff and the number of staff had risen to 993. Recently, the Government had recruited 222 inspectors, bringing the number of inspectors to 279. In parallel, the budget for the Department of Inspection for Factories and Establishments had been increased by nearly four times and 23 new district offices had been established. In conclusion, he gave assurances of the Government’s commitment to international labour standards and expressed his appreciation for the constructive engagement of the ILO to promote labour rights through technical cooperation. The Government expressed its commitment to continue its efforts to promote freedom of association through social dialogue and effective cooperation of both the national and international levels.

The Worker members recalled the recent second anniversary of the collapse of the Rana Plaza factory and noted that some progress had been made, particularly with regard to inspections relating to building and fire safety, but regretted that such progress was almost exclusively attributable to private initiatives. Very much work never-
theless remained to be done to protect freedom of associa-
tion and to ensure respect of the law. It remained extreme-
d ly difficult for workers to exercise their right to freedom
of association in Bangladesh, which suggested that the
improvements achieved in the area of building and fire
safety and other working conditions might not be lasting.
With regard to revelations in 2012, the European Union
had noted that approximately 300 new organizations had
been adopted and had called on the Government to make sig-
nificant progress in that regard. The European Union and
the United States, both signatories to the Sustainability
Compact, had also insisted on a new series of amend-
ments to the Labour Act. The information provided by the
Government on these points should be verified as, despite
its reiterated promises, the Government had still not pub-
lished the new implementing regulations relating to the
2013 Labour Act, thereby jeopardizing the transition to a
sustainable ready-made garment (RMG) industry.

Over 400,000 workers were employed in the production
of garments and shoes in EPZs, from which trade unions
were prohibited and where only workers' associations,
which did not have the same rights or guarantees, could
be established. Although the authorities in EPZs main-
tained that collective bargaining was authorized, it did not
exist in practice and many union leaders had been dis-
misse d with impunity in retaliation for having asserted
their few rights as workers. In 2014, the Cabinet had
adopted a new draft law on EPZs, which had not yet been
promulgated, and which continued to prohibit workers
from establishing trade unions, while providing for work-
ers' associations as the only means of engaging in em-
ployment relations, and prohibiting these associations
from contacting non-governmental organizations. Fur-
thermore, the RMG industry in Bangladesh was beset by
a climate of anti-trade union violence, and impunity,
with certain cases of beatings, some of which resulted in hospi-
talization, and the dismissal of entire trade union councils.
The labour inspectorate and the police continued to fail
to respond to these acts in due time and none of the workers
were able to organize work-place violence. Trade
union leaders and activists from a major enterprise in the
RMG sector had been the subject of extremely brutal anti-
trade union attacks, as demonstrated by surveillance vide-
os. These attacks had happened after the management had
dismissed the trade union leaders and members, and had
refused to engage in any dialogue on the pretext that the
trade unions' sole intention was to destroy the industry.
Investigations had concluded that the attacks had been
conducted in situ, with the orders of the factory management.

After having been harassed by the national intelligence services
and the police, the trade union had been forced to accept
a settlement, which had only been offered because it had
been a headline story in The New York Times and owing
to pressure from foreign clients of the enterprise. Moreo-
ver, little progress had been made in the investigation into
these matters to the point that in 2012 the Government
should once again be called on to resume the investigation
with a view to punishing the perpetrators.

With regard to trade union registration, it should be
noted that approximately 300 new organizations had been
listed since 2013, even though the long-standing official
government policy was to automatically reject all trade
union registration applications in the textile and garment
sector. However, these new organizations, represented
only a very small proportion of the predominantly women
workers in the sector, which was estimated at more than 4
million workers. Around 40 of these new trade unions had
been targeted in anti-union attacks, and a similar number
no longer existed following factory closures. Almost a third
of the new trade unions registered in 2013 no longer existed.
Furthermore, the number of registration applications that were rejected was in fact on the rise, of
26 per cent in 2014 compared with 18 per cent in 2013.
Moreover, a significant number of applications were left
in suspense well beyond the 60-day time limit and no
database was in place to monitor the processing of these
registration applications. Ultimately, approvals of applica-
tions for registration were at the total discretion of the
Joint Director of Labour, who in some cases refused to
accept the application even if all the requested informa-
tion had been provided. This body had also reportedly
received the order for a blanket rejection of all applica-
tions from the three independent trade union federations
from the garment industry, on the pretext of their links with international organizations. In conclusion, the Worker
members expressed their deep concern at the state-
ments of the Prime Minister and alleged that the trade
unions of providing foreign governments with sensitive
information on the situation of workers in Bangladesh,
calling for measures to be taken against them. The
Government would gain in stature if it addressed chal-
enges rather than threatening those who took action to
defend the interests of workers.

The Employer members observed that the case comprised
four main aspects, namely: the lack of investigation and results relating to violence and harassment of trade
unionists; the slow progress in the registration of trade
unions and the requirement to meet a minimum membership of 30 per cent of the total number of workers em-
ployed in the establishment or group of establishments for
initial or continued union registration; the need for con-
sultation with the social partners over proposed changes
to the Labour Act, which contained many provisions
relating to matters concerning freedom of association; and
the complaints of restrictions and harassment of attempts to organize workers. These attacks had been
motivated by a perception of the Government's alleged,
commitment to complying with international labour standards. However, it was important to put
the case into perspective and for it to be examined taking due
note of its context. Recent changes emanated from the
outcomes of the assessments made on the grounds of in-
cidents such as the Rana Plaza disaster and many of these
changes affected a relatively new and rapidly growing
RMG sector. While significant changes were required,
they observed that some of the issues of the case were
related to frustration with the progress made, rather than
the rejection of the need for change. They added that it
was also important to ensure that matters were dealt with
in the right jurisdiction. With regard to cases of violence
and harassment, there had been numerous complaints
alleging violence against, and harassment of, unionists
since 2012, including the murder of a trade unionist in
2012. The examination of such cases had to be carried out
taking into consideration their context. It was common
that RMG factories shared spaces in the same building or
adjacent buildings, and in the event of industrial dispute
in one factory, workers in other factories joined in the
demonstrations, which frequently resulted in violence.
Hence there was a demarcation line between labour dis-
putes and public protests. The latter had to be dealt with by criminal law. Turning to the right to organi- e officers and carry out trade union activities freely, the Employer members acknowledged the widespread union concern over an alleged refusal to register unions in several sectors. They noted, however, that 7,222 trade unions were established in the country over the years and that about 88 per cent of the workforce in the country was employed in the informal sector. She indicated that many of the industries in Bangladesh, such as the textile, steel and jute industries, had been closed. The closure of the factories had in effect reduced the activities of some of trade union federations and some trade unions had become inactive. The RMG sectors had evolved in the 1980s and now provided employment for about 4 million workers, of which 85 per cent were women from rural areas. These workers were not aware of any rights and were insufficiently paid, with a minimum wage of 3,000 Bangladesh Taka (BDT) since 2010, and an increased amount of BDT5,300 in 2013. While recalling the Rana Plaza collapse and the Tazreen fire incident which had caused the deaths of over 1,200 RMG workers, she appreciated the national and international initiatives to ensure safety at the workplace. While acknowledging that with the massive training under the ILO initiative, the number of trade unions in this sector had increased from 115 in 2012 to the present 450 trade unions, she regretted that this was still not sufficient in relation to the number of factories. However, despite this increase, cancellation of the registration of trade unions by the Department of Labour appeared to discourage the workers from uniting. The trade unions were not union-friendly, such as the requirement of supplementary amendments to the Labour Act had been based on extensive tripartite consultations. In addition, supplementary regulations to implement the Labour Act, as amended, were under preparation. As to the requirement to meet a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments for initial or continued union registration, they noted that such restrictions were not unusual, nor prohibited. In this regard, the Employer members expressed concern at the opinion of the Committee of Experts which considered that the establishment of threshold limits for the formation of unions interfered with the workers’ right to form organizations of their choosing. In the view of the Employer members, taking into consideration the national context, a proliferation of trade unions could be counter-productive to the development of healthy industrial relations and economic growth. Moreover, in many countries the threshold limits for the formation of unions were even higher. As to the right to form federations, the Employer members acknowledged the comment made by the Committee of Experts requesting the Government to review the relevant provisions so as to ensure that the requirement of the minimum number of trade unions to form a federation did not infringe the workers’ right to form federations. To this end, considerations on the practicability of making such provisions operational should be taken into account. Turning to the right to organize in EPZs, they noted that EPZs were common mechanisms to stimulate economic growth by attracting foreign investment. The rules governing EPZs should comply with the labour standards ratified by the host countries of the EPZ. For this purpose, Bangladesh had established an Export Processing Zone Authority (BEPZA) which reported on the manner in which EPZ Workers’ Welfare Associations and Industrial Relations Act, 2010, was applied. The Government had indicated that the BEPZA would consider the comments made by the Committee of Experts and the need for any changes in the light of the experience accumulated. Moreover, based on the discussions held by the Conference Committee in 2012 the Government had expressed its intention to work with the ILO on how EPZ workers could be brought into the scope of application of the national labour law to ensure freedom of association, the right to collective bargaining and other matters concerning labour standards. In addition, a high-level committee had been created to examine and prepare a separate and comprehensive labour law as an international standard for EPZ workers. The work of the committee was ongoing. Thus, the Employer members considered that the process was complex and not easy. The Government should therefore avail itself of ILO technical assistance aimed at ensuring that workers in EPZs were fully guaranteed their rights under the Convention.

The Worker member of Bangladesh emphasized that about 88 per cent of the workforce in the country was employed in the informal sector. She indicated that many of the industries in Bangladesh, such as the textile, steel and jute industries, had been closed. The closure of the factories had in effect reduced the activities of some of trade union federations and some trade unions had become inactive. The RMG sectors had evolved in the 1980s and now provided employment for about 4 million workers, of which 85 per cent were women from rural areas. These workers were not aware of any rights and were insufficiently paid, with a minimum wage of 3,000 Bangladesh Taka (BDT) since 2010, and an increased amount of BDT5,300 in 2013. While recalling the Rana Plaza collapse and the Tazreen fire incident which had caused the deaths of over 1,200 RMG workers, she appreciated the national and international initiatives to ensure safety at the workplace. While acknowledging that with the massive training under the ILO initiative, the number of trade unions in this sector had increased from 115 in 2012 to the present 450 trade unions, she regretted that this was still not sufficient in relation to the number of factories. However, despite this increase, cancellation of the registration of trade unions by the Department of Labour appeared to discourage the workers from uniting. The trade unions were not union-friendly, such as the requirement of supplementary amendments to the Labour Act had been based on extensive tripartite consultations. In addition, supplementary regulations to implement the Labour Act, as amended, were under preparation. As to the requirement to meet a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments for initial or continued union registration, they noted that such restrictions were not unusual, nor prohibited. In this regard, the Employer members expressed concern at the opinion of the Committee of Experts which considered that the establishment of threshold limits for the formation of unions interfered with the workers’ right to form organizations of their choosing. In the view of the Employer members, taking into consideration the national context, a proliferation of trade unions could be counter-productive to the development of healthy industrial relations and economic growth. Moreover, in many countries the threshold limits for the formation of unions were even higher. As to the right to form federations, the Employer members acknowledged the comment made by the Committee of Experts requesting the Government to review the relevant provisions so as to ensure that the requirement of the minimum number of trade unions to form a federation did not infringe the workers’ right to form federations. To this end, considerations on the practicability of making such provisions operational should be taken into account. Turning to the right to organize in EPZs, they noted that EPZs were common mechanisms to stimulate economic growth by attracting foreign investment. The rules governing EPZs should comply with the labour standards ratified by the host countries of the EPZ. For this purpose, Bangladesh had established an Export Processing Zone Authority (BEPZA) which reported on the manner in which EPZ Workers’ Welfare Associations and Industrial Relations Act, 2010, was applied. The Government had indicated that the BEPZA would consider the comments made by the Committee of Experts and the need for any changes in the light of the experience accumulated. Moreover, based on the discussions held by the Conference Committee in 2012 the Government had expressed its intention to work with the ILO on how EPZ workers could be brought into the scope of application of the national labour law to ensure freedom of association, the right to collective bargain-
PART II/45

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

Bangladesh (ratification: 1972)

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

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

The Employer member of South Africa noted that consultations with the social partners over proposed changes to the Labour Act had been ongoing, while a draft EPZ Labour Act had been prepared based on consultations and sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting. Recognizing the activities of the ILO to promote decent work and productive employment opportunities for men and women in Bangladesh, as well as to enhance working conditions and labour rights, he hoped that with time progress would be made.

The Worker member of the United States recalled that the statement made on behalf of the Committee of Experts, said that registration was the first step in the long process of building organizations for workers to exercise freedom of association and an industrial relations system that would be needed to advance decent work. He alleged that the Government was doing little to support this process, despite being required to do so by the Convention, despite its stated desire to consolidate its role as a major actor in the global RMG sector and despite considerable support from the international community in this sector, since the Rana Plaza disaster. Although, this would take time, the State must promote and facilitate this process which would lead to mature industrial relations and a sustainable economy. The inadequate measures and persistent delays in issuing the implementing regulations to the amended Labour Act was a matter of concern. In addition, he expressed concern that the draft of the proposed Regulations did not clearly and objectively define the procedure and criteria to be followed for scrutinizing documents while processing applications. Apparently the Registrar of Trade Unions maintained broad discretionary powers. Moreover, the provision requiring all unions to renew their registration every three years could be used to exert pressure on workers’ organizations and bargaining rights. The problematic registration rules, coupled with the Government’s poor union registration practices, had led to increased rejection of union applications at a disturbing rate. The reasons provided by the Government for rejecting unions ranged from the questionable to the absurd, and included: the refusal to let government inspectors enter the factory to inspect; also unions also did not Government to hold full consultations with the social partners in order to elaborate new legislation for EPZs in proximity to other factories. Consequently, when an in-the implementing regulations to the amended Labour Act.

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

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

An observer representing the International Transport Workers’ Federation welcomed some of the amendments to the Labour Act adopted in 2013, while expressing disappointment as the reforms fell short of the requirements of the Convention. The adoption of the Labour Act in 2006 had been a backward step. The Committee of Experts had stated in 2007 that the new Act did not contain any improvements in relation to the previous legislation and in certain regards contained even further restrictions which run counter to the provisions of the Convention. It was therefore of great concern that the vast majority of comments of the Committee of Experts had been disregarded by the Government. It was important to note, among other things, that there continued to be excessive limits on the right to strike and numerous restrictions on organizing, including in civil aviation and seafaring. For registration purposes, workers were still obliged to meet the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments, which was a clear violation of Article 2 of the Convention. Referring to specific examples of violations of freedom of association as a result of restrictive labour laws, he indicated that in 2010, 13 dockworkers’ unions at the port of Chittagong had been dissolved following the disbandment of the Dock Workers Management Board under section 263(A) of the Labour Act. This had also been made possible by the Bangladesh Labour (Amendment) Ordinance 2008, under which only one trade union organization was permitted at this port. As the sole trade union existing at the port of Chittagong organized only permanent employees, subcontracted workers, as well as security personnel, firefighters and other workers had no trade union representation. While there were several registered unions in the civil aviation sector, this was only possible because the Labour Act allowed registration of aviation unions which fit the definition of “organization of employers” as provided for in the Convention. Clearly, small unions with limited financial means could not always afford to affiliate to such organizations, making this a de facto restrictive requirement for registration.

He urged the Government to take the necessary measures to amend the provisions of the Labour Act without delay in accordance with the comments of the Committee of Experts.

The Government member of Canada commended the Government of Bangladesh on the progress made to improve the working conditions in the RMG sector, but emphasized that more work remained to be done to achieve change in this important sector and to advance women’s empowerment. While freedom of association and the right to organize needed to be further strengthened in the RMG sector, these rights also needed to be extended to other sectors of the economy, including EPZs. Furthermore, recalling the need to ensure a more open and transparent environment in which trade unions and workers’ federations could freely and effectively fulfil their roles, he expressed concern at the ongoing violence taking place in the country against trade unionists and urged the Government to apply a policy of zero tolerance against such practices. He called on the Government to amend the Labour Act in certain fundamental areas, in consultation with the social partners, in order to bring it into conformity with the Convention. Finally, he expressed the commitment of his Government to work with all stakeholders to improve safety and workers’ rights in Bangladesh, particularly in the RMG sector.

The Worker member of the United Kingdom, noting that the Labour Act had serious flaws, recalled that Bangladeshi workers had been waiting almost two years for the adoption of its implementing regulations. There had been repeated promises, but no definitive action. The failure to issue those rules had jeopardized the transition to a sustainable garment industry and more mature industrial relations. The ILO Better Work programme and the training programme under the Bangladesh Accord depended on the adoption of those rules and regulations. At the factory level, the absence of the regulations meant that even where workers and employers wanted to set up representative systems and safety committees, they could not do so. International bodies had called on the Government to finalize the rules. On the second anniversary of the Rana Plaza tragedy on 28 April this year, the European Parliament had noted the importance of finalizing and implementing the rules without delay. While the rules should enhance labour rights and comply with core labour standards, the draft contained several significant shortcomings. Firstly, it did not set a procedure for the Department of Labour to deal with unfair labour practice complaints by workers. In the absence of strict deadlines to investigate and prosecute cases, the Department of Labour simply had not, and would not, respond effectively to address violations of labour legislation by employers.

Secondly, the draft rules did not include any procedure for the registration of trade unions, and therefore permitted a situation in which the Registrar continued to enjoy “discretionary powers” which had been used to deny numerous applications for absurd reasons or for no reasons at all. Finally, in the absence of a trade union or a participation committee, the rules allowed for the Inspector General to nominate safety committee representatives. This might have serious consequences for the independence of safety committees, allowing interference by employers in the selection of representatives and in their functioning. These substantial failings needed to be addressed without delay.

The Government member of Nepal thanked the Government for the information provided on the legislative reforms (including the amendments to the Labour Act of 2006, the regulations applicable in EPZs, the EPZ Labour Act to replace the EPZ Workers’ Welfare Act 1996, the EPZ Workers’ Welfare Act (Amendment) Ordinance 2006, the finalized draft regulations for its implementation, and the review of the legislation applicable in EPZs), as well as on the situation in the country concerning the application of the Convention. These reforms were to be commended as a means of improving the protection of labour rights, and the Government was encouraged to continue in this vein.

The Worker member of the Republic of Korea expressed deep concern that freedom of association was not fully guaranteed in the country. Supporting the comments made by the Committee of Experts in this regard, she emphasized the urgency of the adoption of new legislation applicable to EPZs. While the Cabinet had tabled a draft EPZ Labour Act to replace the EPZ Workers’ Welfare Associations and Industrial Relations Act 2010, this Act had been elaborated without the consultation of workers’ representatives and did nothing to address the concerns that had been raised in relation to the application of the Convention. In accordance with the existing and the draft legislation, it was impossible for workers in EPZs to establish trade unions. Workers’ welfare associations (WWAs) could not be considered as workers’ organizations within the meaning of the Convention, as they were heavily controlled by the BEPZA, which included the
control of the procedure for their establishment, including a referendum of workers. However, in most cases, WWA leaders were determined by the employer and workers did not even know who represented them. Where these leaders tried to exercise the right to collective bargaining, they might easily be dismissed. She also referred to the example of South Korea, where the use of a run Korean employer (KEPZ) established by a Korean manufacturer of garments and shoes. As there was no clarity in terms of applicable laws, the employer applied the law that suited him best, resulting in the payment of the national minimum wage that was lower than the one in EPZs, but also in the banning of trade unions in accordance with the law applicable in EPZs. She supported the request by the Committee of Experts for the Government to engage in full consultation with national workers’ and employers’ organizations with a view to elaborating new legislation for EPZs that was in full conformity with the Convention.

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

The Government member of Indonesia recalled that over 7,000 trade unions had been registered in Bangladesh, including around 300 over the past two years, and he commended the Government for the reforms adopted, including the 2013 amendments of the Labour Act 2006, in line with the prevailing international standards. He added that implementing rules would be adopted in the near future. He noted with satisfaction the steps taken by the Government to comply with the Convention in EPZs through the designation of eight labour courts competent for labour disputes and the recognition of the exercise of the right to collective bargaining and the right to strike of WWAs. Finally, he invited the Government, in cooperation with the ILO, to make all necessary efforts to address the challenges faced by Bangladeshi workers through the implementation of the Convention and the promotion of a better working environment in the country.

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

The Worker members emphasized that both the observation of the Committee of Experts and the information supplied to the Conference Committee highlighted the abuse suffered by the workers of Bangladesh, in the form of poor conditions of work, inadequate wages or anti-union aggression. By insinuating that certain collective actions had been instigated by “thugs”, the Government had sent out the wrong signal. Despite the support and goodwill of the international community following the wake of the Rana Plaza tragedy, the Government had not taken the necessary steps to ensure respect for freedom of association. As a result, the United States had removed Bangladesh from the system of trade preferences. In April 2015, the European Union, through the European Parliament and the European Commission, had expressed concern at the lack of progress made by Bangladesh with regard to freedom of association. The increase in the number of trade unions registered during the previous two years in the RMG industry was positive, but not sufficient in itself, especially bearing in mind that nearly 100 trade unions had ceased to exist as a result of either anti-union practices or factory closures. The Government had also announced the drafting of rules to implement the Labour Act, but they had still not been adopted. The draft rules
also appeared to contain problematic provisions. Moreover, the Government, police and the labour inspectorate often remained passive in the face of anti-union discrimination, threats and the violence committed against trade unionists. Such impunity sent out the wrong signal. In 2014, the Committee had asked the Government, as part of its consideration of the application of the Labour Inspection Convention, 1947 (No. 81), to prioritize the amendments to the legislation governing EPZs so as to bring EPZs within the purview of the labour inspectorate. The Government had disregarded those conclusions, since it had not taken any measures in that regard. In conclusion, the Worker members recalled the gravity of the situation and asked for a strong signal to be sent to the Government. A high-level tripartite mission should be conducted to convince the Government that it was essential for it to take the necessary steps to ensure freedom of association in law and in practice. Accordingly, the Government should: adopt and apply the implementing rules of the Labour Act, taking account of the issues raised by the Committee of Experts concerned numerous allegations of violence and reported harassment of trade unionists and trade union leaders and the absence of progress in investigations; delay in registration of new trade unions; the need to ensure freedom of association rights to workers in export processing zones (EPZs); and continued obstacles to the full exercise of freedom of association created by several provisions of the 2006 Bangladesh Labour Act.

The Committee noted the information provided by the Government that two suspects have been identified in the trade union leader murder case. They are still at large but the case has been classified as a sensitive one to ensure regular monitoring and an expeditious trial. The Government stated that 183 complaints of unfair labour practices were received during the period between 1 January and 30 April 2015, 177 of which were settled and criminal cases filed with respect to five. A helpline for workers was established on 15 March 2015 and is expected to improve transparency and governance in dealing with complaints. The Government indicated that 7,495 trade unions and 172 federations were now registered, with a total of 450 trade unions in the ready-made garment sector, and an online registration system has been introduced to ease the registration process. A website has been developed for disseminating reports on registration and is being made more user-friendly. After adoption of the BLA amendments in 2013, the Government acknowledged that the major task incumbent on it was the formulation of the corresponding rules which has required time and several rounds of consultations. The rules, following discussion and consensus in the Tripartite Consultative Council, were now being sent to the Ministry of Law for vetting prior to publication as a Gazette notification. Similarly, the draft Bangladesh EPZ Labour Act was sent to the Ministry of Law for vetting. The Government was engaged in awareness and capacity building to ensure freedom of association through effective trade unionism to over 2,700 worker leaders since 2013. The Government concluded by expressing its appreciation for the constructive engagement of the ILO and development partners in promoting rights at work.

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

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

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

Conclusions

The Committee took note of the statements made by the Government representative and the discussion that ensued. The Committee noted that the outstanding issues raised by the Committee of Experts concerned numerous allegations of violence and reported harassment of trade unionists and trade union leaders and the absence of progress in investigations; delay in registration of new trade unions; the need to ensure freedom of association rights to workers in export processing zones (EPZs); and continued obstacles to the full exercise of freedom of association created by several provisions of the 2006 Bangladesh Labour Act.
The Committee urges the Government to accept a high-level tripartite mission this year to ensure compliance with the recommendations.

**BELARUS** (ratification: 1956)

The Government provided the following written information.

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

With reference to the implementation of the proposals of the direct contacts mission, since the 103rd Session of the International Labour Conference, work on the implementation of the recommendations of the Commission of Inquiry has been organized in accordance with proposals of the direct contacts mission, approved by the ILO Governing Body at its 320th Session, in March 2014. The objective of the mission was to obtain a comprehensive picture of the trade union rights situation in the country and to assist the Government in the rapid and effective implementation of all the outstanding recommendations of the Commission of Inquiry. The Government accepted the proposal of the June 2014 Conference Committee and took the necessary steps to enable the direct contacts mission to carry out its tasks in full. The direct contacts mission visited the Republic of Belarus from 27 to 31 January 2014. Having held a number of meetings and having studied the situation on the ground, the mission noted that there had been some progress regarding implementation of the recommendations of the Commission of Inquiry. Moreover, the mission noted that there were elements of trade union pluralism in Belarus. The direct contacts mission paid special attention to the role of the tripartite Council, which was composed of all the parties concerned: representatives of the Government, employers’ associations and trade union associations (the Federation of Trade Unions of Belarus (FTUB) and the Belarusian Congress of Democratic Trade Unions (BCTDU)). Over the past years, the Council has been the main body in which dialogue between the Government and the social partners on the implementation of the recommendations of the Commission of Inquiry has been taking place. At the same time, the mission expressed the need to improve the work of the Council. The direct contacts mission made a number of proposals, including for joint activities with the participation of the Government, the social partners and the ILO in the following areas: the work of tripartite consultative bodies; collective bargaining at the enterprise level; dispute resolution and mediation; and the training of judges, prosecutors and lawyers on the application of international labour standards. During the discussion at the 103rd Session of the Conference in June 2014, the Committee paid attention to the fact that the Government had supported those proposals and expressed willingness to work together with the social partners and the ILO to implement them. The Government emphasized that the activities planned in accordance with the mission’s proposals would contribute to implementation of a number of recommendations of the Commission of Inquiry, in particular recommendations Nos 4, 8 and 12.

In accordance with the conclusions of the Committee on the Application of Standards in June 2014, the Government together with the Office and with participation of trade unions and employers’ associations made further steps to implement the proposals of the direct contacts mission. For example, the Office, with the assistance of the Government, held a seminar to review the experience of work of tripartite consultative bodies of the social partners (9–10 June, Minsk). The purpose of the seminar was to assist the Government and the social partners to develop proposals for improving the work of the tripartite Council. The seminar was attended by members of the tripartite Council and other interested representatives of the Government, associations of employers and trade unions (FTUB and BCTDU). International experience of the work of tripartite bodies was represented at the seminar by ILO experts, as well as by experts from Lithuania and Finland. The participants at the seminar developed proposals aimed at improving the effectiveness of the Council, which were discussed in detail at the meetings of the Council held on 23 January and 22 April 2015. Following the discussion, the parties represented in the Council reached a common position on amending the Regulations on the Council in order to enhance its efficiency. The new version of the Regulations on the Council for the Improvement of Legislation in the Social and Labour Sphere was approved by Order No. 48 of the Ministry of Labour and Social Protection of the Republic of Belarus of 8 May 2015. The new version of the Regulations has significantly expanded the mandate of the Council. In particular, the Council now has the right to analyse the existing legislation, draft laws and regulations in the sphere of social and labour relations for their compliance with ILO Conventions and Recommendations and international practice to ensure the application of international labour standards at the national level. The Council is empowered to send to legislative bodies its proposals on the implementation of the provisions of the ILO Conventions and Recommendations in the national law, and the amendment of laws and regulations on labour and trade unions, in accordance with the ILO Recommendations. The Council has the right to initiate a review of proposals for amendments and additions to laws and regulations on labour and trade unions made by the National Council for Labour and Social Issues. Also, the new version of the Regulations on the Council provides for monitoring by international experts, including ILO experts in consideration of issues within the Council. In order to facilitate consideration of the issues, the Council can hold extraordinary sessions.

In 2015, the Government carried out the work related to the second area identified in the proposals of the direct contacts mission. On 13–14 May 2015, the Office, in cooperation with the Government and the Belarusian Labour Office, held a tripartite seminar Collective bargaining and Co-operation at the Enterprise Level in the Context of Pluralism. In this regard, it should be noted that, in the context of trade union pluralism, there are several trade union organizations in a number of enterprises in the Republic of Belarus, and each of them, regardless of its size, wants to participate in collective bargaining with the employer. According to the practice established in Belarus, only one collective agreement is concluded within an enterprise. The employer shall enter into collective bargaining with a single workers’ side, represented by trade unions. However, the procedure of interaction between different trade unions within the single trade union group set up for negotiations with the employer is not clearly defined. In fact, the issue is solved by agreement between the trade
unions affiliated to the FTUB and the BCDTU. For example, at the largest enterprise of the republic, JSC “Bela-ruskali” (Soligorsk), three trade unions participate in collective bargaining with the employer to conclude a collective agreement (primary trade union organizations of the Belarusian Trade Union of Workers in the Chemical, Mining and Petroleum Industries and the Trade Union of Workers of Agriculture, affiliated to the FTUB, as well as the primary trade union organization of the Belarusian Independent Trade Union, affiliated to the BCDTU). However, in practice agreement between trade union organizations at other enterprises is not always achieved. This usually entails conflict between the trade unions, which in turn has a negative impact on collective bargaining process at the enterprise.

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

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

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

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

The Employer members thanked the Government for the thorough oral and written information provided and welcomed the constructive tone of the Government, as well as its willingness to continue to engage in collaboration with the ILO and the social partners. The case was complex and had a long-standing history, with 21 observations made by the Committee of Experts on the application of the Convention since 1989, as well as its willingness to continue to engage in dialogue and discussion in relation to all outstanding issues. The Employer members thanked the Government for the thorough oral and written information provided and welcomed the constructive tone of the Government, as well as its willingness to continue to engage in collaboration with the ILO and the social partners. The case was complex and had a long-standing history, with 21 observations made by the Committee of Experts on the application of the Convention since 1989. Repealing the developments since the establishment of the Commission of Inquiry following a complaint submitted under article 26 of the ILO Constitution in 2003, the Employer members recalled the discussion and conclusions on the case adopted in June 2014, and noted that there had been positive developments recently. In its 2015 comments, the Committee of Experts noted that the Government had not taken measures to amend Presidential Decree No. 2 of January 2009 to remove obstacles to trade union registration (specifically relating to the legal address and the 10 per cent minimum membership requirements). In this regard, noting the Government’s explanations that the 10 per cent minimum requirement had now been abolished through the adoption of Presidential Decree No. 4 of June 2015, the Employer members requested the Government to provide the Committee of Experts with more detailed information. The second issue concerned the situation in which authorization for demonstrations by trade unions had been denied and the fact that they constituted a violation of the Act on Mass Activities, as well as the absence of a stated intention by the Government to amend the Act. Recalling that peaceful protests organized by either workers’ or employers’ organizations were protected by the Convention, they encouraged the Government to amend the Act on Mass Activities, particularly the provisions relating to the penalty of liquidation of an organization for a single breach of the Act, which corresponded to recommendations No. 10 of the Commission of Inquiry. The third issue related to Presidential Decree No. 24 concerning the use
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Belarus (ratification: 1956)

be taken to implement the proposals of the direct beneficiaries from international aid, if they so chose. Concerning the fourth issue, which related to the implementation of the recommendations of the Commission of Inquiry, the Government had explained the steps taken for their implementation as a result of the direct contacts mission that had visited the country in January 2014. The direct contacts mission had welcomed the role of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere in this regard, as well as the Council's role relating to the implementation of the proposals of the direct contacts mission. They welcomed the fact that, with the participation of the social partners, concrete steps had been taken to implement the proposals of the direct contacts mission. They particularly welcomed the Government's explanations on the expansion of the mandate of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, including its role in amending labour laws. This Council was a useful platform for discussions and exchanges of views, and efforts should be made to transform the Council into an effective and established forum with the full participation of the social partners. They urged the Government to provide more information to the Committee of Experts in this regard, to continue to engage in social dialogue within the Tripartite Council, as well as in other forums, and to continue to cooperate with the Office. The adoption of Presidential Decree No. 4 repealing Presidential Decree No. 2, in accordance with recommendation No. 2 of the Commission of Inquiry, was also to be commended. The Employer members expressed the firm hope that this positive engagement would mean that the Government was also committed to addressing the other outstanding issues without further delay, and in particular the implementation of the outstanding recommendations of the Commission of Inquiry.

The Worker members noted that, although a decade had passed since the ILO Commission of Inquiry had adopted its conclusions and recommendations regarding the situation of freedom of association in Belarus, only two of the 12 recommendations made had been fully implemented, while for most there had not yet been any action at all. The consolidation of power by the present regime had only resulted in increased repression of trade unions. Workers were forced to renounce membership in democratic unions, and leaders and activists of free unions faced discrimination and dismissal. Union registration continued to be denied, and demonstrations organized by independent unions were still prohibited. Theworkplan designed in 2009 with the participation of the ILO and social partners had not been implemented, and the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which had replaced the “Granit” enterprise, established in 2012, which had lacked any genuine functions. The BCĐTU, which comprised free and independent unions, had submitted proposals for improvements to the legislation and had raised concerns about violations of trade union rights in several enterprises. These calls had been entirely unheeded. They noted that, although the Committee and the Committee of Experts had repeatedly called for the amendment of Presidential Decree No. 2, which created obstacles to the establishment of trade unions, nothing had yet been done. Thus, to register, trade unions still had to provide the official address of their headquarters, which was often the premises of the enterprise concerned, as unions were not allowed to submit their leaders' home addresses as the workplace address. A workplace address was also required, making trade unions dependent on the goodwill of the employer. A list of names of the founding members of trade unions also had to be sent to the Ministry of Justice. All of these obstacles, combined with the brutal repression of and reprisals against trade union activists, had made the development of the Independent trade union movement virtually impossible. Indeed, no independent union had been registered for years.

In accordance with Ministry of Justice Instruction No. 48 of 2005, the registration of a trade union could be cancelled, without the possibility of judicial review, if its charter or structure was deemed not to be in compliance with the law. A union could also be dissolved by the Registrar if its data had not been correctly registered. Presidential Decree No. 29 had introduced a short-term contract system covering 90 per cent of workers. This system served to repress the trade union movement, principally through the refusal of contract extensions to union activists and their families. There was no adequate protection against acts of anti-union discrimination, and many union members had been forced to leave independent trade unions. Additionally, the law imposed severe restrictions on the organization of protests and meetings and any violation could result in a union’s dissolution. The Worker members emphasized that, under such grave circumstances, workers were forced to take extreme measures, including hunger strikes, to protest the continued acts of reprisal and repression against trade unionists. With regard to these acts, they cited the example of one tractor parts company, where over 200 members had been obliged to leave their union to join the Free Trade Union of Belarus (SPB). The union leader, Mr Mikhail Kovalkov, had not been allowed to enter the enterprise, despite a decision by the Bobruisk district and city court ordering the employer to unblock Mr Kovalkov’s permanent pass. In 2014, the contracts of Alyaksandr Varankin, Alyaksandr Hramyka and Victor Osipov had not been renewed in retaliation for having participated in union activities. Since 2008, the local union of an oil refinery affiliated to the Belarusian Independent Trade Union (BNP) had been subject to a harsh anti-union campaign by the management of the refinery. Members of that union regularly received disciplinary punishments due to the fact of their membership, over a six-year period more than 700 workers had been forced to give up their membership. In October 2014, the union leader, Mr Yuriy Shvets, had initiated a hunger strike, but that had not changed the situation. They also cited the example of the trade union of the “Granit” enterprise, established in 2013, which had not been registered. All 200 of its members had been forced to renounce their membership, and its leaders, including Mr Oleg Stakhaeевич, Mr Nicolay Karyshev, Mr Anatoliy Litvinco, and Mr Leonid Dubonosov had been dismissed. They observed that in 2014 Belarus had once again been included in a special paragraph of the Committee’s report, and that other laws had been adopted which further violated the rights of Belarusian workers. At the end of 2014, Presidential Decree No. 5, intended to “strengthen labour discipline” in both public and private companies, had been adopted. This Decree allowed employers to unilaterally change working conditions and facilitated the blacklisting of union members. Presidential Decree No. 3 of April 2015 also imposed severe fines on citizens who were able to work, but who had been unem-
ployed for several months. The Worker members expressed their deep concern at the situation with regard to freedom of association in Belarus and condemned the Government’s continued failure to implement the recommendations of the Commission of Inquiry, which had been adopted ten years ago. The current process of trade union registration and the use of the state-controlled FTUB to suppress the independent trade union movement were also cause for deep concern. As long as the FTUB remained under Government control, the free exercise of workers’ rights would not exist in the country.

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

The Worker member of Belarus expressed support for the statement made by the Worker members concerning the need to examine each situation in both law and practice. The current legislation posed no insurmountable obstacles to registering trade unions. In that regard, the most important was the fact that the requirement that the proportion of workers in a particular establishment who are members of a trade union in order to become a trade union was determined by law and no provision existed in the law permitting recognition of a trade union as representing workers’ interests. In the current context, she expressed concern with regard to the actual improvement of Legislation in the Social and Labour Sphere, which had been established at the recommendation of the ILO. This was a clear sign that trade union pluralism existed in Belarus. The FTUB was participating actively in improving legislation on workers’ social and economic rights and interests and was ready to cooperate further in bringing it into conformity with international labour standards. The Law on Mass Activities contained no significant restrictions on peaceful trade union events. This had been demonstrated in practice by the fact that the FTUB had held over 80 public events in 2015 alone. There might have been occasional exceptions, but there was no systematic restriction on carrying out peaceful activities. The Committee of Experts and the ILO direct contacts mission to Belarus had indicated in their reports that complaints from trade unions concerning the provisions of Presidential Decree No. 24, which governed the use of foreign donations, were unfounded, as in practice trade unions were able to make use of financial assistance. He added that current legislation on trade unions guaranteed the right for 1 per cent to be paid by union members’ from their monthly wages as union dues and those funds should in most cases be enough for unions to meet their activities. He pointed out that the budgets of trade unions were used properly and their finances were managed properly. In conclusion, he noted that the Government was systematically taking measures to apply the recommendations made by the ILO supervisory bodies, was creating an opportunity for social dialogue with all interested social partners in the country and was establishing all the necessary institutions, mechanisms and standards to apply the Convention effectively. The Committee on the Application of Standards and the ILO supervisory bodies could acknowledge the significant progress made on the issue of respect by the Government for the rights of trade union organizations in Belarus.

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

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

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

The Worker member of Poland recalled the conclusions adopted by the Conference Committee in 2014 and regretted that the number of violations of human and trade union rights had increased since then, and that members of independent trade unions still suffered from anti-union discrimination. She drew attention to the abolition of the right of association to establish a union organization. However, she observed that these measures had been undermined by a presidential decree under which new trade unions must be established in all private companies and must affiliate by 2016 with the FTUB, which was under the strict control of the Government. According to the President, as the protection of workers was his prerogative, it therefore depended on his good or bad will, but not on a guaranteed legal basis on which workers could rely. With reference to the denial of workers’ rights in Belarus, she called on the Government to honour the commitments made to social dialogue and cooperation with the ILO in order to effectively all the recommendations of the Commission of Inquiry in order to improve the situation of all workers in the country, beginning with a system which guaranteed civil liberties for all and their respect.

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

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

The Government member of Switzerland recalled that the case had already been discussed on several occasions by both the Governing Body and the Conference Committee. The Government of Belarus had been encouraged to take the necessary steps to guarantee freedom of association and expression and the right to peaceful assembly, including, in particular, amending the Law on Mass Activities, as requested by the Committee of Experts. With assistance from the Office and international social partners, Switzerland hoped that the Government would implement all outstanding recommendations of the Commission of Inquiry. In particular, employers’ and workers’ organiza-
tions must be able to organize their activities freely, and in this regard international social partners could provide valuable support and share relevant experience. Such steps could contribute to strengthening the role of civil society in Belarus and to creating a more favourable environment for respecting human rights.

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

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

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

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

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

The Government member of Canada recalled the concern expressed in 2013 and 2014 at the overall situation of human rights, including the rights of workers. He was concerned by the continued reports of numerous violations of the Convention, including interference by the authorities in the activities of trade unions. The Govern-
ment had improved its degree of cooperation with ILO supervisory bodies, including through the direct contacts mission in 2014. While some measures had been taken by the Government in 2015, the follow-up to the recommendations of the direct contacts mission remained slow and incomplete. Significant progress was needed in implementing the current recommendations of the Commission of Inquiry. He regretted that, despite the numerous requests by the ILO supervisory bodies, few tangible measures had been taken to address discrimination against trade union members and the violations of workers’ rights in the country. The Government should take the necessary measures to address these allegations and the outstanding recommendations, accelerate its responses and make efforts to eliminate human rights violations, including the right to participate in peaceful protests and to associate freely to protect occupational interests. He called on the Government to fully follow up on the recommendations of the Commission of Inquiry of 2004, respect its obligations under the Convention, refrain from measures that inhibit the effective exercise of trade union activities, and cooperate fully with the ILO.

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

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

The Government representative recalled the positive work being undertaken in the country, including measures to achieve the recommendations of the Commission of Inquiry, and said that such efforts would continue. The recommendations of the Commission of Inquiry had been implemented through the adoption of amendments to Presidential Decree No. 2, and statements regarding pressure on independent trade unions had no factual basis. The direct contacts mission had noted several developments, including that some recommendations had been implemented and that trade union pluralism existed in the country. The recommendations of the direct contacts mission were being implemented with the involvement of all parties. It was necessary to focus on these positive changes in order to continue dialogue. The tripartite Council for the Improvement of Legislation in the Social and Labour Sphere was the relevant platform to examine the issues raised, and the direct contacts mission had supported this Council. The Government had enforced the amendments which workers could have recourse if they felt they had been discriminated against. Dismissals that had taken place had been linked to issues related to production, and the dismissals had been carried out in accordance with the legislation. An analysis of the workers who had been dismissed revealed that 7 per cent had been members of the FTUB and 5 per cent of the BCDTU, so such dismissals were not linked to trade union membership. The new realities of the country required a new approach, and the Government had taken measures in that regard, including steps relating to overtime and the promotion of small enterprises. The Government actively consulted the social partners when adopting measures to regulate labour matters. The Government also required the ILO to examine its legislation on labour issues to the social partners, and to examine their proposals, prior to its adoption. The Government had taken measures to implement the past recommendations of the Conference Committee, including the amendment of Presidential Decree No. 2 and the promotion of tripartite seminars. It had achieved concrete results in giving effect to the recommendations of the Commission of Inquiry. Nonetheless, the recommendations of the Commission of Inquiry had not been fully implemented, and the Government would continue with its work, with the social partners and in cooperation with the ILO.

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

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

Conclusions

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

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

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

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

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

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

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

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

The Worker members voiced great concern at the prevailing climate of violence in El Salvador. In May 2015, some 20 workers had been murdered, the highest level of violence since the end of the civil war in 1992. The situation was worrying, especially as it was directed against representatives of trade unions. In January 2010, the Secretary-General of the Union of Workers and Employees of the Municipality of Santa Ana, Victoriano Abel Vega, had been murdered. The Committee of Experts had condemned the murder and the Committee on Freedom of Association had taken up the case. The Committee on Freedom of Association was also examining Cases Nos 2957 and 2896 concerning the detention of a trade union representative, the dissolution of a branch union and the creation of an enterprise union controlled by the employer. The national legislation was not in compliance with Article 2 of Convention No. 87, specifically in relation to the time required between a refusal to register a trade union and the submission of a new request, the possibility for a worker to join more than one organization, the registration procedure and the requirement that trade unions certify the status of their members. On the first point, section 248 of the Labour Code provided that no new request for registration of a trade union could be submitted for at least six months following a previous request. In 2009, as set out in the White Paper, the Government had undertaken to reform the national labour legislation and to amend section 248 of the Labour Code. Despite the Government’s repeated promises and the failure to amend section 248, the Worker members expressed concern and trusted that the issue would be resolved very soon. Regarding the possibility of joining more than one trade union, section 204 of the Labour Code prohibiting workers from doing so would need to be amended. As to the registration procedure, the amended section 248 of the Labour Code provided that employers must certify that founding members of a trade union were employees. The Government would therefore have to take steps to amend the provision, for example by empowering the Ministry of Labour to provide such certification. In conclusion, the Worker members drew the Committee’s attention to the non-compliance of article 47 of the Constitution, section 225 of the Labour Code and section 90 of the Public Service Act with Article 3(1) of the Convention. All of those provisions required that, to be members of a union executive committee, workers had to be Salvadorian by birth. So far the Government had still not amended those provisions. Under those conditions, it was important for the Government to take steps at the earliest opportunity to make the necessary amendments so as to guarantee respect for freedom of association and collective bargaining.

The Employer members indicated that this case was considered to be very serious, owing to the nature of the actions taken by the Government and the fact that they had continued for three years. Despite the comments of the ILO supervisory bodies, far from being resolved, the situation had deteriorated. In 2012, the President had submitted a bill to Congress to amend 19 basic laws on official autonomous institutions and to modify participation by employers’ representatives in the various executive boards by empowering the President to nominate and appoint the respective employer representatives. They explained that it was the granting of that power, and not the changes in the structure of those bodies, as claimed by the Government representative, that was the focus of criticism. The bodies in question included the ISSS, the ISAFORP and the FSV. Such action constituted a clear violation of the Convention, as it prevented employers’ organizations from exercising their right to elect their representatives in full freedom. They noted that the reforms in question were also in violation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and emphasized that measures that placed organizations under the Government’s control constituted acts of interference. Such would be the case if the President designated employer representatives as the only employers’ representatives. They recalled that, in the context of Case No. 2980, the Committee on Freedom of Association had drawn the Government’s attention to the principles relating to the freedom to appoint employers’ representatives and to tripartite consultation, requesting it to respect those principles fully in the future. On the same occasion, the Committee on Freedom of Association had also requested the Government to conduct urgently in-depth consultation with workers’ and employers’ organizations within the CST. They noted that the Government’s response could have been more disappointing. The Government had aggravated the situation by ceasing to convene the CST on the pretext that one of the social partners had not been able to reach agreement on the nomination of its representatives, which was not a requirement under the Council’s rules. They also regretted that the Government had used that excuse to avoid convening the CST and complying with the recommendations of the Committee on Freedom of Association. Moreover, the Government had established a new bipartite body, under Presidential Decree No. 86, which excluded the employers. They also regretted having to disagree with the Government representative, as their reading of the Decree suggested a different interpre-
tation. In practice, the Presidential Committee on Labour Issues was assuming the functions of the CST and the Wages Commission and of other tripartite bodies and higher-level legal bodies. They expressed the view that it seemed to be the intention to prevent employer representatives from participating in decision making. Needless to say, this prompted both unions and employers to propose a method of nominating private sector representatives without consultation, in clear breach of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

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

The Worker member of El Salvador said that trade unions had been drawing up proposals and contributing to public debate on establishing and strengthening democratic institutions in the country, despite the slowness of the procedures intended to ensure profound structural change. There were various factors explaining the fact that the CST was not yet functioning properly. The CST’s regulations did not define clearly, or even tacitly, the procedure for elections for workers’ representatives. Moreover, there was no consensus among the country’s trade unions on the composition of the CST, as those who had traditionally been appointed were not prepared to allow election procedures to be made more transparent and democratic to guarantee the participation of other organizations that had emerged recently. She condemned the interference of ANEP with the functioning of the CST, which, because it did not agree with that type of forum, had announced that it would present a complaint to the ILO. Matters that should have been settled within the tripartite context. She explained that so far the forum had not discussed any issue that came within the purview of tripartite bodies. Although a number of new trade unions had emerged, they were for the most part in the public and informal sectors, while in the private sector unions were tending to disappear. She called on private sector enterprises to respect the provisions of the Convention and allow the establishment of trade unions without let or hindrance. She urged the State to respect the exercise of freedom of association, especially the right to strike. Historically, only two strikes had ever been declared legal in El Salvador, which was clear evidence of the impunity that prevailed and of a flawed judicial system. The workers she represented hoped that the current Government would ensure a labour administration that was fair and just and which applied labour law effectively. In conclusion, she urged the State to speed up the judicial inquiry into the murder of trade unionist Victoriano Abel Vega, clarify the motives behind the crime and punish those responsible.

The Employer member of El Salvador indicated that on 12 August 2012 the Government had introduced 19 legislative reforms that had subsequently been approved by Congress without consultation. Their effect was to expel private sector representatives from 19 autonomous institutions, some of which were tripartite bodies. Among these were the ISSS, to which the private sector was the main contributor, and the ISAFORP, where employers were the only contributors. He added that there were also institutions that were not tripartite in composition, but which received private sector contributions. He observed that, at present, these funds were managed by the Government and used for internal campaigns and to pay off gangs. Moreover, the 19 institutional reforms had changed the method of nominating private sector representatives. Since August 2012, representatives had been nominated by the President of the Republic, rather than on the basis of a shortlist submitted by organizations within the sector or a simple majority of an assembly convened for the purpose. He recalled that the situation had prompted ANEP to present a complaint to the Committee on Freedom of Association alleging the violation of Conventions Nos. 87 and 144 (Case No. 2980). In its recommendations, the Committee on Freedom of Association had drawn the Government’s attention to the principles of the freedom to nominate employers’ representatives and of tripartite consultation, and had requested the Government to respect those principles fully in future. The Committee had also requested that the Government conduct in-depth consultations with workers’ and employers’ organizations within the CST so that agreement could be reached on ensuring the balanced tripartite composition of the executive boards of the autonomous institutions referred to in the complaint. He observed that, when the Committee on Freedom of Association had made its recommendations, the Ministry of Labour had stopped convening the CST on the pretext of the lack of consensus among workers, with the result that all meetings had been postponed. He believed that the CST’s main concerns was that it might lose the control that it had enjoyed up to now over tripartite institutions.

She welcomed the Government’s initiative in creating a bipartite forum through the creation of a roundtable on industrial relations in order to move towards genuine social dialogue and citizens’ participation. The objective of the forum was to formulate and propose public policies and legislative reforms, such as the improvement of industrial relations in the public sector. The participants included the various movements within the trade union sector. She regretted the position adopted by ANEP which, because it did not agree with that type of forum, had announced that it would present a complaint to the ILO. Matters that should have been settled within the tripartite context. She explained that so far the forum had not discussed any issue that came within the purview of tripartite bodies. Although a number of new trade unions had emerged, they were for the most part in the public and informal sectors, while in the private sector unions were tending to disappear. She called on private sector enterprises to respect the provisions of the Convention and allow the establishment of trade unions without let or hindrance. She urged the State to respect the exercise of freedom of association, especially the right to strike. Historically, only two strikes had ever been declared legal in El Salvador, which was clear evidence of the impunity that prevailed and of a flawed judicial system. The workers she represented hoped that the current Government would ensure a labour administration that was fair and just and which applied labour law effectively. In conclusion, she urged the State to speed up the judicial inquiry into the murder of trade unionist Victoriano Abel Vega, clarify the motives behind the crime and punish those responsible.
had come to nominate candidates to the board of the ISSS, organizations affiliated to ANEP had proposed certain names, but the President had decided to choose another person who had been rejected by ANEP because of links to the pharmaceutical sector and the existence of conflicts of interest. As the person in question now sat as the Director of the private sector Committee for the purchase of medicines, which had authorized direct purchases (with no bidding process) amounting to over US$50 million, there were grounds for wondering where the responsibility lay if any acts of corruption came to light. He added that, in January 2015, the Presidential Committee on Labour Issues had been established, through which the Government had begun bipartite dialogue with workers’ unions from both the public and private sectors. He explained that private sector unions had also been invited, but had later been told that the decree establishing the Committee only applied to public employees. That assertion was at odds with the text of the decree in question and with the words of the President, who had stated that the Committee would pursue a strategy to adjust the minimum wage gradually and to strengthen workers’ organizations. This had various implications, including the existence of a new means of interfering in workers’ organizations and the demise of tripartite dialogue in the National Minimum Wage Board. He expressed support for the call made by the Employer members for the Conference Committee to approve a direct contacts mission to determine whether the conclusions of the Committee on Freedom of Association were being applied. He hoped that such a mission could be undertaken before the meeting of the Committee of Experts so that its conclusions could be reported to the next session of the Conference.

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

An observer representing the International Transport Workers’ Federation (ITF) said that the absence of convictions of those guilty of crimes against trade union leaders and members had created a situation of impunity which was extremely damaging to trade union activities, such as in the case of the tragic murder of Victoriano Abel Vega. He also referred to Gilberto Soto, a leader of the International Brotherhood of Teamsters, who had been murdered in 2004 and whose death still remained unresolved. According to the investigations by El Salvador’s Human Rights Ombudsman and the Human Rights Institute at the Central American University: (1) three men had shot Gilberto Soto in the back without taking his belongings; (2) the police had failed to secure the crime scene or evidence; (3) the Interior Minister had declared that Gilberto Soto had not been killed by a death squad; (4) a Salvadorian ambassador had told American union officials that the police had refused to send him a copy of their report; (5) the national civil police had denied the constitutionally guaranteed right of the Human Rights Ombudsman to inspect its files and observe the progress of the investigation; and (6) the police had allegedly extracted confessions from three gang members by torturing them, and they had later recanted their statements. He emphasized that the Government should reopen this case to identify those who had ordered the crimes and who had covered them up. Furthermore, he emphasized that 159 members of the cargo and security departments of the international airport had been dismissed in 2001 in violation of their collective agreement. Management had also proceeded with an intimidation campaign to force the workers to withdraw from the El Salvador International Airport Workers’ Union, affiliated to the ITF. Referring to Case No. 2165 of the Committee on Freedom of Association, which had been closed more than ten years ago, unionized airport workers who organized had continued to face dismissals and the union had ended up ceasing all organizing activity as of 2013 due to constant anti-union discrimination. In conclusion, he urged the Government to heed the call of the airport workers’ union and to ensure compliance with the principles of freedom of association.

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

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

The Employer member of Belgium said that the Federation of Belgian Enterprises supported the position of employers in El Salvador concerning the request, made by the Government in this country, which expressed the need for the countries involved to be invited to organize, to negotiate, and to apply the Convention. He underlined that the Convention must be a framework with a dynamic role, and that, above all, it must be clear that the Convention was not a substitute for national laws but a specific tool adapted to the national level which allowed certain governments to use their own solutions unilaterally.
The Worker member of Argentina referred to a series of provisions in the national legislation that were contrary to the Convention. Article 221 of the Constitution expressly prohibited strikes by public and municipal workers, and the collective stoppage of work, and authorized the militarization of civil public services in the event of a national emergency. Article 79 of the same Constitution, a general limitation of the right to strike by public sector workers was incompatible with the provisions of the Convention. Moreover, articles 529 and 533 established a cumbersome procedure for declaring strikes illegal and required very strict majorities for calling strikes, which made it easier for them to be found illegal.

The United Nations Committee on Economic, Social and Cultural Rights had expressed concern at the restrictions imposed on the exercise of the right to strike and the significant number of strikes declared illegal. It had also regretted that it had not received precise and up-to-date information on the number of strikes declared illegal and the grounds on which these decisions had been made. Restrictions on the right to strike were not limited to these two provisions. Other restrictions existed. It should be noted that the Labour Code also provided for compulsory arbitration in the case of essential services, namely in any situation in which it could be considered as endangering or threatening the normal living conditions of the whole or part of the population. The right to freedom of association was not being fully observed if strikes were declared illegal every time that workers called them. Collective bargaining could not exist if workers did not have the right to call a strike as their main means of collective action. The very existence of social dialogue presupposed that workers' organizations, drawing up their constitutions and rules, the workers and employers, which included establishing or recognizing trade unions, federations and confederations, had in -

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

The Government representative reiterated her Government’s willingness to work with all those who wanted a prosperous country that generated decent work, were committed to the health, education and welfare of families in El Salvador and fostered the development of micro-, small, medium and large enterprises. The Government’s commitment to dialogue had been shown, for example, by the recent withdrawal of the complaint made by the Sugar Cane Workers’ Union (SITRACAN) to the Committee on Freedom of Association. The establishment, through the reforms of joint and tripartite forums did not mean regression in the exercise of freedom of association. On the contrary, the Government was making the participation of employers and workers stronger and more democratic, in accordance with the Constitution. Changes in the legislation had been initiated to extend and comply with trade union rights, eliminating the limitations imposed by previous governments on public employees, which had impeded their right to organize. As a result, the number of trade unions, federations and confederations had increased in the public sector. Workers were key to achieving social, economic and political change. Steps were therefore being taken to ensure that all tripartite and joint forums functioned with the balanced participation and representation of all workers’ and employers’ organizations representing small, medium and large enterprises. There was not only one employers’ organization in the country, but several. Many had found it impossible to participate in tripartite or joint forums because of the hegemony exercised by certain employers’ organizations. Public sector unions had been similarly disadvantaged because, as they were not legally recognized, their participation in such bodies was often limited. Under the previous and current governments, trade union freedoms had been expanded and the number of legal and active unions had increased, as had the number of unionized workers. It was the Government’s wish that working women and men should have decent living conditions and that their fundamental rights should prevail over essentially economic interests so that the country could be an example of dem-
ocratic practices where trade union rights were exercised in an autonomous manner in coherence with the historic struggles of the working class. The workforce needed to be the driving force behind economic and productive development, and not a commodity dominated by individual interests. In recognition of all the social and labour struggles for their country’s development, the Government would continue working to ensure that all organized workers could freely engage in trade union activities and achieve, in both the public and private sectors, decent living and working conditions, with decent wages and social benefits, without any kind of discrimination. With regard to the situation of insecurity in the country, the Government shared the workers’ concern and was undertaking comprehensive action in the context of the Plan for a Safe El Salvador, which had been formulated with broad social and sectoral participation. The same applied to the Council for Public Safety, composed of representatives of the Government, private enterprise, including ANEP, organized workers, churches, the media and social organizations, with the assistance of the United Nations.

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

The Worker members observed that, while they concurred with the observation of the Employer members regarding equality between workers’ and employers’ organizations, the terminology used since 1948 had never given rise to any ambiguity that might suggest the contrary and had never stood in the way of the examination of that right in the context of the ILO’s work. Apart from the terminology used, which could vary from one country to another, it was a question here of the right to organize collectively and its corollary, the right to collective action, which for the workers meant the right to strike. Returning to the case under discussion, it should be observed that the situation in the country had worsened and the current circumstances called for urgent measures from the Government. The Minister of Labour and Social Welfare indicated that the Government condemned the killing of trade union leader Mr Victoriano Abel Vega, that it was still being actively investigated at present by the Prosecutor’s Office, which was stepping up inquiries to elucidate the facts with the express intention of preventing the crime from going unpunished. The Government was maintaining a constant social dialogue with all social sectors including private enterprise but, contrary to hegemonic practices in the past, with all employers’ organizations – small, medium and large – and also with all trade union organizations, including those which had been excluded in the past. Tripartite social dialogue existed in 19 autonomous public institutions and, further to the major reform undertaken and in the light of regulatory aspects, there was a further opening up for the participation of all organizations. With regard to the problems of constituting the Higher Labour Council, the Government representative referred to numerous initiatives and meetings instigated by the Ministry up to June 2015 to resolve the impasse on the basis of democratic, inclusive and representative practices and the regulations in force. She indicated that the existing problem was due to disagreement on the part of the trade union representation, which was divided into two blocks supporting two lists of elected representatives and that the impasse had not been caused by the Government. The Presidential Commission for Labour Affairs which focused mainly on the public sector was a response to the request from the Workers to have a mechanism for direct communication in relation to the Government’s Five-Year Plan; and that this labour forum would not replace the mechanisms for tripartite participation. The Government had achieved changes in the legislation in order to guarantee the trade union rights of public employees and in the past five years the number of active trade unions had risen to 464, with 99 unions in the public sector and 35 in autonomous institutions. According to the practice followed by the Ministry of Labour and Social Welfare, trade union organizations whose registration had been refused could submit a new application the following day. The Government had noted the importance of the provisions and issues.
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Guatemala (ratification: 1952)

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

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

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

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

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

GUATEMALA (ratification: 1952)

A Government representative emphasized the Government’s continued action focused on lawful labour relations, social dialogue and its commitment to the promotion of decent work and freedom of association. With regard to the deaths of trade unionists, since the adoption of the “roadmap” concluded on 17 October 2013 by the Government of Guatemala in consultation with the country’s social partners, with a view to accelerating the implementation of the Memorandum of Understanding between the Workers’ group of the ILO Governing Body and the Government of Guatemala (“the roadmap”), there had been significant progress in ensuring and respecting freedom of association, strengthening trade unionism and protecting trade union leaders. The Special Representative of the ILO Governor-General in Guatemala had aided and witnessed technical assistance activities, including the provision of training to the judicial authorities, the Office of the Public Prosecutor and the Ministry of the Interior, which had been the result of substantial political and institutional efforts and commitment. All the cases had been transmitted to the Special Investigation Unit for Crimes against Trade Unionists of the Public Prosecutor’s Office with a view to improving the monitoring and developing criteria for investigations. A general directive for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers’ organizations and other labour and trade union activists had been agreed upon and was being implemented. The Public Prosecution Services were investigating 70 cases, and it should be borne in mind that the country was beset by problems of criminality and violence that affected the entire population. With a view to better dealing with and solving the 58 cases of violent deaths of trade unionists brought before the Committee on Freedom of Association, the Office of the Public Prosecutor and the International Commission against Impunity in Guatemala (CICIG) had concluded a collaboration agreement in September 2013 as part of reinforcement of investigation capacity. The CICIG had found that in only 37 of the 56 cases examined had the victim been a trade union member. The motives for the murders had varied, and only six people appeared to have been murdered as a result of their trade union activities, and in four cases, the connection of the victims with a union was not clear. Proceedings were under way and the results would be reported in due course. The Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists in Guatemala was also being applied to trade unionists. There had been 25 requests for protection made to the Public Prosecution Services. The trade union protection committee held monthly meetings with all trade union organizations as well as weekly meetings with trade union representatives and investigators from the Office of the Public Prosecutor to follow up on cases being investigated. The Ministry of the Interior had set up a direct telephone hotline and, most importantly, the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining had been successfully established. The latter was examining cases submitted to the Committee on Freedom of Association and information would be provided on developments. Regarding legislative matters, the Government had submitted draft legislative reforms to the Tripartite Committee on International Labour Affairs, while the social partners had made their own proposals. As agreement had not been reached, the various proposals, together with the comments of the Committee of Experts, had been forwarded to Congress. With ILO assistance, the Government would continue its efforts to ensure that freedom of association and collective bargaining were respected. It therefore requested the strengthening of ILO presence in Guatemala.

The Employer members said that this case had been addressed on numerous occasions and was being examined by several ILO bodies through various mechanisms, and they therefore considered that, as it was before the Governing Body, the present case should not be examined by the Conference Committee. In addition to the complaints before the Committee on Freedom of Association, various matters considered serious and urgent relating to freedom of association and workers’ rights were covered by an article 26 complaint to the Governing Body. The case contained several elements, among which the murders of trade unionists affecting the peaceful exercise of freedoms should be highlighted. Over recent years, further murders had been reported. The case also referred to legislative issues, the application of the Convention in practice, registration of trade unions and rights in the maquila (export processing) sector. With regard to the murders, 58 cases were being examined by the Committee on Freedom of Association, 12 of which since 2013. At the national level, in addition to the Public Prosecutor’s Office, there was the CICIG, which was an international investigation body.
and which had analysed 37 cases, six of which were related to trade union activities. The CICIG had made suggestions for improving investigation methods. Most of the murders had occurred in areas of the country that were particularly violent and it had not been demonstrated, at least during the present discussion, that there was a practice of killing trade union members. The Special Investigation Unit for Crimes against Trade Unionsists established in the Office of the Public Prosecutor had been strengthened, and there was also a mechanism for the protection of trade union leaders and members. The Government had adopted measures. An ILO high-level mission had also visited the country and a Special Representative of the ILO Director-General had been sent to the country to provide close and direct support for the required changes in law and practice. A request had been submitted to the Governing Body for the appointment of a commission of inquiry, and the Conference Committee was also examining the same allegations. It was therefore necessary to define the approaches and the most effective mechanisms for the proper examination of the application of Conventions and government replies to the supervisory bodies. With regard to legislation, several points needed to be emphasized, such as the necessity of laws to be established, and the requirement to be nationals of Guatemala and to work in the enterprise to be able to be elected as a trade union leader. These limitations should be reviewed. With reference to nationality, it should be understood that there was reasons of national sovereignty for limiting foreign nationals in trade union executive bodies. The Employer members had described in detail their intervention during the general discussion of the General Report of the Committee of Experts their disagreement with the views of the Committee of Experts concerning Convention No. 87 and the right to strike. They emphasized that as there were no ILO standards on strikes, the scope and conditions of the exercise of the right to strike should be regulated at the national level, a position that had also been endorsed by the Government group in its position statement at the tripartite meeting held in February 2015, and endorsed by the Governing Body in March 2015. The Employer members reaffirmed their intervention during the discussion of the General Report that as there was not a specific standard on strikes, governments could legitimately adopt a different approach to strikes, to be determined at the national level. Regarding the roadmap and the application in practice of the Convention, certain institutions were operational and should be prioritized in order to address the problems. There were two trade union organizations and awareness-raising campaigns in the maquila sector and information had been requested on their impact. In conclusion, this case, as it was on the agenda of the 324th Session (June 2015) of the Governing Body, should be settled by the Governing Body and not the present Committee.

The Worker members said that the Government of Guatemala had been conspicuous in having been invited to appear before the Committee on 21 occasions over the past 25 years. Such frequent inclusion of the country in the Committee’s list stemmed from the fact that it systematically refrained from taking corrective measures in response to the observations and conclusions of the ILO supervisory bodies in the field of freedom of association and collective bargaining. In many of the Special Investigations held simply chosen not to reply. Despite the conclusion of a Memorandum of Understanding and the Government’s commitment to follow a roadmap with respect to labour policy, and also the dispatch of technical missions and a high-level mission by the ILO, the Worker members observed that no substantial progress had been made. With regard to trade union rights and civil liberties, the Worker members deplored the fact that no light had been cast on the cases of 74 trade union members who had been assassinated over the past ten years, including 16 trade unionists in 2013 and 2014. Analysis of the report submitted to the Committee of Experts by the Government confirmed that none of the perpetrators of these crimes had been brought before an arbitration board for systematic non-observance of its own Labour Code. The Worker members deplored the fact that the lack of significant progress was not due to a lack of instruments or resources, but the persistent lack of will by the Government. They welcomed the presence of the Special Representative of the ILO Director-General in Guatemala and considered the
support of the international community to be of incalculable importance in view of the gravity of the situation concerning trade union rights.

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

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

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

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

The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, said that trade unionists should under no circumstances face harassment, intimidation, and certainly not death. While noting the information provided by the Governing Body on the article 26 complaint, the Governments of the Nordic countries had supported the appointment of a Commission of Inquiry. She called on the Government to comply with its commitments regarding individual freedoms and public participation, the rule of law and legal protection. She urged the Government to take action for the investigation, prosecution and conviction of the perpetrators of the murders of trade unionists as well as other acts of violence. She expected that the Government would promptly take all the necessary measures to ensure the protection of trade union officials and members. She urged the Government to adopt the necessary reformal legislative issues, defining the Commission of Inquiry. The Congress of Guatemala should adopt on an urgent basis the legislative reforms requested by the Committee of Experts. The ILO was playing an important role in implementing the Memorandum of Understanding, but the Government had not taken sufficient advantage of that support. She urged the Government to strengthen its efforts to give effect to commitment to the roadmap and the
Memorandum of Understanding, and she encouraged it to deepen and strengthen its engagement with the ILO, as well as with the social partners.

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

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

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

The Employer member of Honduras indicated that it was curious that the case was being discussed once again, as it was under examination by the Governing Body under article 26 of ILO Constitution. The case should not therefore be discussed by the Committee. The Government was complying with its commitments in relation to the Special Representative of the Director-General and this case should be considered a case of progress as well as an appropriate, effective and ongoing intervention of the ILO. All of that was well-known to employers’ and workers’ organizations and had to be accepted. It was important to continue to improve the labour environment in the country. Support should be provided for the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, which had a tripartite structure and reported good results.

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

The Worker member of Spain, also speaking on behalf of the Confederation of Workers of Argentina (CTA Workers), the Confederation of Workers of Argentina (CTA Autonomous) and the General Confederation of Labour of the Argentine Republic (CGT RA), said that Guatemala had not allowed the Convention to be applied effectively since its ratification. The report of the Committee of Experts described some extremely serious events over many years that showed evidence of a resurgence. Reprehensible acts of violence against trade unionists, civil society leaders and rural workers, including 70 murders, were continuing with total impunity. Freedom of association was also under threat in large companies and maquiladoras, and the right to bargain collectively, to strike and to civil liberties, especially respect for human life, were a vital prerequisite for the exercising of freedom of association. Losing that right would be detrimental to other civil guarantees concerning labour. There was an alarming gulf between law and reality in Guatemala. The Government must comply with the Committee’s conclusions. She recalled the conclusions of the missions and the supervisory bodies concerning the situation in the country, which observed the lack of progress and expressed profound concern. Murders were still occurring and there were systematic violations of civil liberties. Neither the rule of law nor democracy existed in the country. Collective bargaining was severely hampered by the actions of the State, which delayed the approval of collective agreements and prevented collective bargaining in the maquila sector. This undermined the policy of elimination of trade unionism needed to be seen in conjunction with the impunity of state and para-state forces, and with the ineffectiveness of the justice system, as almost no murders of trade union leaders had been solved. In conclusion, he proposed the creation of a special ILO permanent mission to monitor the situation, take action and assist the Government in its legal reforms and practice.
The Government member of the United States said that serious violations of freedom of association, including acts of violence against trade unionists, the need for the reform of the Labour Code and the lack of full respect of trade union rights in the maquila sector, persisted in Guatemala. While the Government had regularly informed the ILO about changes to the practices of its police, the practice into compliance with international standards, both the reports of the Committee of Experts and of the Governing Body indicated that this goal had not been achieved. The investigation and prosecution of murders and other acts of violence against trade unionists required additional and urgent action. Some measures had been taken to improve the effectiveness of investigations, but significant steps were still needed to identify and prosecute perpetrators of violence and to protect trade union members at risk. The enforcement of labour laws respecting the right to freedom of association and to collective bargaining remained inadequate. She expressed concern at the Government’s consistent failure to investigate effectively and sanction adequately anti-union retaliation. Measures had to be taken in this regard. Action was also needed to enforce compliance with court decisions, particularly in cases of anti-union violence and unfair dismissals in which the court had ordered the payment of back wages and reinstatement. The lack of protection for the right of workers to organize and to engage in collective bargaining had a negative effect on unionization, particularly in the maquila sector, in which there were only three active unions. She urged the Government to make all the necessary efforts to address these issues as a matter of urgency, and to provide information to the ILO on any steps taken. She looked forward to a review of the government report on the 324th Session (June 2015).

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

The Employer member of El Salvador believed that the serious acts of violence that were occurring in Guatemala and El Salvador were mainly due to lack of appropriate government policies and the lack of coordination between the various public entities involved, including the police, prosecutors and the CICIG. These problems were also due to the lack of adequate training for judges, police inspectors and prosecutors, especially regarding the use of scientific evidence. He referred to the example of DNA analysis laboratories which, if they employed staff specialized in evidence gathering, could greatly contribute to reducing impunity. According to recent studies, more than 93 per cent of the most serious offences committed in Guatemala, Honduras and El Salvador were not solved by the authorities, which explained the lack of credibility of the criminal justice system. He shared the indignation of the Worker members that the murder cases discussed had still not been solved. Central American countries needed more effective security policies, and a better coordination between the police, prosecutors, judges and forensic science for the operation of the criminal law and the criminal justice system. This was particularly important as it affected private investment, and therefore job creation. He admitted that the case of Guatemalan trade union leaders was a problem that also affected the countries in the northern part of Central America. He supported the position of the Employer members that the report submitted to the Governing Body provided evidence that progress was being made in the investigations. As there was already a complaint under article 26 of the ILO Constitution regarding this case and the Committee for the Settlement of Disputes before the ILO was achieving positive results, he believed the case should continue to be dealt with by the Governing Body, rather than the present Committee.

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

The Worker member of the United States indicated that there were two reasons why this case should be discussed by the Committee. The first reason was the number of murders of trade unionists in the country. The second was the ineffectiveness of governments in applying ILO standards to protect workers’ rights in the context of trade. The Central American Free Trade Agreement (CAFTA) concluded between Guatemala and the United States in 2006, required both countries to recognize and protect freedom of association and other rights included in the ILO Declaration on Fundamental Principles and Rights at Work of 1998. The Conference Committee had raised serious concerns regarding the application of the Convention in Guatemala before the entry into force of the CAFTA. The Committee on Freedom of Association had heard 25 cases regarding Guatemala. The Workers group had filed a complaint under article 26 of the ILO Constitution. However, Guatemala continued to receive trade benefits without demonstrating its compliance with the Convention. In 2008, the unions of Guatemala and the United States had filed a complaint concerning abuse of labour rights under the labour chapter of CAFTA. Since then, efforts to address the situation in Guatemala had been made through consultations and dispute settlement mechanisms under CAFTA. Evidence presented during this process had demonstrated the systematic erosion of the Government to enforce laws on freedom of association. A report by the United States Government Accountability Office, published in November 2014, documented violations of freedom of association in Guatemala, including: attempts to bribe union leaders to encourage them to quit their jobs and discourage workers from joining a union; firing workers for their union affiliation or for not dis-
banding unions; non-enforcement of relevant laws; inadequate budgets to investigate, prosecute and punish perpetrators of violations of freedom of association; and the failure to reinstate illegally dismissed workers. Virtually the same information had been sought under the ILO and the CAFTA mechanisms, but no sufficient evidence of perpetrators and violations had been provided by the Government under either process. Neither process had offered remedies to the workers concerned. In conclusion, he recalled that the instruments supervised by the Committee played a role in protecting rights outside the ILO and its supervisory mechanisms, and that ILO fundamental Conventions were increasingly being used to underpin agreements on trade and workers’ rights between member States, although they were failing so far to offer the hope of globalization with social justice.

The Government representative said that he had taken note of the points raised by the participants in the discussion. The country’s major structural problems had and would take time to resolve. All sectors would have to be involved, just as they would have to appreciate the positive side of the changes required by globalization and the technological era. Labour issues, which had been completely disregarded by previous governments, were no exception. The current Government intended to address those issues in a responsible manner, despite the difficult context and repeated complaints to ILO bodies, and would continue to follow up the issues that were being discussed in Committee, as well as others, with a view to improving the circumstances of the approximately 80 per cent of citizens who were not fully employed. The Political Constitution of Guatemala guaranteed freedom of association as a fundamental human and trade union right. That was why legal provisions had been adopted to ensure that freedom of association was respected, and it was the Government’s duty to establish the necessary safeguards.

The reform of the Labour Code that increased the power of trade union leaders now enjoyed protection measures in proceedings. As a result of the protection measures introduced recently, trade union leaders now enjoyed protection, and there had been convictions in 58 cases of violent deaths of trade unionists. Examples included the murder of Luis Arturo Quinteros Chinchilla, who was not a trade union member, who had been attacked with a firearm during a fight in a car park, and Luis Ovidio Ortiz Casos, a union leader, murdered by a minor and two youths involved in criminal activities. The Government had the courage to take the action that was still needed, together with the other state bodies, in the hope that the social dialogue that had been developed in recent years would remain permanently. Finally, he announced that, in view of the total readiness of Guatemala’s workers to collaborate, a tripartite decision had been made to hold a tripartite meeting the next day with Conference delegates to address the current debate.

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

The Employer members, taking note of the different views expressed on developments in the situation in the country, considered that the ILO, through its special representative, should continue its process of observation, support and assistance so that the institutions could operate more effectively. In Guatemala, the institutional structure was adequate and confidence should be placed in the authorities, affording them assistance so that they had the necessary mechanisms. Noting that support for the CICIG would demonstrate the Government’s political will to make progress with the investigations, the Employer members called for the work of the CICIG to be strengthened and supported the proposals made by the Worker members in that regard. They also emphasized the importance of pursuing social dialogue and strengthening bodies in order to arrive at joint solutions. In particular, the Committee for the Settlement of Disputes under the ILO should be strengthened and that the experience of other countries could be useful in that respect. In addition, progress should continue to be made on all the elements of the roadmap, taking into account the observations and comments already made by the Employer members in their first intervention. The Office of the Public Prosecutor should also take decisive action to ensure that investigations were carried out more rapidly and progress should be made on coordination through international agreements, leading to concrete results on the investigation of crimes. The protection of trade union members should be ensured by allocating the necessary resources. It was also important to continue with the programmes for investigators and prosecutors with a view to facilitating investigations in these areas. With respect to legislative issues relating to the right to strike, the Employer members indi-
cated that these issues should be addressed by the competen
tbody in accordance with Guatemalan domestic legis-
lration, and hoped that the most appropriate mechanisms
could be found through social dialogue. As the questions
raised were being addressed in the context of the various
cases that were before the Committee on Freedom of As-
sociation, and that they would be raised in the next
session of the Governing Body, the Employer members
considered that it should be for the Governing Body to
decide on the best approach to be adopted.

Conclusions

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

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

The Committee took note of the Minister of Labour’s em-
phasis on the Government’s commitment to decent work
and freedom of association, as could be seen in the following
results related to the application of the Convention: (1) the
Unit for Crimes against Trade Unionists of the Office of the
Public Prosecutor was now centralizing the investigation of
all such cases (70 in total); (2) a general instruction on inves-
tigating and prosecuting these crimes had been agreed be-
tween the Office of the Public Prosecutor and a technical
group from the trade union sector and was now in effect; (3)
of the 58 cases of violent death under investigation, inves-
tigations had been handed down in eight and ten arrest war-
rants had been issued in other cases, while an arrest warrant
had been requested in one further case; (4) in Guatemala, as
in other countries in the region, there was a problem with
criminality and violence affecting the population in general;
(5) the Office of the Public Prosecutor and the International
Commission against Impunity in Guatemala (CICIG) had
signed a collaboration agreement in 2013 to build investiga-
tion capacity; (6) from an examination of 56 criminal cases,
it appeared that a significant number of victims were not
members of trade union organizations and that in the major-
ity of cases the motives were unrelated to trade unionism
(organizing relatedortion, etc.); (7) 25 requests for protec-
tion of trade unionists had been submitted under the protocol
for the implementation of immediate preventive security
measures to protect human rights defenders in Guatemala;
(8) an emergency telephone line had been set up to deal di-
rectly with threats of violence against trade unionists; (9) at
present, failure to abide by court rulings could give rise to
criminal proceedings and hundreds of breaches had been
reported; and (10) Congress was seeking to strengthen the
power of the labour inspectorate to impose penalties for
labour violations. In addition, tripartite dialogue had been
strengthened. In that regard, a Special Committee on the
Handling of Conflicts referred to the ILO in the areas of
freedom of association and collective bargaining had been
set up and begun examining cases. In addition, the Govern-
ment had submitted draft legislative reforms to the coun-
try’s tripartite body relating to the comments of the Com-
mittee of Experts. When an agreement had not been
reached, the draft, including the comments of the social
partners, had been transmitted to Congress. The Guatem-
alan tripartite delegation had agreed to meet during the Con-
ference to address all the above issues at once and make
progress. Lastly, he expressed appreciation for the technical
assistance and training for public institutions provided by
the Special Representative of the ILO Director-General in
Guatemala and requested that the Special Representative’s
office be strengthened.

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

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

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

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

KAZAKHSTAN (ratification: 2000)

The Worker members deplored the fact that the Gov-
ernment had not felt the need to appear before the Com-
mitee on the Application of Standards, even though Con-
vention No. 87 was not only one of the eight fundamental ILO Conventions but also the cornerstone of collective bargaining, social dialogue and the ILO itself. In its 2012 observation, the Committee of Experts had already formulated a series of comments to the Government regarding the application of the Convention. The Government had then prepared two draft laws allowing employers’ organizations to the Office for technical guidance. Despite several minor changes, the new Law on Trade Unions had entered into force in July 2014 without taking into account the key changes proposed by the Office, thus prompting several comments from the Committee of Experts. They maintained, in this connection, that the application of the Convention could be summarized as comprising seven principal issues. First, trade unions were not authorized until they had been registered and, in order to remain registered, local and regional trade unions had to affiliate to a national confederation within six months. That registration procedure could seriously restrict freedom of association, as demonstrated by the refusal of the Ministry of Justice to register the Confederation of Free Trade Unions of Kazakhstan (CFTUK) on 25 May 2015. Second, the new law established strict rules concerning the establishment of trade and territorial trade unions. Sectoral trade unions had to include at least half of the workers in the sector or half of the trade unions in the sector. Those thresholds were, according to the Committee of Experts, contrary to Article 5 of the Convention. Moreover, all enterprise unions were required to be affiliated to a sectoral trade union and all sectoral trade unions had to belong to a national trade union. It was furthermore mandatory for territorial trade unions to join territorial organizations created by national trade unions. That complex and compulsory structure made it impossible to establish independent trade unions, thereby undermining the very essence of freedom of association, which presupposed the freedom to choose the structure of organizations. Third, judges did not always have the right to form trade unions and, according to the Committee of Experts, the present union, the Union of Judges of the Republic of Kazakhstan, did not constitute a workers’ organization within the meaning of the Convention. Fourth, neither firefighters nor prison staff could establish trade unions, whereas the only exclusions from the right to organize authorized by the Convention were members of the police and the armed forces. Fifth, the right to strike of numerous categories of workers was severely restricted. This was the case with workers in “dangerous industries” (concept that was not defined by the legislation), and with workers in round-the-clock industries and industries providing various public services. In those various cases, the legislation provided that strikes should not jeopardize the maintenance of services or the meeting of users’ essential needs, which was why it was necessary to remind the Government that a minimum service should remain a minimum service and that workers’ organizations should be able to participate in defining it. With regard to the prohibition of the right to strike in the public service, even though the Government had made it clear to the Committee of Experts that it did not cover certain categories, such as teachers, doctors or bank employees, it should be recalled that the ban on the right to strike should be limited to civil servants exercising authority in the name of the State. On account of their status, the employees of the Public Associations, in line with the request of the Committee of Experts, would not be able to defend the interests of environmental protection. On the contrary, they would have to establish the territorial entities that would take a collective decision for the collective bargaining. The recently adopted law seriously limited the freedom of association rights of employers’ organizations and threatened their independence from the Government, were deeply problematic. They called on the Government to take all measures requested by the Committee of Experts regarding the Law’s amendment, so as to guarantee the full autonomy and free functioning of employers’ organizations, and to consider accepting the technical assistance of the Office in this regard. With regard to section 106 of the Civil Code and article 5 of the Constitution, which prohibited the receipt of financial assistance to national trade unions from international organizations, they defined that these provisions violated the rights enshrined in the Convention and urged the Government to remove this prohibition, as per the Committee of Experts’ request. With respect to the strike provisions laid down in section 303 of the Labour Code, they recalled that their views on this particular issue diverged from those of the Worker members and referred to their explanation of their views during the discussion on the General Report. They referred to the fact that the right to strike was not regulated by Convention No. 87 and that the parameters of the right to strike were to be regulated at the national level. They concluded by again expressing their disappointment at the Government’s failure to appear before the Committee.

The Worker member of Norway, speaking on behalf of the trade unions in the Nordic countries and Estonia, expressed deep concern over recent developments in the country that limited freedom of trade union activities and allowed the Government to interfere with trade union activities. The recently adopted law seriously limited the ability to freely define trade unions’ structure, put forward demands and realize the right to strike. The provisions hampered the procedures for the registration, reorganization and liquidation of trade unions. Pursuant to the new
law, sector trade unions should be established by at least half of the total number of employees or organizations in the industry, or should have structural subdivisions in more than half of the regions, cities of national significance and in the capital. Similarly, it was almost impossible to form trade union confederations because of the high legal thresholds. These requirements hindered the free establishment of trade unions and could lead to trade union monopoly. The obligation to re-register created risks for existing trade union, of not fulfilling the new requirements, as observed by the International Trade Union Confederation (ITUC) and the CFTUK. Indeed, the Government refused the registration of CFTUK on 25 May 2015 based on a number of reasons concerning the charter of the organization. The requirements were in clear violation of the Convention which provided workers with the right to formulate charters and decide freely on the structures of the unions. She urged the Government to remedy this situation and allow for the registration of CFTUK, which otherwise would be illegal starting from 1 July 2015. She finally called on the Government to enforce the recommendations of the Conference Committee and ensure compliance with the Convention as well as to ensure in law that workers, as the right of the workers organize and establish trade union organizations and to organize their activities free from any interference by public authorities as well as to allow for the trade unions to represent and protect the rights of their members. The Worker member of the United States recalled that the Government had started introducing changes to its labour legislation in 2011, following a seven-month strike that year by workers in the oil sector that had ended in the deaths of 17 of them, and injuries to dozens more. The Law on Trade Unions was passed in 2014, and although the Government had requested and received the Office’s technical comments on the draft of the said legislation in 2013, several recommendations set out in those comments were not reflected in the adopted version. Several of the latter’s provisions consequently contravened the Convention, particularly those minutely regulating the structure of the trade union movement. She expressed concern that the registration application of the CFTUK was denied on 25 May 2015. This denial of registration to an established and well-recognized union, one that had previously been recognized as a participant in the tripartite structure, suggested that the Government’s position vis-à-vis trade unions had become more restrictive with the legislative reforms. Moreover, amendments to both the Civil and Penal Codes were particularly concerning. She was struck by the fact that the definition of illegal strikes had been amended by law, whereas the latter imposed penalties of up to three years in prison for issuing calls to continue a strike that had been declared illegal. 

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

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

The Worker member of Poland expressed the support of the Confederation of German Trade Unions (DGB) for its colleagues in Kazakhstan. The problems relating to freedom of association in Kazakhstan affected workers and employers, taking into account especially the serious events surrounding the strikes that had taken place in the oil sector. They expressed disbelief that the delegation had failed to come before the Committee, given that the ILO had helped to set up bases for social dialogue in the country. The Law on Trade Unions of 2014 imposed many restrictions to the establishment of trade unions, particularly regarding registration. Within six months following their registration, trade unions had to mandatorily join a higher level trade union organization and if they did not fulfill this requirement they were struck off the register. The risk of further restrictions on the exercise of the right to strike. The definition of illegal strikes had been amended under the former law, whereas the latter imposed penalties of up to three years in prison for issuing calls to continue a strike that had been declared illegal. She noted with concern that developments following the strike of 2011 reflected a deterioration in the trade union rights situation, and urged the Government to undertake legislative reforms necessary to ensure full compliance with the Convention.

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

The Worker members pointed out that the various statements made on the case all tended in the same direction. They underlined the fact that, since the Committee’s last meeting, a new trade union act had been adopted. It provided for compulsory registration of trade unions and established a highly restrictive structure under which organizations appeared to be obliged to join higher level unions, which was a violation of the Convention. Moreover, setting very high thresholds for forming higher level trade unions so as to restrict trade union pluralism was
also contrary to the Convention. Furthermore, since the beginning of the year, a new Penal Code and a new Code on Administrative Violations had imposed restrictions on trade union activity. In the light of the Committee’s discussions, the Worker members requested the Government to: amend its legislation to recognize the rights of judges, firefighters and prison staff to form trade unions; remove the restrictive conditions and procedures for registering trade union organizations; re-register the CFTUK immediately; put an end to the obligation for local, sectoral and regional trade unions to join a national organization within six months of their registration; amend legislation to lower the thresholds required to form a sectoral trade union; lift the prohibition on receiving financial aid from international employers’ and workers’ organizations; and amend the new Penal Code and the new Code on Administrative Violations to clarify vague notions such as “civil society leader” or “social discord”. Lastly, the Worker members urged the Government to request technical assistance from the Office. Given the Government’s attitude towards the Committee, they considered that it would be appropriate to include the Committee’s conclusions on the case in a special paragraph.

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

Conclusions

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

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

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

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

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

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

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

MEXICO (ratification: 1950)

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

The Worker members thanked the Government of Mexico for the information provided which would be analysed, particularly the cases of assassination. In Mexico, protection contracts presented the most serious obstacles to the exercise of freedom of association. The protection contract was a false collective agreement signed between an employer and a union, often established by the employer, and even subject to criminal elements, without the participation of the workers, and even without their knowledge. Its objective was to prevent any independent trade union representation and most afforded employers full discretion with respect to wages, working hours and employment conditions. Once the protection contract had been registered and was in force, it was extremely difficult to form another trade union within the enterprise to negotiate a new legitimate collective accord. When workers attempted to organize freely through a vote (recuento), the employer and the trade union that were signatories to the protection contract often acted in unison to intimidate the workers through verbal threats, sometimes physical violence and summary dismissals. Furthermore, the electoral processes were often manipulated to ensure the defeat of the democratic trade union. This corrupt system, unfortunately, did not appear to be restricted by the Secretariat of Labour and Social Welfare. At the local level, the protection contracts were registered with the full knowledge of the local conciliation and arbitration boards, on which the unions who were signatories to the protection contracts were represented. The Mexican system of conciliation and arbitration boards had been widely criticized for a lack of effectiveness, political partiality and corruption. Although they were nominally tripartite, in practice, these boards were controlled by the executive authorities. While workers benefited, in theory, from different procedures, in practice workers’ representatives were unclear. Several experts had proposed replacing the system of conciliation and arbitration boards with a system of labour tribunals, which would come under the judicial rather than the executive authorities. Experts estimated that approximately 90 per cent of all collective agreements in Mexico were protection contracts, and that the number had been rising over recent years. The persistence of these contracts was explained by corruption and the networks which plagued politics, the administration, the judiciary, the economy and trade unions. This phenomenon had been widely documented in the public reports of the North American Agreement on Labour Cooperation, in academic research and recent case studies. In its 370th Report, the Committee on Freedom of Association recommended the Government to avail itself of ILO technical assistance to carry out national law and practice with regard to protection contracts. They referred to an example of a protection contract concluded between the management of an automobile factory and a “yellow” trade union and the resulting obstacles for the establishment of an independent trade union. On 1 December 2012, the Government of Mexico had enacted a significant reform of the Federal Labour Act, which did not include any provision aimed at restraining the widespread use of protection contracts, but centred on introducing more flexible labour relations. Other aspects of the Mexican system restricted freedom of association: the obligation for the trade union election results to be approved by the labour authorities (a procedure known as toma de nota, which had been used to remove leaders from union duties for political reasons); the limitation of trade union representation rights to workers in specific industries (radio de acción) and the fact that trade unions could not change their status to represent workers in other industries; the very small amount of the penalties provided for by law for violations of labour law and trade union rights, since workers often received less than a third of the amount legally due to them further to legal proceedings relating to dismissal based on discrimination (as the reform of the 2012 Labour Act, had limited salary arrears to 12 months in the case of illegal dismissal, even though the protection contracts could last longer which, in addition to the malfunctioning of the consultation and arbitration boards, had a dissuasive effect on workers); the fact that conciliation and arbitration boards systematically declared strikes illegal, often on technical grounds (even though the courts had revoked such decisions by the boards, it nevertheless entailed costs and considerable delays for workers), the right to strike was also severely restricted by the possibility for the employer to declare the collective agreements null and void on grounds of force majeure.

In conclusion, they denounced the use of physical violence against workers defending their rights, which was a widespread practice in Mexico. Four members of the National Union of Mine and Metal Workers had been murdered since 2006. Nobody seemed to have been charged. Santiago Rafael Garza, an organizer with the agricultural workers’ organizing committee, had been murdered on 9 April 2007 in Monterrey. The three suspects were still at large. The collective actions of the Los Mineros union had been targeted with systematic attacks by police and armed groups. Violence had also been used against the independent union of electricity and telephone workers and the Authentic Labour Front. Furthermore, non-
governmental human rights organizations, which also defended the rights of workers, had been subjected to threats, surveillance and intimidation. They emphasized that attacks on freedom of association in Mexico, a 620 country, were unacceptable, as had been stated repeatedly in international forums. It was time for Mexico to tackle its problems. With regard to the rights of unions, so as to nurture a dynamic and independent trade union movement in the country that would improve labour relations. Noting that Mexico was currently considering ratifying the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Worker members encouraged it to do so, as it would be a significant step but which would require real political will to give full effect to the provisions of Conventions Nos 87 and 98. The Employer members referred to the issues raised by the Committee of Experts. With regard to the murders of two campesino leaders, they noted the Government’s statement to the effect that they were not related to freedom of association matters, since the victims had not been workers but coffee producers, they had not been acting as part of a trade union and their claims had not concerned a labour issue. It was not clear where the information had originated. With regard to the registration of trade unions, they welcomed the measures taken by the Government with respect to computerization and adapting technologies to meet the targets it had set as part of reforming the Federal Labour Act. They also referred to paragraph 561 of the Report of the Committee on Freedom of Association in Case No. 2694, in which the Committee had noted with interest the reform of the Federal Labour Act that had come into force on 30 November 2012, eliminating the exclusion by separation clause in collective contracts (which authorized dismissals in cases of resignation of union membership), required the Federal Conciliation and Arbitration Board to make the contents of collective agreements public and eliminated the local conciliation and arbitration boards, making the Federal Conciliation and Arbitration Board alone responsible for the resolution of labour disputes. The Committee on Freedom of Association had also noted that the Government’s reply indicated that the legislative reform also provided for greater transparency and democracy in trade unions, the professionalization of the legal staff of the boards, the adoption of rules to prevent irregular or corrupt practices in their proceedings, measures to expedite and streamline procedures and more serious fines for deliberate delays. The progress made by the Government of Mexico should not therefore be ignored. Moreover, in paragraphs 561 and 563 of the same report, note was taken of the information provided by the Government on the legal provisions and the national jurisprudence regarding the minimum number of workers required to establish a trade union; the entitlement of the majority trade union to collective agreement rights; the rights of minority trade unions; the right of all workers to join or not join, and to create a trade union; and the right to refuse membership. The Committee on Freedom of Association had observed that the provisions described by the Government did not appear to violate the principles of freedom of association and collective bargaining. It had also taken note of the information provided by the Government regarding its social dialogue and tripartite dialogue policy. They concluded by emphasizing the importance of tripartite dialogue in solving problems. With regard to the right of trade unions to organize their activities and formulate their programmes, the Committee of Experts had requested the Government to amend the legislation that recognized the right to strike of state employees only if there was a general and systematic violation of their rights. They reiterated that the right to strike was not recognized as deriving from the Convention and that only national legislation should be taken into account.

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

The Employer member of Mexico noted the progress made by the Government of Mexico. The murders of two campesino leaders, while deplorable, had no relation to labour matters. While the legal provisions on trade union pluralism had not yet been amended, they had been declared unconstitutional, meaning it was now possible for more than one trade union organization to exist in the same state entity. The labour reform had resolved many pending issues. The Committee of Experts had referred to laws and regulations that did not exist and had made erroneous references. Regarding the observation made by the Committee of Experts that the forced mobilization of workers was only one aspect of a general effort to ensure essential services in the strict sense of the term, he emphasized that this situation had not arisen. Regarding the right to strike, the information referred to by the Committee of Experts was incorrect, and in any case the draft conclusions should not refer to this issue. Regarding the registration of trade unions, the Committee of Experts had welcomed the adoption of a number of provisions aimed at making trade unions more transparent and democratic, including the new section 365bis of the Federal Labour Act, which made it compulsory for the Department of Labour and Social Provision and the conciliation and arbitration boards to publish trade union registrations and by-laws. It needed to be borne in mind that the legislative reform had taken effect at the end of 2012, and that the Government would enforce the new legal provisions in the near future. He emphasized that it was not acceptable for the Committee of Experts to refer to Case No. 2694 of the Committee on Freedom of Association, as that could cause confusion between the two bodies, which dealt with different matters. He requested the Committee of Experts to work with the information provided by the Government. The progress made by the Government should be taken into account.
The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), noted the information provided by the Government concerning the murders of two campesino leaders during a public demonstration. She noted the Government’s statement that the complaint presented in September had actually referred to a continuing situation and that the Government would continue taking steps to give effect to the Convention. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. She trusted that it would provide the Committee of Experts with further information in due course. She also noted the progress made by various federal entities in the application of the Federal Labour Act, which required them to publish registers, trade union by-laws and collective agreements with a view to improving the transparent and democratic functioning of trade union organizations while respecting their autonomy. GRULAC acknowledged the significant efforts involved in computerizing and adapting technology to meet the Government’s own targets to reform the Federal Labour Act and encouraged the Government to continue making efforts to extend compliance with section 365bis of the Act to the rest of its federal entities. The Mexican Government had provided information concerning judicial rulings from the Supreme Court of Justice and the interpretation of the Federal Conciliation and Arbitration Tribunal which had found that legal restrictions on the freedom of association of civil servants were not applicable. She noted with interest the Government’s explanations concerning the interpretation of the Federal Conciliation and Arbitration Tribunal, which considered that, even though the legislative authorities had not amended the freedom of association legislation that applied to workers employed by the State, the 2011 Constitutional reform in the area of human rights had made it clear that international treaties, once ratified, were binding. Under Article 133 of the Constitution, acts of Congress deriving from the Constitution and all treaties that were in conformity with it, with the approval of the Senate, constituted the supreme law of the land. In that respect, compliance with the Convention was not conditional on the provisions of the Federal Civil Servants Act, as the Convention took precedence over the latter. Rulings of the Supreme Court of Justice had also recognized the hierarchical position occupied by international treaties ratified by Mexico within its domestic legal framework. Lastly, GRULAC welcomed with interest the Government’s will to continue promoting social dialogue with all of civil society and reiterated its commitment to the strict application of the Convention and respect for freedom of association. She trusted that the Mexican Government would continue taking steps to give effect to the Convention.

The Worker member of the United States emphasized the volume of exported fruit and vegetables from Mexico to the United States, which had tripled to US$7.6 billion over the last decade. He said that trade and profit under NAFTA had benefited employers along the supply chain, but denied labour rights to workers. Mexico had ratified Convention No. 87 and the Rural Workers’ Organisations Convention, 1975 (No. 141), but continued to exclude that workforce from collective bargaining agreements that included Convention No. 87. The Trans-Pacific Partnership which was being negotiated between twelve countries, including the United States and Mexico, was supposed to include strong commitments to core Conventions. Without real reform of law and practice, Mexico would be in violation from the moment such a treaty entered into force.

An observer representing IndustriALL Global Union denounced the protection contracts labour relations system in Mexico. The reports on Case No. 2694 of the Committee on Freedom of Association showed that over 90 per cent of all workplaces were still controlled by the official protection unions. Despite the repeated recommendations from the Committee on Freedom of Association and the Governing Body over the past five years, and the Government’s public and written promises, there had been no progress for Mexican workers. The protection contract system and the conciliation and arbitration boards prevented workers from establishing unions. Despite the 2012 reform to the Federal Labour Act, there was still no access to information concerning collective bargaining agreements, transparency and labour inspection. Workers in the leather and shoe industry, rural areas, mines, the oil and gas industry and export processing zones who had referred to the official protection unions had not benefited from the provisions of freedom of association. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. The Convention was the only way to bring about a new system of protection for workers, to prevent the violation of freedom of association. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement.

The Government member of the United States said that, in November 2012, the Government of Mexico had taken steps to modify key provisions of the Federal Labour Act. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. The persistence of false trade unions, or “protection unions”, remained a major challenge and constituted a serious limitation of the right to freedom of association, particularly as collective agreements were concluded with these protection unions without the knowledge and consent of workers, often even before enterprises had opened. Section 365bis of the Federal Law permitted employers to impose a wage increase well below what workers were seeking. The officially registered union had played no role whatsoever in negotiating the 4 June agreement under the protection contract system. The 4 June and 14 May agreements concluded by employers, the Government and workers were an important but tenuous victory that would have to be watched closely, supported by all the signatory parties and built upon. The exercise by workers of their rights under the Convention, including the right to join an organization of their own choosing and to collective action, such as the right to strike, had taken place outside, and despite, Mexico’s predominant labour relations system. That example illustrated that Mexico did not respect freedom of association. However, it also showed that workers could solve that problem by exercising their fundamental rights, including the right to strike, regardless of shortcomings in national law and practice. Until union registrations were made public and non-representative entities were barred from signing protection contracts, Mexico would not be in compliance with the labour rights protections in trade agreements that included Convention No. 87. The Trans-Pacific Partnership which was being negotiated between twelve countries, including the United States and Mexico, was supposed to include strong commitments to core Conventions. Without real reform of law and practice, Mexico would be in violation from the moment such a treaty entered into force.
Labour Act provided for compulsory publication of trade union registration and rules by the local conciliation and arbitration board. The National Union of Workers (UNT) had reported that this legal obligation was not currently effectively fulfilled by any of the local boards in practice in Mexico’s 31 states. This failure facilitated the persistence of conciliation and arbitration boards in the establishment and perpetuation of protection unions, particularly through their authority to register collective agreements and to administer the recuento process through which a union attempted to secure collective bargaining rights for its workplace. The structure of these local boards did not provide for adequately inclusive worker representation and often perpetuated a bias against independent unions. It was time for the Government of Mexico to transfer these functions to the judicial branch or some other independent entity to ensure honest representation of workers and the full and fair administration of labour law and adjudication of disputes. She called on the Government of Mexico to undertake these critical legal and administrative reforms to adequately address the continued presence of protection unions and the failings of the boards in order to ensure workers the right to freedom of association in law and practice as soon as possible.

The Worker member of Finland indicated that national legislation should never be used as an excuse to undermine core ILO labour standards. Companies should respect the same core labour standards wherever they operated. All workers had the fundamental right to join the union of their own choosing without any interference or harassment, and had the right to negotiate collectively. She added that, unfortunately, the examples she was raising were from a Finnish multinational company operating in Mexico. It was currently an employer of 7,000 workers and she emphasized that the workers employed by the company had not learned of the existence of the protection contract until they had sought to organize an independent union at their factory. The management had denied their request and had referred to the existing protection contract as the legal framework in need of reform. The company had requested the labour authorities for an election to allow workers to choose their union. The authorities had delayed the election for a year, giving the company and the protection union time to pressure workers, including with threats to close the plant. The independent union had narrowly lost the election. Immediately following the election, the company had dismissed more than 100 workers, including the entire executive committee of Los Mineros. The dismissed workers also included all the union observers in the election. Workers were had been called individually and told to sign a “voluntary” resignation letter. Officials of the Federal Labour Board had been present and had encouraged the workers to sign. Moreover, ten workers had not signed the resignation letters and had filed for reinstatement. After more than two years, the Federation of Protectionist Unions. She indicated that the 2012 reform had failed to address key deficiencies in the Federal Labour Act that allowed the continued existence of protection unions, including the absence of any provision that would require the demonstration that an employer was operational and that its workers supported the initial collective bargaining agreement at issue before that agreement could be deposited. She was also concerned by the enabling role of conciliation and arbitration boards in the establishment and perpetuation of protection unions, particularly through their authority to register collective agreements and to administer the recuento process through which a union attempted to secure collective bargaining rights for its workplace. The structure of these local boards did not provide for adequately inclusive worker representation and often perpetuated a bias against independent unions. It was time for the Government of Mexico to transfer these functions to the judicial branch or some other independent entity to ensure honest representation of workers and the full and fair administration of labour law and adjudication of disputes. She called on the Government of Mexico to undertake these critical legal and administrative reforms to adequately address the continued presence of protection unions and the failings of the boards in order to ensure workers the right to freedom of association in law and practice as soon as possible.

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

An observer representing the Confederation of University Workers in the Americas (CONTUA), also speaking on behalf of Public Services International, expressed his concern that workers in the Americas were still facing serious legal restrictions in their work to organize.” He observed that the case under discussion showed that anti-union pressure had intensified. The failure of the Government to meet its obligation to make trade union registrations and by-laws public was another means of protecting false unions and restricting and failing to protect democratic trade unions, whose registration was either refused or delayed excessively without any grounds whatsoever. He agreed with the Committee of Experts, which had indicated that there was a conflict between Mexican labour legislation and the Convention, namely the prohibition on two or more unions coexisting in the same state agency; the creation of mixed organizations (combining trade unions and other sectors of society); and the recognition of trade union federations at state level. He conceded that many of those contradictions had been resolved through the courts, with the provisions in question being declared unconstitutional after lengthy legal proceedings. However, in addition to judicial rulings, it was vital to repeal once and for all the provisions that were in violation of the Convention. He emphasized the serious legal restrictions in Mexico’s Constitution limiting the right to strike of state employees, which were inconsistent with international standards and with the historical stance taken by the ILO supervisory bodies, in addition to being in violation of the Convention, which clearly protected the right to strike as a human right at work. In conclusion, he noted that collective labour relations in Mexico continued to be a source of concern, with employers maintaining support for those who promoted and fought for democracy and the momentum of political and social change.

The Worker member of Colombia agreed with the International Trade Union Federation (ITUC) and the Trade Union Confederation of the Americas (CSA-TUCA) that there was reason to fear that the concept of employer protection collective contracts might be exported to other countries, as had happened in Colombia, whose union contracts operated as employer protection contracts. He recalled that employer protection collective contracts had been defined as contracts that employers concluded with trade unions, or rather with a person with a trade union registration, who guaranteed that the employer would be able to operate without any union opposition or any demands from the workers, in exchange for the “trade union” offering the service. In reality, the whole process involved a false union and a false collective agreement. Certain studies suggested that around 90 per cent of registered collective contracts in Mexico were in fact employer protection collective contracts. That was a result of three factors: the existence of a large number of enterprises and false trade unions that were willing to
violate the law; the existence of legal provisions under which collective protection contracts were possible; and the inaction or complicity of State institutions. Although collective labour contracts had to be deposited with conciliation and arbitration boards, the union did not have to prove the membership of the workers in the enterprise with which they were concluded. Furthermore, and because collective contracts contained an “exclusion clause” that prohibited employers from recruiting workers who were not members of the union (“exclusion from recruitment”) and a clause obliging them to dismiss workers who resigned or were expelled from the union (“exclusion by separation”). He considered that: it was necessary to review the power of the authorities to refuse the registration of a trade union or to recognize its representatives; that when depositing a collective agreement, the existence of the enterprise concerned and of its workers, and their representatives, should be required; and that “exclusion from recruitment” and “exclusion by separation” clauses should be prohibited. It was also essential to adopt measures to guarantee in practice the enforcement of the new legislative provisions requiring that the registration information and by-laws of unions be made public and accessible, as well as the registration provisions on the transparency and democratic functioning of trade unions. In conclusion, he urged the Committee to reiterate appeal made by the Committee of Experts for the amendment of Mexican legislation so that the right to strike of workers in the service of the State, including workers in the banking sector, was fully recognized, as that right was inherent to Convention No. 87.

The Government representative said that there were a number of issues that warranted analysis and clarification. He reiterated the Government’s commitment to freedom of association and the free exercise of the right to organize. He expressed particular concern at the fact that the matters raised predated the labour reform, the first of the major structural reforms undertaken in the country, which had entailed significant changes in the manner in which those issues were addressed. Referring to the claims that 90 per cent of collective agreements were protection contracts, he observed that that figure originated from a survey conducted in 2004, and that, regardless of the criteria used in that analysis, it was important to indicate that there had been substantial developments and changes in enterprises in Mexico. He emphasized that virtually 99 per cent of enterprises in the country were micro, small and medium-sized enterprises. Statistical information should be treated with particular care. With regard to the provisions on the transparency and democratic functioning of trade unions, under section 693 of the Federal Labour Act it was possible for legal personality to be granted to trade unions on the basis of other documents. He said that the acknowledgement of the legal personality to a trade union did not affect its operation. He emphasized that toma de nota certificates were issued within an average of five working days, and sometimes even three. With regard to the coverage of workers by any trade union was free to include any worker as its member; the point was to prevent the creation of false unions. With regard to the references made to Cases Nos 2694 and 2478 of the Committee on Freedom of Association, he considered that the Conference Committee was not the appropriate forum to which to transfer discussions from the Committee on Freedom of Association, as confusion would ensue. The delay in the online publication of union by-laws and registrations was unacceptable; the information used to be up to date. He considered it a matter of fact that the Mexican Constitution and the Federal Labour Act still contained a prohibition for information made by the present Committee. They observed that the information available came largely from the cases of the Committee on Freedom of Association. Four meetings had recently been held with different types of organizations, two of which had been attended by the President of Mexico. At one of these, in August 2013, a meeting had been held with the CSA-TUCA, the IndustriaALL Global Union and the United Steelworkers, during which many issues relating to the legislative reforms had been discussed. In April 2014, the President of Mexico had also held a meeting with the UNT, the organization that had been responsible for the_succes of the Commission on Freedom of Association. In addition, the Secretary for Labour and Social Welfare had held several meetings, including with the UNT, the Revolutionary Confederation of Workers and Campesino Farmers, and the Regional Confederation of Workers of Mexico. Progress was being made in many areas that were addressed. Extensive social dialogue was being undertaken, not only with Mexican
workers' organizations, but also with international organizations. They emphasized that it was important that existing conflicts were being resolved and that social dialogue, inspection mechanisms and the justice system were functioning. They also recalled that it had been reported that many legislative provisions were not only inapplicable, but also unconstitutional. They noted that ILO technical assistance could be associated with a process of legislative development. To that end, the Government itself had announced the possibility of carrying out a technical revision of Mexican legislation. They invited the Government to avail itself of ILO technical assistance, where appropriate.

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

Conclusions

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

The Committee took note of the fact that the issues raised by the Committee of Experts related, among other things, to: the murders of two campesino (peasant farmer) leaders; failure to publish trade union registrations and by-laws at local level (a practice connected with protection unions and protection contracts) despite a legal obligation to that effect; legal provisions declared unconstitutional that ran counter to trade union pluralism in federal state agencies, the right of civil servants to join trade unions freely and the right of civil servants' organizations to affiliate with other organizations; and the ban on foreigners serving on trade union executive committees.

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

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

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

- fulfill without delay its obligation to publish the registration and by-laws of trade unions in the local boards in the 31 states in the country, not just in the Federal District and San Luis de Potosí, in a period of three years as established in the Federal Labour Law;
- identify, in consultation with the social partners, additional legislative reforms to the 2012 Labour Law necessary to comply with Convention No. 87. This should include reforms that would prevent the registration of trade unions that cannot demonstrate the support of the majority of the workers they intend to represent, by
means of a democratic election process — so-called protection unions; and
- provide a report on progress made to comply with these recommendations by the next session of the Committee of Experts.

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

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

SWAZILAND (ratification: 1978)

The Government provided the following written information.

There has been remarkable progress in dealing with the issues raised by the ILO in the 2015 report of the Committee of Experts. The progress on the issues is as set out below.

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

Concerning the amendment of the Industrial Relations Act to ensure that criminal and civil liability penalties do not impair the right to freedom of association (sections 40(13) and 97), this issue has been dealt with in the Industrial Relations (Amendment) Act No. 11 of 2014 by amending the Act to ensure that civil and criminal penalties do not impair the right to freedom of association. In addition, in consultation with the ILO and following a review by the social partners and other stakeholders, in July 2014, the Code of Good Practice was sent to the Attorney General for further review. At the meeting between the Government and the social partners, soon after their registration, the revised Code was circulated and now awaits comments from the social partners before the end of July 2015. The Ministry will be following up on the offer from the ILO to provide training to the police, workers, employers and other stakeholders on the application of the Code. Furthermore, following consultations between the Government and the ILO, a consultant has been selected to undertake a review of the Public Order Act, and we are working with the ILO to ensure that the consultant starts working in July 2015. The draft amendment to the Suppression of Terrorism Act has been referred back to Cabinet to ensure that the amendments will not compromise law and order. The revised bill will be presented to Parliament shortly. Moreover, following recommendations from the Essential Services Committee, sanitary services have been removed from the list of essential services from the Industrial Relations Act, meaning that the Government has responded fully to the ILO request (Legal Notice No. 149 of 2014). With respect to the Public Service Bill, this Bill was finalized, presented and received Cabinet’s approval and will be published and presented to Parliament for debate.

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

In addition to the legislative amendments, the Government wishes to address other issues, which have been referred to the Government, through various structures of the ILO. The issues include the following: (a) Thulani Maseko: Mr Maseko was charged and convicted of contempt of court after publishing an article which constituted a scurrilous attack on the judiciary, calculated to undermine the rule of law in Swaziland. Mr Maseko elected to continue his attack on the judiciary throughout his trial, and this had a bearing on his sentence. The judgment in this case will be made available to the relevant ILO supervisory structures. (b) Respect for the law: The Government has faced a total disregard for the laws of our country, provocation and violent assaults against police officers and fellow employees by the workers’ federation, its affiliates and their members. This has resulted in conflict between the police and the federation, its affiliates and their members. In addition, the Government provided some examples of the acts of violence against the police, as well as other acts of violence and intimidation against fellow employees: (i) On 30 June 2014, two police officers, namely Constable Sihle Zwane and Hlengezi Shabangu were assaulted with stones and had to be taken to hospital for treatment for injuries they sustained. This was during a strike action by the Swaziland Agricultural Plantations and Allied Workers Union. (ii) On 4 June 2014, a strike action by the Swaziland Agricultural Plantations and Allied Workers Union, the Deputy National Commissioner of Police was held hostage by workers who would not let him out of his motor vehicle, while they also blocked police officers who intended to assist him. (iii) On 20 June 2014, fellow workers, who were exercising their right not to take part in a strike action, were poisoned (their tea was administered with poison). The employees are still under treatment. These and other allegations are set out more fully in our letter to the ILO dated 24 November 2014.

The Industrial Relations Act provides the unions and federations with the right to engage on issues of public policy and public administration. However, the extent to which they may engage in such issues does not cover issues which are of a purely political nature (including advocating for regime change through violent means). Increasingly, the activities of the workers’ federation are being overwhelmed by a political agenda at the expense of its core and primary mandate, which is the advance of socio-economic interests of workers. To some extent, this has been responsible for the tension between the police and the workers’ federation and its affiliates. We request...
the ILO to pass the message that freedom of association does not translate into lawlessness. It carries with it certain obligations for the maintenance of an orderly society. Tangible progress has been made on the issues referred to the Government by the Committee of Experts. The Government thanks the Office of the ILO for the ongoing assistance provided. The Government also requests the trade and development partners of Swaziland to continue to take note of the tangible progress made in addressing the issues raised by the ILO. Based on the positive progress, the year 2015 will be the year when trade relations with key development partners will be improved, thus improving economic development and employment.

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

The Employer members recalled that the case was serious and had been discussed by the Committee 12 times. The Government had previously indicated to the Committee, in June 2013, that it would address all outstanding legislation as a matter of urgency. The Employer members recalled the conclusions that had been adopted by the Committee of Experts concerning the right to strike, with respect to the right to establish trade unions, and the requirement for the registration of trade unions. TUCOSWA had been registered by the Labour commissioner, in accordance with the new legislation, six months after it had officially renewed its request, but the right to exercise freedom of speech and freedom of expression had been taken away from the parties involved in the dispute.

The Employer members expressed concern regarding issues relating to freedom of association in practice. The ILO had not yet made reference to the written information provided by the Government by the Committee in relation to the Convention, and that the terms and conditions of industrial action, including the issue of sympathy strikes, should be determined at the national level. The Employer members would continue to monitor adherence to the principle of freedom of association in the country. They were willing to support the Government to promote freedom of association, in both law and practice. They welcomed the registration of TUCOSWA and other federations, but noted with concern the stalling of progress with regard to the outstanding legislative issues. The Employer members expressed concern regarding issues relating to freedom of association in practice.

The Worker members expressed disappointment at the Government’s statement that the repression of the trade unionists was in reaction to acts of violence perpetrated against the police when they had mounted an armed response to a dispute arising from collective action by the workers. Such an interpretation of a fundamental right, recognized by the social partners, was thoroughly shocking. It was the sixth consecutive year that the Committee found itself faced with the Government’s total failure to apply the Convention, after having given it every possible opportunity to undertake the necessary reforms. Two high-level ILO missions had been sent to the country, the most recent of which, in 2014, had concluded that for the past ten years there had been no progress whatsoever in terms of the protection of the right to freedom of association. The ILO had also provided the country with technical assistance. Yet the Government still had full discretion over the approval of the registration of trade unions, a power it continued to use to restrict freedom of expression and trade union activities, thereby continuing its violation of the right to establish trade unions without prior authorization. The Government had thus revoked the registration of TUCOSWA when in March 2012 it had committed itself to backing the democratization of the Labour Relations Act and the amendments to the Industrial Relations Act had been adopted in November 2014, and subsequently, the registration of federations of workers and employers had taken place in May 2015. The Employer members expressed concern regarding the length of time that the process had taken, and trusted that there would be no further interference with the registration of trade unions or employers’ organizations, in violation of the Convention. They welcomed the developments that had led to the adoption of the amendments to the Industrial Relations Act, which now permitted the recognition of workers’ and employers’ organizations under the law, and urged the Government to ensure that the right of association of all such organizations was ensured in practice.

Such organizations should be given autonomy and independence to fulfill their mandate and represent their members. Noting the Committee’s, in Experts’ indication that the lawyer of TUCOSWA, Mr Maseko, was still in prison, the Employer members expressed concern regarding any action to penalize legal counsel for representing their client’s interests, which constituted a violation of freedom of association. Mr Maseko should be released from detention. The Employer members expressed concern regarding the Government’s justification for that imprisonment with explanations on the rule of law and for his alleged written attack on the judiciary through a published article. The Employer members expressed concern that the Government’s explanation with regard to the status of the Public Service Bill and the Correctional Services (Prison) Bill were quite similar to the previous explanations provided. With respect to the review of the Public Order Act, the Employer members encouraged the Government to provide information to the Committee of Experts on progress made in that regard. With respect to the request of the Committee of Experts concerning the right to strike, the Employer members expressed the view that such requests fell outside the scope and mandate of that Committee in relation to the Convention, and that the terms and conditions of industrial action, including the issue of sympathy strikes, should be determined at the national level. The Employer members would continue to monitor adherence to the principle of freedom of association in the country.
exposed to police intimidation and violence. The police systematically attended union assemblies and conducted regular searches of union offices which, if they took place without a warrant, constituted grave and unjustifiable interference in trade union activities. TUCOSWA had been refused authorization in March 2015 to hold an in-axierten and July 2015, of TUCOSWA and the other federations, whose organizations were in compliance with that Act had been registered. the framework for Swaziland's cooperation with the EU – and in the country. She recalled the commitment that had been made by the Government under the Cotonou Agreement – and expressed concern at the state of freedom of expression, opinion, assembly and association in the country, but there had been no concrete results. Far-reaching measures were therefore needed in order to elicit concrete action from the Government.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Albania, Norway, the Republic of Moldova and Armenia, expressed concern at the state of freedom of expression, opinion, assembly and association in the country. She recalled the commitment that had been made by the Government under the Cotonou Agreement – and for the European Union (EU) – to respect democracy, the rule of law and human rights principles, which included freedom of association. The European Parliament Resolution of 21 May 2015 (2015/2712(RSP)) had called on the Government to take concrete measures to respect and promote human rights in the country. In that respect, compliance with the Conven-

The Employer member of Swaziland recalled that the high-level mission that had visited the country in January 2015 had highlighted that the Industrial Relations Act required revision in order to ensure full compliance with the Convention and enable recognition and registra-

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Swaziland (ratification: 1978)
rights and wider human rights in the country. She called on the Government to cooperate with the ILO and to respond to the requests of the Committee of Experts. She urged the Government to avail itself of ILO technical assistance with a view to addressing the outstanding issues.

The Employer member of Zambia commended the Government for the information provided and for its willingness to continue collaborating with the ILO. The Government had taken considerable steps to improve the labour legislation with a view to ensuring that it was in line with ILO standards.

The Worker member of South Africa indicated that the number of trade union, civil and political prisoners had grown tremendously over the years, including Thulani Maseko, Bheki Makhubu, Mario Masuko, Maxwell Dlamini, and the Diamini. Amos Mkhizi, Sonko, Doabi, Roland Rudd and Sililo Thandaza. Mario Masuko had been arrested simply for addressing workers and peacefully calling for democracy and still remained in jail. The persecution of trade unionists was disguised as fighting terrorism. Legislation in Swaziland was one of the most cruel and oppressive legislations that officially criminalized the defence of human and trade union rights, and allowed the official persecution of trade union and civil rights activists. Moreover, the non-registration of unions under the pretext that they were engaged in politics symbolized the way in which the Government had been dealing with the matter. The speaker mentioned that, having failed to suppress TUCOSWA and unions in general, the Government had formed its own bogus union, called SEEIWU, a union that the monarchy and not to workers. South African trade unionists who had been invited by TUCOSWA to visit their sister unions in Swaziland clearly concluded that there were many similarities between how the Swazi regime and the former apartheid regime in South Africa operated with regard to the persecution of workers and human rights activists. The speaker concluded by stating that there could be no free trade union activity without an enabling environment for the democratic expression of all rights of the people as citizens of the country, including workers.

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

The Worker member of the United Kingdom indicated that this case was gaining more condemnation. She emphasized that those breaches of the Convention had been long-standing and that workers in Swaziland could not wait any longer for change.

The Government member of Zimbabwe observed that the Government had taken considerable steps to improve the legislation with a view to ensuring that it was in line with the Convention and the EU should require Swaziland to comply with its international obligations and to produce real progress, before signing any agreements with Swaziland. In concluding, she emphasized that those breaches of the Convention had been long-standing and that workers in Swaziland could not wait any longer for change.
market access to the United States under the condition that internationally recognized workers’ rights, including the right of association and the right to organize and bargain collectively, would be protected. That revocation would be felt most deeply by the workers in the country. It was estimated that 17,000 jobs would be lost as a consequence. Swazi workers considered that tremendous progress had been made by the Government since last year to improve the industrial relations climate in the country. Since the implementation of those reforms might come with challenges, he called upon all parties concerned to genuinely work together to improve the lives of Swazi workers. He expressed support to the Government in that respect.

The Worker member of Botswana noted with satisfaction that the Government in that respect. In that context, two activists had been running a small business, speaking also on behalf of TUCOSWA, as well as the employers’ federations and had affected the status of social dialogue. After three years, the TUCOSWA had finally re-registered in May 2015, but the Ministry of Labour and Social Security remained outspoken about killing trade unionists, there remained much work to be done. The Government had failed to register the TUCOSWA, following a three-year wait, was the result of pressure stored if the Government would meet the benchmarks.

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

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

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

An observer representing the International Trade Union Confederation (ITUC) had been running a small business, practice and threat of police intimidation and interference with trade union activities as a means of suppressing the full enjoyment of the right to freedom of association and the right to collective bargaining. The arbitrary detention of trade unionists, such as that of Mr Thulani Maseko since 2013 for exercising the fundamental right to freedom of association and to organize and bargain collectively, to create an environment conducive to open social dialogue and full cooperation with the social partners.

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

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

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

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

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

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

The Worker members stated that they would have liked to be positive but it proved to be difficult. It was now time for urgent action. They took note of the progress indicated by the Government; yet they were of the view that if one was to examine closely the situation, it was hardly possible to see any progress. With regard to the Industrial Relations Act, they noted that section 32 continued to give unlimited discretionary powers to the Labour Commissioner in respect of the registration of trade unions. The registration of TUCOSWA, which had taken more than three years, should not be considered as a governmental success. Moreover, ATUSWA, one of the largest sectoral unions in the country, had formally lodged its application more than 21 months previously and was still awaiting a response. With regard to the Public Order Act, they highlighted that it was important to implement necessary reforms both in law and practice, thereby supporting economic growth, creating an environment for sustainable enterprises to thrive, and creating jobs. The Employer members urged the Government to complete the work that it had begun without further delay.

Regarding the technical assistance sought by the Government in order to amend the Public Order Act and bring it into line with the Convention, that technical assistance had been provided in 2011 by the ILO on that very issue. As a result, clear and specific recommendations had been given as to the manner in which the Act needed to be amended; but the Government had chosen to ignore these recommendations over four years after their comments. Regarding the technical assistance sought by the Government in order to amend the Public Order Act and bring it into line with the Convention, that technical assistance had been provided in 2011 by the ILO on that very issue. As a result, clear and specific recommendations had been given as to the manner in which the Act needed to be amended; but the Government had chosen to ignore these recommendations over four years after their comments. The Government representatives were pleased that the ILO had been urging the Government to adopt that legislation. To date, prison staff were still not allowed to join or establish a trade union. Swaziland had not fully addressed any of the recommendations provided by the supervisory bodies.
over several decades. Technical assistance, fact-finding and high-level missions by the ILO had not been seized as an opportunity to bring laws and practices into compliance with the Convention. Instead, the police had continued to attack and arrest trade unionists. The Worker members therefore called upon the Government to: immediately and unconditionally release all workers imprisoned for exercising their right to freedom of expression; register ATUSWA and amend section 32 of the Industrial Relations Act in order to ensure that trade unions could be registered without previous authorization; amend the Public Order Act and the Suppression of Terrorism Act in order to bring it into compliance with the Convention; adopt the Code of Good Practice without any further delay and ensure its effective application in practice; adopt the Correctional Services (Prison) Bill to allow prison staff to join and establish trade unions; and investigate arbitrary interferences by police in lawful, peaceful and legitimate trade union activities.

Conclusions

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

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

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

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

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

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

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

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

BOLIVARIAN REPUBLIC OF VENEZUELA
(ratification: 1982).

A Government representative recalled that in 1936 the ILO had played a key role in the drafting of the provisions of the first Labour Act relating to freedom of association and the right to organize and collective bargaining. For almost 80 years those standards had remained unchanged and had been incorporated with virtually no modifications into the Basic Labour Act of 1991, the 1997 reform on the Basic Act on labour and men and women workers (LOTTT) of 2012. However, the Committee of Experts was now indicating that those standards were contrary to freedom of association and was recommending the technical assistance of the Office. The Government had been obliged to appear before the Conference Committee over
a 15-year period, more for political reasons related to the arrival in power of a worker-led revolutionary government than in relation to technical or legal issues. He observed that the Bolivarian Revolution had been zealous in its protection of freedom of association, that the country’s Constitution has incorporated the content of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and that in the last 15 years no persons had been detained for the exercise of trade union activities, a fact unprecedented in the last century. The chief accusation against the Government involved an assault of which an ex-president of the Federation of Chambers of Commerce and Production of Venezuela (FEDECAMARAS) had been a victim in 2010. It had been a criminal act that had been dealt with immediately by the police, but attempts had been made to present it as a government-backed attack. The 2014 ILO high-level mission, which had been conducted four years after the Government had agreed to it, had been provided with abundant written documentation and testimonies on the assault and the other seven specific accusations covered by Case No. 2254 of the Committee on Freedom of Association. Even though none of the points raised by the Government had been refuted, the mission had not made any pronouncement on any of the eight cases. Furthermore, even though the Bolivarian Republic of Venezuela had moved on from a “dialogue of the elite” to a comprehensive and inclusive social dialogue, attempts were being made to return to the past with an exclusive business round table for FEDECAMARAS, an organization which was continuing to conspire against the Government. The attempted coups d’état by FEDECAMARAS in 2002 and 2003 had not resulted in any pronouncement by the ILO. On the contrary, on both occasions, the need for dialogue with that organization had been highlighted, despite the hundreds of deaths resulting from the actions of FEDECAMARAS. He underlined the illegal nature of the compensation that it was being attempted to impose on FEDECAMARAS leaders for the recovery of seven estates. Those recoveries were part of a campaign to recover 8,000 estates whose lands had been stolen from farmers. In that context, over 180 farmer leaders had been killed by assassins hired by parties closely connected to the business sector.

The report of the high-level mission pointed to the need for confidence to engage in dialogue, but FEDECAMARAS was conspiring in funding and directing activity against the principle enshrined by the recent identification of criminal acts organized by enterprises in the medical and pharmaceutical sectors. Those acts, backed by FEDECAMARAS, generated mistrust on the part of the Government, the people and their organizations. In the consultations held with the most representative workers’ organizations on the report of the high-level mission, all had refused to participate in a dialogue round table with FEDECAMARAS. To make any rapprochement possible, the ILO needed first to urge FEDECAMARAS to desist from any conspiratorial actions against the Government. In the meantime, dialogue was continuing in the country with the workers’ and employers’ social organizations that wished to find a solution to the problems. Since 2014 there had been a Federal Government Council for the Working Class composed of 1,056 trade union leaders, who, in periodic meetings with the President, made proposals and took decisions concerning various topics of national policy. In addition, the President of FEDEINDUSTRIA, an employers’ organization that grouped together the country’s small and medium-sized enterprises, which represented 90 per cent of the country’s economy, had been appointed to establish, in conjunction with the employers, a council for developing the production plan for the nation. In 2014, a working meeting had been held in the presence of the Trade Union Confederation of the Americas (TUCA-CSA), in which over seven organizations had participated. In this meeting, various points mentioned in the observation of the Committee of Experts had been reviewed, some of which had been discarded for being baseless while others had been solved. He hoped that their inclusion in the observation of the Committee of Experts was merely due to problems of timing. Lastly, he declared that his Government was open to dialogue with the workers, regardless of their political views or position, on condition that the debate was constructive and aimed at finding solutions. With respect to FEDECAMARAS, there would be a comprehensive dialogue when there were guarantees that the organization had abandoned any conspiratorial attitude or action against the Government.

The Employer members emphasized that the case was being discussed by the Conference Committee not because of a whim on the part of the Employers’ group, but because it had been given a double footnote by the Committee of Experts, which was an independent body. The case was not new for the Conference Committee, as it had also given rise to a high-level tripartite mission in 2014. Since the last meeting of the Committee of Experts, the ILO Director-General had sent a letter to the Government in February 2015 expressing his concern at the new events reported by the International Organisation of Employers (IOE) and FEDECAMARAS, and in March 2015 the Committee on Freedom of Association had reviewed Case No. 2254 and decided that it would be dealt with again at its May 2015 meeting. The case under examination by the Committee addressed a number of matters, including serious violence and intimidation against FEDECAMARAS, the criminalization of trade union activity, restrictions on the registration of trade union organizations, on the election of their leaders and the formulation of their programmes in full freedom. The Committee had hoped to receive substantive replies from the Government with regard to the numerous issues. However, the Government persisted in providing the same information as in the past. The Employer members recalled the importance of the resolution concerning trade union rights and their relation to civil liberties adopted by the International Labour Conference in 1970, which emphasized that respect for the Universal Declaration of Human Rights and the international Covenants on human rights, constitutes a prerequisite for the free exercise of freedom of association. In that regard, there was first of all a need for authentic democratic institutions and not just window dressing, which could be questioned in the case of the Bolivarian Republic of Venezuela. In addition, by virtue of those principles, the Government had the obligation to ensure observance of the right to life, to ensure that nobody was arrested or detained for the exercise of freedom of association, and to avoid using false accusations to harass the representatives of employers’ and workers’ organizations. Moreover, it was necessary to avoid any delay in the application of justice, which should be delivered by independent authorities. With regard to acts of violence and intimidation against the leaders and members of FEDECAMARAS, new developments had been denounced by the IOE and FEDECAMARAS. New attacks had occurred in a context in which the Government had stepped up its accusations against the private sector, which was allegedly engaging in economic warfare to destabilize the country. He emphasized that the argument of economic warfare against the Government had been dismissed the previous day by the United Nations Economic and Social Council (ECOSOC). He cordially invited the Government to comply with the recom-
Bolivarian Republic of Venezuela (ratification: 1982)

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

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

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

Regarding trade union rights and civil liberties, the persistence of repeated assassinations of workers, especially in the construction sector, was a source of profound and very serious concern. At the heart of the problem was the existence of fictitious unions intended to serve as intermediaries between workers and employers on work sites, but which in practice operated as criminal organizations. Impunity, the lack of any transparent system for hiring workers, the small number of investigations conducted and the fact that no official reports were published on violence had aggravated the situation described by the Committee of Experts. Nevertheless, it was encouraging that the Government had recognized the existence of criminal groups in the sector, and the Workers’ group reiterated the hope that the Government would take action to follow up the tripartite round table that had been established to find a lasting solution to the prevailing violence and impunity, based on the active involvement of the social partners. Regarding the criminalization of trade union action, representatives of the Confederation of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions of Venezuela (CODESA), the General Confederation of Labour (CGT) and the Independent Trade Union Alliance (ASI) had, in the course of mutually respectful dialogue that had also been attended by representatives of the ITUC and the TUCA–CSA, drawn the attention of the Ministry of Labour to several instances of violations of the right to freedom of association. The union mission had taken particular note of several instances, as noted by the Committee of Experts, of repression of the exercise of the right to strike, even though it was recognized in Venezuelan law, as well as several cases of trade unionists being placed on parole for lengthy periods before their cases were examined by the courts. The Ministry of Labour and the Office of the Public Prosecutor had undertaken to identify the cases and resolve them. The Worker members would continue to pay great attention to those cases. Finally, they urged the Government to pursue its dialogue with trade unions with a view to developing a stable political and civil climate in which fundamental rights were guaranteed, including freedom of association, collective bargaining and other vital labour issues on the agenda in the country.

The Employer member of the Bolivarian Republic of Venezuela said that there had been repeated and increasingly serious violations of the Convention by the Government. The Government had so far failed to comply with any of the recommendations made in the report of the ILO high-level mission, especially the establishment of a round table with FEDECAMARAS to examine the complaints made, the call on the Government to desist from using intimidation and excessive language against FEDECAMARAS, and the restoration of dialogue with that organization. The Conference Committee had examined violations of the Convention on 13 previous occasions and the observation by the Committee of Experts this year was a double-footnoted case. The economic scenario was very critical, with rampant inflation, a price index that did not take account of the real costs of production, and an exchange control system that provided no regularity in currency flows so that enterprises could purchase the imported inputs needed for production. There were high levels of shortage and scarcity for certain foodstuffs and other essential products, such as medicines.

Faced with this reality, the Government was conducting a media campaign of harassment and stigmatization aimed at holding FEDECAMARAS responsible for the ills afflicting the population, making the complaint that the Government had been accompanied by a series of repressive measures depriving various union and business leaders of their freedom based on accusations of conspiracy, boycotting and hoarding. Recently the Government had adopted a harsher tone in its public messages against FEDECAMARAS, accusing it not only of waging economic warfare against the Government, but also of acting against the people, inciting the latter to commit aggression against the employers’ organization and its representatives, jeopardizing their exercise of freedom of association, affecting their freedom of expression and endangering their physical integrity. Minimum wage increases and legislation were also frequently imposed without consultation. The Government’s failure to comply with the provisions of the present Convention, the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), was extremely serious and constituted an absolute lack of respect for the recommendations of the high-level mission, undermining the existence of FEDECAMARAS, the most representative employers’ organization in the country. With a view to contributing to the search for solutions,
FEDECAMARAS had sent the Government a document entitled “Committed with Venezuela”, which contained proposals made by each of the major economic sectors represented in the organization. However, the Government had not replied to that communication so far. FEDECAMARAS hoped for progress for all Venezuelans and that it would maintain the preservation of the role of private enterprises as the creators of jobs, facilitating conditions that were conducive to production, investment and sustainability. She called for the ILO to act as an intermediary to enable dialogue with the Government since dialogue was essential, now more than ever, in order to solve the country’s economic crisis and ensure the well-being and progress of the Venezuelan people.

The Worker member of the Bolivarian Republic of Venezuela indicated that, since the Bolivarian Revolution in 1999, the Government had confronted and defeated, together with the workers, attempts to establish labour flexibility and to privatize public services, and to disregard the rights to strike, to organize and to collective bargaining. In this way, the neoliberal transformations which had caused so much harm to workers around the world had been avoided. Participatory and proactive democracy had enjoyed full employment stability, the unions had been strengthened and protected and the right to strike had been protected, even in those cases where essential services were affected. In 2013 alone, over 500 collective agreements had been concluded in the private sector and 100 in the public sector, benefiting over 3 million workers. Furthermore, since the election of President Maduro, the highest level of participation of trade unions had been achieved in the conduct of the country’s economic and political affairs, through the presidential councils for the working class, rural inhabitants, young persons, artists, women and indigenous persons. The President of FEDEINDUSTRIA had recently been requested to call on the most representative organizations to form a presidential employers’ council.

Over 1,050 union leaders organized by productive sector were participating in the presidential council for the working class. The situation presented was in dramatic contrast with the economic situation of Venezuela at the outbreak, opposed all the progress made by workers, participated in coups d’état, in sabotage actions and the threats against employers and the detention of FEDECAMARAS. As part of that dialogue, FEDECAMARAS had visited the presidential palace, and in February 2015 nine meetings had been held at its headquarters. The Bolivarian Socialist Workers’ Confederation was opposed to setting up tripartite dialogue, as the country had gone beyond that system and set up a more in-depth form of social dialogue that took place within presidential councils. The workers supported inclusive social dialogue, provided that FEDECAMARAS changed its long-standing attitude of sabotaging and opposing the workers’ achievements. In conclusion, he expressed full support for the efforts being made by the President to maintain dialogue, including with FEDECAMARAS.

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

The Employer member of Brazil said that any improvement in a country’s social conditions presupposed the existence of effective tripartite social dialogue, along with respect for private initiative and employers who, together with workers, produced the country’s wealth. In the Bolivarian Republic of Venezuela there was false dialogue, and the threats against employers and the detention of employers leaders was contributing to the deterioration in the economic situation of the country which had changed its long-standing attitude of sabotaging and opposing the workers’ achievements. In conclusion, he expressed full support for the efforts being made by the President to maintain dialogue, including with FEDECAMARAS.

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

The Worker member of Cuba welcomed the Government’s reply, which had been endorsed by the country’s most representative trade union organization. The Government had the political will to maintain inclusive social dialogue in line with the country’s constitutional and legal framework. This was demonstrated by the fact that, since April 2013, significant technical round tables on social dialogue had been held with the employer sector in which hundreds of enterprise representatives had taken part. In order to avoid the credibility and impartiality of the ILO’s supervisory mechanisms being undermined, recommenda-
tions to promote social dialogue in the Bolivarian Republic of Venezuela should not be directed exclusively towards the Government. While the Government had certainly demonstrated its openness, another party had instead created a hostile environment and had excluded itself from the social dialogue process. Moreover, as the Government had indicated, the observation of the Committee of Experts covered issues that did not fall within the scope of tripartite dialogue in the country, but were a matter for other constitutional bodies. After 15 years of listening to comments that were largely rhetorical, the moment needed to come when the case would be dealt with constructively, evaluating in an objective rather than political manner the will of the Government and the country’s most representative workers’ organization to build a just society.

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

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

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

The Worker member of Brazil stated that the repeated examination of cases involving the Bolivarian Republic of Venezuela bothered all those members of the Committee who were committed to the advancement of workers’ rights throughout the world. She praised the Government, which had assumed the presidency in 1999 and had escaped from the external influence of the United States and the administration of FEDECAMARAS. She regretted that FEDECAMARAS and the IOE continued to make defamatory actions in the Conference Committee against a Government which enjoyed the support of the majority of Latin American countries in opposition to the sanctions imposed by the United States. It was also to be regretted that the instigators of a coup d’état and the economic sabotage of the country came to the Committee to express concerns regarding the situation of workers and the lack of consultation. She called for any allegations proven to be false no longer to be discussed in the Committee.

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

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

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

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

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

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

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

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

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

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

An observer representing Public Services International (PSI) voiced his concern at the persecution of public sector workers by means of the selective dismissal of trade union leaders, compulsory retirement, the sponsoring of parallel trade unions, the improper intervention of the CNE and the laborious and costly formalities involved in the registration of trade unions. These practices constituted a violation of the independence of trade unions provided for in the Convention. Moreover, they continued to occur despite the appeals made by the ILO supervisory bodies. Since there were two laws applying to public employees that ran counter to the exercise of freedom of association, the country’s labour legislation should be unified and she called for the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). Those Conventions provided an international normative framework for the application and respect of freedom of association and collective bargaining rights of public sector workers. A process of inclusive bipartite
dialogue was needed for purposes of negotiation, to strengthen public employment and to ensure that the rights set out in the Convention were respected. A plan was also needed to follow up and implement the promises that the Ministry of Labour had made to the ILO high-level tripartite mission. Social dialogue was important for democracy and for guaranteeing decent working and living conditions. The Government’s commitments should be clear and precise.

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

The Government member of the Dominican Republic rejected the accusations made against the Venezuelan Government with regard to compliance with the Convention, as it had shown a willingness to resolve its domestic political problems in an exemplary manner through peaceful and democratic means and through elections. Furthermore, there was broad dialogue in the country, which had been recognized by the high-level tripartite mission, which undoubtedly represented important progress in relation to the dialogue between social partners that had prevailed previously. The application of, and compliance with, ILO Conventions on freedom of association, collective bargaining and social dialogue were uncontested in the Bolivarian Republic of Venezuela. The Government was promoting social dialogue by holding technical round tables with employers. Workers and the employers were also participating in broad social dialogue in the country. The Government had held, in February 2015, the first meeting between the representatives of FEDECAMARAS and the presidential commission on economic affairs. The Government had succeeded in determining those responsible for acts of violence towards the leaders of FEDECAMARAS. The Government had suggested, as indicated by the Committee of Experts, that the trade union organizations should submit information concerning the names of trade union victims and, in particular, to the extent possible, the circumstances of the murders, including any indication of their anti-union nature. The Government had explained that the participation of the CNE in the elections of trade union representatives was optional and occurred only if a union sought either the support or the technical assistance of that body. The CNE was independent from the executive authorities and its constitutional role was to guarantee the electoral rights of workers and of all citizens. He called on the Committee to take note of the efforts of the Government to promote social dialogue and to address the concerns of the social partners. He hoped that the Government would continue to expand this process.

The Worker member of Nicaragua said that he rejected the way in which the case of the Bolivarian Republic of Venezuela was being treated as an alleged violation of the Convention, given that the Government had repeatedly shown that it was faithfully complying with ILO Conventions and national labour legislation. The Government had even accepted ILO missions to the country and had supplied them with all the necessary information. The labour policy developed and introduced by the Government had led to the negotiation of collective agreements. The minimum wage had been raised, access to free public education and health care was guaranteed, social housing construction programmes were being implemented and round tables for bilateral and tripartite dialogue were being promoted to seek solutions to the most serious problems faced by workers and the population in general. The Government supported the cause of the people of Latin America and the Caribbean and difficulties were being resolved through dialogue, the essential foundation of tripartism. It was important to ensure that the ILO was a credible, strong, authoritative and prestigious organization so as to ensure the well-being of workers and the proper functioning of industrial relations. Claims should not be used for political purposes.

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

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

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

An observer representing the Inter-Union Assembly of Workers – Workers’ National Convention (PIT–CNT) indicated that the trade union movement in Uruguay was aware of, and acknowledged, the existence of inclusive social dialogue in the Bolivarian Republic of Venezuela.
and that efforts had been made to intensify it. The Government had convened a meeting at FEDECAMARAS’ own headquarters, but the Organization had not taken part. It was a double footnoted case, but it should be recognized that in the country the right to strike, one of the pillars of freedom of association, was recognized by the Constitution. Fundamental rights in the country were therefore not being questioned. There was no problem with discussing politics, but there should be no misuse of the Committee. It was unacceptable that those who were participating in dialogue forums established by the ITUC on spurious grounds to discuss a case that had become politicized. Dialogue and cooperation were the foundation for moving forward in resolving conflicts. In that regard, the progress made by the Government to solve its internal problems democratically was positive. The high-level tripartite mission that had visited the country had acknowledged the Government’s political will to pursue inclusive dialogue with all social partners and had noted the significant progress that the Government had made in meeting its international labour obligations. In this spirit of dialogue, the President of the Bolivarian Republic of Venezuela had convened a dialogue with all social partners in February 2015, and FEDECAMARAS had declared publicly that the meeting had been productive. It was time to turn the page and move forward for the benefit of the country.

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

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

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

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

The Government member of the Islamic Republic of Iran noted that due consideration should be given to the measures taken by the Government, which demonstrated
its commitment and willingness to resolve the existing problems. The Government had engaged in inclusive dialogue with employers’ and workers’ organizations in the country, as recognized by the high-level tripartite mission in 2014. It had also promoted the holding of technical round tables with employers to address specific issues. Further technical assistance should be provided to the Government.

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

The Government member of Jamaica expressed support for the statement of GRULAC. She was encouraged by the approach of the Government to work with the Committee. She noted the efforts that had been made by the Government to improve social dialogue and its willingness to enhance this further. She was confident that the Government would continue to foster dialogue and engage with all the stakeholders concerned, in line with the Convention.

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

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

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

The Worker members said that they would confine themselves to the factual elements of the case, that is the issues that had been raised by the Committee of Experts relating to the non-conformity of the legislation with the Convention, and the information reported by employers’ and workers’ organizations. This had been supplemented by the elements mentioned by the Government in reply and the invitations made by the members of the Committee to pursue cooperation. It should be remembered, however, that cooperation with the ILO could only be fruitful if it was based on, or led to, real and sincere tripartite social dialogue based on respect for freedom of association and the commitment of all the parties concerned. The conformity of the national legislation with the Convention had been a matter of concern to the Worker members for several years. Overcoming the challenges involved would necessarily require political will and assurances of commitment to social dialogue with the objective of seeking solutions, rather than making an already very conflictual situation worse. The Government needed to adopt the legislative amendments deemed necessary by the Committee of Experts, especially to end the interference by the CNE in trade union elections and to review the procedure for transmitting lists of trade union members to the public authorities. Measures also needed
to be taken to bring an end to impunity for crimes committed against workers in the construction industry and to establish an effective recruitment system for construction workers without delay. The Worker members welcomed the Government’s offer to strengthen the ITUC’s social dialogue initiative, with the participation of all Venezuelan trade unions, as well as the positive developments on the matters raised by the Committee of Experts and Venezuelan trade unions. They called on the Government to submit a full report, before the next session, on the issues raised by the Committee of Experts and the Committee on the Application of Standards and requested the ILO to support tripartite activities in the Bolivarian Republic of Venezuela, with the participation of regional employers’ and workers’ organizations.

The Employer members noted the many interventions on the present double-footnoted case. They observed that, while some interventions had been political in nature, others had been based on factual evidence, and not on speculation. The report of the Committee of Experts was clear and the report of the high-level tripartite mission had recommended an action plan, which included bipartite and tripartite dialogue. Although the Government representative had noted that broad dialogue existed, none of the action points of the mission had been implemented almost a year and a half after it had visited the country. The matter had been examined by the Governing Body of the ILO and the Committee urged the Government to:

- take action approved by the Governing Body.

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

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

- comply without further delay with the conclusions of the tripartite high-level mission which had visited the Bolivarian Republic of Venezuela in January 2014 and the proposed plan of action;
- immediately cease acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders perpetrated by the Government;
- end impunity for crimes committed, especially against workers in the construction sector, including by adopting a clear and efficient recruitment system;
- review the practice of providing lists of trade union members to the public authorities;
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Mauritius (ratification: 1969)

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

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

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

MAURITIUS (ratification: 1969)

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

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

The Employer members said that this was an ongoing case involving interference in collective bargaining. The country had an extensive system for collective bargaining and minimum employment standards. The National Remuneration Board promulgated orders on minimum wages and terms of employment in 30 sectors and regularly reviewed those orders to ensure that their terms remained appropriate. The Board was not a mediation or arbitration mechanism. Remuneration orders established a floor, and employers and workers subsequently bargained for better terms. If the parties bargained in good faith but could not agree, they could voluntarily agree to a dispute resolution procedure. While this framework was not in violation of the Convention, its practical implementation had been quite problematic. In 2010, the social partners in the sugar industry had negotiated a collective agreement, but there had been 21 areas of disagreement where the parties had defaulted to the terms set out in the remuneration order. Several weeks later, the National Remuneration Board had partially reviewed the remuneration orders that applied to the sugar industry, focusing on the 21 areas in which no agreement could be reached during collective bargaining. In 2012, the Committee on Freedom of Association had reminded the Government that recourse to public authorities like the National Remuneration Board should be voluntary. The Government had subsequently withdrawn the referral of the 21 issues to the National Remuneration Board in August 2012. However, once again in 2014, the same problems had arisen. Following
the expiration of the collective agreement in the sugar industry, and after months of negotiations, the union had taken strike action. The employers and the union had subsequently concluded a collective agreement. The Government had then referred the unresolved issues to the National Remuneration Board, as it had done in 2010. The Board had also imposed some special conditions on the collective agreement, which it was not permitted to do under national legislation. The Government’s interference in collective bargaining was wrong. The Employer members hoped that the Committee would reiterate that point.

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

The Employer member of Mauritius indicated that the reality in the country was not conducive to the practice of collective bargaining. While the Government had established legislation on collective bargaining, there remained some significant deficits. The legislation failed to meet its objective of providing a framework for collective bargaining and was not accompanied by appropriate policies and properly functioning institutions. The ERA stipulated that collective bargaining was mandatory and conditional on freedom of association or the right to bargain collectively. The Government’s interference in fixing of private sector wages and its annual raising of salaries under the Additional Remuneration Act were problematic and limited the scope of collective bargaining. In 2010, employers in the sugar industry had been forced to sign a collective agreement, and issues not resolved during negotiations had been referred to the National Remuneration Board. Despite assurances that such interference would be discontinued, it had re-occurred in December 2014. In the context of negotiating a collective agreement, workers had organized a strike, and employers had respected their right to do so. However, the Government had intervened, requiring the signature of a collective agreement that did not take into account the views of employers. The trade union demands that had not been accepted during collective bargaining had again been referred to the National Remuneration Board or to arbitration. The Government’s interference in voluntary collective bargaining was unacceptable, and dispute resolution machinery was not effective in resolving industrial disputes. Allegations relating to a decrease in the number of collective agreements in EPZs were unfounded. Labour laws were applicable to that sector, and workers’ fundamental rights were protected.

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

The Worker member of Mauritius said that, despite current labour legislation, in practice the rights of workers were not respected. Trade unions had been calling for the Government to revise its legislation. He reiterated that legislation should not be perfunctory, and the Ministry of Labour needed to pay attention to protecting workers, particularly as the existing protection for trade unions and trade union leaders was contained in a code of practice that was not binding. Anti-union discrimination still existed in the country, despite legal protection, and contract workers feared dismissal for engaging in trade union activity. While collective bargaining existed in theory, it did not exist in practice. There was also a lack of social dialogue in the country. In the public sector, terms and conditions of service and salary were being imposed. Some workers in that sector were paid low wages, including below the minimum wage. That needed to be addressed by the Government, including through collective bargaining. There was no voluntary negotiation in the public sec-
tor. Trade unions could express their views to the body that regulated terms and conditions, but that body then took its own decisions. There was also difficulty with regard to the organization of migrant workers in EPZs. Such workers were not free to join unions as they could feel threatened and could face deportation. He called for flexibility in the law so that right to strike would be granted to the individual unions in that unit, at least on a collective basis.

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

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

The Worker member of Mali said that his statement was supported by the Worker members of Liberia, Nigeria and Sierra Leone. Maintaining the country's annual growth rate at more than 3 per cent had been possible thanks to solid contributions from the workforce and the country's EPZs, which were treated as enclaves with their own sovereignty, shielded from the obligations and requirements arising from the need to respect human and trade union rights. Despite the existence of legislation, the tendency in protected zones was to avoid collective bargaining agreements. The Government to the views of the social partners; the discussion had not been a democratic exercise in tripartite dialogue. The Worker member of the United Kingdom noted that there were problems of anti-union hostility in EPZs. In the case of reprimands for union activity, the law provided little protection. National legislation did not allow for individuals to be reinstated if they had been dismissed on account of union activity. Furthermore, anyone who was involved in a strike that did not comply with the procedures laid down in the framework would face dismissal, with limited rights to seek a legal remedy if the dismissal had not been justified.

The Worker member of Mauritius (ratification: 1969) recalled the measures that had been taken, over a number of years, by the Government to give effect to the Convention and to respond to the requests of the Committee of Experts, including amendments to the ERA, measures to protect against acts of interference in workers' and employers' organizations, and the replacement of the Export Processing Zone Act. He emphasized that there was no impediment in the ERA, as amended, preventing workers in EPZs or migrant workers from joining unions or engaging in collective bargaining. It was therefore up to trade unions to use the available legal framework to engage in and promote collective bargaining in all sectors. The Government had not intended to undermine collective bargaining. The referral of issues to the National Remuneration Board had taken place in a very specific context, as a strike in the sugar industry at that time would have had a negative impact on the country's economic situation. It was not the policy of the Government to request the National Remuneration Board to intervene in cases where a collective agreement had been concluded. Concerning the referral of the dispute between the joint negotiating panel and the Mauritius Sugar Producers' Association to arbitration, he indicated that, following negotiations, no collective agreement had been reached, and both parties had referred the dispute to the Court of Conciliation and Arbitration. No agreement had been reached at the level of that Commission, and the panel had opted to take strike action, which would have had negative economic effects. Accordingly, the Minister of Labour, acting under section 79a of the ERA, had brought the two parties to the negotiating table and an interim collective agreement had been reached. The dispute had then been referred to an arbitrator appointed by the Government, in the absence of agreement between the parties. With respect to compulsory arbitration, section 53 of the ERA contained only the duty to begin negotiations when served with notice, but legislation did not require the parties to conclude a collective agreement. Requiring the social partners to engage in collective bargaining did not contravene the Convention. He referred in this regard to Report No. 68 of the CFA, Case No. 2149. (2008 Report) indicated that it was not contrary to Article 4 of the Convention to oblige the social partners, in the context of encouraging and promoting the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment. The Government would listen to the views of the social partners; the discussion had been a democratic exercise in tripartite dialogue.
Government would continue to take a transparent approach with respect to the application of the Convention and stood ready to consider any recommendation made by the Committee, with the support of technical expertise from the ILO. Any recommendations would be considered within the context of the ongoing review of labour legislation which the Government had committed itself to. In that regard, a technical committee had been set up and all stakeholders had been invited to make proposals to it with respect to the legislative review.

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

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

Conclusions

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

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

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

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

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

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

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

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

Migrant workers are provided with vocational training services, which are fully funded by the Government. In 2014, 2,653 migrant workers completed vocational training in various areas, such as computer literacy, operation of check-ups and shelters. At these centres, free interpretation services in 15 languages are provided. Approximately 250 interpreters are in service at any given time and 500 interpreters remain available. Migrant workers are provided with vocational training services, which are fully funded by the Government. In 2014, 2,653 migrant workers completed vocational training in various areas, such as computer literacy, operation of check-ups and shelters. At these centres, free interpretation services in 15 languages are provided. Approximately 250 interpreters are in service at any given time and 500 interpreters remain available.
correction order for those workers who are undertaking the same kind of work within the same workplace, as they may face the same kind of discrimination.

With regard to equality of opportunity and treatment of women and men, the labour force participation rate and employment rate of women in the Republic of Korea have continued to rise, from 53.9 per cent in 2009 to 57.2 per cent in 2014. The employment rate rose from 52.2 per cent in 2009 to 54.9 per cent in 2014; the percentage of women workers has risen in workplaces which are subject to the Korean Government’s affirmative action scheme from 34.01 per cent in 2009 to 37.09 per cent in 2014, while the percentage of women managers has risen from 14.13 per cent to 18.37 per cent in the same period. The use of childcare leave (for those with a child under the age of 6) and the reduced working hours system during the childcare period has increased. The number of recipients of childcare leave benefits rose from 58,134 in 2011 to 76,833 in 2014 (73,412 women and 3,421 men). The number of workers using the reduced working-hours system during the childcare period has also steadily increased, from 39 in 2009 to 1,116 in 2014. Starting from October 2014, the basic pay for those using the reduced working hours system during the childcare period has increased from 40 per cent to 60 per cent of the ordinary wage; and the period of reduced working hours may be extended by the period of childcare leave not taken (up to two years). In 2015, the Government introduced part-time childcare services at day-care centres across the country to support part-time working parents, and implemented a programme designed to ensure that working mothers benefit from childcare services. The Government plans to increase gradually the target of childcare services provided by elementary schools.

In addition, before the Committee, a Government representative reiterated that migrant workers entering the country under the EPS received the same protection as nationals under the national labour legislation. Under the system, foreign workers could only change employment for certain reasons allowed by the law, as the worker was under a specific employment contract with the employer and the visa was based on that contract. However, workers were allowed to change workplaces up to three times during the first employment period of three years and up to twice during an extended employment period of 22 months. There was no limit on workplace changes when the change was not attributable to the workers themselves, such as closure of the business and unfair treatment or dismissal by employers. When an EPS visited a job centre and applied for a workplace change, the centre made its judgement on the basis of evidence submitted by the worker or its own fact-finding efforts. Unreasonable discrimination by the employer based on nationality, religion, gender or physical disability constituted one of the justifiable circumstances for workplace changes. In 2014, a total of 7,501 migrant workers, or 13.2 per cent of total workplace changes, had been approved for reasons not attributable to the worker, including unfair treatment by the employer. In September 2011, the Government had introduced comprehensive policy measures for the protection of non-regular workers to address unreasonable discrimination against them and reinforce the social safety net for workers in precarious situations. In 2015, the Government had initiated a project to financially support partial labour in 570 and medium-sized enterprises that had regularized their non-regular workers. The Government was preparing a guideline for employment security of non-regular workers, which provided that there should be no unreasonable discrimination in terms of welfare benefits. Since the adoption of the measures for non-regular workers in the public sector in November 2011, a total of 31,782 non-regular workers engaged in permanent and continuous work in that sector had become workers with open-ended contracts in 2013, and 18,650 such workers had done so in the first six months of 2014. The Government had been initiating policies to support work–family balance and maternity protection, and was also carrying out affirmative action to meet the women employment target three consecutive times and had not complied with obligations to take affirmative action after having received correction orders. The women’s employment rate had increased by 20 per cent and the percentage of women managers had risen by 80 per cent from 2006 to 2014. In conclusion, the Government was making efforts to eliminate discrimination in employment and occupation, and these efforts would have an impact.

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

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

The Employer members said that the observation of the Committee of Experts did not contain evidence of the allegations received concerning non-compliance with the Convention, nor did it explain how the Convention had not been complied with. The Committee of Experts had asked the Government for further information or called upon the Government to do things that it was already doing. There was no justification for making a comment in the form of an observation. Referring to the explanations of the Committee of Experts concerning the distinction between an observation and a direct request, as set out in paragraph 53 of its General Report, the Employer members noted that the case demonstrated that the Government had made great efforts to comply with the requests made, and that it continued to be cooperative in its engagement with the Committee of Experts, despite a lack of clear direction as to how the national legislation failed to be in compliance with the Convention. The Employer members therefore considered that the Government had demonstrated commitment to achieving compliance with the Convention, and it should be commended for providing timely and comprehensive information in response to the comments made. The Committee of Experts had welcomed the changes to the EPS allowing workers to change employers in the case of unfair treatment, and had noted that foreign workers could submit complaints in that regard. The Committee of Experts had not provided any specific evidence that the Government was not doing enough to prevent discrimination in that regard in law and practice, and it had only requested the Government to continue its efforts to ensure that migrant workers were able in practice to change workplaces when subject to violations of anti-discrimination legislation and to provide information on that subject. This would have justified a direct request to the Government, and not an observation. As had been emphasized in previous years, the right of foreign workers to stay in the country arose from the labour contract signed between the worker and his or her employer, and in principle the worker should continue to work in that workplace. Therefore, the limitation on the number of workplace changes permitted was not a violation of foreign workers’ rights. In addition, frequent mobility would undermine the ability of employers to manage their workforce, and there had been a 152 per cent increase in applications to change jobs between 2006 and 2011. Foreign workers should receive pre-employment training in their country of origin and should be made aware of the labour legislation in the Republic of Korea and the system of grievances. Training, education and information sessions were provided by the Government to migrant workers upon arrival in the country and programmes of technical and vocational training were also provided, funded by the Government. The Government should continue to review the impact of the new regulations in relation to providing appropriate flexibility to foreign workers based on the national context and to monitoring the impact of new initiatives by collecting data, reviewing, and where appropriate making adjustments to programmes to ensure appropriate protection and management of its foreign worker labour force, in consultation with workers’ and employers’ organizations.

The Employer members indicated that the statement in the Committee of Experts that many non-regular workers should be further explained to clarify how that situation was related to discrimination. It would have to be shown that non-regular forms of work were considered to be less acceptable or that workers in those jobs were at a disadvantage. Labour markets required diverse forms of employment, including part-time work and fixed-term work, as well as seasonal workers. Those forms of work should not be stigmatized as undesirable or underprivileged. The rates of labour market participation of men or women should not necessarily be considered to be discrimination without an appropriate evaluation of the country and the social context. It was also necessary to determine to what extent women who were employed in those forms of employment would prefer other forms of employment over non-regular employment. As some women might be attracted to part-time work at certain stages, labour market policies aimed at supporting such part-time work included increasing the remuneration for such work. Even if discrimination was present, the Government had taken the necessary measures, which had achieved results. It was therefore not proportional for the Committee of Experts to urge the Government to review the effectiveness of the measures taken. With respect to
equality of opportunity and treatment of men and women, labour force participation rates were not necessarily a reflection of discrimination, and the Government had taken various measures to raise the participation of women. The Government might have gone too far with the introduction of a system of denouncing companies that failed to meet affirmative action requirements, and this might have created a negative impact on the competitiveness and sustainability of business. With respect to the issue of discrimination on the basis of political opinion, the Government members considered that the constitutional values invoked by the Government, in particular the political neutrality of education, should be acknowledged and respected. In determining possible discrimination, the Committee of Experts should have balanced the right of students to education without the risk of being politically influenced with the rights of teachers to engage in political activities. If insufficient information was available in that regard, the Committee of Experts should have requested further information in a direct request. In conclusion, there appeared to be little evidence of discrimination or any serious non-compliance with the Convention, and a direct request would have been more appropriate. The efforts of the Government should be recognized, and the impact of the reforms and changes in legislation should be monitored to ensure that it remained flexible and responsive.

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

The Employer member of the Republic of Korea said that under the EPS workers were supposed to work at the specific workplace at which they had signed a contract. Migrant workers were allowed to change workplace up to three times, but every change of workplace was subject to a fee. That change was not attributable to the worker. Discrimination against migrant workers was prohibited in law and complaints regarding discrimination could be filed with the National Human Rights Commission. If persons were treated differently based on reasonable factors such as lack of skills or communication abilities, such distinctions did not constitute discrimination. There was legislation to prohibit discrimination based on gender and employment status, and persons who believed that they had been discriminated against could apply for corrective measures. An employment status disclosure system had been introduced in March 2014, which constituted too great a burden for businesses. Affirmative action policies were implemented in the country. Related measures had been continually strengthened to prevent breaks in the careers of women, including the extension of childcare leave. While women’s participation in the labour market was low compared to men, this was due to many factors, including culture, tradition and stereotyping against women. Civil servants and teachers in the country were asked to remain politically neutral, which meant that they were asked not to show their political preferences while engaged in their profession. Laws and systems had already been put in place to prevent discrimination, and the effectiveness of the measures needed to be monitored. Much progress had been made and efforts were ongoing, which should be acknowledged by the Committee of Experts.

Another Worker member of the Republic of Korea focused on discrimination based on employment status, since women and migrant workers constituted the majority of precarious workers. The most serious problem was the extension of the term “non-regular workers”. Under the current legislation, a worker, after working more than two years as a fixed-term worker, had to be considered by the employer as a non-fixed-term worker. Extending that to four years, a measure favouring employers, would increase the number of non-regular workers and further aggravate job insecurity. Turning to the problem of the increase in temporary agency workers, she emphasized that the Government’s attempt to expand the range of dispatched work for workers aged 55 or more and high-income professions would result in non-regular workers falling into the category of dispatched work and facing downward pressure on working conditions and wages. Furthermore, the information provided by the Government did not correspond to the reality and no tangible improvements had been made since the conclusions adopted by the Conference Committee in 2009 and 2013. As of August 2014, precarious workers accounted for nearly 50 per cent of the total workforce, with workers representing an increasing share of 56 per cent, and the average monthly wage of women non-regular workers being only 36 per cent of that of male regular workers. In order for victims of discrimination to file a complaint against employers, the person who paid the wages and the person who committed discrimination needed to be the same. This was made difficult by the fact that employers were trying to outsource as much as possible to sub-contractors to avoid direct employment. Additionally, a majority of non-regular workers did not have recourse to remedies out of fear of retaliation by employers, such as termination of employment. Strongly calling upon the Government to take the necessary steps to bring the relevant legislation into line with the Convention, she called for the principle of direct employment in consistent and
continuous jobs be set out in the Labour Standards Act. Fixed-term work should be strictly confined to temporary vacancies resulting from exceptional circumstances. When illegal temporary agency work was found, the dispatched worker should be treated as a non-fixed term employee of the user–employer. Indirectly employed workers should be treated as non-fixed term employees. The situation of discrimination faced by precarious workers in the public sector, which the PSI had mentioned the previous year in the Committee, had only worsened due to the Government’s public sector policies emphasizing the creation of part-time and precarious jobs, deregulation, outsourcing, cost-cutting, including curtailing pensions and benefits, the maximization of efficiency, such as the introduction of performance-based pay, and the privatization of public services. These measures were in stark contrast with the promises made by President Park before her election to eliminate precarious work in the public sector by 2015. In this connection, she referred to the Sewol Ferry tragedy as an example of a consequence of the implementation of those policies. In this case, the Government had not conducted a fair investigation and had not taken the necessary measures. The same attitude could be observed in the Government’s response to the outbreak of the Middle East Respiratory Syndrome (MERS), which put precarious public workers at particular risk. Deaths in the public services were also rising due to suicides committed for reasons of stress and heavy workload. The Government, however, was continuing its anti-union policy, denying the detrimental impact of the lack of negotiation on working conditions. Employers and the Supreme Court had revoked the legal status of the KTU. The Government had thus chosen to compound its breach of the Convention. Finally, she called for an ILO director mission to promote the implementation of Conventions Nos 87, 98 and 111.

The Worker member of Nepal referred to the problems faced by precarious workers employed under the EPS. Migrant workers were asked to work long hours, more than ten hours a day and even 28 days a month, without being paid for the overtime worked. They were not paid for work performed on their weekly rest or holidays. Such a situation caused physical and mental problems, leading to suicide in many cases. He added that under the EPS, migrant workers could not change their jobs more than three times and each change would require permission from their previous employer. If such permission was not obtained, the worker would work for the same employer under conditions similar to forced labour. Even if permission was granted, the workers would be deported back to the country of origin if a new job was not found within three months. The prohibition from political activity was an indirect discrimination against migrant workers. He therefore called for the repeal of section 63 of the Labour Standards Act. He also referred to the issue of discrimination against migrant workers with respect to the establishment of trade unions. The Government did not yet recognize the trade unions for migrant workers, depriving them of their right to collective bargaining, which was granted to Korean workers. He added that, while international law provided that employment contracts for foreign workers must be written in a language that could be understood by them, contracts for migrant workers were written only in Korean. Such a situation might allow employers to escape their responsibilities because migrant workers could not understand the contents of their contract. Korean workers would not face such a situation.

The Worker member of Italy, focusing on discrimination against women, referred to the 2011 concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) concerning the Republic of Korea, which had raised concerns about the disadvantages faced by women in the employment sector, including the concentration of women in certain low-wage sectors, the lack of job security and benefits, particularly for non-regular workers, and the wage gap between men and women. Although the Government’s
policy to promote part-time jobs and the “decent flexible work hours system” intended to boost the employment rate were welcome, without enough measures to guarantee equal pay and treatment of women non-regular workers, the policy was deepening the flexibilization of women’s labour at the expense of the less competitive women workers in the labour market, he noted. His employment in the Republic of Korea was still lower than the average percentage for OECD countries and the share of women part-time workers had grown rapidly to 17.7 per cent of women workers in the country. In addition, the flexibilization policy had discriminatory effects, as employers preferred to employ women without spouses or children. As married women and mothers were deemed less competitive in the labour market, they were the most vulnerable to labour rights abuses, including sexual harassment. She expressed concern at the impoverishment trend affecting women part-time workers and questioned the enforcement of the Equal Employment Act that protected equal pay for equal work with respect to women part-time workers in non-regular employment and in small enterprises. The policy was not supported by effective measures and legal enforcement to combat discrimination against women workers, and failed to ensure protection and equal benefits, such as maternity leave, for non-regular part-time women workers. She considered that the Government’s promotion of part-time employment and the flexibilization of labour was creating more indecent jobs and discrimination against women workers.

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

The Worker members indicated that this case concerned discrimination on the basis of migratory status, political opinion, gender and contract type. The Government should, as a matter of urgency, take a certain number of measures. It should first of all authorize the departure of EPS workers without having to obtain authorization from their employer and provide those workers who were trying to change jobs with a list of employers. The Government should also: repeal section 63 of the Labour Standards Act and ensure that all labour rights applied to all workers, including migrant workers, in all economic sectors; ensure that the rights of migrant workers were enforced, including through workplace inspections; and extend the scope of the labour legislation to the agricultural sector. The Government should also allow all teachers to exercise their civil and political rights, reinstate teachers dismissed for exercising freedom of expression, allow dismissed and retired workers to join a union and take the necessary measures to register the KTU without delay and to facilitate the registration of the KGEU. Urgent measures should also be taken to eliminate discrimination against workers on fixed contracts, particularly workers and dispatched workers, especially given its particular impact on women workers. The Worker members called on the Government to ratify the four fundamental Conventions which the Republic of Korea had yet to ratify: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Abolition of Forced Labour Convention, 1957 (No. 105). The Worker members said that each of these issues had already been raised over the previous two years, and that the Government had not availed itself of the ILO technical assistance that had been suggested, nor had it accepted the direct contacts mission proposed. The Government had made no progress, and had even regressed in certain areas. As in 2014, the Worker members once again urged the Government to accept a direct contacts mission.

The Employer members acknowledged that, while there were instances of discrimination and that improvements could still be made in practice, there was no concrete evidence that the national laws were in breach of the Convention. Regarding the issue of migrant workers, the Employer members recommended the Committee of Experts to continue to request that the Government provide the necessary information to the Committee of Experts to enable it to assess the situation. They again urged the Government to accept a direct contacts mission.

Part II/103
Conclusions

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

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

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

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

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

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

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

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<td>ITALY (ratification: 1971)</td>
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The Government provided the following written information.

According to the latest National Institute of Statistics (ISTAT) data (June 2015), there was an increase in the employment rate between April and March 2015. In April, the numbers in employment increased by 0.7 per cent (159,000 more employees than the previous month), with the level of employment returning to the levels of 2012 and the employment rate rising to 56.1 per cent. The unemployment rate has fallen to 12.4 per cent. According to ISTAT, the rate of unemployed young people aged 15–24 who are actively seeking work has fallen to 40.9 per cent. The Organisation for Economic Co-operation and Development (OECD) has also provided estimates for employment in Italy, has welcomed the Jobs Act and expects a fall in unemployment in 2016.
### Main labour market indicators, per gender, geographical area and age (2012–14)

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Source: ISTAT, RCFL media annuale.

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Source: ISTAT, RCFL media annuale.
Employment Policy Convention, 1964 (No. 122)
Italy (ratification: 1971)

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

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

With regard to youth employment, Legislative Decree No. 104/2013 introduces new instruments to strengthen career guidance in secondary schools and a pilot programme (through the simplification of labour contracts) in the last two years of secondary school. The Youth Guarantee Programme was launched last year (1 May 2014) and, at the moment (4 June 2015), young people who join the Youth Guarantee Programme are 604,854, with a funding of €1.5 billion. The gender composition of the registered people is: 51 per cent male and 49 per cent female. Some 8 per cent of those registered are in the 15–18 age group, 53 per cent are in the 19–24 age group and 39 per cent are over 25. Among these registered young people, 329,656 have subscribed to the “service pact” and have been profiled (168,009 males and 161,647 females). This Programme has represented, for us, a new way to coordinate and manage the labour market services, to create a competitive–cooperative system between private and public employment services, taking into account the structural reforms we are dealing with in these fields, with the delegation law No. 183/2014 (Jobs Act). The Ministry of Labour and Social Policy has developed several measures and approaches to address youth unemployment, together with the regions. A website has been established for the Youth Guarantee Programme (www.garanzigiovani.it). A “profiling methodology” has been developed for young people to place them in a specific cluster and to direct them to specific and tailored measures (such as vocational training, traineeship, apprenticeship, civil service, self-employment or job incentives for employers). The regional activation plans contain specific programming of financial resources and active strategies for young people, including ongoing and future measures financed by the European Social Fund or from national/regional resources.

Another important tool to enhance youth employment is the European Employment Services (EURES) Network, designed to facilitate the free movement of workers within the European Economic Area. Partners in the network include public employment services, trade unions and employers’ organizations. The main objectives of EURES are to inform, guide and provide advice to potentially mobile workers on job opportunities, as well as living and working conditions in the European Economic Area, and to assist employers wishing to recruit workers from other countries. In the context of the Employment and Social Inclusion (ESI) Operational Programmes (the European Social Fund or from national/regional resources) to the “Your first EURES job” project, which supports work experience abroad for young people aged 18–35 (including apprenticeships, traineeships and job interviews). In line with the EU 2020 Strategy, the “Welfare to work” action system was implemented in 2012–14, including ALMP plans for the employment of young people, workers aged over 50, women and the unemployed, which are managed by the regions and provinces.

With reference to education and training policies, it should be noted that the general outline of the National System for the Certification of Skills was established by Legislative Decree No. 13/2013. As a precondition for access to the European Social Fund for the period 2014–20, and in compliance with the country-specific recommendation of 8 July 2014 (point 6), Italy has undertaken to continue the implementation of the National Directory, with the aim of developing a single reference for the recognition and standardization at the national level of regional qualifications. This commitment led to the adoption of an Agreement in the State–Regions Conference in January 2015, envisaging a system of operational references for the certification of regional vocational qualifications, by issuing the National Reference Framework of
regional qualifications and establishing minimum standards for the validation and certification of skills. This agreement has been reflected in an Inter-Ministerial Decree issued by the Ministries of Labour and of Education. The cornerstone of the system is the establishment of the National Framework of Regional Qualifications, which serves to organize, aggregate and accord nationwide recognition to over 2,600 regional vocational qualifications. This system is based on the expansion of statistical classifications (economic activity and job classifications) involving a mapping of the labour market and of occupations. The descriptive approach adopted by the system will allow progressive extensions (vocational training, the education system, university degrees, vocational qualifications and apprenticeship profiles), as well as dynamic updates. The Directory is also a valuable tool for employment information systems, as it will lead to a more targeted and timely matching of labour market services. It also helps in the development of individualized active policy measures and the strengthening of lifelong training and geographical and sectoral mobility. The extensive use of statistical classifications provides a basis for enhancing the full and systematic interoperability of all of these measures with the employment information systems of other Member States of the European Union, OECD countries and the EURES network. Moreover, within the Youth Guarantee Programme, an inter-institutional working group has been established within the Ministry of Labour on the validation and certification of skills acquired in non-formal contexts, such as national civic service. With a view to increasing youth employment, through the Jobs Act Reform, the Government also intends to focus on measures related to work-based learning, particularly through apprenticeship contracts. More generally, the aim is to foster the use of such contracts by redefining: training provided both within and outside enterprises; training content and employers’ obligations; and the general criteria of apprenticeship in technical and vocational schools, with particular reference to the number of hours of schooling during apprenticeship. A specific legislative decree will be adopted to rationalize employment incentives, including apprenticeship. A reform was also introduced in 2013 in the field of adult education to reorganize adult education centres, which are now part of the Italian education system and can issue certificates and qualifications (Regulation No. 263/2012). In the field of education and vocational training, national standards have been defined for 22 qualifications (three years) and 21 diplomas (four years), described in terms of competences, in line with the provisions of the European Qualifications Framework. In recent years, the emphasis has been on improving tertiary education and higher technical education and training with a view to creating training supply that is more closely matched to the changing requirements of the labour market.

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

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</tbody>
</table>

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

In addition, before the Committee, a Government representative referred to the written information and added that over the last five years Italy had faced a severe economic crisis, which had led to an increase in the unemployment rate up to 12.7 per cent in 2014. Young workers were the most affected by the crisis: in 2014 the unemployment rate of workers aged between 15 and 24 years was 42.7 per cent and the number of young people who were neither employed nor in education or training was 22.1 per cent. The Government further referred to the Fornero labour market reform which included the reform of the employment protection legislation, with the aim of reducing the segmentation in the labour market; the reform of the unemployment benefit system, whose coverage and coherence had been increased; the introduction of instruments for easing the transition between school and work; incentives for the employment of older workers and of women in areas with a high female unemployment rate or in sectors characterized by high gender gaps. Furthermore, the Fornero reform introduced a permanent system of monitoring, with the participation of the social partners and of all the institutions involved both in the implementation of the reform or in the collection and treatment of statistical data. The youth employment strategy provided for a package of interventions aimed at fostering the employment of young people, including an employment incentive, financial support for work experiences and incentives for self-employment and entrepreneurship; the youth guarantee programme represented a very important challenge and an opportunity to test a new approach to the provision of public employment services and active labour market policies, through the creation of a competitive and cooperative system between public employment services and private agencies, the development of a national “profiling methodology” in order to provide young people with more focused and tailored paths of placement, the introduction of standard costs at the national level and the results-oriented payment for labour market operators. The 2014 Jobs Act was the most ambitious of the three reforms giving the Government the power to reform many aspects of the labour market legislation, including the establishment of a national employment agency. In this respect, subsequent Acts had already been approved or would be adopted in the following weeks. A three-year contribution relief was established by Law No. 190 of 2014 for new open ended contracts, aimed at encouraging an employment intensive economic recovery with more stable jobs. Statistical data showed some improvement of the main employment indicators following the implementation of these reforms. The number of employed people increased by 0.7 per cent in April compared to March 2015. The employment rate reached 56.1 per cent while the unemployment rate fell to 12.4 per cent. During the first three months of 2015, the number of new employment contracts increased by 3.8 percentage points: the number of new open-ended contracts increased by 24.6 per cent with respect to the same period in 2014. With respect to youth employment, the latest figures showed an increase of 5.7 per cent in the number of employed people aged between 15 and 24 by March 2015. Their unemployment rate was currently 40.9 per cent, which was 2.4 percentage points lower than in April.
Concerning education and training policies, the Government representative indicated that, according to the National System of Certification of Skills, a national directory of qualifications was being implemented and that the Jobs Act reform focused on work-based learning, particularly through the reform of the apprenticeship contract. The appointment of the national body for the co-ordination of the collective bargaining for the public administration to learn from experience, through the continuous adjustment of measures and services.

The Employer members observed that the Committee of Experts had formulated since 1990, 16 observations on the implementation of the Convention. This was the first time that the Committee was able to discuss the case on the grounds of significant progress shown by the Government. Quoting Article 1 of the Convention, which required each member State to declare and pursue an active policy designed to promote full, productive and freely chosen employment, they recalled that the main problems regarding the Italian employment situation were related to regional and gender disparities, excessively high youth unemployment, as well as the high level of undeclared employment. These problems were rooted in structural causes and persisted irrespective of the prevailing economic situation, which was also reflected by the Committee of Expert’s comments over the past 25 years. The profound economic crisis of 2008, which had affected all European countries, posed particularly tough challenges to the Italian economy and the employment situation. Although the labour market institutions were not the cause of the crisis, their shortcomings and inefficiencies, including excessive bureaucracy, contributed to the aggravation of the crisis and hence hampered both employment generation and economic recovery. In addition, the inefficient labour court system, where legal disputes were decided only after several years, discouraged employers to offer open-ended contracts to workers. The same deficiencies were observed in public employment services which therefore were not able to fulfil their role in active labour market policy. Likewise, the vocational education and guidance system was not able to fully integrate young people in the labour market. In order to tackle these problems, the Government had undertaken a comprehensive approach required each member State to declare and pursue an active policy designed to promote full, productive and freely chosen employment, which provided for consultations on employment policies and in particular representatives of employers and workers, they observed that the Government had been discussing the measures adopted with the social partners to tackle the social partner consultation on the implementation of the Convention. Following the 1990-2010 period, the Government had evidently assumed its responsibility and had proposed a draft legislation which was in line with the recommendations of the European Council within the framework of the European Semester. The social partners were consulted during the deliberations in Parliament and gave their views on the reform package which was subsequently adopted by Parliament. The implementation measures of the reform were under preparation and subject to broad consultations with the social partners. In this regard, the Employer members hoped that the opponents of the modernization of the labour market would give up their negative attitude and that both social partners would participate in a proactive manner in the consultations. In conclusion, the Employer members praised the Government’s comprehensive structural reforms, which had been an improvement in the number of cooperatives over the last 15 years, including cooperatives which had a positive impact on employment. Finally, the Government representative noted the importance given to the issue of monitoring, which would also be applied to the reform of active labour market policies. Great attention would be paid to the monitoring system and to the capacity of the public administration to learn from experience, through the continuous adjustment of measures and services.

The Worker members recalled the objective of full, productive and freely chosen employment, based on consultations with social partners and the importance of other key documents on which consensus had been reached, such as: the Decent Work Agenda; the 2008 Declaration on Social Justice for a Fair Globalization; the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the 2009 Global Jobs Pact; the 2010 ILC Resolution concerning the recurrent discussion on employment; and the 2008 Oslo Declaration. Beyond the existence of a framework, the Employment Policy Convention, 1964 (No. 122), required initiatives on the part of the Government. The Committee of Experts was empowered to assess whether the measures taken would affect employment in a positive way and whether the social partners had participated in the implementation of the Convention. The Worker members recalled the recommendation of the Social Partner consultation on the implementation of the Convention, which required timely consultations, thus allowing for exchanges to take place, compromises to be reached and amendments to be discussed. Labour law was, however, of holding consultations within the meaning of the Convention, which required timely consultations, thus allowing for exchanges to take place. The Employer members stressed that structural reforms always needed time until positive effects became visible. Already, the first positive effects had been noted, such as the significant increase of employment, including youth employment. Also, the employment of women was growing faster than the employment of men. Most importantly, the number of open-ended employment contracts had increased significantly since the adoption of the Jobs Act. Turning to the provision of Article 3 of the Convention which provided for consultations on employment policies with the representatives of the persons affected by the measures and in particular representatives of employers and workers, they observed that the Government had been discussing the measures adopted with the social partners to tackle the social partner consultation on the implementation of the Convention. Following the 1990-2010 period, the Government had evidently assumed its responsibility and had proposed a draft legislation which was in line with the recommendations of the European Council within the framework of the European Semester. The social partners were consulted during the deliberations in Parliament and gave their views on the reform package which was subsequently adopted by Parliament. The implementation measures of the reform were under preparation and subject to broad consultations with the social partners. In this regard, the Employer members hoped that the opponents of the modernization of the labour market would give up their negative attitude and that both social partners would participate in a proactive manner in the consultations. In conclusion, the Employer members praised the Government’s comprehensive structural reforms, which had been an improvement in the number of cooperatives over the last 15 years, including cooperatives which had a positive impact on employment. Finally, the Government representative noted the importance given to the issue of monitoring, which would also be applied to the reform of active labour market policies. Great attention would be paid to the monitoring system and to the capacity of the public administration to learn from experience, through the continuous adjustment of measures and services.
they had been hired; and had authorized the use of contracts for part-time employment with greater flexibility regarding working hours and casual work for all task types. In the case of apprenticeships, the reform had ended payment for training hours. Finally, it introduced "contracts with increasing protection", which was a source of controversy for the unions. In the case of redundancies, which would have clarified any doubts and would have allowed for adjustments to be made, the workers were faced with a fait accompli whereby labour law had been undermined. The Government was considering work, wages and social protection in the broad sense, as nothing more than another factor in its budgetary orthodoxy, thereby going against the Declaration of Philadelphia on which the Convention was based. The latest data submitted were not surprising, as many jobs in the country were seasonal, which was reflected in the extensive use of fixed-term contracts. A correlation should be made between this data and the fact that enterprises received subsidies for three years. Questions should be raised regarding the sustainability of that temporary assistance with regard to employment. There was a high risk of damaging the cohesion of a country that was already experiencing economic and social imbalances among its different regions and a high unemployment rate for women. Although the Government had high hopes for the Youth Guarantee of the European Commission, the scheme had limited resources and would not be enough to resolve the problem faced by all young people, who also needed to be guaranteed a quality transition between school and work. In conclusion, the Worker members said that they shared the concerns of Italian workers, who feared a resurgence in precarious employment and growing poverty even within the world of work. The way out of the crisis lay in the creation of more quality jobs and in greater efforts to train workers.

**The Employer member of Italy** indicated that the environment was different from that of 1964 when the Convention had been adopted. Globalized economies, technological and demographic change and different ways of production as well as new requirements for workers and enterprises had transformed the labour market. However, the objectives of the Convention remained valid and needed to be pursued, as active labour market policies to promote growth, employment, social development and cohesion were more necessary than ever. Governments and social partners had to be committed to adopt reforms to adapt the labour market to the situation. In this regard, it was necessary to examine the possibility of introducing measures that would have clarified any doubts and positively addressing the challenge, in particular Italy, where structural reforms of the labour market had lagged behind for years. The alarming figures concerning employment, in particular women and youth employment, could be explained by the delay in addressing the structural weaknesses of the economy and of the labour market which had been exacerbated by the crisis. Now some improvements and later figures must be highlighted, particularly with regard to the creation of permanent employment. In any case, it had to be recalled that Italy remained behind other EU countries in the use of fixed-term contracts, and was the country where temporary agency work benefited from full equal treatment in comparison with permanent employment. The Jobs Act implemented by the Government contained a package of reforms that simulated the cumbersome and reinforced active labour market policies, overcoming rigidities that discouraged job creation. A regulatory framework that fostered employment together with policies that encouraged investment could contribute to recovery. Social partners had an active role to play in this strategy and they had the opportunity to channel their views through the existing institutions, including the Parliament. They could also contribute to the modernization of the labour market through collective bargaining which, even during the crisis, had contributed to finding balanced solutions to protect employment and support competitiveness. The results already achieved should encourage the Government to adopt further reforms within the framework of the Convention.

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

The Government member of France, also speaking on
behalf of the Government members of Croatia, Cyprus, Germany, Greece, Luxembourg, Portugal, Romania, Slo-
venia and Spain, said that, like Italy, the Governments of all participating countries, with a coordinated approach at EU level designed to combat unem-
ployment in a difficult context for public finances, with a
view to reducing an unprecedented unemployment rate, ensure strong and lasting growth and strengthen social cohesion. The Europe 2020 strategy for smart, sustainable
and inclusive growth, which defined the macroeconomic
direction of the EU, was based on the same objectives and
aimed for a 75 per cent employment rate for the 20-64
age group and the possibility for every person to seize
opportunities, develop skills in order to be able to find a
job, be educated and trained, and enjoy social protection
according to the various risks encountered throughout life. Poverty at work remained an issue to be faced by the
member States, and developing access to employment
remained a significant challenge, particularly for women
and vulnerable groups. The search for the right balance between macroeconomic objectives, on the one hand, and
those of inclusive growth, on the other, and also the crea-
tion of an environment conducive to the development of
investment merited closer attention, as recommended by
the European Commission’s recent investment pro-
gramme. Better use of human capital through more inclu-
sive labour markets should contribute to growth and so-
cial progress. In view of their representativeness within
social Europe, trade union and occupational organizations
at the European level had a particular role to play, espe-
cially in the social and employment spheres. Italy was
pursuing active policies to achieve full, productive and
freely chosen employment and the Government should be
trusted to continue its efforts in that direction, in accord-
ance with the values and principles of the ILO. Fur-

the more frequent role of the ILO. Fur-

mer, without social dialogue there could be no lasting
solution to the problems of the labour market in Europe. The
ILO had to play its full part in integrating the social
dimensions of international labour standards in the multi-
lateral system through increased collaboration with other
international bodies, particularly those in the economic
and financial spheres.

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

The Employer member of Spain stated that, like his
country, Italy had suffered the economic repercussions of
the 2008 crisis, resulting in a slowdown in economic growth and the loss of employment, along with an in-
crease in structural inequalities that had existed before the
D. Within the framework of the Stability and Growth Pact, the Italian Government had taken significant steps to
overcome those difficulties. Although labour reform alone
could not solve employment problems, together with oth-
er reforms it represented a key piece in building a vigor-
ous recovery in the job market during the post-recession
economic cycle. The Spanish employers supported the
reform and advocated the adoption of additional measures
to remove the unnecessary rigidity from the job market
and create a favourable environment for enterprises to
create high-quality jobs. The Jobs Act, among other
measures taken by the Government, reflected its firm
commitment to reactivating employment creation.

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

The Employer member of France indicated that, owing
to the severe economic recession, Italy had had to intro-
duce major labour market reforms, such as the Jobs Act,
in order to address the high rate of unemployment. In par-

cular, the country had adopted the Fornero Reform, which
established a range of measures to protect the working
conditions for women and young people, boosted appren-
ticeships and vocational training and implemented the
youth plan, which had been converted into a law in ac-
cordance with the 2020 Strategy, and measures to address
the mismatch between labour supply and demand which
aimed, for example, to improve the employability of older
unemployed persons and their reintegration into the la-
bour market – with specific measures for women. In
2014, the employment services had been reformed and the
National Employment Agency had been established. Em-
phasis had also been placed on training with the reorganiz-
ation of adult training centres, which were now part of
the national education system, and on improving the qual-
ity of higher and technical education so as to adapt it to
the changing labour market. Also in 2014 the Ministry of
Economic Development had adopted measures to promote
employment through cooperatives and the development of
small and medium-sized cooperatives. In conclusion, she
said that Italy should be encouraged to continue the ef-
forts it had already undertaken, in accordance with the
Convention, to reduce unemployment with a view to full
employment.
The Worker member of Brazil recalled the importance of the Convention, the main objective of which was to give expression to the principles set forth in the Declaration of Philadelphia relating to full employment and social justice. The Convention promoted the creation of employment through the adoption of growth and economic development policies that tackled the problem of unemployment and underemployment. The application of the Convention in Italy had been hampered by the restrictive economic and social policies promoted by the European Commission. In that context, the Jobs Act had been adopted at the end of 2014 creating new forms of employment contracts and making it easier to dismiss workers. The measures recommended by the European Commission, known as specific recommendations for each country, showed that the ills of low productivity and competitiveness of Italian enterprises were regarded as stemming from excessive social protection of the employment relationship. However, reality showed that enterprises were not hiring more workers just because it was easier to dismiss them but also because there was an economic policy geared to economic growth and with it the expansion of business. Even though data showed a slight reduction in unemployment, it was important to be aware of the effects that flexibility policies had had in Latin America where they had been extensively applied. In the long term, making dismissals more flexible, creating incentives for part-time contracts and making use of outsourcing resulted in a creation of precarious jobs or underemployment, in complete contradiction with the Convention. It was certain that workers’ lives could not be improved in the long term if no macroeconomic policies were adopted aimed at economic growth based on investment technological innovation wage increase or state investment.

The Employer member of Turkey indicated that the comments of the Committee of Experts gave a misleading picture of the situation in Italy and that the evaluation of the situation should not be based solely on quantitative analysis. The profound economic crisis had greatly damaged the Italian economy and labour market, and the response of Italy had been bold and responsive. The structural reforms in areas such as vocational training, apprenticeship, public employment services, employment contracts and flexibility had been undertaken in a consistent way. These measures showed a clear commitment to overcome the crisis through policies for employment creation. Positive effects could already partially be seen, but more was needed to achieve success. Turkish employers welcomed the progress made by the Italian Government and its commitment to comply with the Convention.

The Worker member of Belgium referred to the impact of the crisis and the austerity measures on women’s jobs and lives in Italy. Young women, even those who were highly qualified, were limited to precarious and unstable work. Women over 40 years had difficulty situating themselves satisfactorily on the labour market. According to the 2014 European Commission annual report on equal opportunities, if Italy did not radically change its employment policy, it would only achieve its objective of a female employment rate of 75 per cent in 30 years’ time, equality of treatment between men and women would only become a reality in 70 years’ time, and parity representation in national Parliament would imply being 20 years old. The rate of male employment was 22 per cent higher than the employment rate for women, while the average for this gap in the EU was 12 per cent. Women left the employment market because certain types of contracts did not offer them adequate maternity protection. In addition, the practice of “white resignations” was common, under the terms of which, at the time of her recruitment, the woman worker signed a resignation letter which the employer would use if the worker was pregnant or on maternity leave.

The Employer member of Belgium highlighted that, in the financial and economic crisis that had swept Europe since 2008, there was one common objective: restoring economic growth and create sustainable economic growth and market and that necessarily entailed the structural reform of the labour market. The reforms, which had sometimes been trying, were at last beginning to bear fruit. Governments had tackled the countries’ structural shortcomings with determination and had regularly, if not constantly, consulted the social partners before adopting and implementing new measures. There were of course differences of opinion among the social partners on the proper steps to take, especially when they were unpopular; and in the absence of consensus the Government was obliged to take the final decision. The requirement in Article 3 of the Convention that the Government consult the social partners on its employment policies was not intended to undermine the sovereignty of States, and governments had to pursue whatever structural reforms were necessary to protect the competitiveness of enterprises and to sustain employment and, therefore, the social security system. He concluded by asserting that government practice in Italy was in keeping with the Convention.

The Worker member of Poland, observing that the Italian labour law reform had resulted in a reduction of workers’ rights, focused on the situation of the most disadvantaged children. Child labour could become a reality within the EU as a result of the austerity measures which had a great impact on vulnerable groups through the reduction of family incomes and cuts in state expenditures dedicated to health care, education and social services. Italy had one of the highest rates of school drop-outs in Europe. A 2013 survey from Save the Children pointed out that, at least one out of 20 children was exploited. In October 2011, the UN Committee on the Rights of the Child urged Italy to develop effective mechanisms capable of ensuring children’s education, health and social assistance, and called for a comprehensive analysis on resource allocation for this purpose. In this context, the Government should have considered the implementation of free universal education as a priority for the creation of new quality jobs and public investments for development and growth of the country. Those considerations should be central in the international community and EU policy debate in order to finally break the chain of decent work deficits, poverty and inequality we face success.

The Worker member of Germany observed with concern that the recent labour market reforms of the Government were socially imbalanced, and that they had fatal consequences for the economy and society. While the Government faced challenges to overcome the economic crisis that had resulted in the loss of thousands of jobs, there was real doubt as to whether the Jobs Act would achieve economic growth and development, increase living standards and reduce the unemployment rate. The Jobs Act had introduced a new contract with additional safeguards replacing the previous open-ended standard employment contracts. Consequently, judicial procedures against employment termination for economic reasons would now become more difficult. Where employment contracts had recently been concluded or where enterprises employed more than 15 employees, there was no right of reinstatement except where the courts considered the dismissal to be discriminatory. Furthermore, the amount of compensation for unfair dismissal had been significantly reduced, including in the event of collective dismissals. Section 18 of the Italian workers’ statute which previously provided for the protection of workers organized in trade unions against unfair dismissal had been undermined, which was
tantamount to interference in freedom of association. The introduction of the new contract with additional safeguards meant that enterprises could simply realize unfair or collective dismissals by paying a meagre compensation. There were concerns that other regulations under the Jobs Act would provide for further precarization and the weakening of the "guilt" between employer and workers. While it had appeared from some of the statements made during the discussions that the regulations on the protection against dismissal were the main cause for the labour market crisis in Italy, there was very little evidence to support this belief. In fact, countries with the highest protection against unfair dismissal were more economically successful and had higher employment rates than others. He concluded by stating that the Government should have consulted workers in the early stages of the reform process, and that it should also take into account social objectives in its efforts to promote employment.

The Worker member of Japan, referring to the Director-General’s Report to the Conference, indicated that work should contribute to overcoming social problems through connecting people and making a link between workplaces and society. However, such linkage was becoming weaker and weaker because of the increase in precarious work and the deterioration of the quality of employment. Although the crisis represented a chance to recognize the importance of stronger coherence between growth strategies and employment policies, few lessons had been learnt from it as the policies being implemented all over the world had demonstrated, including in Italy. The Jobs Act instilled more flexibility in the labour market, removing constraints faced by employers in hiring and firing workers through a redefinition of company sizes, the establishment of new rules on fixed-term contracts and a revision of section 18 of the Italian workers’ statute that prevented companies from downsizing during a crisis. Such measures would be surely creating more jobs but most of them would be precarious leading to a vicious cycle of, among others, insecure and lower waged jobs; decrease of savings; even lower consumption; no investment and stagnant growth. In order to stop such a deflation spiral, investments should be made to create decent jobs and employment policies should aim at the strengthening of workers’ protection and the raising of wages. Finally, despite the provision in Article 3 of the Convention, in many countries, consultation with enterprises was often given priority over that with trade unions. Without proper consultation of workers’ representatives, measures would not be effective or beneficial to those at whom they were targeted.

The Worker member of Argentina stated that Italy’s labour reform had ushered in a process that had been described as a “labour counter-reform” because of its regressive nature in terms of protection for a considerable number of the rights and guarantees that Italian workers had acquired during the 1950s. The “counter-reform” was the fruit of the employers’ and Government’s mistaken belief that restricting rights and increasing the power of employers would raise employment levels. However, reality showed a different picture: unemployment in Italy had reached extremely high levels, especially in the south of the country, and affected women most acutely and young people to an alarming degree. In addition to seriously affecting the stability of labour relations by abolishing reinstatement of the guilt between employer and workers, the reform had undermined the worker protection system through the revision of section 2103 of the Civil Code, which made it impossible for an employer to assign a worker to lower-level functions than that at which the worker had originally joined the enterprise. Since the reform, the opportunities for potential abuse by employers had increased dramatically, as not only could they now assign workers to inferior duties, but there were also restrictions on the judicial power to redress the balance in cases where it was alleged that the assignment of hierarchically inferior tasks was excessive in view of the enterprise’s actual economic position. Moreover, all reference to the employer’s duty to assign equivalent functions to preparatory dismissals had been excluded. Categorization of the latter, determining which services a worker performed was now left to the completely arbitrary choice of the employer, regardless of the worker’s particular skills and abilities. The consequences of this for the dignity of workers were incompatible with the Convention and the 1944 Declaration of Philadelphia.

An observer representing Public Services International (PSI) stated that the reform of the public employment system via the establishment of the National Employment Agency had resulted in the abolishment of more than 550 centres for employment. This had led to employment uncertainty for more than 8,000 workers and to a vacuum in employment services. A flood of cuts in public spending was hitting public services severely. She recalled that spending cuts involved the abolition of the State Forestry Corps, whose function would be assigned to other police corps, which were already dramatically understaffed and underfunded. The health sector represented 14 per cent of total public spending; in 2015, 2,069 hospitals and 8,718 first-aid services were closed along with several centres for emergency services. Such spending cuts would lead to fewer jobs, more overtime and less safety for patients. Furthermore, 3 million public service workers had had their last wage increase in 2008. Since then, wages had been frozen, collective bargaining suspended until 2018 and no mechanism to compensate the increase in the cost of living had been foreseen. The Constitutional Court was expected to decide whether the practice of freezing wages during a time frame of ten years was compatible with the Constitution and a verdict of incomparability would lead to a payment to all public employees of €35 billion, corresponding to the past seven years. Finally, recalling that employers were on the one hand supporting flexibility and flexicurity and, on the other, questioning the role of the Committee of Experts and ignoring trade union arguments, she warned that workers were tired of being exploited and that, in a world embroiled in social and political conflicts, such a discontent could lead to very dangerous consequences.

The Government representative addressed some of the questions raised during the discussions. In relation to social dialogue, he reiterated that the social partners had been permanently involved: they had been heard by Parliament in relation to the various aspects of the Jobs Act; they had been involved in the relevant contractual arrangements which had been left to collective bargaining; they had been consulted in relation to labour market policies through their involvement in the governance of institutions, including the new national agency for active labour market policies and the Italian National Security Institute. Moreover, the social partners had been involved in the management of labour market policies, through the management of the newly introduced solidarity funds in the event of the reduction or suspension of labour activity. Finally, the social partners had also been in charge of international bilateral funds for the training of employees. However, it was the Government that had to bear the responsibility for the economic downturn and the economic recovery, and therefore had to adopt the reforms that it deemed necessary. He then addressed the issues concerning the Youth Guarantee. This strategic plan was not an extraordinary programme that had been intended for just a couple of years, but was indeed intended as a pilot project to introduce a new approach for public employment policies and active labour market policies.
This programme had been co-financed by the European Social Fund, and it was expected that a more permanent and stable source of financing would be provided by the EU. Referring to the need for community service in order to maintain the competencies of workers that was raised during the discussion, he indicated that traineeships, training, and education were part of the Action Plan relating to the Youth Guarantee. He emphasized that the public employment services had not been abolished, even though in view of the administrative reform, employment services were no longer represented at the provincial level. In fact, the support of the regions was crucial to address youth unemployment, in the framework of the Youth Guarantee programme. In relation to the issue of fixed versus open-ended contracts, he indicated that the success of the Government strategy lay in the numbers. There had been an increase of about 24 per cent in the number of new open-ended contracts in the first three months of 2015 in relation to previous years. It was better to provide for economic incentives than for strict legislation that was difficult to implement. The Government was committed to fostering open-ended contracts with a long-term perspective. In relation to the protection of workers, he analyzed the numbers from the OECD employment protection legislation indicators. A calculation in relation to employment protection legislation had been made after the adoption of the Fornero policy reform. In 2013, Italy had an index of 2.79 for the protection of permanent workers against collective dismissal, which was higher than the OECD average index, which was 2.29. Concerning the regulation on temporary employment, Italy had an index of 2.71, whereas the OECD provided for an average index of 2.08. Concerning female employment, while there had been a decrease in the total employment during the crisis, when breaking down this number, it had become clear that the female employment rate had risen. The Employer members indicated that it was important to recall that employment could not be created by Decree, but that it depended on economic conditions. Therefore, the Government was to be commended on addressing the regulatory barriers for entry into employment, where these barriers had been found to be excessive or to have long-lasting negative effects on employment. They were surprised to hear the criticism concerning the new employment contract introduced under the Jobs Act that removed the possibility for reinstatement in case of dismissal, but enhanced compensation rights. In fact, most EU Member States provide for similar regulatory frameworks, and it could not be seriously claimed that workers in all these countries were exploited and pushed into precariousness and badly paid jobs. The Government had demonstrated significant progress in complying with the objectives of the Convention by adopting and currently progressively implementing a comprehensive package of measures addressing structural weaknesses concerning employment. The Government should continue its comprehensive approach to structural reform in order to improve the employment situation and foster job-rich inclusive growth. Given that the Jobs Act, which was the key component of the reform package had only recently been adopted and considering that structural reforms always took time to reveal their results in terms of the employment situation, they considered that the Committee should continue to evaluate the implementation of that Act based on updated labour market data. Therefore, the Government should provide a detailed report to the Committee of Experts on the application of the Convention in 2015.

The Worker members expressed their satisfaction that the Employer members had emphasized the relevance of the Convention in the current crisis, the importance of the Committee examining its implementation and the need to assess employment policies from the qualitative as well as the quantitative standpoint. As to the soundness and necessity of the structural reforms, obliging the workers to make all the efforts and sacrifices amounted to making them carry the cost of a crisis for which they were not to blame. It was also surprising that some speakers were all the more inclined to leave the problematic State and delegating their own role as social partners in the context of social dialogue. Given the risk of a return to precarious employment and increasing poverty, the best solution to the crisis was to create more quality jobs and improve the level of training. However, since the measures taken thus far by the Government were likely to offer only short-term solutions, it was essential that, for the Committee of Experts’ next session, the Government continued to provide relevant data on: the outcome of the reforms undertaken to combat high unemployment, long-term unemployment and youth unemployment, especially through the creation of sustainable quality jobs; the simplification of types of contract and the number of permanent contracts benefiting from public funding; the development in women’s employment and the fight against the disparities in employment from one region to another; the review of policies and measures to attain the objectives of full, productive and freely chosen employment; the promotion of productive employment through cooperatives. The Government should also make every effort to revive and strengthen social dialogue.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative and the discussion that followed in relation to the issues raised by the Committee of Experts related to employment policy measures to alleviate the impact of the crisis adopted in 2012–13 and which included: the monitoring of the measures implemented with the participation of the social partners; the high unemployment rate which reached 12.6 per cent in May 2014 and affected young people by a greater proportion; the continued differences in employment rates between northern and southern regions of the country, as well as the measures taken to promote productive employment through cooperatives.

The Committee noted the information provided by the Government representative indicating that the unemployment rate had been reduced to 12.4 per cent in April 2015 and the rate of unemployed young people aged 15–24 who were actively seeking employment had fallen to 40.9 per cent. The Committee also noted the information provided on the 2015 Jobs Act which included the establishment of a National Employment Agency, the revision of unemployment benefits as well as new provisions on the dismissal and reinstatement of workers, leading to an increase in the number of new open-ended contracts by 24.6 per cent with respect to the same period in 2014. More than 600,000 young people had joined the Youth Guarantee Programme launched in May 2014. The Government representative also reported on an Agreement reached between regions in January 2015 envisaging a National Framework of Regional Qualification to coordinate nationwide recognition to over 2,600 regional vocational qualifications.

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

- ensure, in consultation with the social partners, a comprehensive approach to employment policies in order to improve the employment situation and foster job-rich inclusive growth, in line with the Convention;
- ensure tripartite consultation on the development and implementation of employment policies, based on regularly updated labour market data, including on the number, kind, duration of employment, and youth and gender issues and regional disparities;
The Government provided the following written information.

Convention No. 122, which was ratified by Spain in 1970, and which Spain has always shown a willingness to comply with and apply, provides that all Members of the Organization shall pursue an active policy designed to promote full, productive and freely chosen employment, but also qualitative. All this has taken place within the framework of social tripartite dialogue, in consultation with employers’ and workers’ representatives. The Government’s economic and employment strategy is established within the framework of the European Semester. Its policies correspond to the three main pillars of the Annual Growth Survey 2015 for the social and economic policy of the European Union (EU) for 2015. Two priorities which are mutually reinforcing should be highlighted in order to complete the reforms that have been started and to promote economic recovery and job creation.

The decisions taken regarding active employment and vocational training policies can be understood in the light of the situation and characteristics of the Spanish labour market in December 2011, with its structural weaknesses and inefficiencies that the 2007 crisis only accentuated: the great rigidity in the adaptation of working conditions to the economic situation; the excessive segmentation or duality of the labour market; and the lower productivity per worker than our European partners. These structural problems, coupled with the intense economic crisis, were reflected in dramatic figures. Between the beginning of the crisis and December 2011, the unemployment rate rose from 8.6 to 22.9 per cent. The unemployed population rose to 3.3 million. Over 2.5 million jobs were destroyed, according to the Active Population Survey (EPA). The unemployment rate for persons under 25 years rose from 18.8 to 48.6 per cent. The long-term unemployed accounted for half of all unemployed persons. Permanent employment was falling in December 2011 at an annual rate of 22.5 per cent.

In this context, it was essential to adopt structural reforms, including labour reforms, to allow the economy to grow and generate employment. This reform agenda has enabled the Spanish economy to regain the confidence of the international markets and to gain efficiency, flexibility and the ability to compete. With the 2012 labour reform, a profound transformation of the labour market commenced in Spain which was very much in line with the concept of flexicurity that is prioritized in the EU employment guidelines: that is greater flexibility, but without prejudicing workers’ rights or the unemployment protection system, which is an essential part of our welfare state. This has been reflected recently in Constitutional Court Ruling No. 8/2015 of 22 January 2015, which definitively endorses the labour reform and rejects the notion that it violates the right to freedom of association, collective bargaining, work and effective judicial and constitutional protection. According to the estimates of the Ministry of Economy and Competitiveness, this labour market transformation has helped to prevent the destruction of over 225,000 jobs during the first year following the entry into force of the reform. Furthermore, the labour reform has contributed for the first time to employment creation in Spain based on moderate economic growth rates. The data clearly reflect this closer relationship between employment and GDP. In 2014, when there was a change in the trend of this indicator, GDP growth over the whole year was 1.4 per cent and, according to EPA data, employment rose by over one per cent compared with the previous year, or an increase of over 2.5 per cent. It is important to emphasize that a fundamental effect of the labour reform has been, for the first time, the creation of employment in Spain based on moderate economic growth rates.

With the modernization of employment relations, it was important to modernize employment activation policies, with the main objective of developing a new employment policy framework within which all of its instruments are geared towards the activation and employability of workers to help ensure that the recovery results in quality and stable employment. Based on the intensive work of previous years, in September 2014 a package of measures was adopted to promote activation, including the new Spanish Employment Activation Strategy 2014–16. This Strategy establishes new working methods for all public employment services throughout the country over a multi-year framework. It includes common objectives, flexible and specific means of achieving them, and a new system of continuous evaluation and results-based performance. The overall objective is the modernization of public employment services. This action is reflected in annual plans, which coordinate and group together all the activities undertaken by public employment services each year in light of the common objectives. Since 2012 four plans have been adopted, and the last one was presented to the meeting of the Sectoral Conference for Employment and Labour Affairs in April 2015, with the Autonomo Communities. These plans set out what is being done and where, so as to compare and above all measure the impact of the various initiatives. To that end, in a particularly significant inter-administrative effort, a system of indicators has been developed, approved by all, to evaluate the results of the measures and, on that basis, determine the distribution of funds for activation policies, which are granted on an annual basis by the State to the Autonomo Communities. Accordingly, for example, the results achieved in 2014 determine the distribution of 80 per cent of the funds in 2015, or around €850 million. The activation strategy includes a series of elements that could be considered the “backbone” of employment services. For example, to facilitate the transition to employment, the Framework Agreement for public-private collaboration in job placement has been developed, in accordance with the Private Employment Agencies Convention, 1997 (No. 181), which defines a common framework for the development of cooperation projects between the 14 employment services that have adhered to the Agreement and the 80 private job placement agencies that have been selected. The Single Employment Portal is in operation, which channels job vacancies from the various public employment services and private portals that have joined this project. In January 2015, the Common Portfolio of Services under the National Employment System was adopted which determines all the employment services to be provided throughout the country, to which all workers are entitled. For each of the services included in this Portfolio (vocational guidance, placement and advice for enterprises, vocational training and skills development, and advice for self-employment and entrepreneurship), the content and minimum common requirements have been

**SPAIN (ratification: 1970)**

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established and work is already being carried out with the Autonomous Communities on the service protocols that will be adopted as a whole.

Young people are the worst affected by the recent crisis, with the youth unemployment rate rising to 51.4 per cent, or 382,012 young persons under 25 years of age, whose unemployment rate has decreased by nearly 105,500 since 2011. Some of the initiatives launched to promote youth employment as part of the labour reform of 2012 include: the entrepreneur support contract of indefinite duration, which provides incentives of up to €3,600 for three years for the hiring of young persons on indefinite contracts – over 107,000 contracts of this type were concluded with young persons under 30 years of age in the period between the 2012 labour reform and April 2015; and the modification of the training and apprenticeship contract with the purpose of making it more flexible and geared to the daily requirements of enterprises and their training needs – more than three years after its modification, it is a consolidated instrument that paves the way for dual vocational training for young people, enabling them to be trained while in employment. In 2014, a total of 140,000 contracts were concluded, which was 32 per cent more than in 2013 and 130 per cent more than in 2012. During 2015, the pace of progress has been maintained, reaching the year-on-year figure of over 25 per cent. In the period between the 2012 labour reform and April 2015, over 355,000 training and apprenticeship contracts have been recorded.

In 2013, the Spanish Youth Employment and Entrepreneurship Strategy 2013–16 was adopted, including 100 emergency measures, of which 85 per cent have already been put into effect. At present, over 400,000 young people under 30 years of age (402,908 persons as at 12 May) have benefited from the entrepreneurship or employment measures contained in the Strategy, in addition to the measures for training, guidance and improving employability implemented by the Autonomous Communities. A total of 66 per cent have benefited from a recruitment incentive and the remaining 34 per cent have benefited from measures for the promotion of self-employment and entrepreneurship, especially the €50 flat rate social security contribution for the newly self-employed. The upturn in the labour market is beginning to be felt by the young. In 2014, unemployment for the youngest (under-25) age group fell by 93,400, a 10 per cent reduction compared with 2013. It is the second year in which unemployment for the youngest age group has decreased, after constantly rising from 2013 to 2015. In 2014, the unemployment rate for this age group rose by 1.6 per cent, the first increase since 2006. In the context of the Youth Employment and Entrepreneurship Strategy, and in response to a recommendation by the European Council in April 2014, the National Youth Guarantee System was adopted in July 2014, under which young persons under 25 years of age who are either unemployed or not in the education or training system can receive offers of employment or training. Through this system, electronic registration in the Youth Guarantee System has been introduced so that beneficiaries can obtain information on the measures available and the results achieved can be monitored and evaluated. In addition, a range of measures have been determined for implementation by the State and the Autonomous Community concerned, according to their respective capacities. These include those designed to improve the matching of labour supply and demand and to enhance the vocational skills of beneficiaries. As at 30 April 2015, a total of 48,576 young people were covered by the scheme. Moreover, the 2014–20 operational programme for youth employment has been developed, to which over €2,360 million has been allocated as assistance in launching action to promote labour market access for young people. On 13 April 2015, the Sectoral Employment and Labour Affairs Conference, with the participation of ministerial authorities and the employment advisers of the Autonomous Communities, agreed to extend the maximum age for access to the National Youth Guarantee System from 25 to 29 years, on an exceptional basis, in the event that the ratio between the two ages, currently standing at 29.7 per cent, drops below 20 per cent. Finally, also of relevance in combating youth unemployment are the measures adopted to ensure greater coordination between employment policies and education policies. These include: establishing a more flexible procedure for streamlining the updating of the National Directory of Vocational Qualifications (vocational training diplomas and certificates of vocational competence); boosting vocational training that is better matched to the labour market and more effective, including the establishment of “basic vocational training” (vocational training in the education system has seen an increase from 462,492 students in 2007–08 to 793,034 in 2014–15, an increase of 71.5 per cent); combating early school drop-out through a specific plan for 2014–20 supplementing the education reform. In Spain, the school drop-out rate has fallen gradually from 31.7 per cent in 2008 to 21.9 per cent in 2014 (the intermediate commitment was therefore comfortably achieved). This decrease has been greater than the average achieved across the EU (where the rate fell from 14.8 per cent to 11.1 per cent).

The Extraordinary Programme for Employment Activation, which was adopted in December 2014 in the context of social dialogue and collaboration with the Autonomous Communities, is an illustration of the Government’s determination that the economic recovery should benefit as many workers as possible. It is aimed at categories whose needs arising out of the economic crisis are particularly acute, such as the long-term unemployed with family responsibilities who have exhausted the options available to them under the employment protection scheme and who meet the requirement of actively seeking employment. The Programme envisages activities that are designed to improve the employability of such workers so that they can return to the labour market, as well as time-based assistance in the form of financial support to enable them to benefit from activation measures. Moreover, the scheme is compatible with a contract for an employer, as an innovation that serves as a double incentive for both workers and employers. The Programme also responds to the need to provide personalized employment services and to improve the employability of the unemployed. The programme that proved to be the most successful in 2014–15 was the four-year programme for the hiring of young persons on indefinite contracts – over 107,000 contracts of this type were concluded with young persons under 30 years of age, of which 29.7 per cent were for female applicants. The remaining 70.3 per cent of contracts were recorded for young men under 30 years of age. In Spain, the country’s vocational training system, which each year trains over three million workers, with the participation of some 480,000 enterprises, managed to keep pace with requirements in a specific social and economic context since it was first set up in 1992, it has not adapted with the required flexibility to the ever more complex requirements of the economy. Among the reforms included in the process of transforming the vocational training system, which it opted deliberately for a form of training that could provide the skills required by the economy. It was at that point that the individual right of workers to training was explicitly recognized and that training centres were given direct access to funds that had previously been reserved for the social partners. This gradual transformation
of the training system, which is also reflected in the management and financing of training schemes run by the social partners over the past three years, culminated in the recent reform of the vocational training system that was approved by Royal Legislative Decree No. 4/2015 of 22 March 2015. Some of the most significant features of the reform are as follows: it applies to all those whose responsibilities cover employers and workers throughout the national territory, thereby promoting the necessary labour market unity; the social partners and collective bargaining continue to play a fundamental role; an efficient system of labour market monitoring and forecasting is to be introduced as part of a multi-year strategic plan to ensure that training is consistent with the present and future requirements of the economy and of workers; each worker will have a training account that will accompany them throughout their working life; training at the enterprise will be made as flexible as possible; the training provided through the public administration will be organized on a competitive basis and will be open only to training institutions; tele-training will be used to maximize efficiency and flexibility; the quality and impact of the training will be monitored on an ongoing basis to increase the productivity of workers and the competitiveness of the entreprises; and a special inspection unit and a new endorsement system will be established, based on the principle of zero tolerance of fraud. These innovations will all be made possible by the development of a comprehensive data system to guarantee the traceability of training activities and the comparability, consistency and regular updating of all available information on vocational training.

The adoption of the new vocational training model coincides with the increasing signs of economic recovery (six quarters in which GDP has risen steadily and an estimated annual growth rate of around 3 per cent between 2015 and 2018). It should be possible to translate these promising economic forecasts into tangible gains for the labour market through the greater employability of workers and greater competitiveness of the enterprises.

Judging from the various reforms and other measures introduced since the 2012 labour reform and from the benefits that they have brought, the application by Spain of Convention No. 122 constitutes a positive outcome in both quantitative and qualitative terms. Current monthly and quarterly data tend to confirm that the country’s economic and employment recovery is here to stay. This is the conclusion that can be drawn from the various sources that measure the labour market situation. According to the social partners, the national unemployment rate (seasonally adjusted) in the first quarter of 2015, the number of unemployed fell by 488,700 compared with the previous year (minus 8.2 per cent year on year), the largest fall in unemployment since 2006. This was due in part to the creation of 504,200 jobs in that quarter, or a growth rate of 3 per cent since the previous year, which was higher than the GDP growth rate of 2.6 per cent. Spain has never before experienced such intense and rapid growth simultaneously in both employment and GDP. According to registered unemployment and social security affiliation, between April 2014 and April 2015, unemployment fell by over 350,000 (minus 351,285), the biggest year-on-year fall ever recorded (with an actual fall of 7.5 per cent, compared with the 12.5 per cent increase in unemployed workers recorded in May 2012). Over the same period, social security affiliation rose by almost 580,000 (plus 578,243), while the fall in unemployment over the last two years combined was over 650,000 (minus 656,177) and affiliation to the social security system exceeded 750,000 (plus 775,944). The underlying trend, as reflected in seasonally adjusted data, continues to be favourable. With the exception of July 2014, Spain has now experienced 24 consecutive months in which seasonally adjusted unemployment has fallen, something unheard of for the past 15 years. In seasonally adjusted terms, unemployment in April 2015 dropped by 50,160, the best figure for April ever recorded. Registered unemployment among young persons under 25 years of age has fallen over the past 12 months by 33,965, or 9.5 per cent per year on year. Despite these encouraging figures, Spain still suffers from high unemployment. According to the estimates of the 2015–18 Budget Stability Programme, unemployment in 2015 is expected to be 22.1 per cent, and with an estimated GDP growth rate of around 3 per cent over the coming years, the unemployment rate should gradually fall to about 15.6 per cent in 2018.

In accordance with Convention No. 122, social dialogue has been a constant feature of the Government’s action during an especially intense period of reforms, in the course of which efforts have always been made to seek agreement with the social partners. This is because only with an instrument as powerful as social dialogue, together with the collaboration of everyone, is it possible to confront the biggest challenge facing Spanish society, namely employment. Although for the past three years people have not always agreed on the diagnosis of the country’s labour market, or on the best way to solve the problems posed, the parties continue to support an effort to keep all channels and means of communication open. The Government of Spain is fully aware of the irrereplaceable role played by the social partners, which is recognized in the Constitution and is of vital importance to the country’s democratic system. That is why, irrespective of the differences of view that may have occurred from time to time, the Government has consistently maintained a climate of dialogue with trade unions and employers’ associations, which necessarily contributes to the more effective defence of the rights and legitimate interests of both workers and employers. Social dialogue has thus become firmly established, both through meetings of ad hoc working groups and the competent bodies on which the social partners are represented, such as: the State Council for Corporate Social Responsibility; the General Council of the National Employment System; and the Board of the Tripartite Foundation for Vocational Training. The issues on which the social partners have engaged in dialogue and reached consensus include: the Entrepreneurship and Youth Employment Strategy; the Youth Guarantee Plan; the Corporate Social Responsibility Strategy; the introduction of changes in the vocational training subsystem; the annual employment policy plans; the regulation of occupational skills certificates for updating and the amendment of the corresponding decree; the training and apprenticeship contract; as well as more specific matters, such as (in 2013 and 2015) the reduction in the number of days of entitlement to agricultural subsidies and support. This systematically open approach to the exchange of views and proposals has also clearly contributed to the conclusion of other agreements on employment issues, such as: the Agreement on proposals for tripartite negotiations to strengthen economic and employment growth rates of July 2014; the Agreement on an activation programme for the long-term unemployed of 15 December 2014; and, after prolonged and intensive negotiations (although the document itself has never been signed) a new tripartite agreement on training. Account has also been taken of the countless proposals and combined analytical input of the social partners and other representative organizations of the self-employed, which have their own enterprises, training centres and experts.

In addition, before the Committee, a Government representative, referring to the information provided in writing, added that significant steps had been taken in recent years which demonstrated that the destruction of employment caused by the economic crisis had been curbed and that a
robust process of reducing unemployment and creating jobs had started in a context of economic recovery. The change was qualitative as well as quantitative. The policies and reforms adopted by the Government had the principal objective of creating stable and high quality jobs in coordination with all economic and social policies. With reference to Article 3 of the Convention, the Government was not only holding prior consultations with workers’ representatives on the various standards and programmes that shaped employment policies, but also ensured their participation in various standing forums for discussion and social dialogue, at both the level of the State and the Autonomous Communities.

All of the progress referred to had been achieved in the context of constant social dialogue during an especially intense period of reforms, in the course of which efforts had constantly been made to seek agreement with the social partners. Only through social dialogue and the collaboration of everyone was it possible to confront the biggest challenge facing society, namely employment. The Government was fully aware of the indispensable role played by the social partners. For that reason, irrespective of the differences of view that may have occurred, the Government had consistently endeavoured to maintain a climate of dialogue with trade unions and employers’ associations, which necessarily contributed to the more effective defence of the rights and legitimate interests of both workers and employers, with a more complete overview of the labour market so that it could respond to the needs of the economy, in accordance with the system of representation and dialogue established by the Government.

The Worker members recalled that the objective of the Convention to achieve full, productive and freely chosen employment was as topical as ever. The Convention was the main instrument providing guidance on cooperation and coordination of policies on employment at the national level, and viewed employment not as a hypothetical result of economic policies, but as the objective that these policies were to serve. In this regard, the Convention was directly linked to the Decent Work Agenda and was a governance Convention within the meaning of the 2008 Social Justice Declaration, alongside the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), under which governance was based on social dialogue, particularly regarding the revision of employment policies. The objectives of the Convention, in compliance with fundamental principles and rights, had also been reaffirmed by the 2008 Employment Code.

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ployment of those who were most marginalized in the labour market needed to be prioritized and the Decent Work Agenda should be returned to the heart of economic policies, which was fully in accordance with the Convention.

The Employer members recalled that in 2013 the Commission had already expressed concern in relation to the deterioration of the labour market and recommended that the Government continue to evaluate, with the participation of the social partners, the impact of measures taken to overcome the crisis. In August 2013, the International Organisation of Employers (IOE) and the Spanish Confederation of Employers’ Organizations (CEOE) had welcomed the 2013 reform aimed at establishing a framework for future economic recovery, reducing macroeconomic imbalances, creating a favourable environment for the establishment and development of enterprises, improving competitiveness and productivity, and promoting the export sector. They had also welcomed the labour reform, which had been validated by the Constitutional Court. The reform was in line with the flexibility introduced in other European countries and was governed by the EU Stability and Growth Pact. Regarding youth employment, the Employer members also praised the Youth Employment and Entrepreneurship Strategy 2013–16, which contained 100 measures aimed at boosting employment for young people. They emphasized that the role of the Committee of Experts and the Conference Committee with regard to the Convention was to ensure that member States had the explicit intention of guaranteeing full and productive employment, that measures and institutions existed to attain that objective, that the social partners were consulted on the policies and measures and that review mechanisms existed. It was not within the competence of the Committee of Experts to assess the validity, effectiveness or justification for the measures adopted. The Convention was a promotional instrument which required governments to adopt an employment policy, but it did not specify the content of the policy. That was appropriate as the achievement of full employment required broad economic policies that took into account the political, economic and social context, inflation, and respect for human rights and private property. Job creation also presupposed the proper functioning of the labour market.

A Worker member of Spain said that, three years after the most aggressive labour reform that Spain had seen since the return of democracy, the unemployment situation in the country was dramatic. More than 5.5 million people were registered unemployed and 71 per cent of the unemployed. Of those, 782,000 were under 25 years of age. Youth unemployment stood at 51 per cent. More than 3.3 million people had been unemployed for more than a year, accounting for 61 per cent of all those unemployed. One in four unemployed, on 1.4 million persons, had been looking for work for three years or more. There was a serious risk that unemployment would become structural. More than one million households had no income at all and 29 per cent of the population was at risk of poverty or social exclusion. The current labour market was driving inequality by imposing reductions in wages, massive unemployment and underemployment. Spain was one of the countries where inequality had increased the most as a result of wage gaps and poor quality jobs. The 2012 labour reform had made it easier and cheaper to dismiss workers and allowed employers to modify employment contracts unilaterally, and 60 per cent of dismissals lacked justification and sufficient legal protection. The Convention required the State to pursue an active policy designed to promote full employment. However, the fact that the national budget had been reduced by 48 per cent between 2010 and 2014 showed that full employment was not a priority for the Government. The deterioration in the public employment service also showed how little importance was given to the issue. With respect to the scope of consultation with workers’ organizations on employment policy, he said that there had been no place for negotiation either within the labour reform process or any other economic measure taken. This was reflected in the number of complaints and representations made to the supervisory bodies. In reply to the Employers’ allegations that the Committee of Experts and the Conference Committee were not competent to consider employment policies, he said that accepting such claims would lead to the conclusion that the ILO no longer had any raison d’être. Workers rejected that argument.

Another Worker member of Spain, speaking on behalf of the CC.OO. and the UGT, and with the support of the Workers’ Labour Union (USO), described the difficult situation in the labour market, characterized by a very slow fall in unemployment, the intolerable absence of protection of the unemployed and the rise in precariousness. Although the number of registered unemployed had increased, spending on benefits had dropped by €7.7 billion between 2010 and 2014, and that trend had continued in 2015. The result of such brutal cutbacks was that the coverage rate had fallen by more than 32 per cent, and 2 million unemployed with no protection whatsoever. As a result, the CC.OO. and the UGT were backing a proposed legislative initiative seeking to introduce a minimum income benefit. Data from the general social security system confirmed the huge deterioration in the quality of employment: over half (51 per cent) of those registered were employed on precarious contracts (37 per cent on temporary contracts and 25 per cent on part-time contracts). Of the contracts signed in May 2015, 95 per cent were temporary or part time. Moreover, job creation was only increasing in sectors with low added value. Despite trumpant speeches by the Government, reality showed that there had been no structural change to either the economy or employment. Bearing in mind that 4.2 million people were registered unemployed and that the actual unemployment figure had been estimated at 5.5 million by the active population survey, a reduction of 2.7 per cent was completely insufficient. To emerge from the crisis, the Government continued to promote a production model based on low-value services, with a very low and decreasing proportion of industrial activities, condemning people to precarious employment contracts on low wages, with significant seasonal fluctuations and not enough jobs to provide people with employment opportunities. Against such background, top-down, piecemeal, sector-by-sector, strategies aimed at fostering structural change in the production system, promoted the efficient use of public resources at all levels in the administration, and helped to boost domestic demand. Public investment must be increased and redirected towards improving the quality and technological level of enterprises. New measures were also urgently needed to improve protection for unemployed people, particularly the long-term unemployed with no income, as suggested in the ILO report Spain: Growth with jobs. In conclusion, she emphasized that it was time to do away with the mistaken notion that dismantling labour rights or collective bargaining would improve the labour market, that cutting public spending would create a more efficient public sector, that any job was a job even if it did not allow low-income workers to escape from poverty and that slashing wages was a competition tool.

The Employer member of Spain observed that the economic crisis of recent years had had very serious consequences for the labour sector. At the end of 2011, unemployment in Spain stood at 24 per cent of the active population and 48 per cent of workers under 25 years of age. The Government had accordingly appealed to the social partners to engage in social dialogue to reach an agree-
ment that would serve as a basis for the reform of the country’s labour legislation, which was obviously needed. During the period of intense negotiations that followed, it had regrettably not been possible to reach an agreement. As a result, the Government adopted Royal Legislative Decree No. 3/2012 issuing urgent measures for the reform of the law to introduce, to generate strong measures. Spanish employers were very much in favour of the reform which was consistent with the employment policy of the European Union and that helped to modernize Spain’s labour legislation by bringing it more into line with the flexibility prevailing in the surrounding countries. The employers would have liked the reform to have brought working conditions in Spain even closer to the conditions in those countries. Employment figures were now positive and that tended to support the reform: in April unemployment fell by 120,000, and in May by a further 117,000. The European Union and the Organisation for Economic Co-operation and Development (OECD) had also made a positive assessment of the reform, which they saw as favouring employment creation. Social dialogue was an important feature of democracy in Spain and was part of its culture. He referred to some of the achievements of the social dialogue, creating the 2012 labour reform which showed that not only had it taken place, but that it had clearly been fruitful. The beginning of 2013, for example, saw the negotiation of the Entrepreneurship and Youth Employment Strategy. On 18 March 2014 an agreement had been reached with the Prime Minister and with the leading representatives of workers’ and employers’ organizations to promote measures aimed at changing the economic cycle, creating employment and increasing social cohesion. On 29 July 2014, a tripartite agreement had been concluded on proposed tripartite negotiations on raising economic and employment growth rates. That in turn had given rise to a 15 December 2014 agreement on the extraordinary employment activation programme to promote the employability of unemployed workers with special needs. Finally, although the best outcome of social dialogue was the conclusion of an agreement, dialogue could also be intense without necessarily leading to such a result. Linking the existence of social dialogue to its outcome did not properly reflect its essence.

The Government member of France, also speaking on behalf of the Government members of Croatia, Cyprus, Germany, Italy, Luxembourg, Portugal, Romania and Slovenia, indicated that these countries were engaged in a constructive dialogue at the EU level. Implementation of active policies aimed at full, productive and freely chosen employment and to combat unemployment. The efforts made by Spain were fully in line with those undertaken in the framework of the European Employment Strategy, and Spain was also committed to combating and overcoming the negative effects of the economic and financial crisis, in full consultation with the social partners. The Government should be encouraged to continue its efforts in this regard, in accordance with the values and principles of the ILO, to which Spain was particularly attached, as shown by the number of Conventions it had ratified. Without social dialogue, it was clear that there could be no sustainable solution to the labour market problems in Europe. Moreover, he emphasized that the ILO needed to play its full role in ensuring that the social issues highlighted in the annual ILO reports were taken into account in multilateral systems through enhanced cooperation with other international organizations, and specifically economic and financial institutions.

The Employer member of the United Kingdom emphasized the need to view Spain’s compliance with the Convention in the context of the ongoing economic crisis. It was also necessary to recall that Spain’s labour law reforms had been introduced within the framework of the EU Stability and Growth Pact, which placed emphasis on the reduction of the public deficit and debt when the latter grew excessive. He observed that the Spanish economy had started to recover in the second half of 2014 and gross domestic product (GDP) growth of 2.5 to 3 per cent was expected in 2015. Social dialogue was also thriving, although it did not always result in agreement. In this connection, he expressed confidence that Spain would continue to evaluate its employment and social policies with the social partners. The problem of youth unemployment was a multifaceted one that Spain was taking steps to address. He questioned whether the Committee of Experts had the competence to supervise Spain’s policies on youth unemployment, which in his view were a matter of national sovereignty. He also maintained that the Committee of Experts lacked the competence to question the rulings of the Spanish Constitutional Court, which had supported Spain’s 2012 labour reforms. It was of concern to note that Spain had appeared before the Conference Committee twice in the last three years for failure to apply the Convention. Supervision of the application of the Convention by the Conference Committee was not appropriate, and in the years to come Spain should not appear again on this subject, particularly in view of its ongoing constructive dialogue with the Committee of Experts.

The Worker member of Germany expressed support for Spanish workers. The serious economic crisis also affected society and the negative social effects of austerity policies affected the health, welfare and pension systems. A large proportion of the population lived with precarious jobs, such as short-term contracts, and increased job insecurity was prompting many young people to leave the country. Some employers were particularly creative in crafting flexible contracts which caused inequality because workers were not properly remunerated. The situation resulting from excessive contract flexibility was in contradiction with the principles of fair pay, fair working conditions and fair working time, and challenged the concept of decent work promoted by the ILO since its establishment in 1919. Precarious jobs generated inequality and poverty and better social dialogue was crucial to solve this problem.

The Employer member of Germany said that the economic crisis of 2008 had revealed, among other things, structural weaknesses and rigidities in Spain’s labour market. It was both just and important that in addressing the crisis Spain should reform its labour market to create a competitive and combat the high levels of unemployment. She maintained that Spain was fulfilling its obligations under the Convention, and doing so in a manner consistent with the principles laid down in the Oslo Declaration to which the Employer members had referred. The positive effects of the policies that Spain was pursu- ing could readily be observed: over the previous year, for instance, half a million new jobs had been created. She welcomed the results Spain had achieved in promoting employment, and said that the Government should be encouraged in its ongoing efforts to reform the labour market and pursue fiscal consolidation.

The Worker member of Sweden, speaking on behalf of the Worker members of the Nordic countries and Estonia, noted that almost a decade of economic hardship and austerity measures had had a negative impact on society. Unemployment was at historically high levels, especially for young people, many of whom had to leave the country in search of a better future. Furthermore, a large proportion of the population had precarious contracts, such as short-term contracts. She maintained that these challenges should be addressed through active labour policies serving the interests of both workers and employers, and that they should not be used as a pretext for dismantling social
policies. She emphasized that international labour standards were to be complied with also in times of economic hardship. The EU had launched the Social Investment Package in 2013 with the aim of supporting social policy measures and spending, especially for youth, such as education and support for the transition from education to employment. She highlighted the Government’s commitment to promoting social dialogue and investment in training and education.

The Employer member of France emphasized that the 2008 economic crisis had caused a major deterioration in the labour market in Spain, which had in turn resulted in an increase in the national debt, which had obliged the Government to establish a fiscal consolidation plan. The crisis had resulted in significant unemployment, but as a result of the efforts made by everyone, there was now a substantial recovery of economic growth and a reduction in the public deficit. Since 2012, structural reforms had been introduced to create a climate conducive to the creation of enterprises, and therefore to job creation. The national programme of reforms presented in the context of the European Semester in 2013 and Spain’s employment strategy would result in a substantial recovery and a fall in unemployment. In March 2014, a tripartite meeting had been held to exchange views on the measures that needed to be taken to promote growth and economic recovery. The Government had adopted numerous measures to promote youth employment, particularly in the fields of training and apprenticeship. The platform for tripartite social dialogue on the future of vocational training, launched in May 2013 had been a positive step. Although several agreements on training had been concluded between the social partners since 1992, the CEOE was open to dialogue to adapt them to current economic and social needs. The measures that the Government had taken showed that it was in compliance with the Convention and it should be encouraged to continue its efforts to consolidate growth and therefore return to full employment.

The Employer member of Belgium noted that the 2008 economic crisis had obliged all stakeholders to make major efforts to return to economic growth and employment. In that regard, the structural reform of the labour market that had been introduced was beginning to bear fruit. Both the planning of the reforms and their implementation had involved constant consultation with the social partners. However, it was understandable that the social partners did not always see eye to eye, especially with regard to measures that were painful. She believed that Article 3 of the Convention was not intended to undermine the sovereignty of States when taking the necessary decisions and that, in the circumstances, the Government had been in full compliance with the Convention.

The Employer member of Italy observed that Spain was pursuing the objectives of the Convention in an extremely challenging context, namely that of the ongoing economic crisis which was also affecting her own country, Italy. The structural weaknesses of Spain’s labour market had been magnified by the crisis, and could only be addressed within the framework provided by the EU Stability and Growth Pact. The detailed information provided by the Government representative amply demonstrated that the country was on the right track in terms of addressing the implementation of the Convention, with a focus on economic recovery. Moreover, the strategy of addressing unemployment and labour market dualism through a flexibility approach, which sought to increase employability while maintaining protections for workers, was commendable. Noting with approval the Government’s willingness to maintain channels of dialogue with the social partners, for the formulation and implementation of employment policies, she said that the Government should be encouraged to continue with the labour market reforms that had already begun to yield positive results.

The Worker member of Greece, also speaking on behalf of the Worker members of France and Portugal, recalled that the Convention set full, productive and freely chosen employment as the objective of social policy. In particular, Article 3 of the Convention established the requirement for social dialogue and the Committee of Experts regularly emphasized the importance of full cooperation with the social partners in formulating and implementing employment policies. Furthermore, the 2010 General Survey on employment instruments and the report of the Committee of Freedom of Association of March 2014 considered social dialogue to be even more essential in times of crisis. She regretted that the Government, while recognizing the vital constitutional role of trade unions and social dialogue, refused to consult the social partners on the adoption of laws and regulations which profoundly affected employment standards and the industrial relations framework. In particular, during the parliamentary debate on the adoption of the 2012 labour market reform, the Government had claimed that there was no need for social dialogue in order to validate the agreements. Regardless of the fact that in 2013 the Conference Committee had urged the Government to intensify its efforts to reinforce the social dialogue process, a number of laws and decrees had been enacted without prior social dialogue and the entire labour relations system had been modified unilaterally. In this regard, she regretted that the Ministry of Labour had ignored the letter of complaint from the two most representative trade unions calling for the restoration of social dialogue and that it had rejected the observations of the trade unions on three key employment policy initiatives, namely the 2015 annual employment policy plan, the employment activation strategy and the common portfolio for public employment services. She also deplored the fact that the employment training framework had been modified without seeking agreement with the social partners. She emphasized that the social partners were striving to maintain bipartite dialogue, as demonstrated by the 2015–17 Employment and Collective Bargaining Agreement, while the Government was sidelining tripartite social dialogue, undermining bipartite social dialogue and disrupting collective bargaining structures. In conclusion, she urged the Government to comply with the Convention.

The Employer member of Denmark said that, while it was true that the impact of the economic crisis on workers and their families, it was also necessary to address the need for labour market reform, as the Government had done. In view of all the information placed at the disposal of the Committee, it appeared that the Government was fulfilling its obligations under the Convention, and in a manner consistent with the principle of social dialogue. The Convention itself provided that employment policies should take due account of the agreements. She regretted that the Ministry of Labour had ignored the letter of complaint from the two most representative trade unions, without the Ministry of Labour having made any attempt to collaborate with the social partners. She regretted that the Ministry of Labour had adopted a number of laws and decrees without taking into account social dialogue. She regretted that the Ministry of Labour had not sought to consult social partners on the adoption of laws and regulations.
also needed to accept their responsibilities and participate in the much-needed reforms.

The Worker member of Argentina said that the Confederation of Workers of Argentina (CTA Autonomous) supported the Spanish trade unions in their fight to preserve what had been won and resist the loss of their rights. The report by the Spanish trade unions had found that the labour reform of 2012 provided not only for reinstatement, but also the payment of adequate compensation as one of the possible outcomes of unjustified termination of the employment relationship. Similarly, Ruling No. 119/2014 of July 2014 had set aside an appeal to find contracts involving a probation period of one year unconstitutional. The ruling had justified the purpose of such contracts on the grounds that the promotion of full employment prevailed over the rights potentially acquired during a probation period. It therefore departed from the conclusions of the report by the ILO tripartite committee which had examined the representation made in 2012 by the Spanish trade unions regarding the Termination of Employment Convention, 1982 (No. 138). It should be noted that the Constitutional Court had not considered the observations of the ILO supervisory bodies in response to the complaints made in 2012 by the Spanish trade unions concerning fundamental aspects of the reform, despite the fact that under article 96 of the Spanish Constitution, international treaties were part of national legislation and prevailed over domestic labour laws. The 2012 labour reform had introduced flexibility into the principle aspects of individual labour rights and significantly weakened collective bargaining, giving priority to enterprise bargaining over branch and regional agreements. During the first phase of the crisis, the destruction of jobs had mainly affected temporary contracts as a result of their greater flexibility. In the second phase, which had coincided with the adoption of the labour reform, the destruction of permanent jobs had increased considerably compared with temporary employment, in relation to previous years. The 2012 labour reform not only gave employers undisputed authority by reinforcing their unilateral power, thereby tipping the increasingly unstable balance between labour law and the free market, but also sought to weaken the trade unions. These rulings, in addition to reinforcing the breakdown of the consensus forged by the Spanish Constitution in relation to the system of labour relations, bolstered the subordination of workers’ rights to purely discretionary political considerations.

The Employer member of Colombia said that the case had been examined by the Conference Committee and by other supervisory bodies, and that their conclusions had always demonstrated the need to respond urgently to a severe crisis. The fact that 26 per cent of the active population and over 50 per cent of young people in Spain were unemployed, combined with the country’s severe public deficit and public debt, created a serious situation that called for urgent decisions. The Committee of Experts in its last meeting in 2015 had therefore called for further efforts to strengthen social dialogue. The Government had taken measures to reduce macroeconomic imbalances and to support the establishment and development of enterprises. The urgent measures adopted by the Government had been analysed in detail by the Constitutional Tribunal and in several EU forums. As a result of those measures, the number of affiliates of the social security system had increased significantly in May 2015. The OECD had revised upwards its economic growth forecast for Spain from 1.7 to 2.9 per cent for 2015, and from 1.9 to 2.8 per cent for 2016. Similarly, the unemployment rate was decreasing and agreements had been concluded between workers and employers on the appropriate regulation of wages.

The Government representative said that unemployment in Spain was a social problem that could not be disguised. The number of people employed in 1996 had been the same as in 1976, which showed that employment had not been created in the first 20 years of democracy. In 1996 a job creation process had begun, but had been insufficient. The trend had been reversed by the Government at the end of 2007, when unemployment had begun to rise. The Government had been obliged to resort to automatic stabilizers, but the crisis had turned out to be more serious than anticipated. In order to combat the situation, other types of measures had been adopted as part of the 2012 labour reform, the aim of which had been to promote job creation and improve the capacity of the labour market to adapt. Spain was in compliance with the Convention. In 2014, the country had topped the eurozone figures for unemployment reduction and job creation, demonstrating the positive impact of the 2012 labour reform and subsequent measures. In the last 12 months, unemployment had fallen by 488,700, the largest annual reduction since 2002. In addition, year-on-year employment had risen by 504,200, a rate of 2.97 per cent above growth in GDP. At the same time, the 2012 labour reform had made the labour market more flexible, but this flexible approach had not been at the expense of job security. Flexibility did not imply precarious work, but placed the emphasis on the worker rather than on the job. It was notable that permanent contracts were on the increase. In 2006, two in three contracts had been permanent, but by 2013 the figure was three in four, which meant that Spain was doing better than the EU average. The improvement in employment was thus not only quantitative, but also qualitative. Moreover, Spain was the second-highest OECD country in terms of spending on active and passive employment policies. One example was the PREPARA programme, an active policy measure that included economic assistance. More recently, the Employment Activation Programme, approved in December 2014, which targeted a category with special needs resulting from the crisis, as was the case with the long-term unemployed with family responsibilities who had exhausted their entitlements under the unemployment protection system at least six months earlier. These programmes were not a Spanish invention, but were based on the experience and possibilities offered by its European partners. It was over 15 years since there had been 24 months of continuous job creation in Spain. This reduction in unemployment was due not only to the actions of the Government, but also to social dialogue, which remained a constant feature of Spanish life.

The Employer members said that the discussion in the Conference Committee highlighted the need to develop active employment policies, in accordance with the requirements of Article 1 of the Convention. The information provided by the Government showed that it was complying with the Convention, starting with Article 1. In that context, the 2012 labour reforms had introduced urgent measures to generate employment and overcome the crisis. The policy pursued by the Government was in line with the EU’s Stability and Growth Pact, to which Spain had signed up. In the European context, the Government could not take action in isolation, but must coordinate with all other EU Member States. In accordance with Article 2 of the Convention, the Government’s employment policy was an integral part of a coordinated and coherent political and regulatory framework. The Employer members emphasized the importance of the rulings of the Constitutional Court which fully supported the labour reforms introduced by the Government, and implied that it was not for the Committee to make further comments on those reforms. In addition, other measures had been taken to give effect to the Convention, such as programmes aimed at the most vulnerable groups, including
young people and the long-term unemployed. At the same time, a gradual transformation of the vocational training system was under way to make it more effective in meeting employment policy objectives. All this was being done in full compliance with Article 3 of the Convention, which required consultation with the social partners on the measures to be adopted. Social dialogue was a means of reaching agreement, but not an end in itself. So far, results had been achieved, such as an agreement on proposals for tripartite negotiation to strengthen economic growth and employment, concluded on 29 July 2014, and an agreement on an activation programme for the long-term unemployed, concluded on 15 December 2014. Lastly, the COEO, the CC.OO. and the UGT were finalizing negotiations with a view to concluding the third agreement on employment and collective bargaining, which would establish guidance on wage increases, as well as on matters relating to job stability for young people. These agreements were specific examples of social dialogue on active employment policies. However, the content of such agreements was specific to each State and it was therefore not for the Conference Committee to analyse the manner in which they should be applied in practice. Various representatives of OECD and EU countries had commented positively on Spain’s labour reforms. As such, data reflecting these improvements should be included in the conclusions to the case, highlighting the progress achieved, while recognizing that there was room for improvement.

The Worker members emphasized that the numerous interventions on the case offered clear evidence that the Committee was amply fulfilling its role of examining the application of the Convention. They also welcomed the importance attached by Employers to joint collective bargaining on employment issues. Since the adoption of the Convention in 1964, the world of work had had to face two major crises, one at the end of the 1970s and another during the 1980s, which had resulted in mass unemployment in industrialized countries, and the growth of inequality in a context of globalization and deregulation in which social standards had become the poor relations of the economy. In these circumstances, the ILO had taken the initiative to set up the World Commission on the Social Dimension of Globalization and to adopt the 2008 Social Justice Declaration. In 2009, in response to the current global financial and economic crisis, the ILO had adopted the Global Jobs Pact with the support of all of its constituents. The Pact, the objective of which was to bring the economy back to growth, emphasized the need for consultation on employment and collective bargaining procedures. The Committee noted the active labour market measures prioritized in the European Union employment guidelines. In accordance to the Convention, active employment policies had to play a fundamental role in macroeconomic policies, with particular attention being paid to the formulation and implementation of these policies. The examination of the Convention therefore went further than formal recognition that social policies did not exist, and necessarily entailed an examination of the substance of employment policy. While it was in no way intended to question the existence of European governance, the fact remained that the EU was not above ILO standards, nor was it above the European Social Charter. In the discussion on this case, the Worker members had felt that it was necessary to follow the conclusions adopted by the Committee in 2013. They accordingly asked the Government to return to the path of tripartite social dialogue and to discuss with the social partners the formulation of an employment policy that was in conformity with the objectives of the Convention. Those consultations should be held before any decision was taken so that there was a genuine opportunity to make counter-proposals. Under Article 2 of the Convention, the Government was required to continue to assess with the social partners the results of the employment policy and of the amendments to labour market legislation. It should also endeavour to ensure that there was broad consensus on programmes related to training, especially for workers with particular difficulties in finding employment and young people, based on strong public services. The Worker members concluded by calling on the Government to accept the technical assistance proposed in 2013 and to inform the Committee of Experts at its next meeting of the steps taken to meet its obligations under the Convention.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative on the discussion that followed on the issues raised by the Committee of Experts related to the measures adopted to mitigate the impact of the crisis, the situation of a persistent unemployment which particularly affects young people, and the labour reforms adopted which included programmes to coordinate educational and training measures with employment opportunities and to improve skills levels.

The Committee noted the information provided by the Government representative concerning the comprehensive economic and employment measures taken by the Government to overcome the jobs crisis and the labour reforms initiated in March 2012 in line with the concept of flexicurity prioritized in the European Union employment guidelines. The Committee noted the active labour market measures taken, such as the Spanish Employment Activation Strategy 2014–16, the Single Employment Portal and the Common Portfolio of Services adopted in January 2015 to promote the use of public and private employment services. Youth em-
employment remained extremely high and an Extraordinary Programme for Employment Activation was adopted in December 2014 specifically targeting workers whose needs arising out of the jobs crisis were particularly acute, such as the long-term unemployed with family responsibilities. The Government representative also provided information on positive employment data indicating that, in the first quarter of 2015, the number of unemployed persons fell by 488,800 when compared with the previous year, and that 504,200 jobs were created in that same quarter.

The Committee took note of the complete information provided by the Government on the active employment measures that were being implemented in the framework of the Economic and Employment Strategy adopted in the context of the European Union to combat unemployment and the social consequences of the crisis. Taking into account the discussion, the Committee requested the Government to:

- continue a constructive social dialogue, taking fully into account the experience and views of the social partners with their full cooperation in formulating and enlisting support for such policies concerning the objectives expressed in Article 1 of the Convention;
- consistent with the Convention, evaluate, together with the social partners, the results of employment policy and take such steps as may be needed including, where appropriate, the establishment of programmes for the implementation of the employment policy;
- focus on guaranteeing the largest consensus on programmes linked to vocational training and continue the dialogue with the social partners on vocational training for youth and the unemployed on the basis of strong public services; and
- submit a report to the Committee of Experts in 2015 on the application of the Convention.

Minimum Age Convention, 1973 (No. 138)

PLURINATIONAL STATE OF BOLIVIA (ratification: 1997)

A Government representative expressed the unwavering commitment of the Plurinational State of Bolivia to eradicate the causes of forced and hazardous labour and the labour exploitation of children and young persons, through the development and implementation of policies, plans and programmes at all levels of the State. The Political Constitution of the State and the Children’s and Adolescents’ Code prohibited forced labour and child exploitation, as well as the performance of any work without the consent and fair compensation of children. The General Labour Act and the Code fixed the minimum working age at 14 years. Social reality in much of the world was that children and young persons, because of necessity, entered work before they reached the minimum age. ILO reports indicated that 10 per cent of the world population of children and young persons were engaged in work and that 5.4 per cent carried out hazardous work which entailed a violation of their rights. In Latin America and the Caribbean the rate of child labour was 8.8 per cent and the Plurinational State of Bolivia was not spared from that reality. It was necessary to take action to raise visibility of and combat this situation. It should also be emphasized that the causes were structural and multiple and public policies for its effective and progressive eradication were therefore necessary, taking into account the fact that informality contributed to the extremely vulnerable everyday situations in which each child and young person continued to experience. Since 2006, the Plurinational State of Bolivia had been developing social and economic policies that guaranteed all its inhabitants a decent and better life, with an increase in the gross annual domestic product of more than 5.8 per cent over the last nine years. The national minimum wage had also been raised from US$63 in 2004 to US$237 in 2015, that is, an increase of 400 per cent. The population living below the extreme poverty line had decreased from 45 per cent in 2000 to 18 per cent in 2015.

He referred to the following examples of public policies adopted for the benefit of children and young persons: (i) the Juancito Pinto allowance, which provided a monetary incentive for primary school pupils (in 2015 this had been extended to secondary school students) which contributed to reducing the school drop-out rate to 1.5 per cent; (ii) the new Education Act; (iii) the eradication of illiteracy; (iv) free school breakfasts in the public education system, thereby reducing the rates of child malnourishment; (v) the Juana Azurduy allowance for pregnant women, which was a payment that reduced the rates of child and maternal mortality and benefited young workers during pregnancy; (vi) the supply of computers to educational centres and schools and of laptops to secondary school students to improve the quality of education; and (vii) the installation of internet services in the education system and in urban and rural areas. In this context, the Code which had been adopted set the minimum age for work at 14 years. In addition, an exception had been established of 12 years for work carried out by children for another person and 10 years for work carried out by children on their own account, in both cases, special prior authorization from the parents or guardians and the State authorities, provided that the conditions that protected children’s rights were ensured. Child exploitation and forced and hazardous labour were also prohibited. The Code envisaged a plurinational plan for children and young persons which incorporated the programme for prevention and social protection for working children under 14 years of age, under which support was to be provided to families in extreme poverty, with the commitment to provide work to the parents of underage workers. Furthermore, among other initiatives, mechanisms had been established to further promote education, training and awareness raising among families and society when the cause of work was extreme poverty. The exception to the minimum age was provisional, with a view to overcoming this problem by 2020. With the aim of protecting children, the following measures had been adopted: the right to receive a salary equal to the national minimum wage, the right to short- and long-term social security, the promotion of the right to education, and a 30-hour working week for work carried out for a third party by children aged 12–14 years, with two hours of that work to be dedicated to education. The Plurinational State of Bolivia was not contravening the Convention, but was seeking to broaden protection of child workers under the new Code, which was an exceptional measure that contributed to the application of the public policies aimed at eradicating child labour. The Government would seek international cooperation so that other countries, particularly those in the region, could share best practices for the eradication of child labour. Conscious of the work that needed to be undertaken over the following five years, the Government expressed its commitment and would make good use of the experience of the international community and the ILO. The Government invited the Committee of Experts to adopt a comprehensive approach in its analysis of the situation of child labour in the country, which took into account all the measures and public policies that had been implemented over the past nine years for children and adolescents.

The Employer members emphasized that the Committee of Experts had made observations on seven occasions on the manner in which the Plurinational State of Bolivia was applying the Convention. It was a situation of the utmost gravity and involved three issues. First, the Com-
mittee of Experts deplored the fact that the new Children’s and Adolescents’ Code amended section 129 of the previous Code by reducing the minimum age for employment to 10 years in the case of own-account work and 12 years for children working for a third party, which was contrary to Article 7(4) of the Convention. The Committee of Experts emphasized the distinction made between children working on their account and children working for a third party. The 2012 General Survey on the fundamental Conventions stated that equal protection should be given to children in both situations, since many children working on their own account were engaged in the informal economy and under hazardous conditions. Second, even though the Convention contained a flexibility clause in Article 7(1) and (4) enabling children between 12 and 14 years of age to perform light work, provided that it was not harmful to their health and did not prejudice their school attendance or vocational training, the new Code only allowed this possibility from 14 years of age. The Employer members considered that the age for admission to light work should be reduced. Third, the legislation did not contain provisions obliging employers to keep registers, as provided for in Article 9(3) of the Convention. The existence of data on the number of minors in work would enable the Government to perceive the magnitude of the problem of child labour. According to the 2010 ILO Global Report on Child Labour, 23 per cent of children between 5 and 14 years of age were engaged in economic activity and 60 per cent of children in the rural sector were working (14 per cent in hazardous work). It was a widespread phenomenon affecting more than 500,000 children. There was a significant lack of conformity between the legislation and the Convention which needed to be rectified rapidly. However, any amendment of the legislation should be effected in full consultation with the most representative workers’ and employers’ organizations. There was also a need for the Government to adopt a national plan for the progressive elimination of child labour through social dialogue and to strengthen labour inspection in both the formal and informal sectors. In conclusion, the Employer members emphasized the importance of having recourse to the technical assistance of the Office in that regard.

The Worker members emphasized that the present case concerned the minimum age for admission to employment, light work and the keeping of registers. Prior to 23 July 2014, the Children’s and Adolescents’ Code, which set the minimum age for admission to employment at 14 years but did not provide any mention of the exception for children working for a third party, specified the minimum age for children carrying out that type of work, which was not self-employed and was not engaged in hazardous work, for children aged 12 to 14 years. This minimum age had been in conformity with the Convention. The 2012 General Survey on the fundamental Conventions stated that the exceptions to the minimum age of 14 for agriculture and construction sectors as hazardous, it established an exception for children carrying out that type of work in a family or community undertaking, which was in violation of the Convention, which did not allow such a distinction and prescribed a higher minimum age for hazardous work (18 years). With respect to the Government’s argument that labour inspection would better protect children in the workplace if they were covered by the General Labour Act, the Worker members were of the view that the Government did not need to only the law had no capacity to monitor the working conditions of an estimated 850,000 children working nationwide, in addition to adult workers, considering that the national inspectorate only had 69 inspectors. Therefore, reducing the minimum age, while maintaining the same number of labour inspectors, would have an adverse effect and increase the exploitation of children. The Worker members indicated that admission to employment. While the Worker members could understand the Government’s argument that such measures for the reduction of the minimum age were essential to supplement the income of the poorest families, they did not agree with that view. In this regard, in the 2012 General Survey on the fundamental Conventions, the Committee of Experts had expressed its concern at the distinction made between children working on their account and children working for a third party. The 2012 General Survey on the fundamental Conventions stated that equal protection should be given to children in both situations, since many children working on their own account were engaged in the informal economy and under hazardous conditions. Second, even though the Convention contained a flexibility clause in Article 7(1) and (4) enabling children between 12 and 14 years of age to perform light work, provided that it was not harmful to their health and did not prejudice their school attendance or vocational training, the new Code only allowed this possibility from 14 years of age. The Employer members considered that the age for admission to light work should be reduced. Third, the legislation did not contain provisions obliging employers to keep registers, as provided for in Article 9(3) of the Convention. The existence of data on the number of minors in work would enable the Government to perceive the magnitude of the problem of child labour. According to the 2010 ILO Global Report on Child Labour, 23 per cent of children between 5 and 14 years of age were engaged in economic activity and 60 per cent of children in the rural sector were working (14 per cent in hazardous work). It was a widespread phenomenon affecting more than 500,000 children. There was a significant lack of conformity between the legislation and the Convention which needed to be rectified rapidly. However, any amendment of the legislation should be effected in full consultation with the most representative workers’ and employers’ organizations. There was also a need for the Government to adopt a national plan for the progressive elimination of child labour through social dialogue and to strengthen labour inspection in both the formal and informal sectors. In conclusion, the Employer members emphasized the importance of having recourse to the technical assistance of the Office in that regard.

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while they understood the Government’s argument, the conclusions on this case would have to be firm concerning the action to be taken and the time frame, since no derogation was possible for fundamental issues such as child labour and minimum age.

The Employer member of the Plurinational State of Bolivia said that despite the efforts of the labour sector in his country (as in many others) operated under very particular circumstances, in which, for example, underage children were obliged to work in order to help their families, it was obvious to the Confederation of Private Employers of Bolivia (CEPB) that the Government had entered into a commitment to eliminate all forms of child labour that did not conform to the principles of the ILO. Any amendments made to the provisions of section 58 of the General Labour Act or to section 52 of Regulatory Decree No. 224, which specified that the minimum age for apprenticeship was 14 years, had to comply strictly with Articles 2(4) and (5) and 5 of the Convention, which essentially provided that: (i) the minimum working age of 14 years was non-negotiable; (ii) the Plurinational State of Bolivia’s economy and educational facilities would need to be considered insufficiently developed; and (iii) employers’ and workers’ organizations had to be consulted first (which had regrettably not been the case). There was no child labour in Bolivia’s formal sector represented by the CEPB, because no legally constituted enterprises under the supervision of the authorities recruited minors. On the other hand, the informal economy which, in view of its anonymity, was able to take advantage of the poverty of certain segments of the population and deny them decent jobs, did indeed resort to child labour in order to minimize operating expenses, labour costs and taxation. That being so, keeping registers as a means of identifying child workers, as required under Article 9(3) of the Convention, was especially necessary if the informal sector were to be monitored properly. Consequently, one of the first steps that needed to be taken in tackling the child labour problem was to develop a set of formalization policies under which the labour legislation could be applied to the informal economy, which currently employed over 70 per cent of the country’s workers. The temporary nature of the lower minimum age for work (that is, 5 years) could not justify the legislation not being in conformity with the Convention. Finally, as the promotion and effective practice of tripartism was a fundamental principle of the ILO, and given the fact that there had been no such tripartism when the Government decided to lower the minimum working age, the consultation of workers and employers was mandatory under Articles 2(4) and (5) and 5 of the Convention, the CEPB was fully prepared to collaborate with the Government in the planning of ways and means of bringing the country’s legislation into full conformity with the provisions of the Convention.

The Worker member of the Plurinational State of Bolivia said that the Child Workers’ Confederation (COB), the most representative trade union organization, had not participated in drafting the Children’s and Adolescents’ Code. However, the COB’s list of claims addressed the issue of amending the General Labour Act, including setting the minimum age for admission to work at 14 years. Although the Government had acted in good faith, the workers refused to take a step backwards in labour protection and deplored the fact that any flexibility should be sought in the application of international Conventions. Priority should be given to reforming the law in order to resolve the issue. The Government had taken several steps to improve the situation of workers. More should be done to that end, but with the agreement of workers and employers. He requested technical assistance from the Of-

fice, particularly in order to strengthen labour inspection, as many enterprises did not respect workers’ rights.

The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), made special mention of the “Regional Initiative for Latin America and the Caribbean Free of Child Labour” which had been established with the support of governments, employers and workers of the region, with a view to stepping up the pace of the reduction of child labour and achieving the goal of its elimination by 2020. GRULAC noted that the actions taken by the Government were set out in its Constitution, which established the duty of the State, society and the family to safeguard the best interests of children and young persons. She also emphasized the information provided by the Government indicating that the Code had been drawn up on the basis of dialogue with civil society and the active participation of the latter, including associations supporting children and young persons. GRULAC observed that the Government’s initiative was temporary and geared to the elimination of the causes of work by children and young persons. It should result in better living conditions for them, as well as eliminating the need for such work. She emphasized the progress achieved by the Government in reducing poverty and, consequently, in tackling the structural causes of child labour. She trusted that the Government would continue implementing policies for the progressive reduction of child labour, with a view to its effective elimination, in accordance with the objectives of the Convention.

The Worker member of Uruguay said that the Uruguay-an trade union movement had followed with much interest the social and political progress achieved in the country. The Uruguayan trade union movement was aware of the recent progress made, as indicated in the Government’s detailed account, and was not indifferent to the general political developments taking place throughout the Americas to promote international labour standards through negotiation and social dialogue. However, as the trade union movement was independent, it was free to express its disagreement with the Government’s position. Firstly, he deplored the fact that the social partners had not been invited to participate in the drafting process of the new Children’s and Adolescents’ Code. Secondly, although the consultation of workers and employers was mandatory under Articles 2(4) and (5) and 5 of the Convention, the CEPB was fully prepared to collaborate with the Government in the planning of ways and means of bringing the country’s legislation into full conformity with the provisions of the Convention.
raise the minimum age. While the national legislation provided for a compulsory schooling of up to 12 years, the new Code would hinder the ability of children to attend school. He recalled that the Convention permitted light work for persons between 13 and 15 years of age only where such work did not threaten children’s health and their education and training. He expressed the view that hazardous workplace conditions in the country would not meet the definition of the term “light work” as provided for in the Convention. He supported the observation of the Committee of Experts, which urged the Government to take immediate measures to ensure the amendment of section 129 of the new Code, so that the minimum age was at least 14 years, in conformity with the age specified by the Government at the time of ratification and with the requirements of the Convention in this regard.

The Government member of Nicaragua commended the steps taken by the Government to eliminate child labour. Inequality, poverty and the unequal distribution of wealth made it difficult to eradicate what was a structural problem. The measures taken by the Government had been highlighted during the Human Rights Council’s Universal Periodic Review in terms of the social and economic progress made. Work was currently under way to adopt a national five-year plan to prevent and progressively eradicate the worst forms of child labour and to protect young workers. The measures taken should be considered as a whole, since structural problems could not be eliminated in isolation. In the case of child labour, the viewpoints of children, families, communities and the nation should be kept in mind. Consideration should be given not only to the commitments made by the Government, but also to the action it took.

The Government member of the Bolivarian Republic of Venezuela, aligning himself with the statement made on behalf of GRULAC, took note of the commitment of the Government to eliminate child labour. The national legislation on the issue had been drafted with the active participation and in dialogue with civil society. His Government had no doubt that the Government of the Plurinational State of Bolivia would pursue its child and adolescent protection policies with a view to eradicating the causes of child labour, and he hoped that the Conference Committee would not overlook the positive aspects of the explanations and arguments put forward by the Government. He trusted that the conclusions reached would be objective and balanced.

The Government member of Ghana said that child labour was a threat to the progress of any country which faced challenges, as well as to the growth of a well-trained and capable future global workforce. The phenomenon of child labour was deplorable and should be condemned everywhere. Child labour was often justified by the immediate need to relieve poverty and not the long-term development and best interests of the child. While recognizing that the challenge with child labour in various sectors in Ghana was a function of poverty, he provided information concerning the projects and measures adopted to confront the situation, including through tripartism and working closely with the ILO, with a particular focus on the fishing and cocoa sectors and education initiatives. To permit and certify 10-year-olds, as had been done by the Government of the Plurinational State of Bolivia, was a retrograde step, and he urged the Government to revert to the age of 14 as the minimum age for work, in keeping with the ratification of the Convention.

The Government member of Switzerland expressed concern regarding the recent changes in Bolivian law to legalize child labour from the age of ten years. Act No. 548 of 17 July 2014 was incompatible with the Convention, as Switzerland had already pointed out during the 20th Session of the Human Rights Council’s Universal Periodic Review. Lowering the legal minimum age for work sent the wrong message to families and children, as the employment of children under the age of 14 was not consistent with the requirements of a proper education that would enable children to break the cycle of poverty and give access to different opportunities. He requested the Government of the Plurinational State of Bolivia to bring its legislation into line with the Convention and to take measures to promote the rights of the child.

The Government member of Egypt said that there was no doubt that the Bolivian Government had the political will to stop the exploitation of children, as demonstrated by the Government’s ratification of the Convention and the legislation adopted in 2014 preventing children’s exploitation in work. The international community was responsible for protecting children in the world of work, and the Bolivian Government should have the opportunity to continue its efforts in that respect.

The Government member of Cuba expressed support for the statement made by GRULAC. She emphasized that the information provided by the Bolivian Government demonstrated its firm political will to make progress in eradicating child labour and to fulfill the law reflected in the Convention, as arising from the application of the Convention, as endorsed by the Bolivian Constitution, which guaranteed the best interests of children and young people. This political will was also reflected in the projects that the Bolivian Government had developed to eradicate child labour, as indicated in the report of the Committee of Experts. They included the Triple Seal programme of incentives for cooperation, which required enterprises to demonstrate that they did not use any form of child labour in order to be eligible for certain benefits; the Action Plan 2013–17 in conjunction with UNICEF; and the introduction of awareness-raising measures and training. She recommended that account should be taken of the progress made by the Bolivian Government in eradicating poverty and fighting for social inclusion, as well as social programmes that had a bearing on eradicating child labour.

The Government member of Pakistan thanked the Government for its commitment to promoting international labour standards and recognized that the Bolivian Government was striving to expand its range of protection of the rights of children and young persons and was making efforts to reduce structural elements that contributed to extreme poverty. The legislative Code under discussion aimed to prohibit dangerous work or work activities that prejudiced the health or moral of children and to halt those which jeopardized their educational prospects. It strove to protect children who had otherwise been outside legislative protection. While he noted with satisfaction that public education and health facilities had improved in recent years, he urged the country to take into account the valuable input of the social partners at the national and international levels to improve the law and its implementation and he welcomed the Government’s readiness in that regard.

The Government representative said that the problem would not be so complex if the current capitalist global economic system did not place such overriding importance on profits which gave rise to and facilitated this type of exploitation of boys and girls. Child labour was a social reality and laws would not make the situation worse. On the contrary, the law reflected this reality. He recalled that the Plurinational State of Bolivia had taken the practical steps already mentioned to eradicate child labour. Those measures had produced positive results, such as a reduction in malnutrition and the end of illiteracy, as also confirmed by international indicators. Moreover, the recent legislation had only reduced the working age for light work and work under state control. The sub-
ject of child labour had been controversial since the dark days of neoliberalism, when his people had been cruelly exploited. But since 2006, with the Constituent Assembly and the new Political Constitution, the debate had begun on child labour. The President, Evo Morales had indicated that it was necessary to govern for the people, and part-take in the sacred defence of boys and girls, and the defence of their rights. He also recalled that delegations of the workers concerned had called for the recognition and protection of their rights at work and, referring to the statement of GRULAC, he highlighted the political will of the Bolivian State to safeguard the rights of children and end child exploitation and child labour. That was the undertaking. President Evo Morales had given instructions to improve the situation of children and to resolve their problems of health, nutrition and education. The legislative amendments adopted were therefore simply an exception and were intended to protect these working children, who were also heads of household, with the ultimate aim of eradicating child labour.

The Worker members observed that a law that authorized child labour could not be justified as a means of combating the problem. Certain measures referred to by the Government representative of the Plurinational State of Bolivia were positive, but would be more effective if the law on child labour was restored. Authorizing exceptions, even temporary ones, to the principles contained in Convention No. 138 could be interpreted as legitimization by the International Labour Conference of an opt-out system, which would send the wrong signal to countries in situations of poverty or whose economies were in transition. This backward step would call into question the credibility of international action against child labour. The new Children’s and Adolescents’ Code was not in conformity with Convention No. 138, as it permitted work by children below the minimum age specified by the Convention. That was a step in the wrong direction. More investment was needed in the areas of public education and social protection. The Government should: (1) withdraw the contentious legislation and, after consultation with the social partners, prepare a new law that was in conformity with the provisions of the Convention; and (2) strengthen human and technical inspection resources and training for labour inspectors in order to take specific action in law and practice. It could show its willingness by accepting ILO technical assistance, which could begin by preparing, in conjunction with the social partners, a time frame for actions to bring the law into conformity with the Convention. The Government should also inform the Committee of Experts at its next session of the specific steps taken.

The Employer members emphasized that, even if the Bolivian Act was temporary, it was in violation of the Convention, which was one of the fundamental Conventions of the ILO. With regard to dialogue with civil society, they emphasized that the Convention required consultation with the most representative organizations of workers and employers, and those organizations had not been consulted when the new Act was passed. Various points should therefore be reflected in the conclusions. First, the Government of the Plurinational State of Bolivia should be urged to bring its legislation into conformity with the Convention and to hold prior effective consultations with the most representative organizations of employers and workers so that steps to eradicate child labour were the fruit of tripartite dialogue. They also emphasized the importance of developing a national plan, in consultation with the social partners, that took into account primary and secondary education, which were the only ways out of poverty. It was also necessary to strengthen labour inspection, which, in order to be effective, needed not only human resources but also a strategy to extend coverage to the informal sector. The Government should also be urged to accept ILO technical assistance for the eradication of child labour.

Conclusions

The Committee took note of the oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that followed relating to the 2014 amendments to the Children’s and Adolescents’ Code which lowered the minimum working age from 14 to 10 years for self-employed workers and to 12 years for those children in an employment relationship, although the Government had specified a minimum age of 14 years for admission to employment or work upon ratification of Convention No. 138. These amendments also allowed all children under the age of 14 to undertake light work without setting a lower minimum age for such work. The discussions had also highlighted that these amendments would legally authorize children between 10 and 14 years to work, in addition to the approximately 800,000 children between 5 and 17 years of age who were in a child labour situation according to the last Child Labour Survey of 2008 which had been carried out by the National Institute of Statistics (INA) with ILO support.

The Committee also noted the detailed information provided by the Government outlining the economic and social policies put in place since 2006 which had produced positive results, such as a reduction in malnutrition and the end of illiteracy. The Government had also referred to a host of public policies adopted for the benefit of children and adolescents. In this context, the Children’s and Adolescents’ Code set a minimum working age of 14 years, but established an exception of 12 years for work carried out by children in an employment relationship, and of 10 years for work carried out by self-employed children. The exception to the minimum age was provisional, with a view to overcoming the problem of providing support to families in extreme poverty by 2020. The Government had stated that it did not contravene the Convention, but sought rather to broaden the protection of child workers under the new Code. Finally, the Committee noted the Government’s statement that it would seek international cooperation so that other countries, particularly those in the region, could share best practices for the eradication of child labour.

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

- repeal the provisions of the legislation setting the minimum age for admission to employment or work and light work, in particular sections 129, 132 and 133 of the Children’s and Adolescents’ Code of 17 July 2014;
- immediately prepare a new law, in consultation with the social partners, increasing the minimum age for admission to employment or work in conformity with Convention No. 138;
- provide the labour inspectorate with more human and technical resources, as well as training, with a view to a more efficient and concrete approach in relation to implementing Convention No. 138 in law and practice;
- avail itself of ILO technical assistance to bring the legislation into compliance with the Convention; and
- report in detail to the Committee of Experts for its upcoming session.

The Government representative expressed disagreement with the conclusions and reserved the right to analyse them and send his observations at a later stage.
decisive steps taken by the Government. With respect to legislation, a major overhaul of the occupational safety and health (OSH) system had taken place in 2012 with the enactment of the Occupational Safety and Health Act No. 6331 (OSH Act), which had been prepared in close consultation with the social partners, taking into consideration the outcome of a high-level meeting held in Geneva in 2011. The OSH Act was based on international conventions and directives. In addition, 36 implementing regulations and six communiqués had been issued. The new OSH legislation applied to all activities and workplaces in the public and private sectors, with limited categories of workers (armed forces and police, disaster and emergency activities, domestic services, self-employed persons, and prisoners receiving training under rehabilitation programmes) excluded from its scope. In order to apply the legislation effectively, social dialogue had been institutionalized through the establishment in 2005 of the National Occupational Safety and Health Council. He added that he had found it strange to hear comments about the insufficient frequency of meetings of the Council from trade union confederations that were not actively participating in it. The Council had adopted the Third National Occupational Safety and Health Policy Document and Action Plan for 2014–18, the objectives of which were: improving OSH activities, particularly in the agricultural and public sectors; reducing the number of accidents, especially in the metal, mining and construction sectors; improving statistics; determining the most common occupational diseases and collecting diagnostic data on them; and fostering a “safety culture”. The Government would communicate detailed information on the activities of the Council in its next report on the application of the Convention. The speaker then replied to questions raised by the Committee of Experts in its observations. Regarding the roles and responsibilities of employers and occupational safety experts, the OSH Act dedicated one chapter to this matter. With respect to activities conducted in the mining, metal and construction sectors, a project had been carried out between 2010 and 2012 to improve health and safety conditions in small and medium-sized enterprises (SMEs) in these sectors. There was also ongoing cooperation with the ILO to improve OSH in the mining and construction sectors. In this context, a National Tripartite Meeting on Improving Occupational Safety and Health in Mining had been organized in October 2014. This meeting had led to a technical assistance project being set up in January 2015, which aimed to develop a plan of action to improve working conditions in mining. As regards the functioning of the inspection system, the government was entrusted with verifying compliance with OSH legislation and carrying out inspections. The Board conducted at least two inspections every year targeting mine and construction workplaces. Annual reports on the Board’s activities were regularly communicated to the ILO in the context of reporting on the application of the Labour Inspection Convention, 1947 (No. 81). A series of legislative amendments had been adopted recently, covering the following matters: strengthening the authority and responsibilities of occupational physicians and occupational safety experts; introducing incentives and disincentives for enterprises with positive or negative OSH track records; consideration of OSH aspects in public procurement procedures; allowing pressure to overproduce to be deemed a legitimate reason for stopping work; working hours in the miners’ O Convention to be limited to 37.5 hours per week, 7.5 hours daily; and OSH matters to be part of compulsory curricula at certain universities. In addition, the duration of paid annual leave for miners had been increased by four days and the minimum wage for miners had been doubled. In order to promote a safety culture widely, various activities had been undertaken. They included: OSH guidelines for different sectors, a national campaign, and workshops and seminars to promote the OSH Act, training programmes for SMEs, and the development and dissemination of promotional materials (letters, booklets and advertisements). In addition, Turkey had hosted regional and international conferences, including the 19th World Congress on the Safety and Health at Work held, in September 2014 in Istanbul. The Government had found it strange to hear comments about the insufficient response to the public outrage and pressure from the trade unions, and hoped that, together, they would take all necessary measures to bring laws and practice into compliance with the Convention. They also welcomed the tripartite consultations on OSH in mines, ILO technical assistance and the roadmap. The OSH Act had been adopted in 2012 and, while it had been clearly stated that the applicability to public sector workers would only begin in the last two years, Turkey had ratified the Safety and Health in Construction Convention, 1988 (No. 167), Safety and Health in Mines Convention, 1995 (No. 176) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), which symbolized the Government’s commitment to work on the matter. At the diplomatic level, Turkey had placed the issue of safer workplaces among the employment priorities of the Turkish presidency of the G20. In conclusion, the Government representative once again expressed his disappointment in the strongest terms at the inclusion of Turkey on the agenda of the Committee, despite the measures taken. The speaker considered that this decision was unfair and inconsistent. Nevertheless, the Government had taken this opportunity to explain recent developments, albeit in a limited amount of time. The speaker reiterated that the Government was committed to improving OSH conditions for the well-being of the people, and that it was also determined to continue its efforts towards effective implementation of legislation and a safety culture in society.

The Worker members expressed their appreciation for the Government’s determination to protect workers’ safety and health. Although this was the first time the Committee of Experts’ observations of Turkey’s compliance with the Convention had been discussed, it was particularly appropriate, after the major mine accident in Soma, which had exposed the country’s challenges regarding OSH. They proceeded to give statistical information from the National Statistical Institute regarding workplace accidents in general, as well as at the Soma and Ermenek mines. By ratifying Convention No. 155, as well as Conventions Nos 167 and No. 176, the Government had accepted the responsibility for establishing a safe working environment. While welcoming these ratifications, the Worker members considered that it was an appropriate response to the public outrage and pressure from the trade unions, and hoped that, together, they would take all necessary measures to bring laws and practice into compliance with the Convention. They also welcomed the tripartite consultations on OSH in mines, ILO technical assistance and the roadmap. The OSH Act had been adopted in 2012 and, while it had been clearly stated that the applicability to public sector workers would only begin in July 2016. Section 13 of the Act elaborated a procedure to be followed when workers were exposed to serious and imminent danger, which could only be bypassed in the event of unavoidable danger, suggesting that if it would occur before a worker could remove himself or herself, Workers should be allowed to remove themselves when they had reasonable justification to believe that the work situation presented an imminent and serious danger, whether an accident had occurred or not. Furthermore, although the Act provided for the establishment of OSH committees to ensure the joint liability of the main employer and sub-employers when outsourcing contracts exceeded six months. Trade unions had not been sufficiently consulted in the development of legal measures and OSH policies and, therefore, successive action plans have been deeply flawed and ineffective. The National Action Plan 2014–18 did little more than repeat previous action plans that had failed to achieve their goals. The Government had failed to moni-
tor workers’ health in order to detect and register occupational diseases, which was essential in developing appropriate OSH action. Although an adequate and appropriate system of inspection was also required to ensure the enforcement of OSH legislation, the already insufficient number of labour inspectors had been decreasing drastically and were not properly enforced. A major factor in the high number of workplace accidents was the increase in subcontractual employment arrangements which allowed employers to decrease direct labour costs and circumvent employment protection legislation. Labour inspections were inadequate and subcontracted workers were forced to work under unhealthy and insecure working conditions. Worker representatives played a key role in ensuring that effective OSH policies were adopted and implemented, and, therefore, along with employers, they were relied upon for the successful application of national OSH infrastructures. It was therefore important that they could exercise their right to freedom of association in an atmosphere free of violence and repression. As long as the Government had not taken sufficient measures in law, policy and practice to effectively implement the Convention, Turkish workers would continue to suffer.

The Employer members expressed their appreciation for the detailed information that the Government had provided. The tragedy in the Soma mine had been devastating, and health and safety of mine workers was important. However, in order to be fair and balanced, the Committee could not let one tragedy eclipse their discussion of national law and practice. Commendably, Turkey had ratified the main ILO OSH Conventions, and its inclusion on the Committee’s list of cases provided a constructive opportunity to discuss the measures it had been taking to implement Convention No. 155 in law and in practice, as discussion of cases on the list did not always entail a failure to implement a Convention. She recalled the 2010 observation of the Committee of Experts, which had requested information concerning measures to adopt a bill on OSH. Following that observation, the Government had adopted the OSH Act in 2012 and had enacted new policies and measures, including sanctions and penalties, in that respect. Under the Act, the National OSH Council, in which the social partners participated, had been developed and had adopted a new action plan that set safety targets for the next four-year period. In addition, in 2014, the Government had initiated a technical assistance project on OSH with ILO assistance and support from the social partners. An important positive outcome of the 2014 National Tripartite Meeting on Improving Occupational Safety and Health in Mining, which had included the participation of the ILO and the social partners and involved the adoption of a roadmap concerning improvements to OSH in mines, and which could apply to other industries. The Government had agreed that a research institution would carry out research on OSH in the context of subcontracting arrangements in certain high-risk sectors.

Turning to the concern that had been raised by the Committee of Experts in its 2014 observation with respect to the scope of the new Act, the Employer members encouraged the Government to continue to provide information to explain whether those exclusions existed and, if so, the rationale behind them. Noting the concerns regarding the participation of the social partners in the new OSH Council, they invited the Government to provide information to the Committee of Experts at its next session and stressed the importance of social dialogue to the goal of achieving full compliance with the Convention. With respect to the recruitment and role of occupational physicians and occupational safety experts (OSEs), they understood from the Government’s submission that it had provided a clarification concerning the different roles played by employers and OSEs, and that the Government had taken measures to strengthen occupational safety. They encouraged the Government to share information concerning that positive measure with the Committee of Experts. Regarding the Committee of Experts’ observations of deficiencies in the Turkish OSH system, the Employer members noted that the system was still being set up in the country and they encouraged the Government to continue its efforts, in consultation with the social partners. With respect to the concerns that had been raised regarding the establishment and application of procedures for notifying occupational accidents and diseases and producing statistics, the Employer members encouraged the Government to take measures, in consultation with the social partners, to improve its notification procedures and to provide the Committee of Experts with the statistics requested. To conclude, they welcomed the Government’s ongoing efforts, together with the social partners, to improve safety and health at work, as had been demonstrated at the National Tripartite Meeting to overcome gaps in application in practice. The positive measures taken by the Government should be highlighted, and the Employer members encouraged the Government to continue its efforts, in consultation with the social partner and to continue its long-standing collaboration with the ILO.

The Worker member of Turkey conveyed his condolences to the families of workers who had lost their lives in occupational accidents in Turkey. He welcomed the enactment and enforcement of the OSH Act which, apart from some exceptions, covered all workplaces and workers in both the private and public sectors. However, in view of the high number of workplace accidents, further steps needed to be taken. The number of OSEs was insufficient and their independence should be guaranteed. In addition, SMEs, which represented the majority of workplaces in Turkey, had limited resources and were facing challenges to implementing safety and health measures. The Government of Turkey should reconsider unionization and respect for workers’ rights, and awareness raising was vitally important for the efficient implementation of legislation. He invited the employers to adopt a human-based, sustainable approach by reviewing their position as regards OSH, so as not to consider it only as a cost issue. The lack of adequate diagnosis and treatment of occupational diseases was another issue to be solved urgently. Unemployment, undocumented work and subcontracting practices also intensified OSH challenges. The speaker underlined the importance of tripartite and dialogue mechanisms in the area of OSH, and encouraged the Government to improve the inspection system and the collection of data regarding occupational accidents and diseases, with a view to taking a preventative approach.

The Employer member of Turkey recalled that Turkey was one of the countries which had ratified the main ILO OSH Conventions and, over the last 34 years, had been discussed 27 times by the Committee, demonstrating its commitment to align itself with ILO standards and to recognize its shortcomings. Turkey had been undergoing a reform process in OSH for years, which had to be considered as a case of progress in order to encourage further improvement. In 2003, a new Labour Code had been enacted in order to comply with European Union (EU) and ILO OSH standards. Turkey had also ratified both Convention No. 155 and the Declaration of the International Labour Conference, 1985 (No. 161), had established a National OSH Council, and had adopted its first national OSH policy document in 2006. To respond to implementation gaps, the capacity of the general directorate on OSH and the Turkish labour inspectorate had been improved. In 2012, Parliament had enacted a separate OSH Act, which was a milestone in the development of new policies and
preventative measures, provided a sound legal basis for the National OSH Council, and introduced new sanctions and stronger administrative penalties. The enactment of the Act had been problematic and, accordingly, it had been amended four times. As indicated in the report of the Committee of Experts, a new initiative had begun in 2014 with the display of the International Labour Organization (ILO) at the National Tripartite Meeting on Improving Occupational Safety and Health in Mining. This had led to an ILO technical assistance project on occupational safety and health, under which the ILO would facilitate national efforts to improve OSH in Turkey. The National OSH Council had adopted a new action plan which set out targets and activities for the next four years. The speaker explained the duties and functions of OSH under the new Act, according to which, if an employer terminated the employment contract of an OSE on the grounds that the OSE had notified a possible occupational disease or emergency, the employer would pay compensation of at least one year’s salary of OSE or occupational physician in question. The problem in Turkey was not its legislation but the implementation thereof, which must be addressed with the necessary tools to strengthen the safety culture in society, such as through specific plans and measures to include OSH in all levels of education.

The Worker member of South Africa recalled the Soma tragedy and the lack of preventative measures taken. He said that the Government had decided that mining accidents were inevitable and had no will to confront them and take the appropriate measures. Most of the workers who had died in the Soma mine accident were subcontracted workers who were disproportionately employed in low-skilled and hazardous occupations and industries, and their employment created a downward pressure on wages, working conditions, safety and livelihoods. Labour inspections were rare in Turkey, but that situation was worse with respect to subcontracted workers owing to their unstable and disguised employment relationship. The Government needed to address the increase in subcontracting as part of the discussion around health and safety. South Africa also had a huge mining industry and the country continued to fight against casual labour. The speaker expressed his solidarity with the workers of Turkey and recommended immediate reforms by the Government to prevent further worker exploitation, giving due regard to the problem of subcontracted workers.

The Worker member of New Zealand expressed sympathy with Turkish workers in relation to OSH issues. There were a number of similarities between the situation in Turkey and that in New Zealand, which had also recently ratified Convention No. 155, and was undergoing a fundamental harmonization of its safety and health legislation, had also acted following a coal mining tragedy, and was also actively engaged in reviewing the regulations and rights concerned. The speaker congratulated the Turkish Government for its recent actions to try to address those issues, particularly by ratifying Conventions Nos. 167 and 176. However, more could and should be done to protect workers. According to the Declaration of Philadelphia, a core part of the ILO’s mission was to provide “adequate protection for the life and health of workers in all occupations”. However, exemptions from the scope of application of the OSH Act compromised that fundamental right for certain groups of workers: public sector workers, who were denied access to occupational health services under exemptions contained in sections 6 and 7 of the OSH Act until July 2016, which should be removed as a matter of urgency; and “own-account contractors” were further excluded from the Act’s scope. Considering that the Act could encourage disguised forms of employment, the Government should expand the scope of application of the OSH Act to cover “own-account contractors”. The Government had taken many measures regarding those issues; however, as the Committee of Experts had emphasized on several occasions, OSH required a dynamic ongoing process.

An observer of the International Transport Workers’ Federation (ITF) recalled that, in 2005, Turkey had ratified Conventions Nos. 155 and 176 on the Safety and Health (Dock Work) Convention, 1979 (No. 152). However, since then, the Government had failed to fully bring its laws and practices into line with those Conventions, particularly in Turkish ports. Dock workers were exposed to significant workplace hazards, such as the use of unsuitable surfaces for crane operations, and did not have adequate personal protective equipment available to them, which was the most basic of safety requirements. Heavy congestion in ports not only led to traffic accidents but also increased exposure to carbon monoxide. The speaker cited statistics from 2012 concerning fatal accidents in Turkish ports, as well as cases of permanent disability, injuries, and occupational disease diagnoses. Those statistics were high, despite the fact that they excluded informal and precarious workers, who made up a large proportion of the country’s port labour force. Labour inspection in Turkish ports did not receive adequate training to fulfil their duties, and existing OSH policies were not communicated to workers in an understandable manner. Ports-specific OSH measures were needed with the aim of reducing the incidence of fatal occupational accidents and enhancing safety standards. Those measures should deal, among other things, with the handling of dangerous goods, protective equipment and clothing, and container transport procedures. The Government’s recent ratification of Conventions Nos. 167 and 176 and the subsequent introduction of OSH measures for the mining and construction sectors were encouraging initiatives which might possibly pave the way for sector-specific OSH measures in ports. The speaker encouraged the Government to avail itself of ILO technical assistance in that regard.

An observer representing Public Services International (PSI) said that the Government had not satisfied its responsibilities with respect to the OSH working conditions of public workers in Turkey. Not only were public sector employees temporarily excluded from the application of the OSH Act until July 2016, but “own-account contractors” were permanently excluded. The Act would encourage disguised forms of employment. In the public sector, there was no obligation to keep statistics related to occupational injuries and diseases, in violation of Article 11 of the Convention. A civil servant exercising the right not to work, in application of the OSH Act, could still be sanctioned under sections 26 and 125 of the State Servants Act 657. Violence against civil servants employed in various sectors, including health and education, should be addressed within the scope of OSH as some of those workers were deprived of protective measures despite their vulnerability when working with violent patients. Turkey was critically underfunded, with increasing proportions of precarious and outsourced workers amounting to a de facto privatization of public health institutions, which directly impacted the quality of care and services provided. She expressed concern over the privatization of the management of OSH systems, as the independence of inspectors could not possibly be ensured if they were paid...
by the same employers who refused to invest in safe working conditions for their workers. Moreover, it was not just management systems for OSH that were at risk of privatization, because the modalities of the management influenced the content of the OSH delivered. Full participation by the social partners in the definition, implementation and management of OSH was essential to ensuring working conditions and preventing deaths and injuries. She underlined the urgency for the ILO to develop a standard on the management of OSH.

The Government representative said that he had taken careful note of all the constructive criticisms expressed by the Committee, although he still disagreed with the decision to include it in the list of cases. Nevertheless, he was pleased to hear that improvements in Turkey regarding OSH had been acknowledged by the majority of Worker and Employer representatives. Concerning the Soma mine accident, 16 programmed and non-programmed inspections with regard to OSH had been carried out by labour inspectors over the past four years and the mine had been closed down by the Ministry. The accident had occurred as a result of the employer’s negligence, and sanctions had been imposed as provided for in legislation. He recalled that workers were represented by the strongest trade unions in Turkey, and stressed that the active involvement of employers and workers was necessary to ensure effective workplace safety. Employers, trade unions and workers should also act responsibly to keep the working environment safe and healthy, and they should help the relevant authorities in the discharge of their duties and in the continuous application of measures taken. With respect to the social security benefits provided to those affected by accidents in mines, in addition to the general provisions of social security legislation, some specific arrangements had been made by two new laws, under which any debts of the deceased miners owed to the social security institution had been revoked and their survivors were accorded the right to receive survivors’ pensions regardless of whether they fulfilled the required conditions. With respect to the Ermenek mine accident, there had been ten inspections since 2009, when the work had begun. Judicial processes were under way in both the Soma and Ermenek cases. The Ministry’s labour inspectorate had conducted two programmed inspections every year at each of the mines, and non-programmed inspections were also carried out when complaints were received. In cases of violations of the law, either an administrative fine was imposed or, when danger to life existed, operations at the workplace were stopped. Between five months of 2015, 433 mine workplaces had been inspected and, in 82 cases, their operations had been stopped, while in 236 cases administrative fines had been levied.

The Convention did not prohibit subcontracting. Subcontractors, like main contractors, were responsible for ensuring a safe and healthy working environment and meeting the provisions of relevant legislation. The main contractors were jointly responsible for ensuring compliance with the law. Concerning collaboration between the main contractor and the subcontractor, section 22 of the OSH Act required the establishment of OSH committees in workplaces where subcontracting continued for more than six months. The requirement for collaboration and coordination of safety and health activities among and between OSH committees or OSH workplace was not conditional upon the duration of the work; rather, it must be fulfilled in all cases under section 23 of the Act. On the right of workers to remove themselves in cases of serious and imminent danger, section 13 of the Act did not preclude such action, where serious and imminent danger was deemed unavoidable in the opinion of the worker concerned. With regard to the number of hospitals that were employed in safer and healthier workplaces and were authorized to diagnose occupational diseases, he clarified that, despite reports of there being only three such hospitals, that number had been increased to 129. Similarly, the number of occupational safety experts had increased from 8,665 (before the Act had entered into force) to 106,000, and the number of occupational physicians had increased from 8,446 (before the Act had entered into force) to 26,000. Concerning the rate of accidents in Turkey, statistics only covered wage earners, among whom accident rates were relatively high. If public employees and “own-account contractors” were included, the accident rate would be much lower. There was a constant decrease in the rate of fatal occupational accidents in the country. Regarding the number of inspections, he said that inspection figures would be provided in a written report but further reported that, in 2014, there had been 5,087 programmed inspections and 5,042 non-programmed inspections. In the construction sector, the Labour Inspection Board had carried out a special inspection in 45 provinces with more than 300 inspectors in October 2014, during which 2,087 construction sites had been inspected and operations had been stopped in four out of five workplaces. That rate, nearly 80 per cent, indicated that there were much to be done with regard to raising awareness among employers and workers. In 2014, a total of 3,625 construction sites had been inspected and 1,858 shut down. The total amount of administrative fines levied was more than 27 million liras, that is, US$10 million. Statistics and data collection on occupational diseases for civil servants would be undertaken in line with the decision made by the National OSH Council and taking place and through action plans. Turkey continued to improve its legislation and had achieved enormous progress during the last decade. It attached great importance to the participation and active involvement of the social partners, civil society and universities, even though some of those partners had not participated in the process of drafting legislation or in the National OSH Council’s meetings. He stressed that Turkey had exerted enormous efforts in recent years in order to ensure that all workers were employed in safer and healthier workplaces and would continue to do so for the well-being of its citizens.

The Employer members thanked the Government for its efforts to respond to the concerns that had been raised. The discussion had provided an opportunity to positively note the measures that the Government had taken to comply with the Convention in law and in practice, in consultation with the social partners and, where applicable, with the ILO. They expressed their appreciation for measures taken to bring legislation, practice and safety culture into line with the Convention, and encouraged the Government to continue to report to the Committee of Experts on the measures it had taken in that regard. They further encouraged the Government to continue to work with the social partners in those efforts.

The Worker members stated that the ratification of Conventions Nos 167 and 176 was an important step, taken together with the social partners, particularly given that construction and mining were the most dangerous sectors for workers. The Worker members agreed with the Employer members’ statement that the Soma tragedy should not eclipse discussions and that overall progress and increased efforts should also be mentioned. The statistics provided by the Turkish Statistical Institute were evidence that the measures had been sufficiently effective to prevent disastrous accidents and, therefore, certain issues should be taken up with the social partners to address the situation of workers exposed to serious and imminent danger, who were not permitted to withdraw without the consent of the employer, as well as “own-account workers” and public sector workers who were excluded from the scope of the Act. The Government had
not replied to questions raised regarding the increased vulnerability of subcontracted workers, who were only covered by OSH measures if their contract exceeded six months, nor had it provided information on the number of workers excluded under the Act. The Worker members urged the Government to present its report on the Convention to the Committee of Experts and to continue to avail itself of ILO technical assistance.

Conclusions

The Committee noted the detailed oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to: (i) ensuring that occupational safety and health (OSH) legislation applied to all workplaces covered by the Convention; (ii) the need to improve the functioning of the National OSH Council, including effective representation and consultation of the social partners; the need to improve inter-ministerial coordination on OSH issues; clarifying the roles and responsibilities of employers and occupational safety experts (OSEs) and ensuring workplace safety; the need to periodically review the OSH situation with particular attention to subcontracting and the mining, metal and construction sectors; strengthening labour inspection, particularly with respect to the various forms of precarious work, and ensuring the effective application of penalties; improving and ensuring the application in practice of procedures established for the notification of occupational accidents and diseases, and the production of annual statistics; ensuring that workers can remove themselves from situations of serious and imminent danger without suffering undue consequences; and ensuring collaboration on OSH between two or more undertakings engaging in activities simultaneously at one workplace.

The Committee noted the information provided by the Government representative on the adoption of the Third National Occupational Health and Safety Policy Document and Action Plan for 2014–18 by the tripartite National Occupational Health and Safety Council. This Action Plan included the objectives of: improving the quality of OSH activities; reducing the number of accidents in the metal, mining and construction sectors; intensifying OSH activities for agriculture and public sectors; disseminating a safety culture; improving the collection of statistics on work accidents and occupational diseases as well as diagnostic data; and providing hospitals with the infrastructure necessary to diagnose occupational diseases. In this regard, the Government indicated that a workshop with the relevant stakeholders had been held in May 2015 in order to identify a roadmap for improving the collection and dissemination of data on OSH. Moreover, amendments to the Occupational Safety and Health Act No. 6331 had been adopted in April 2015 to: strengthen the applicable administrative fines; clarify the authority and responsibility of workplace physicians and OSEs; add incentives for enterprises with good OSH records; include OSH obligations in public procurement and prohibit mining companies that had experienced fatal work accidents from public procurement for two years; specify that pressure for overproduction could be a reason for suspending work; limit the maximum hours of work for miners; and introduce OSH as a compulsory curricula component in relevant educational programmes. The Government indicated it was implementing several awareness raising measures aimed at developing a preventative culture of safety and health, including by disseminating information on the new legislation. Other measures taken included the ratification of the Safety and Health in Mines Convention, 1995 (No. 176) and the Safety and Health in Construction Convention, 1988 (No. 167) in March 2015. The Government further indicated that it was cooperating with the ILO on a project that aimed to develop a tripartite roadmap for improving occupational safety and health, particularly in the mining and construction sectors, in line with international commitments under relevant ILO labour standards. The Government provided information on the number of labour inspections undertaken, including sectoral inspections, administrative fines imposed and stop orders issued.

The Committee welcomed the ongoing efforts made by the Government and the social partners to improve safety and health at work and the intention to overcome the issues identified in a comprehensive and sustained way, with the support of the Office.

Taking into account the discussion, the Committee requested the Government to:  
■ ensure that the Occupational Safety and Health Act is in compliance with Convention No. 155, in particular with respect to its coverage and in ensuring the right of workers to withdraw themselves from serious and imminent danger;  
■ assess the effectiveness of the measures undertaken in the context of the National Action Plan aimed at increasing workplace safety;  
■ improve record keeping and monitoring systems concerning health and safety, including occupational diseases;  
■ increase the number of labour inspections and ensure that dissuasive sanctions are imposed for infractions of laws and regulations, in particular with respect to subcontractors;  
■ refrain from interfering violently in lawful, peaceful and legitimate trade union activities addressing health and safety concerns; and  
■ engage in genuine dialogue with all social partners.

The Committee urged the Government to present its report on the Convention to the Committee of Experts this year, and to continue to avail itself of ILO technical assistance.

Safety and Health in Mines Convention, 1995 (No. 176)

PHILIPPINES (ratification: 1998)

A Government representative expressed her appreciation for the work of the Committee of Experts and the Conference Committee. Referring to legislation, she indicated that Republic Act No. 7942 (Mining Act) of 1995, and its Implementing Rules and Regulations, and Department of Environment and Natural Resources (DENR) Administrative Orders Nos 2010-21 and 2000-98 gave effect to the Convention. The DENR Administrative Order, or DAO, 2000-98 was the Mine Safety and Health Standards Order, which mandated the competent authority, the Mines and Geosciences Bureau (MGB) of the DENR, to enforce safety and health measures in the exploration, mining, quarrying, mineral processing and other allied or related services. With regard to the preparation of appropriate plans of working by the employer under Article 5(5) of the Convention, these must be submitted by mining firms. Detailed plans for work programmes were evaluated by the MGB prior to the approval of applicable contracts and relevant permits. With regard to Article 7(a) of the Convention, part of the duties of the employer under DAO 2000-98 was to assess all safety and health risks in all of

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its workplaces, and to involve the safety engineer in the preparation of risk assessment regarding the design, alteration, selection or modification of processes, construction of structures, installation of machinery and equipment. A plan was required to be kept at the mine showing the location of all permanently installed electrical machinery and apparatus in connection with the mine's electrical system. All mining firms had at least one safety engineer and one safety inspector who had undergone the required 40-hour training on basic occupational safety and health in the mines (BOSH), and held the required licence and mining operation experience.

With regard to Article 10(c) of the Convention, the “chapa” system was a traditional method of accounting for workers underground and was still being used by some mining firms today. Under the “chapa” system, underground miners were grouped into teams led by a foreman who reported to a shift boss, who in turn reported the location, type of activity and details on each team to the mine supervisor. Each mineworker had a pair of “chapa” metal chips, similar to those used by the army, with the miner’s number. One “chapa” was deposited at the entrance to shafts or portals and placed at a location map in the working area of a team or a certain miner. A mineworker would keep the duplicate. The “chapa” was also used for the issuance of chargeable miners’ lamps with effective usage of eight hours. The depository for “chapas” was usually located near the mine entrance or shift, where security guards were posted. Other mining firms used logbooks, which were kept at the entrance to shafts or portals, recording the miner and his/her assigned work area. A system of radio communication was a requirement for underground mines. At present, most mining firms used electronic devices for accuracy, in lieu of the traditional punch card, in entering or exiting mine sites. All underground workers had a designated work area specified in daily reports, and shift bosses, supervisors and safety officers closely monitored each work area. As had been noted by the Committee of Experts, some provisions of the Convention were not explicitly specified in national laws, rules and regulations. The Government would thus integrate in the proposed bills to criminalize Occupational Safety and Health (OSH) violations, the responsibility of employers to ensure that mines were designed and constructed safely and provided conditions of safe operation and a healthy working environment, including the right of workers and their representatives to report accidents. The Mine Safety and Health Standards Order No. 2009–001–O and DAO 2010–21 were incorporated into its domestic legislation, and implemented was based simply on an administrative order issued by the DENR. In conclusion, the speaker indicated that, as requested by the Committee of Experts, the Government would submit a detailed reply in 2016 with regard to the Convention.

The Worker members welcomed the information provided by the Government on the application of the Convention. However, it was difficult for them to assess the information and be sure that it met the requirements of the Convention. Convention No. 176 was a technical Convention, but the life and health of many workers depended on its proper application. That was why they were anxious to expose any failure to apply the safety and health policy in mines in the Philippines. To begin with, there were serious shortcomings from the juridical standpoint: although the country had ratified the Convention, it had still not incorporated it into its domestic legislation, and implementation was based simply on an administrative order issued by the DENR. Moreover, the review of the government and technical shortcomings in the administrative order. For example, according to the order, all employers in charge of mines had to submit an annual safety and health programme that comprised rules for the organization and management of the environmental risk involved, but there was no requirement that they prepare plans of workings such as were called for in Article 5(5) of the Convention. Moreover, the existing provisions did not require the employer to ensure that the mine was provided with electrical, mechanical and other equipment so as to provide conditions for safe operation and a healthy working environment, as stipulated in Article 7. In reference to Article 10(c) of the Convention, the Government stated that employers had to set up security posts at the main entrance to underground mines and keep a register of the daily hours of work. However, it had not provided any information on how the probable location of each worker could be ascertained or on the technical system that was used in most underground mining operations. Furthermore, the Government had provided no information on any regulations for implementing Articles 13(1)(a) and 13(2)(f). Lastly, the Government had not provided accurate information on accidents in the mining sector for the
2012–13 fiscal year. The number of accidents had risen sharply and that increase had most likely been aggravated by the boom in small unregulated mines that resorted extensively to subcontracting. Finally, the Worker members regretted that the Government had not indicated what steps it had taken or planned to take in order to tackle the issue of back accidents in the country’s fast-expanding mining sector.

**The Employer members** thanked the representative of the Government of the Philippines for the detailed information provided. They stressed that this case was about doing the right thing before tragedies happened, such as the tragic accident that had occurred at the Pike River Mine in New Zealand on 19 November 2010, where 29 miners had lost their lives. The Government’s report that had been submitted to the Committee of Experts had not provided enough information to assess whether there was full compliance with the Convention. Laws in the Philippines gave effect to some provisions of the Convention, but not all provisions. The traditional system, known as the “chapa” system, used to designate work areas was not used systemically in the country. Laws and orders needed attention to ensure that they complied with all the provisions of the Convention. Given that workers in a mine needed to know that they would be rescued in the event of an accident, and that the key to being rescued quickly was the security of knowing the names and probable location of workers in a mine, the Employer members called upon the Government to work effectively towards full compliance with all provisions of the Convention, including the establishment of a system to record the names of workers and their probable location in the mine.

**The Worker member of the Philippines** said that, since the enactment of the Republic Act No. 7942 (Mining Act) in 1995, investment and expansion in the mining sector had been increasing. According to mining industry statistics from the MGB, employment in the mining sector had increased from 130,000 workers in 1997 to 250,000 workers in 2013, but had fallen to 235,000 workers in 2014. The health and safety of Filipino workers in the mining sector had yet to be seriously addressed. While he recognized the efforts of the DOLE to ensure compliance with existing labour laws, they needed to be reviewed and enhanced. Recalling the 13 May 2015 factory fire which had taken the lives of 72 workers, he said that more needed to be done for workers. In Compostela Valley, there had been cases of landslides and caving in which a direct result of mining activities and had led to deaths. Small-scale mining was pervasive and was a major concern. A mobile clinic and an occupational safety and health audit in the area, conducted by the Federation of Free Workers (FFW) through its unions in the health sector and in cooperation with the Occupational Safety and Health Centre, had revealed that many children and others who had worked in open-pit mines had levels of mercury and lead in their blood that were way beyond the allowable levels. Exposure to hazards and accidents had happened because of the lack of a comprehensive law that genuinely promoted the welfare of workers. Although the Labour Code and the Mining Act provided some general provisions on occupational safety and health, not all provisions of the Convention had yet been incorporated into domestic legislation. A draft code on safety and health in the workplace had been proposed more than two decades ago. The draft bill had however never been passed into law. Although there was a pending bill in the House of Representatives on a proposed new law on safety and health endorsed by the tripartite social partners, it was still awaiting deliberation. It was imperative that the Government exert more effort to protect workers’ occupational safety and health by adopting a code on occupational safety and health in compliance with Convention No. 176 and other international commitments and by imposing higher penalties, including imprisonment, in cases of violations. New legislation should not only include corporate mining but also small-scale mining, as the Convention applied to all mines. Technical assistance from the ILO, as well as workers’ capacities on OSH issues, would be crucial. Moreover, the speaker emphasized the need to strengthen the voice of workers by strengthening freedom of association and collective bargaining in the mining sector. Unions would help in making employers comply with labour laws, including those on safety and health in the workplace. OSH committees with union representatives should be institutionalized. It was a major concern for trade unions that subcontracting of labour was widespread in the mining sector. An example was given of a mining firm in Agusan where the FFW had successfully organized workers in the mines. However, the management of the mining firm had refused to recognize the union, saying that they were not employees of the mining firm, but rather employees of the illegal manpower agency operating within the firm, disguised as a cooperative. This case was still pending in court.

**The Employer member of the Philippines** welcomed the comprehensive and positive information provided by the Government to the Committee. While the Employers had a positive attitude towards the Committee of Experts’ report, he referred to the comments of the Committee of Experts on the application of the Convention by the Philippines and considered that there was no real violation of the Convention to be detected. With regard to the design of a working plan which contained elements on organizational rules and risk management in mine operations by employers, he indicated that this requirement referred to simple administrative procedures with which employers would comply voluntarily in a speedy manner. As to the responsibility of employers to ensure that mines were planned and constructed in a manner that would ensure safe operations and a healthy working environment, he observed that this was a responsibility that mining companies assumed even before starting operation at a mine, as the Government only had a permit to bring a mine into operation if the installation requirements set forth had been met. Turning to the requirement to establish a recording system for names and probable locations of all persons working underground, he assumed that, once technical progress had been made, the mining companies would establish such a system. In that regard, he added that no report existed on the area because the mining companies were not obliged to report accidents. Coming to the right of workers to report accidents, dangerous occurrences and hazards to the competent authority, he thought that this was a non-issue, since no report highlighted that this right was suppressed in the country. Moreover, its exercise was in the best interest of all. Government, employers and workers. He added that the tripartite partners were ready to engage in dialogue in order to take further measures to prevent accidents. In his view, the comments of the Committee of Experts had made the form of a “gentle reminder” to the Government and employers to improve and maximize safety and health in mines. In that respect, he said that the Employers’ Confederation of the Philippines (ECOP), the umbrella organization for employers’ organizations in the country, would hold a seminar in June 2015 on occupational safety and health matters, focusing on risk prevention, in order to promote the implementation of occupational safety and health standards and ILO Conventions on this subject. Moreover, the Employers endorsed a bill to criminalize violations of occupational safety and health standards, which also highlighted the Employers’ commitment to social justice.
The Government member of Singapore welcomed the efforts made by the Government to enhance the safety standards of workers in the mining industry, along with the steps taken to implement the Convention. In particular, she noted the enhancement of the “incentive and penalties” approach to encourage greater compliance by miners and the Government in reviewing existing laws and regulations to bring them into conformity with the Convention. This should be done in consultation with the relevant stakeholders. In conclusion, the speaker requested the Government to provide the information requested by the Committee of Experts and to avail itself of technical assistance from the ILO.

The Worker member of Japan expressed his sympathy and support for the deplorable working conditions of workers in the mining sector in the Philippines, especially in the unregulated small-scale mining sector. The country was identified as having high mineral potential, with 9 million hectares of land containing untapped mineral resources. Employment in this sector had increased from 130,000 workers in 1997 to 252,000 workers in 2012, indicating an annual increase of 9.6 per cent. Although legislation to ensure safety and health in mining, quarrying and related activities was in place, both implementing rules and regulations and practice needed to be aligned with the spirit of the Convention. He pointed out that data revealing the incidence of accidents, as noted by the Committee of Experts, only covered reports from large mining firms, while serious and fatal accidents occurring in the small-scale mining sector went unreported. The Government’s tripartite approach, though laudable, did not appear to be effective in the mining sector owing to the low unionization rate of less than 5 per cent. The low unionization rate was attributed to the fact that workers were supplied by manpower agencies and cooperatives, and to other precarious working arrangements. Finally, he urged the Government to align its laws and practices and to comply with its obligations under the Convention.

The Government member of the Republic of Korea indicated that the Republic of Korea had supported the reforms undertaken by the Government, through a technical cooperation programme, to develop policies to prevent industrial accidents, improve workplaces and provide industrial accident compensation. In addition, training for OSH personnel within the Philippine Department of Labor and Employment was provided by the Korean Occupational Safety and Health Agency (KOSHA). The technical cooperation programme and technical assistance would facilitate the implementation of the provisions of the Convention. He called on the Government to strengthen its laws and to align them with the spirit of the Convention. He pointed out that data revealing the incidence of accidents, especially in the small-scale mining sector, were due to poor governance and lack of Government capacity to carry out regular inspections. Referring to a study by a university in Manila, he said that corruption among officials in return for ignoring environmental regulations had led to more environmental disasters. He urged the Government to strengthen its laws and to align them with the provisions of the Convention. He called on the Government to take the necessary steps to provide workers with adequate protection and to adopt a comprehensive law on occupational safety and health that included adequate penalties. Moreover, in conformity with the Convention, participation by workers’ representatives in investigations and inspections must be ensured. To that end, it was essential for independent unions to exist in the country. This was not the case in the Philippines, where workers, including contract workers, were not organized. He concluded by highlighting the fact that accidents usually occurred in workplaces where unions were absent, banned or discouraged.

The Government member of Indonesia expressed support for the Committee of Experts in reviewing existing laws and regulations to bring them into conformity with the Convention. As a member of ASEAN, the Philippines participated in ASEAN-OSHNET which aimed to ensure cooperation among national OSH institutions undertaking research or disseminating information. Within this framework, since 2010, the Philippines had provided training programmes on OSH both to ASEAN member States and to third countries. This cooperation would facilitate implementation of the provisions of the Convention in the broader context of the ongoing reform of the labour law compliance system. The ILO should continue supporting and cooperating with governments to secure the implementation of the Convention.

The Worker member of Malaysia said that the statistical information on the number of accidents, both fatal and non-fatal, in the mining industry, which had increased considerably from 2011 to 2013, did not include accidents occurring in the small-scale mining sector. Moreover, quoting some examples, he said that several incidents involving waste spillovers from large-scale mining firms had been documented. He stressed that unreported fatal accidents, especially in the small-scale mining sector, were due to poor governance and lack of Government capacity to carry out regular inspections. Referring to a study by a university in Manila, he said that corruption among officials in return for ignoring environmental regulations had led to more environmental disasters. He urged the Government to strengthen its laws and to align them with the provisions of the Convention. Efforts should be made to ensure the effective enforcement of laws covering all employers in the mining sector, whether big or small, through regular inspection with the involvement of trade union representatives.

The Government representative said that the discussion had been beneficial, as the Government was always keen to learn from the experiences of other countries that had ratified the Convention. This was particularly important for the continuing process of revising standards related to occupational safety and health. She underlined the Government’s commitment to improving the occupational safety and health system, including in the small-scale mining sector, in order to align it with the requirements and standards set out in the Convention. To that end, the Government was working at an accelerated pace that was sometimes difficult for the social partners to handle. However, tripartism was robust in the country, and consultations were held with the social partners on all legislative initiatives and other measures in the area of occupational safety and health. She added that, by the end of 2014, a training campaign for trade unions on occupational safety and health had been launched, with support from the United States Department of Labor and the ILO, and was expected to be expanded in 2015. She also mentioned that the competent authorities on research into occupational safety and health matters were tripartite in nature. In conclusion, the Government expected to be able to undertake the necessary reforms to fully comply with the Convention and would provide a detailed report to the Committee in 2016.

The Employer member recognized that any accident in mining, whether fatal or non-fatal, was unacceptable. They observed, however, that much had been done by the Government, together with the social partners, to improve the situation and hence meet the requirements set out in the Convention. A number of areas had been identified in which implementing regulations needed to be perfected,
since they were not in full compliance with the Convention. To that end, they noted the Government’s extensive information on programmes and measures under way to build capacity in the area of occupational safety and health. The Government had also showed clear commitment to taking the necessary steps with the technical assistance it already had requested from the ILO. They therefore thought that the Government should finish its work and provide a report to the Committee of Experts in 2016, allowing the progress made to be examined further.

The Worker members indicated that, even though discussions on this case had been less contentious than on others, they were nevertheless extremely important given that the work in question was hard and invisible, exposing workers to considerable risks to their safety and health. Although the Convention was a technical one, it contributed to achieving the objectives of the ILO Constitution to the effect that no country should impose inhuman working conditions in any sector of activity. In that regard, it should be recalled that the issues of trade union freedom, collective bargaining and effective social dialogue were key at both national and local levels. In view of the increasing number of fatal and non-fatal accidents in the mining industry, they noted that the Government should formulate stronger policies in the area of occupational accidents and that some provisions of the Convention had not been incorporated into national laws or regulations. The Government explained that it planned to undertake consultations for the review of the national regulations and standards relating to occupational safety and health in the mining sector. It indicated that provisions would be integrated into draft legislation, currently before Congress, relating to the responsibility of employers to ensure that mines are designed and constructed safely, and also their responsibility to provide conditions of safe operation and a healthy working environment, as well as to the right of the workers and their representatives to report accidents. The Government also indicated that it intended to develop a joint memorandum of agreement between the Department of Labour and Employment and the Department of Environment and Natural Resources for closer coordination in order to strengthen safety and health in mines. This joint memorandum of agreement would include action to restore the accreditation system for service contractors in mines in order to ensure the coordination of two or more employers at a mine in implementing measures concerning the safety and health of workers. The Government further indicated that it would continue to work with the Mining Industry Tripartite Council and pursue its efforts to develop the capacity of the social partners with respect to occupational safety and health. The Committee also noted the Government’s request for technical assistance from the ILO.

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

- Provide further information on the measures taken to ensure that the employer in charge of the mine prepares appropriate plans of workings before the start of the operation;
- Adopt legislative provisions that impose responsibility upon employers to ensure that the mine is designed and constructed safely and provided with electrical, mechanical and other equipment, including communication systems;
- Provide information on the manner in which probable location of the workers in the mine is recorded;
- Indicate measures taken to ensure that whenever two or more employers undertake activities at the same mine, the employer in charge of the mine coordinates the implementation of all measures concerning the safety and health of workers, and is held primarily responsible for the safety of the operations;
- Indicate measures undertaken or envisaged to ensure that workers and their representatives have the right to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;
- Provide information on measures taken or planned to respond to the increase in occupational accidents and on the application of the Convention in practice. It should also avail itself of ILO technical assistance.

Conclusions

The Committee took note of the oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to: the need to have a comprehensive legal framework to give effect to all provisions of the Convention; the increase in the number of work accidents in the mining industry; the effective application of penalties for violations related to occupational safety and health; the need to take measures to ensure that workers and their representatives have the right to report accidents, dangerous occurrences and hazards to the employer and to the competent authority; the need to ensure that workers’ safety and health representatives receive notice of accidents and dangerous occurrences; and the need to ensure that employers in charge of mines be responsible for the organization of apparatus for violations relating to occupational safety and health; the need to ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment to provide conditions for safe operation and a healthy working environment.

The Committee noted the information provided by the Government representative as well as the Government’s indication that some provisions of the Convention had not been incorporated into national laws or regulations. The Government explained that it planned to undertake consultations for the review of the national regulations and standards relating to occupational safety and health in the mining sector. It indicated that provisions would be integrated into the Philippines (ratification: 1998)
A Government representative referred to the study conducted in 2014 on street children which had identified 2,527 children living on the streets. Many of them were under 18 years of age and were forced to work by their families. They were not in school and were engaged in activities such as begging on a seasonal and temporary basis. They were often subject to violence and exploitation. The data collected through the study had been used to formulate an action plan to protect children from all forms of abuses. The plan adopted a holistic approach covering both children and their families. The activities under this plan were twofold. The first pillar was training on child labour provided to both public and civil society organizations at the municipal level. The second set of activities was based on a long-term approach to ensure continuity, which included an awareness-raising campaign. At the national level, an inter-ministerial agreement had been concluded and a regional action plan adopted by virtue of the agreement under the coordination of the State Agency for Child Rights Protection. The implementation of the regional action plan had started in May 2014 under the primary responsibility of the Child Protection Unit, in cooperation with various government agencies, as well as social workers and non-governmental organizations. The activities had resulted, for instance, in 108 children and 44 families in Tirana no longer living on the streets. Improvements had also been observed in other areas, including: the number of children and/or their families brought under protection by social care services, the number of children newly enrolled in schools, and the number of families trained for employment and offered a job. She added that only a limited number of institutions were involved in the issue of sexual abuse of children, and specialized services were lacking. In this context, the Ministry of Labour, Social Affairs and Equal Opportunities had implemented a programme to protect children from abuse and exploitation in collaboration with UNICEF. Under this programme, various stakeholders, including social services, teachers, medical professionals, the General Prosecutor’s Office, had jointly established a platform for specialized care. Particular attention had been paid to the Roma community, with training to identify child abuse being provided to that community.

The Worker members deeply regretted that the Government had prevented Albanian worker representatives from being present at the discussion. The International Trade Union Confederation (ITUC) had filed a complaint on this subject on 2 June 2015 under article 3(2) and (5) of the ILO Constitution. Finally, a delegate representing Albanian workers had been able to attend the discussion. In the absence of other Albanian worker representatives, the following was based on information that they had transmitted. Member States that had ratified the Convention were required to implement programmes of action aimed at eliminating the worst forms of child labour and to take all the necessary measures to ensure the effective implementation and compliance with the Convention. In 1999, the Government had signed a Memorandum of Understanding with the ILO’s International Programme on the Elimination of Child Labour (ILO–IPEC) in relation to the prevention of child labour and the rehabilitation of children who were in intolerable situations. Despite the efforts of the Committee of Experts making five observations and five direct requests since the ratification of the Convention in 2001, the issue had still not been resolved. Albania continued to be a country of origin of child trafficking. In 2012, the United Nations Committee on the Rights of the Child had noted that it was deeply concerned at the high number of children exposed to economic exploitation, and specifically to hazardous activities. The issue of the worst forms of child labour included trafficking, which was international in scope, forced begging, and also affected the manufacturing industry. The problem was particularly prevalent in certain communities, such as the Roma and Egyptian populations, where children had great difficulty in gaining access to education. Approximately 2,527 children were affected. However, the Government had made efforts, as noted by the Committee of Experts. A national strategy and a plan of action against the trafficking of children and to protect child victims of trafficking had been implemented between 2005 and 2007. An Act adopted in April 2014 prohibited the sale and trafficking of children and criminalized the involvement of children under the age of 18 in the use, production and trafficking of drugs. The Government had also established bodies to work with labour inspection to enforce sanctions more effectively. Despite the fact that the trafficking of children for economic or sexual exploitation was prohibited by law, in practice it was still a serious problem and the Government’s response was not satisfactory. The Worker members emphasized the following points: (i) the worrying absence of accurate information on the number, sex and age of child victims of trafficking for sexual exploitation; (ii) the two minority communities mainly affected (Roma and Egyptian children); and (iii) the problems of the Albanian education system, which did not allow children from those communities to improve their educational level, as well as the dilapidated state of school buildings. School fees were also a major obstacle for the access of Roma and Egyptian children to education and, despite the plans that had been established by the Government, social services for children were inadequate. Even though efforts had been made, inspection services were inadequate and were not yet capable of detecting the worst forms of child labour, which made the legislation unenforceable, as recently noted by the United Nations Committee on the Rights of the Child. In order to ensure prohibition and elimination of the worst forms of child labour, the Government needed to take strong measures without delay.

The Employer members recalled that the Convention provided that a ratifying country must take immediate and effective measures as a matter of urgency. With respect to Albania, they observed that in its observations published in 2011 and 2015, the Committee of Experts had noted the measures taken by the Government, such as the National Anti-Trafficking Strategy, the standard operating procedures on the identification and referral of victims and potential victims of trafficking, and the Albanian Child Protection Unit that collaborated with the labour inspectorate to identify children at risk of child labour. The Committee of Experts had also noted with satisfaction the adoption of Act No. 10347 of 11 April 2014 which prohibited the sale and trafficking of children and their involvement in drug trafficking. The Penal Code had also been amended to increase penalties for crimes against children, including trafficking, and to criminalize possession of child pornography. The Employer members also noted that, in its findings of 2013 on the worst forms of child labour, the Department of Labor of the United States had noted “significant advancement”, referring to effective labour inspection, prosecution and the funding of social programmes. With the information on all these measures taken, the Employer members considered that the case of Albania was one of progress. They observed that the Committee of Experts had also noted in its observations other measures, including the educational efforts for children of the Roma community, support for families and children living in the streets, the Action Plan for Children and the Action Plan for the Decade of Roma Inclusion which aimed at increasing the participation of Roma children in education. While the situation was not perfect, as the Government
itself recognized, and there remained concerns with respect to child trafficking, the Government had taken immediate and effective steps and treated issues related to child labour as a matter of urgency, as required by the Convention.

The Worker member of Albania indicated that the Government had introduced a wide range of laws and regulations, including laws on safety and health at work, anti-discrimination and education and vocational training; and government decisions on labour inspection, a list of professions in difficult conditions, dangerous work, the integration of abused and trafficked children and state social services. In Albania, 10 per cent of the population lived in poverty, which had led to an increasing number of children being at risk of the denial of their fundamental rights. Children from the Roma and Egyptian communities continued to suffer from exclusion and segregation in schools. Violence against children was an issue of concern in Albania. Many adults believed that physical and psychological pressure had positive effects on children, which lead children to believe that violence was necessary at home and in school. Albania was a country of origin of child trafficking to western European countries, especially for forced labour and begging. Although the Government was not fully in compliance with the minimum standards for the elimination of child trafficking, significant efforts had been made recently. Child labour was and would remain a priority for the Confederation of Trade Unions of Albania (KSSH). He expressed his concern that, according to KSSH studies, about 50,000 children in the country aged between 7 and 17 were working in various economic sectors. He considered that the high rate of child labour was the source of poverty in the country, associated with poor education and the lack of administrative and legislative reform. He regretted that little had been done to prevent child labour and believed that public awareness raising was important with the involvement of trade unions in all sectors. He also expressed concern at the issue of the lack of credibility of statistical information, as he observed that the figures were manipulated in accordance with the interests of the body issuing the information.

The Worker member of Italy, based on the information provided by the Union of Independent Trade Unions of Albania (BSPSH), referred to studies reporting that Albanian children were engaged primarily in agriculture and domestic work, as well as forced begging. Despite the legislative, institutional and policy frameworks adopted, child trafficking persisted, especially for children from the Roma community. He pointed out that the majority of street children. Primary and secondary schooling was compulsory, but the associated costs often prevented poor families from sending their children to school, especially in the case of girls. Roma children faced additional difficulties, as they lacked civil registration and had to work to help their families. She emphasized the need to further strengthen institutional structures and monitoring mechanisms for the implementation of children’s rights at the national and regional levels so as to develop sound policies and programmes for children aimed at protection and prevention from child labour, education and vocational training, and social reintegration focused on family empowerment. Labour inspection needed to be strengthened and adequately supported by relevant expertise with a view to ensuring that the relevant legislation was enforced and violations were penalized. Labour market policies needed to be implemented to promote youth employment and the formalization of the informal economy. The social partners could make a valuable contribution in this regard. She called on the Government to continue to request ILO technical assistance and to consider ratifying the Domestic Workers Convention, 2011 (No. 189), as many children were engaged in domestic work.

The Worker member of Serbia said that the situation of child labour in Albania, as described by the Committee of Experts, might exist in any other country in the region, differing only in terms of the level of the problem. It was rooted in the traditional culture within which the younger generation was trained. He underlined that information on children engaged in exploitative activities was manipulated in accordance with the lack of credibility of statistical information, as he observed that the figures were manipulated in accordance with the interests of the body issuing the information.

The Worker member of Italy emphasized the importance of the issue of the worst forms of child labour, which was an essential problem requiring commitment from everyone. They emphasized that additional measures needed to be taken by the Government as a matter of urgency. The main difficulties previously highlighted were: deficiencies in the data collected and made public by the authorities; the fact that minorities were particularly affected by child trafficking; the situation of the Albanian education system, and the fact that it was impossible for many Roma and Egyptian children to benefit from it; and the weakness of the inspection services. For these reasons, the Worker members suggested that the Government intensify its efforts and take the following measures urgently: (i) improve the monitoring and statistical services to make detailed information available on children and to analyse in depth international child trafficking; (ii) improve the legal framework of the Albanian education system; (iii) remove obstacles to increase the participation by Roma and Egyptian children in the education system, particularly by abolishing costs related to education and improving infrastructure, and combating forced begging in collaboration with UNICEF; and (iv) ensure that inspections services and provide labour inspectors with the necessary means to discharge their duties. In this regard, labour inspectors needed to be provided with expertise on child labour, and especially on detection of child labour. These measures should cover child trafficking at both the national and international levels so as to ensure that crimes were prosecuted effectively and deterrent sanc-
tions imposed in practice. The Worker members requested further collaboration with ILO–IPEC and asked for an ILO technical assistance mission to be organized. The Government’s acceptance of such a mission would indicate a genuine will to move towards the improved application of the Convention. Noting the suggestion by the Employer members that this should be considered a case of progress, the Worker members recalled that a case could only be qualified as one of progress when the Committee of Experts noted that there had been progress on a particular point. That did not mean that the country was in compliance with all of the provisions of the Convention, nor did it exclude follow-up on certain issues. This was the reason why the Worker members had proposed their measures noted above.

The Employer members noted that only the Government of Albania had taken the floor, and that no other Employer members had made statements. They indicated that, while there were reasons to remain concerned with respect to child labour and child trafficking in Albania, similar situations, though their extent might vary, existed in many of the countries that had ratified the Convention. Considering that the Government was taking effective measures in a speedy manner, they were of the view this was a case of progress. They then highlighted further measures which they would like to see implemented: increasing the number of labour inspectors trained to deal with matters relating to child trafficking and the number of police investigations in this respect; more effective functioning of the Child Protection Unit; and more effective measures with regard to the Roma community.

Conclusions

The Committee took note of the detailed oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the prevalence of the trafficking of children for sexual exploitation from Albania, which continued to be a source country, as well as the high number of street children and Roma children with low levels of education involved in the worst forms of child labour including trafficking, begging and work on the streets.

The Committee noted the Government’s statement outlining laws and policies put in place to combat the sale and trafficking of children for sexual exploitation, as well as the action programmes that were being undertaken to remove children from such situations. The Committee further noted the Government’s indication that it was carrying out initiatives to raise awareness amongst various stakeholders to combat sexual exploitation of children and trafficking for that purpose. The Committee also noted the Government’s statement that it had undertaken various programmatic measures to identify and protect children from the Roma and Egyptian communities from the worst forms of child labour, including begging and street work. This included the implementation of an inter-ministerial initiative in 2014 entitled “Support for families and children living on the streets”, which had removed a certain number of children from the street and provided for their social integration. In addition, and given the low school attendance rates of Roma children, the Government had adopted the Action Plan for Children and the Action Plan for the Decade of Roma Inclusion which aimed to increase the attendance of Roma children in compulsory education. Lastly, the Committee noted the Government’s statement that while there were implementation issues in Albania, its legislative framework was in line with the Convention and the political will of the Government clearly existed to address the implementation gaps.

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

- continue removing barriers to greater participation of Roma and Egyptian children in the education system, including access to free basic education and access to education in their own language;
- continue taking urgent measures to stop trafficking, the practice of forced begging and work on the streets, in conjunction with UNICEF, and report on these measures;
- increase the number of labour inspectors as well as the resources allocated to them; train inspectors on child labour under national and international law and on methods to effectively monitor and enforce these laws;
- increase the number of police investigators for child rights;
- effectively enforce anti-trafficking legislation, take measures for effective implementation in practice and provide information on the progress to the Committee of Experts made in this regard, including on the number of investigations, prosecutions, convictions and penal sanctions applied; and
- re-initiate collaboration with ILO–IPEC, which ended on 31 December 2010.

The Government representative indicated that the Government would take the necessary measures to address the issues raised by the Committee.

CAMBODIA (ratification: 2006)

The Government provided the following written information.

With regard to the issue of the sale and trafficking of children, the Government indicates that it has been working very hard to prevent and eliminate this phenomenon. As a result, 95 actions have been taken in 2014 in all 25 provinces by the National Police and Royal Armed Forces. 127 suspects have been sent to the Municipal Court of First Instance. As reported by the National Committee for Counter Trafficking (NCCT) in 2014, there are 412 people that have been saved from human trafficking, of whom 67 persons are aged below 15 years of age and 36 persons are aged between 15 and 18 years of age. These people have been transferred to the Department of Social Affairs, Veterans and Youth Rehabilitation, organizations and their families for safeguard. In addition, the Government has continued strengthening effective law enforcement and taking measures to ensure the robust prosecution of offenders. In this regard, the Action Plan of the NCCT 2014–18 was adopted in early 2015. This Action Plan is a significant roadmap to contribute to the eradication of all forms of child labour and exploitation of children under its four key strategies namely: (1) strengthening law, policy and enhancing cooperation; (2) enhancing prevention; (3) enhancing the criminal justice response to human trafficking; and (4) protecting victims through quality support appropriate to their gender and age. Regarding the issue of compulsory labour exacted in drug rehabilitation centres, the Government indicates that children under the ages of 18 years are not permitted to be in drug rehabilitation centres. Instead of being detained in drug rehabilitation centres, they are sent to different organizations or orphanages for their rehabilitation in which they are not subjected to the obligation to perform work. Finally, the Government indicates that it has been fully engaged in improving the national education system through reforms by the Ministry of Education, Youth and Sports (MoEYS) in accordance with the National Strategic Development Plan 2014–18. MoEYS has been implementing the 3rd Education Strategic Plan 2014–18 in which the numbers of schools and students have increased gradually. The 2014–15 annual report of MoEYS indicates that 31 out of 72 education policies have been completely implemented, 61.4 per cent out of 66 per cent of the target of all forms of educational services provided for children aged 5 has been achieved, the drop-out rate at primary school level has been reduced from 10.5 per cent.
in 2013–14 to 8.3 per cent in 2014–15, the drop-out rate at secondary school level has fallen from 21.2 per cent in 2012–13 to 21 per cent in 2013–14, and the real enrolment rate at the primary school level has risen from 95.3 per cent in 2013–14 to 99.4 per cent in 2014–15.

In addition, before the Committee, a Government representative in Viet Nam referred to the recent report of the Committee of Experts. First, concerning the application of Articles 3(a), 7(1) and 7(2)(a) and (b) of the Convention, he said that the NCCT had been actively implementing activities based on the national Action Plan and its implementation together with the Village/Commune Safety Policy. According to the 2014 annual report of the Ministry of Social Affairs, Veterans and Youth Rehabilitation, seven provincial departments of the Ministry in Phnom Penh, Pursat, Kampot, Kratie, Siem Reap, Svay Reang and Banteay Mean Chey had successfully rescued victims from 346 cases of human trafficking (including child trafficking), 154 of whom had been provided with counseling, education, rehabilitation and vocational skills training. Child labour prevention activities had continued to remove children from the worst forms of child labour and ensure support services, including education, vocational training and reintegration and cooperation and continued with civil society organizations to combat trafficking of women and children and to promote decent work for children. As a result, in 2014, the Ministry of Labour and Vocational Training had removed 12,515 children from the worst forms of child labour and prevented 8,106 children from entering child labour by supporting them and providing them with non-formal education and vocational training. Furthermore, the National Multi-Sectoral Orphans and Vulnerable Children Task Force (NOVCTF) had provided care support at home to orphans, vulnerable children, children living with HIV/AIDS through social counselling and sensitizing children at school for care and treatment, and had provided food, shelter and seed capital for family businesses in target provinces. Second, with respect to the application of Article 3(a) of the Convention, he noted that the Law on Juvenile Justice was still in the drafting stage and the protection and safeguard of minors under detention therefore remained in accordance with Article 67 of the Law on Prisons of 21 November 2011. Third, concerning the application of article 7(2)(a) of the Convention, he explained that, with government support, schools at all educational levels had been built every year and the number of children in school had gradually increased. Simultaneously, public school numbers had increased in urban and rural areas to provide better access to education. The Sub-national Committee on Combating Child Labour and Other Forms of Exploitation of Children and Women had also been preparing a National Plan of Action on Child Labour Reduction and Elimination of the Worst Forms of Child Labour Phase II (2014–18). In conclusion, he affirmed his Government’s commitment to providing better protection and safeguards to all children in the country and to preventing them from all forms of child labour and child trafficking. The Cambodian National Council for Children (CNCC) was establishing a National Child Protection System to improve networking among all government institutions. Action plans and policies would be adopted to promote child protection and child development throughout the country.

The Worker members noted that Cambodia was still in a situation of serious violation of various fundamental labour Conventions and invited the Government to respond to concerns relating to all of the Conventions indicated by the Committee of Experts. They expressed serious concern at the trafficking of children for sexual and labour exploitation, despite the adoption of a National Plan of Action on Trafficking and Sexual Exploitation of Child-
engaged in domestic work for 12 to 16 hours a day, seven days a week. The Labour Code appeared to only apply to those with an employment relationship and failed to cover many areas of informal sector work where the most serious child labour problems existed. Furthermore, despite the Government’s information concerning efforts to increase inspections and concerns about weakening of efforts that were being made. The Government had provided information concerning an inter-ministerial mechanism to combat the trafficking of women and children, as well as the initiatives by a large number of governmental departments to address trafficking issues. Nevertheless, the Committee of Experts had expressed concern at the low number of actual prosecutions and convictions of traffickers and had urged the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders were carried out. Turning to the current observation of the Committee of Experts, they noted that, according to recent figures, there had been no meaningful improvement concerning the success rate of children saved from trafficking. The implementation of anti-trafficking legislation remained largely ineffective and trafficking of children, particularly for the purposes of sexual exploitation, was continuing. Additional information was needed on the nature and extent of trafficking in the country, which required consistent and standardized approaches to victim identification, data collection and analysis. Moreover, although the Government had taken measures to coordinate national efforts to combat trafficking, further work was needed to convert those efforts and policies into concrete and financially supported action. With respect to concerns about the involuntary admission of persons to drug treatment centres, the Government had provided information concerning different organizations or orphanages that were responsible for rehabilitating detained children, but had not provided assurances that those children were protected from mistreatment. Concerning access to free basic education, the Government had recently provided information that drop-out rates had improved slightly and enrolment at primary school level was nearing 100 per cent. However, it had not addressed the main concerns with respect to the completion of a full programme of education. The Government should be asked to implement new strategies that would produce meaningful results as a matter of urgency.

An observer representing the International Trade Union Confederation (ITUC) welcomed the Government’s policy and the master plan aimed at eliminating the worst forms of child labour in 1995, but said that significant progress had not been made. He recalled the 2012 joint survey by the Cambodian Government and the ILO which provided statistics of child workers and those in hazardous jobs. Regarding the worst forms of child labour, he raised three points. First, concerning sex and drug trafficking, young girls had been victimized, forced to work in brothels, and even raped and tortured. The number of arrests of child traffickers reported by the Government did not include the major offenders. He emphasized that child trafficking was well organized and that a strong commitment, manpower and prosecution was required from the Government to combat the major offenders. Second, children were made to work long hours and under hazardous conditions in the construction, agriculture, informal and SME sectors, and received limited attention from the Government. In this regard, reports suggested that the Government did not have sufficient information on several shared efforts with ILO–IPEC to eliminate child labour, including projects to eliminate the worst forms of child labour. The Government needed to move from enacting laws to the enforcement of those laws and should be encouraged to intensify its efforts to eliminate child labour in all its forms. Education and access were essential in this respect, but those reforms would take time before having positive results. She highlighted recent initiatives with employers, including transition measures from primary to secondary school. Other important initiatives included the improvement of the quality of teaching methods, access to education and curriculum design. Any change in the education system would have a marked impact that needed to be managed carefully and strategically. To ensure that young people graduated with relevant labour market tools, the Minister of Education was including vocational training schemes in secondary schools to ensure a more practical education. In the field of education, employers were consulted at all levels and significant positive efforts were under way, but would still take time. It was essential to continue to intensify measures to identify those children most at risk of being trafficked or moved into the worst forms of child labour. The Government should be encouraged to intensify its efforts to eliminate child labour, including those in hazardous and informal sectors. She emphasized that in Cambodia, children aged 12–17 years were driven by poverty to quit schooling and were made to do heavy work for US$3 a day. Third, because the law restricted employment to those aged 15 years and above, underage workers were found in the garment sectors working without formal identification. He referred to the Human Rights Watch Report of 2015, which had found that law enforcement was weakened by the lack of access of children to education, that children were paid less than the minimum wage and that they were instructed to hide from inspectors.

The Employer member of Cambodia emphasized that instances of child labour, including its worst forms, were serious and employers were encouraged to incorporate anti-trafficking information into education and training packages to be used by employers and workers to disseminate information in industries, including the garment sector. While there was an ongoing engagement between employers and the ILO to combat child labour in Cambodia, further engagement was needed from the tripartite constituents to achieve the full elimination of the worst forms of child labour. The Government needed to move from enacting laws to the enforcement of those laws and should be encouraged to intensify its efforts to eliminate child labour in all its forms. Education and access were essential in this respect, but those reforms would take time before having positive results. She highlighted recent initiatives with employers, including transition measures from primary to secondary school. Other important initiatives included the improvement of the quality of teaching methods, access to education and curriculum design. Any change in the education system would have a marked impact that needed to be managed carefully and strategically. To ensure that young people graduated with relevant labour market tools, the Minister of Education was including vocational training schemes in secondary schools to ensure a more practical education. In the field of education, employers were consulted at all levels and significant positive efforts were under way, but would still take time. It was essential to continue to intensify measures to identify those children most at risk of being trafficked or moved into the worst forms of child labour. The Government should be encouraged to intensify its efforts to eliminate child labour, including those in hazardous and informal sectors. She emphasized that in Cambodia, children aged 12–17 years were driven by poverty to quit schooling and were made to do heavy work for US$3 a day. Third, because the law restricted employment to those aged 15 years and above, underage workers were found in the garment sectors working without formal identification. He referred to the Human Rights Watch Report of 2015, which had found that law enforcement was weakened by the lack of access of children to education, that children were paid less than the minimum wage and that they were instructed to hide from inspectors.

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trafficking legislation, particularly by enhancing the capacity of law enforcement agencies, including their financial capacity. The EU was concerned by the 2011 concluding observations of the Committee on the Rights of the Child, where the mistreatment of persons in drug rehabilitation centres apparently extended to children, and urged the Government to indicate what safeguards existed, in both law and in practice, to ensure that children below the age of 18 years detained in drug rehabilitation centres, who had not been convicted by a court of law, were not subjected to the obligation to perform work. According to an ILO–IPEC survey, the Cambodia Labour Force and Labour Survey 2012, only 3 million out of the 4 million (79 per cent) children aged 5 to 17 years in the country attended school. The EU urged the Government to continue its efforts to reinforce the education system, notably by continuing to increase its financial allocation to the sector and by prioritizing the implementation of its policies to place equitable access, the retention of children in formal education and the quality of education at the centre of its work. Acknowledging the strong leadership of the Government in 2014 in the areas of examination reform, school inspection and teacher policy, which provided a basis for improvement in the sector, she called on the Government to cooperate with the ILO and to respond to the requests of the Committee of Experts and expressed its continued readiness to cooperate with the Government to promote development and the full enjoyment of all human rights.

The Government member of Switzerland supported the statement made by the EU. He expressed great concern about child labour, specifically the sale and trafficking of children. He supported the observations of the Committee of Experts on this issue and said that it was necessary to conduct in-depth investigations. He stressed that all governments should prioritize the education of children. According to the data provided by ILO–IPEC and UNICEF, only around 75 per cent of the children in Cambodia were in school. He encouraged Cambodia to continue its efforts to increase school attendance rates.

The Worker member of Japan referred to statistics provided by the Cambodia Labour Force and Child Labour Survey 2012 and said that those figures were already enough to describe how bad the situation of child labour was in the country; nevertheless, it did not reflect the reality. Thousands of girls and boys were trafficked from, through and within the country every year for the purpose of sexual exploitation and forced labour. Furthermore, children were engaged in child labour, many of them in the worst forms of child labour, including in small enterprises and informal workplaces. Labour inspection, corrective action and accountability were crucial to combating child labour. In 2014, the Cambodian Labour Ministry had taken some positive steps to revamp its monitoring, creating integrated labour inspectorate teams to inspect factories. Those steps were encouraging and overdue, but the Ministry’s efforts continued to be weak in several critical respects: tackling government corruption and collusion with factory management, the lack of transparency about its inspections and outcomes, and poor accountability. He added that the presence of democratic and independent trade unions was essential to eliminating child labour. As monitors of the implementation of the law and collective agreements in the workplace, unions had an important role in ensuring compliance with anti-child labour, alongside employers, by identifying illegal child labour, removing children from the workplace and sending them to school. The high presence of government-dominated trade unions in some sectors, however, allowed the worst forms of child labour to continue unopposed. He therefore urged the Government to ensure that all trade union rights were respected in both law and practice at the earliest date, as this would have a positive impact on the eradication of the worst forms of child labour.

The Government member of Canada recalled that, while Convention No. 182 was one of the most recent ILO Conventions, it had experienced the fastest rate of ratifications and had become one of the eight fundamental Conventions. The Convention addressed egregious activities centred upon some of the most vulnerable people in our societies, namely children. His Government therefore strongly encouraged all States to fully implement its provisions. He welcomed the actions that had already been undertaken to address trafficking and sexual exploitation of children, and to prevent the engagement of children in the worst forms of child labour, by expanding access to early childhood, secondary and post-secondary education, as well as to non-formal, technical and vocational education. While noting positively the efforts focusing on marginalized and vulnerable children and girls who were at risk of dropping out of school, there were still areas where more had to be done, or information had to be provided. He urged the Government to strengthen its efforts to combat the sale and trafficking of children through the implementation of the anti-trafficking legislation, the conduct of investigations, robust prosecutions and the strengthening of law enforcement authorities. He also urged the Government to take action to increase school enrolment, and especially to reduce the drop-out rate at the secondary school level. While noting the information provided by the Government, he indicated that he looked forward to receiving information on the rules governing persons under 18 detained in drug rehabilitation centres, as well as the possible compulsory exaction of child labour in such facilities and the lack of criminal convictions.

The Worker member of the Philippines was alarmed at the high number of out-of-school children in Cambodia. The percentage of girls not attending school was close to 12 per cent. Data also showed that a large proportion of these children (almost 60 per cent) did not attend school because they could not afford to do so or could not access a nearby school. According to UNICEF statistics for 2012, the net attendance rate at primary school, 85.2 per cent for boys and 83.4 per cent for girls, dropped significantly to 45.9 per cent for boys and 44.7 per cent for girls in secondary school. He added that the fact that children and young people were being detained in drug rehabilitation centres could not be ignored. Most persons detained were confined for three to six months, while some detentions lasted up to 18 months. According to government statistics, some 2,200 people were detained in drug rehabilitation centres in 2012. The majority of detainees were young men between the ages of 18 and 25, although at least 10 per cent of the total population were children. Under international law, arresting and locking up homeless persons, sex workers, street children or persons with disabilities in drug rehabilitation centres was wholly unacceptable. He therefore asked that all individuals currently detained in Cambodia’s drug rehabilitation centres be immediately and unconditionally released. He added that the expansion of voluntary treatment services should not be a precondition for shutting down and closing inadequate rehabilitation centres. Torture and other ill treatment in these centres were common. Cruel assaults by staff appeared routine and there had been numerous similar cases reported earlier by Human Rights Watch. Bold measures were needed to act now, not tomorrow, for a better future for these children and young people.

The Government representative indicated firstly that Mr Kung Atith was not a Cambodian delegate. While taking due note of all the constructive comments made, he observed that some of the information provided was exaggerated and failed to reflect the reality of the situation. The Government was strongly committed to providing
better protection and safeguards for children in the country, as well as to preventing their involvement in all forms of child labour and trafficking of persons. The Government continued to strengthen the effective implementation of existing legislation and would endeavour to take further measures. The CNCC was setting up the National Child Protection System in order to ensure close cooperation among government institutions. The CNCC had already been working very closely with the relevant ministries and the social partners for the purposes of promoting child protection. Moreover, despite its limited resources, the NCCT had also been working strenuously to prevent human trafficking and to bring perpetrators to justice. The Government welcomed the collaboration of the national social partners and continued to work closely with the country’s development and social partners. In 2014, 20 per cent of the national budget had been allocated to education and the Government had further increased the allocated budget in 2015. He concluded by expressing his Government’s readiness and commitment to cooperate with the Committee of Experts and to keep it informed of any further progress made.

The Worker members emphasized that the Government needed to be determined to taking urgent, immediate and concrete measures to resolve the serious situation of child labour in Cambodia. They were deeply troubled first and foremost with the absence of a quality national public education system. A combination of corruption and the misuse of resources was depriving many children of a quality education. Instead of education, children were exploited for sex and other worst forms of child labour by criminal networks. They emphasized that children held in drug rehabilitation centres were subjected to forced labour. Children were often forced as the result of the dire poverty of their parents and sometimes worked alongside them, as in the case of agriculture, salt production, fisheries and construction, or they worked on their own in garment factories, using fake identification documents. They therefore urged the Government to immediately end the so-called “clean the streets” operations, immediately release all children held in drug rehabilitation centres and provide medical treatment to those children with actual drug problems certified medical professionals, and move to close the drug centres completely. They also called for the effective enforcement of anti-trafficking legislation and the provision of information on the progress made in this regard, as well as on the number of investigations, prosecutions, convictions and penal sanctions applied. Inspections should be increased to ensure that children under the age of 18 were not employed in hazardous work as envisaged by Convention No. 182 and Recommendation No. 190. The Government should work with trade unions and employers to identify the best methods for detecting and eradicating the worst forms of child labour in agriculture and industry. Investment was also needed in quality public education for all children. They called on the Government to accept ILO technical assistance to accomplish these goals.

The Employer members recalled that Convention No. 182 was a fundamental Convention of paramount importance and indicated that the variety of examples that had been mentioned in the discussion showed that the Convention was not being effectively implemented in Cambodia. There were two important areas of focus: the eradication of forced trafficking and other related practices occurring in drug rehabilitation centres and the poor school attendance rates. The Government had given assurances on a number of programmes, activities and resources that had been established to prevent trafficking and prosecute offenders. The budget for the education system had been increased significantly and there was therefore no excuse for the lack of progress. While aware that building a truly democratic society took time, more still needed to be done. The Employer members agreed with the Worker members on the need for the Government to upgrade the anti-trafficking programmes, provide evidence of significant progress to the Committee of Experts, ensure that children were not placed in drug rehabilitation centres, orphanages and other rehabilitation organizations that engaged in practices such as involuntary work, and increase its education budget so as to close the education gap at both the primary and secondary school levels. The Employer members also agreed that ILO technical assistance would be needed to ensure rapid progress.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the sale and trafficking of children for labour and sexual exploitation, compulsory labour exacted in drug rehabilitation camps, the significant number of children involved in hazardous work in agriculture, salt fields, construction, fisheries and the garment industry, as well as the high number of children not attending school, particularly secondary school.

The Committee noted the detailed information provided by the Government outlining the measures taken to combat the trafficking of children. These included measures to withdraw children under 18 from trafficking and to provide for their rehabilitation and social integration, as well as through the adoption of the Action Plan of the National Committee for Counter Trafficking 2014–18 adopted in early 2015. This National Plan of Action contributed to enhancing prevention and the criminal justice response to human trafficking, as well as protecting victims with gender- and age-appropriate support. The Committee also noted the Government’s indication that children under the age of 18 are not detained in drug rehabilitation centres, but instead were sent to different organizations or orphanages for their rehabilitation in which they were not subjected to the obligation to perform work. Finally, the Committee noted the information provided by the Government on measures taken to implement the National Strategic Development Plan (2014–18) which aimed to expand access to early childhood, secondary and post-secondary education, as well as non-formal, technical and vocational education. As a result, the number of schools and students had increased gradually, enrolment rates at the primary school level had risen and drop-out rates at both the primary and secondary school levels had dropped. Finally, the Government had indicated that it had increased over the past two years the percentage of the national budget allocated to education.

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

- in coordination with the social partners, increase its efforts and focus on preventing children from being exposed to the worst forms of child labour, including through increased labour inspections in the formal and informal economy;
- effectively enforce anti-trafficking legislation and provide information on the progress made in this regard, including on the number of investigations, prosecutions, convictions and penal sanctions applied;
- investigate and provide verifiable information on the extent to which forced labour, abuse and related practices occur in drug rehabilitation centres, including assurances that children are not detained in such centres or subject to forced labour and other related practices in any other institution in which they may be lawfully detained. In cases where children are found in such centres or similar institutions, they should be imedi-
CAMEEROON (ratification: 2006)

A Government representative said that child labour was a priority issue and that it had a central place within society. That was the reason why Cameroon had ratified Convention No. 182. The objective of the Government was to remove children from labour, particularly in the agricultural sector, in order to teach them the skills for a job or to enrol them in school. He added that Act No. 2005/015 of 29 December 2005 to combat the trafficking and smuggling of children had been adopted and that the scope of application of this Act had been broadened in 2011 in order to also cover child smuggling. He emphasized that his country had adopted a national plan of action to eradicate child labour. To that end, the Committee to Combat Child Labour had been set up in April 2015. He considered that the statistics that had been published were exaggerated as they had been provided by unofficial channels. He insisted that Cameroon was resolutely determined to eradicate child labour. In that regard, he referred to the International Day for the Protection of Children, held on 2 June 2015, when UNICEF had ranked Cameroon among the 25 countries that had adopted policies on child protection and had recommended the adoption by Cameroon of Act No. 2005/015. In conclusion, he indicated that his country had established the objective of eradicating child labour by 2017.

The Employer members indicated that 56 per cent of children under the age of 14, which was the minimum age for work, were currently engaged in work, and up to 40 per cent of them (1.6 million children or 8 per cent of the entire population) were engaged in the worst forms of child labour. According to a study partially prepared by the Government in 2012, between 600,000 and 3 million children were victims of human trafficking, which accounted for up to 15 per cent of the entire population. Children were engaged in domestic work, forced street begging, industrial work and commercial sexual exploitation, including child pornography, both within and outside of the country. Despite the measures taken to resolve these issues, the Employer members pointed out that they were too few and too slow. Referring to the Convention, they added that the measures taken were not immediate and effective, or not adopted with urgency. In particular, Act No. 2005/015 did not prohibit the use, procuring or offering of children for illicit activities and had resulted in only a few prosecutions involving children. Additionally, the drafting of the new Child Protection Code prohibiting the use, procuring and offering of children for pornography and sexual exploitation had been in process for nine years, since 2006. They appreciated the establishment of a committee of stakeholders, including organizations of employers and workers, to combat trafficking, as well as increased vice squad monitoring, carried out in conjunction with INTERPOL, and a constantly monitored phone line for anonymous complaints and three officers on permanent standby to investigate child labour issues. The Employer members emphasized that these measures were not sufficient and urged the Government to take the immediate and effective measures it had agreed to adopt in 2002 when ratifying the Convention, and also to treat this matter with the urgency required by the Convention.

The Worker members said that they welcomed the Government’s announcements concerning legislation and the targets set. It was important, however, to emphasize the urgent nature of the issue of child labour, and particularly its worst forms. The Government’s reference to pressure exerted on certain individuals to collect statistical data on child labour only served to weaken its arguments. In that regard, they observed that an alarming number of children, representing almost half the population of Cambodia, suffered economic exploitation through the worst forms of child labour, which were themselves perpetuated by the lack of an effective Government strategy. Moreover, the worst forms of child labour legislation set the minimum age for admission to employment at 14 years. It was estimated that the number of children under 14 engaged in work was at least 1.5 million, or around 28 per cent of children in that age group. Around 164,000 children aged between 14 and 17 were engaged in dangerous activities. Moreover, Cambodia had not reviewed its list of hazardous occupations, as required by Act No. 17 of 1969. In fact, Act No. 17 did not prohibit underwater work or work at dangerous heights, as in the case of children employed in fishing or to harvest bananas. According to UNAIDS, there were currently some 510,000 HIV/AIDS orphans in Cambodia that were particularly vulnerable to the worst forms of child labour. Often deprived of adequate family support, these children had no choice but to resort to economic activity to meet their needs. Many sectors of the economy were heavily reliant on child labour, including domestic service, street vendors, mining, agriculture, transport and construction. At least half the children in rural areas worked in agriculture, while in rural areas in the north of the country, the rate was as high as three quarters, mostly in tea and cocoa plantations, where production served international supply chains. Child domestic workers, most of whom were girls, suffered particularly difficult conditions, especially during working days averaging 13 hours, without a specific rest day. Although social services existed, the Government did not seem to have adopted effective policies to abolish the use of child labour in domestic work.

In the northern rural areas in the country, the tradition of sending boys to study religion in Koranic schools continued to be abused to force children to beg or perform other work, giving all their earnings to religious teachers. Children were also victims of abuse on urban streets, where they were employed in petty trades and other small-scale production activities, including by their parents. These children were particularly vulnerable to the worst forms of child labour, becoming victims of trafficking, forced labour, prostitution, begging networks, networks selling and trafficking drugs, and other forms of petty crime, as well as hazardous work. According to an ILO survey, nearly 4,000 children between 11 and 17 years of age, mainly girls, were subject to commercial sexual exploitation. The procuring or offering of children under 18 for the production of pornography or for pornographic performances and other illicit activities, including the production and trafficking of drugs, was not penalized. Despite repeated appeals by the Committee of Ex-
between child labour and education. Children deprived of job market, where they were often forced to work under hazardous conditions and were the victims of blatant exploitation. Those investigations could hardly be considered an adequate response in view of the scale of the problem. The laxity in the application of the legislation was exacerbated by the fact that the labour legislation only applied to contractual employment relationships, while the majority of children who worked had no formal employment contract. Only 81 labour inspectors were employed by the Ministry of Labour and Social Security, which was totally inadequate for responding to the massive incidence of child labour in Cameroon. Furthermore, inspectors did not have the necessary transport facilities or fuel to carry out their inspection tours. There were no reliable official statistics on the number of child labour violations, penalties or summonses issued, or of children assisted and provided with care following inspections. In conclusion, they emphasized the importance of the links between child labour and education. Children deprived of access to education had few alternatives to entering the job market, where they were often forced to work under hazardous conditions and were the victims of blatant exploitation. It was therefore crucial to extend access to free compulsory education in order to reduce child labour. Cameroon had fixed the age of completion of compulsory schooling at 14 years and the right to free education was provided for under Presidential Decree No. 2001/041. In practice, however, additional school fees and the cost of books and uniforms were prohibitive for many families and had been cited as the main cause of school drop-outs. Access to education was hampered by the remoteness of schools and the lack of drinking water in rural schools. In addition, at least 60 per cent of children were not registered at birth and as a result faced enormous difficulties, including with regard to education.

The Employer member of Cameroon condemned the use of child labour. However, he expressed surprise at the statistics published in a document that had been exaggerated. The Government should act quickly in order to eliminate the worst forms of child labour. He recalled that his organization was a member of the Committee to Combat Child Labour, which had been mentioned by the Government representative. The Government needed to map the areas where child labour was an issue and ILO assistance would be necessary to that end.

The Worker member of Cameroon considered that the Government’s efforts to combat and eliminate the worst forms of child labour were slow to bear fruit. The social fabric had begun to unravel, exposing workers to dire poverty, and that had fostered another multidimensional form of exploitation of children in domestic work, agricultural and forestry undertakings, fishing and sex work. In order to bring the necessary educative campaign, as free of charge, a number of snags remained, including the requirement to pay the fees of the parent’s association, which represented an obstacle for many parents. He made it clear that in private education those rates were even higher, in some cases forcing parents to choose which of their children should enjoy the benefits of education. In such cases, boys were more likely to be given preference than girls. He noted that, despite the commendable efforts of the Government, the school enrolment rate in Cameroon remained relatively low. Enrolment rates in primary education varied by region. However, the Government had a panoply of legal texts with which to combat the worst forms of child labour. Those texts however, whether in force or other instruments, could not bear fruit without the support of the families concerned.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Norway, Republic of Moldova and Armenia, said that the EU was engaged in promoting the universal ratification and implementation of the eight fundamental ILO Conventions as part of its human rights strategy. The EU called on all countries to protect and promote all human rights and fundamental freedoms to which their people were entitled. The EU wished to recall the commitment made by Cameroon under the Cotonou Agreement, the framework for Cameroon’s cooperation with the EU, to respect democracy, the rule of law and human rights principles, which included the abolition of the worst forms of child labour. Compliance with Convention No. 182 was essential in this respect. Noting that the Committee of Experts requested the Government to take all the necessary measures to ensure that investigations and thorough prosecutions were carried out with respect to persons engaged in the sale and trafficking of children under 18 years of age, the EU encouraged the Government to reinforce the capacity of the authorities responsible for Act No. 2005/015. Noting that the Child Protection Code had been in the process of adoption since 2006, she urged the Government to take the necessary measures for the adoption of the Code. The Government was also urged to take immediate and effective measures to ensure the implementation of the National Plan of Action for the Elimination of the Worst Forms of Child Labour (PANETEC) in the very near future, in particular by removing children from the worst forms of child labour, including hazardous types of work. The EU was concerned by the apparent increase in the numbers of children who were HIV/AIDS orphans. Expressing its solidarity with the families of the victims, the EU urged the Government to make sure that these children were not engaged in the worst forms of child labour. Noting that the laws requesting proclamation by the Government to take effective and time-bound measures to protect children engaged in domestic work, she encouraged the Government to cooperate with the ILO in the context of the ILO–IPEC project on this subject. In conclusion, the EU called on the Government to cooperate with the ILO and to respond to the requests of the Committees of Experts. The EU also expressed its continued readiness to cooper-
ate with the Government to promote development and the full enjoyment of all human rights.

An observer representing Public Services International (PSI) said that the trafficking of children and the worst forms of child labour in Cameroon were the consequences of poverty and economic regression. The drastic slump of school enrolment rate, the wage levels, the growing incidence of the exploitation and financial crises had had a negative impact on school enrolment of children, who were therefore deprived of education. School enrolment rates were much lower than those in countries having comparable per capita income levels to Cameroon. There was a practice of not sending children to school, which was unprecedented for a country that had not suffered the effects of war and civil conflict. Boys tended to be given preferential treatment at the expense of girls. For boys, the primary school enrolment rate varied from 39 per cent to nearly 100 per cent according to the region, compared with the enrolment rate for girls, which was 26 per cent in the regions of the far north. Children belonging to minority groups, such as pygmies and nomads, and those in border areas, did not attend school. Furthermore, the allowances previously awarded to teachers working in regions other than their own had been abolished. This had caused a gradual withdrawal of teachers from the most remote regions to the big cities, resulting in turn in the closure of rural schools.

To alleviate the situation, parents had begun to contribute heavily to the financing of education. In the far north, the region worst affected, 61 per cent of teachers were paid by parents. In the central region, which was the richest, the equivalent figure was 13 per cent. Inspectors, who had the task of ensuring the smooth running of schools, estimated that children now received only 25 weeks of teaching in the cities and 20 weeks in rural areas, compared with the official figure of 36 weeks. The situation was similar in secondary education, where for years the link between training programmes and job market openings had been non-existent, but that had not produced the necessary readjustment. The further a school was from a city, the worse its chances of receiving support in any form. It was therefore important to create jobs, especially decent work for adults in order to combat child labour at the same time. In conclusion, she called on the Government to take steps to abolish primary school fees; adopt a new national policy on schoolbooks; draw up an education programme that ensured access for girls; respect children’s rights; provide education that was geared to the needs of the job market; ensure decent pay for teachers; fight corruption; and respect the trade union rights of all workers.

The Government member of Algeria agreed that the concrete actions described by the Government of Cameroon should be supported, such as the implementation of a national committee to combat child labour and the adoption of a national plan of action and legislative and regulatory measures. The Government’s efforts to give greater visibility to the issue and effectively combat child labour should be supported as long as they strengthened the implementation of the national plan of action and assist the work of the national committee.

The Worker member of the United Kingdom emphasized that progress had been woefully slow despite the Government’s commitment, at the time of ratification, to put in place and implement, as a priority, programmes for the elimination per the worst forms of child labour and of the rehabilitation of children removed from such labour. She noted that the sale and trafficking of children, as well as children involved in domestic work, was high, that sexual exploitation and the use of children for pornography was common, while a high number of HIV/AIDS orphans were without care or education. Although Act No. 2005/015 had been adopted to combat the trafficking and smuggling of children, its implementation was regrettably low as there was little to show in the way of improvement. While noting the extremely high rate of child trafficking in the country, she called for the capacity and effectiveness of the monitoring mechanisms to be reviewed, such as the vice squad. The investigating team consisting of the three officials, who relied on reports of the public by telephone which, unsurprisingly was not an impressive mechanism. Considering the scale of the problem in the country, the figures for the prosecutions conducted in 2012 of only two cases involving a total of five children, out of the estimated 600,000 children trafficked in the country appeared to be very low. Referring to the adoption of the Child Protection Code, she said that although the Government had been promising its adoption since 2006, there had still been no indication of when the Code would be adopted and whether it would meet the requirements of the Convention. She deplored the fact that, despite the PANATEC programme, which offered to provide care for vulnerable children, including HIV/AIDS orphans, the number of orphans who had little or no care and who remained vulnerable to severe exploitation through the worst forms of child labour had increased to over half a million in 2013. She therefore encouraged legislative and other measures to be taken to make a real difference in the situation of children in Cameroon.

The Worker member of Nigeria observed that child labour was a reality for many children in Cameroon. These children not only lived on the margins of society, but had also been deprived of normal development. He indicated that he came from the northern part of Nigeria which had borders with Cameroon and had therefore witnessed the growing incidence of the exploitation and trade of children for work, such as domestic servants, sex slavery and agricultural undertakings. With the appearance of Boko Haram, these practices had significantly erupted. The average working hours of many children were between 12 and 15 without rest periods or the provision of food. As the Committee of Experts rightly observed, this deplorable situation was even worse for girls, who constituted 60 per cent of the trafficked and bonded workforce. These girls were generally used for commercial sex tourism and other forms of sexual exploitation, including the production of pornography. Turning to the practice of the exploitation of boys attending Koranic schools, where they received education which included a vocational or apprenticeship component, he said that these boys were sent out onto the streets to beg for money which they had to hand over to the instructors of their Koranic school. He indicated that child labour, including practices of human trafficking and forced labour, was also an easy manner to provide children as child fighters for Boko Haram. In conclusion, the Government must accelerate its efforts to protect the rights of the child through a system of coherent and consistent sanctions. To this effect, robust and proactive protection and rehabilitation measures were also necessary.

The Government member of Switzerland indicated that child labour, and particularly child trafficking were unacceptable. The conclusions of the Committee of Experts related to combating the sale and trafficking of children should be supported. Sufficiently dissuasive sanctions should be implemented and appropriate measures taken to raise awareness and discourage parents who were putting their children to work. With regard to the legislation, the Government should adopt the Child Protection Code in order to demonstrate strong political commitment to making progress on the issue and effectively combat child pornography. The Government should implement PANETEC to remove children from hazardous and domestic work.
The Government representative of Canada, recognizing the considerable challenges faced by the Government, supported the specific efforts made to respond to the concerns expressed by the Committee of Experts, in particular with regard to combating the sale and trafficking of children. Children were often displaced for the purpose of labor, especially in rural areas, and were frequently subjected to unregulated industrial activities, construction sites and for sexual exploitation for commercial purposes. In addition, although anchored in the traditional customs of the country, the practice of domestic work made children vulnerable by exposing them to various forms of abuse. The efforts made to bring to justice those who were found guilty of the sale and trafficking of children should be welcomed, and the Government should increase and intensify its efforts in that area by adopting the Child Protection Code as soon as possible, continuing its cooperation with the ILO and responding to the requests for information contained in the observations of the Committee of Experts.

The Government representative, while thanking all speakers for their recommendations and suggestions, questioned whether some of the data that had been cited actually related to Cameroon. On average, school attendance rates were over 80 per cent, and even 95 per cent in some regions. With regard to the problems in the extreme north of the country, it should not be forgotten that the region had been devastated by the war against Boko Haram and that saving lives was the main concern there. He also queried the information regarding child labour in mines, since Cameroon did not have a mining industry. The same was true of sex tourism, which was non-existent in the country. The low number of investigations was due to the small number of complaints made. The Government would take note of the recommendations made and would provide further information. It was however important not to paint such a bleak picture. The Government recognized that a problem existed and had taken steps to address it, particularly by establishing a legal framework. It was now important to stay on course and move forward faster when the economic and social situation so permitted. His Government greatly appreciated the support offered by partners, particularly the EU, and was committed to making every effort to combat the worst forms of child labour effectively so that they could be eradicated.

The Employer members thanked the Minister of Labour for coming to the Committee to examine the application of the Convention by his country. They had carefully listened to all the explanations provided. They clarified that, contrary to what the Government representative apparently understood, nobody believed that the Government had institutionalized child labour, including its worst forms. However, the discussions in the Committee expressed frustration at the slowness with which the problems were being addressed. Referring to the wording of the Convention, they emphasized that the Government’s commitment at the time of ratification, was to take immediate action to abolish the worst forms of child labour. Hence, the slow speed with which the measures and actions were taken under the Convention was a problem. In conclusion, while they trusted that the Government had done its best to implement the Convention, they emphasized that the Government, with technical assistance from the ILO, needed to take more measures more rapidly.

Worker members said that addressing the worst forms of child labour was difficult and thanked the Government representative for the information supplied. Without going into a discussion of figures, it should be recalled that the report of the Committee of Experts was based on a series of studies conducted jointly with the Government and that the gap between the figures quoted in the studies and the results achieved was too large, and hence frustrating. Child labour, and especially its worst forms, were a widespread practice in the country and the legislative and practical measures taken were totally insufficient. A considerable number of children at special risk were working in the informal economy outside the scope of the national legislation and the number of labour inspections was insufficient. The situation in extreme regions, especially those that were affected by terrorism, was particularly alarming. The Government should therefore ensure that the national legislation covered children working in the informal economy; revise the list of hazardous types of work in consultation with the social partners; promptly adopt the Child Protection Code so as to prohibit the use and offering of children for illicit activities; reduce the very large number of working children under 14 years of age by allocating the necessary resources to the labour inspectorate; ensure that school costs did not represent an obstacle to education; and, lastly, adopt, in consultation with the social partners, a national plan of action to combat child labour and the trafficking of children. To that end, the Government should consider availing itself of ILO technical assistance in order to identify the best way to coordinate the necessary measures and obtain prompt results, while bringing national law and practice into conformity with the Convention.

Conclusions

The Committee noted the detailed oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the trafficking of children for labour and sexual exploitation, the absence of legislation prohibiting the use, procuring or offering of children for pornography or for illicit activities, the large number of children involved in hazardous work and the increase in the number of children at risk of the worst forms of child labour including HIV/AIDS orphans and child domestic workers.

The Committee noted the information provided by the Government representative outlining policies and programmes put in place to combat the sale and trafficking of children, as well as hazardous work by children. This included the adoption of a comprehensive action programme, the National Plan of Action for the Elimination of the Worst Forms of Child Labour (PANETEC) that was being undertaken in collaboration with the ILO–IPEC to remove children from such situations. The Government had established, within the framework of the PANETEC, a national committee which was responsible for the elimination of child labour and its worst forms by 2017. The Committee also noted the Government’s statement that measures would be taken within the framework of the PANETEC to address the situation of HIV/AIDS orphans and child domestic workers in order to protect them from the worst forms of child labour. The Committee observed that the Government had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO.

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

- urgently revise, in consultation with the social partners, the list of hazardous work established by Law No. 17 of 1969 in order to protect children under the age of 18 from engaging in dangerous activities, including working underwater and at dangerous heights;
- adopt and implement the Child Protection Code, which has been pending for almost a decade, in order to prohibit the use, procurement and offering of children for illicit activities;
- reduce the extremely high number of children below the age of 14 engaged in employment, including haz-
ardous work, through: (a) a significant increase in the number of labour inspectors; (b) a significant increase in the resources allocated to them; and (c) the amendment of the Labour Code so as to limit the exceptions to the general prohibition against children working who are 14 years and below; and consistent with Presidential Decree No. 2001/041, and as required by Article 7(2)(c) of the Convention, ensure that children have access to free basic education and are therefore less vulnerable to the worst forms of child labour.

The Committee requested the ILO to offer, and the Government of Cameroon to accept, technical assistance in order to bring its laws and practices into line with Convention No. 182.
Appendix I. Table of Reports on ratified Conventions due for 2014 and received since the last session of the CEACR (as of 13 June 2015) (articles 22 and 35 of the Constitution)

The table published in the Report of the Committee of Experts, page 515, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses. Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

<table>
<thead>
<tr>
<th>Country</th>
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<th>Notes</th>
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<td></td>
<td>requested</td>
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<td></td>
<td>(Paragraph 46)</td>
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<td>· All reports received: Conventions Nos. 8, 9, 16, 22, 81, 87, 98, 129, 135, 140, 150, 160</td>
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<td>· 14 reports not received: Conventions Nos. 45, 81, 88, 98, 115, 120, 127, 136, 139, 148, 159, 170, 174, 176</td>
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<td>Uganda</td>
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</table>

**Grand Total**

A total of 2,251 reports (article 22) were requested, of which 1,739 reports (77.25 per cent) were received.

A total of 132 reports (article 35) were requested, of which 112 reports (84.85 per cent) were received.
## Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

### Reports received as of 13 June 2015

<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>
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<td>447</td>
<td>-</td>
<td>406 90.8%</td>
<td>423 94.6%</td>
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<tr>
<td>1933</td>
<td>522</td>
<td>-</td>
<td>435 83.3%</td>
<td>453 86.7%</td>
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<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>
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<tr>
<td>1936</td>
<td>662</td>
<td>-</td>
<td>577 87.2%</td>
<td>604 91.2%</td>
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<td>1937</td>
<td>702</td>
<td>-</td>
<td>580 82.6%</td>
<td>634 90.3%</td>
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<tr>
<td>1938</td>
<td>748</td>
<td>-</td>
<td>616 82.4%</td>
<td>635 84.9%</td>
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<td>1939</td>
<td>766</td>
<td>-</td>
<td>588 76.8%</td>
<td>-</td>
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<td>351 48.4%</td>
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<td>370 50.6%</td>
<td>578 79.1%</td>
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<td>-</td>
<td>581 76.1%</td>
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<td>521 65.2%</td>
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<td>806</td>
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<td>666 82.6%</td>
<td>695 86.2%</td>
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<tr>
<td>1950</td>
<td>831</td>
<td>253 30.4%</td>
<td>597 71.8%</td>
<td>666 80.1%</td>
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<tr>
<td>1951</td>
<td>907</td>
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<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>
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<tr>
<td>1953</td>
<td>1026</td>
<td>212 20.6%</td>
<td>840 75.7%</td>
<td>917 89.3%</td>
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<tr>
<td>1954</td>
<td>1175</td>
<td>268 22.8%</td>
<td>1077 91.7%</td>
<td>1119 95.2%</td>
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<td>1955</td>
<td>1234</td>
<td>283 22.9%</td>
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<td>1170 94.8%</td>
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<tr>
<td>1956</td>
<td>1333</td>
<td>332 24.9%</td>
<td>1234 92.5%</td>
<td>1283 96.2%</td>
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<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>
</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>
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<tbody>
<tr>
<td>1959</td>
<td>995</td>
<td>200 20.4%</td>
<td>864 86.8%</td>
<td>902 90.6%</td>
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<tr>
<td>1960</td>
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<td>256 23.2%</td>
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<td>963 87.4%</td>
</tr>
<tr>
<td>1961</td>
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<tr>
<td>1962</td>
<td>1309</td>
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<td>1964</td>
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<td>213 14.2%</td>
<td>1268 84.8%</td>
<td>1356 90.7%</td>
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<tr>
<td>1965</td>
<td>1700</td>
<td>282 16.6%</td>
<td>1444 84.9%</td>
<td>1527 89.8%</td>
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<tr>
<td>1966</td>
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<td>1330 85.1%</td>
<td>1395 89.3%</td>
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<td>1968</td>
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<td>1409 85.5%</td>
<td>1470 89.1%</td>
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<tr>
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<td>1821</td>
<td>249 13.4%</td>
<td>1501 82.4%</td>
<td>1601 87.9%</td>
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<tr>
<td>1970</td>
<td>1894</td>
<td>360 18.9%</td>
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<td>1549 81.6%</td>
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<tr>
<td>1971</td>
<td>1992</td>
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<td>1504 75.5%</td>
<td>1707 85.6%</td>
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<tr>
<td>1972</td>
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<td>1572 77.6%</td>
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<tr>
<td>1973</td>
<td>2048</td>
<td>300 14.6%</td>
<td>1521 74.3%</td>
<td>1691 82.5%</td>
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<tr>
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<td>370 16.5%</td>
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<td>1975</td>
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As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

<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>
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<tr>
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<td>1979</td>
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<td>1983</td>
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<td>370</td>
<td>1573</td>
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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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<td>988</td>
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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>
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<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>
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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>
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<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>
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<tbody>
<tr>
<td>2012</td>
<td>2207</td>
<td>809</td>
<td>1497</td>
<td>1742                        78.9%</td>
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<tr>
<td>2013</td>
<td>2176</td>
<td>740</td>
<td>1578</td>
<td>1755                        80.6%</td>
</tr>
<tr>
<td>2014</td>
<td>2251</td>
<td>875</td>
<td>1597</td>
<td>1739                        77.2%</td>
</tr>
</tbody>
</table>
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Part Two: A

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Part Two: A

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Part Two: B No. 122

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Part Two: A
REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL
Fifteenth sitting
Saturday, 13 June 2015, 10.15 a.m.

President: Ms Jauzême

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION AND APPROVAL

The PRESIDENT

I 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. 14, parts 1 and 2.

I invite the Officers of the Committee to come up to the podium. They are Ms Gaviria (Colombia), Chairperson; Ms Regenbogen (Canada), Employer Vice-Chairperson; Mr Veyrier (France), Worker Vice-Chairperson; and Ms Mulindeti (Government member, Zambia), the Committee’s Reporter, who will be the first to take the floor.

Ms MULINDETI (Reporter for the Committee on the Application of Standards)

It is a pleasure and an honour to present to the plenary the report of the Committee on the Application of Standards. The Committee is a standing body of the Conference, empowered under article 7 of its Standing Orders to examine 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 and other standards-related obligations as provided for under the ILO Constitution.

The Committee provides a unique forum at the international level as it gathers actors in the real economy drawn from all the regions of the world who have sat alongside one another during times of economic booms and busts.

Significant work by all parties went towards the preparation for this session of the Committee in the framework of the standards initiative and the follow-up to the 2012 session of the Committee. A number of important meetings took place this year.

First, let me refer to the February 2015 tripartite meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at the national level, during which the Workers’ and Employers’ groups presented a joint statement concerning a package of measures intended to provide a constructive way forward for the questions that had arisen with respect to the role of the supervisory system. During the February 2015 tripartite meeting, the Government group had also expressed its common position on these matters.

Another important meeting was that of the informal tripartite working group on working methods of the Committee on the Application of Standards, which met in March 2015 and held very constructive discussions. It considered the issues of the establishment of the list of cases and the adoption of conclusions. It also examined the possible implications on the functioning of the Committee of the two-week session of the Conference. The informal working group adopted a series of recommendations on these issues, which were transmitted to the Governing Body. On the basis of the results of these meetings, the Governing Body was able, in March 2015, to adopt a comprehensive decision embracing all the matters that had been put on the table in relation to the standards initiative. It decided not to pursue, for the time being, any action in accordance with article 37 of the Constitution to address the interpretation question concerning Convention No. 87 in relation to the right to strike.

The Governing Body also decided to establish a tripartite working group under the Standards Review Mechanism and to request the Chairperson of the Committee of Experts and the Chairperson of the Committee on Freedom of Association to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures.

Finally, the Governing Body called on all parties concerned to contribute to the successful conclusion of the work of the Committee at the current session of the Conference. I am therefore happy to be in a position to report that the Committee was able, at this session, to conclude its work successfully.

The report before the plenary is divided into two parts. The first part contains the general report of the Committee, which includes a record of its general discussion and its discussion of the General Survey of the Committee of Experts. The second part consists of a detailed record of the discussion of individual cases, in particular the 24 individual cases examined by the Committee on compliance with ratified Conventions and the related conclusions adopted for each of these cases.

I will recall the salient features of the Committee’s discussions in respect of these questions. Let me start by indicating that the Committee was able to adopt a list of 24 individual cases for discussion. In doing so, it pursued its efforts towards achieving the balance sought between the fundamental governance and technical Conventions as well as geographical balance and balance between developed and developing countries – the latter being a new
criteria resulting from the discussions within the informal tripartite working group on working methods of the Committee which met in March 2015. Although challenged by time constraints, the Committee was able to examine those 24 cases and adopt consensual conclusions in all cases. It regretted that the Government of Kazakhstan failed to take part in the discussion concerning the application by its country of Convention No. 87. This case has been mentioned in a special paragraph of the Committee’s report. The Committee also decided to include a special paragraph on the application by Mauritania of the Forced Labour Convention, 1930 (No. 29) and by Swaziland of Convention No. 87.

I will now briefly refer to the Committee’s general discussion, during which the fruitful dialogue between the Committee and the Committee of Experts was highlighted. The Committee works closely with, and to a large extent on the basis of, the report of the Committee of Experts. Furthermore, it is an 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 2014.

Subsequently, this year, the Committee had the pleasure of welcoming the Chairperson of the Committee of Experts, who attended the first days of its sessions as an observer with an opportunity to address the Committee. The discussions placed emphasis on the importance of the interaction between the two committees. The Committee also examined the Committee of Experts’ General Survey concerning the right of association and rural workers’ organizations instruments, namely the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers’ Organisations Convention, 1975 (No. 141), and the Rural Workers’ Organisations Recommendation, 1975 (No. 149). This General Survey, together with its discussion by the Committee and the outcome adopted following that discussion will inform the recurrent discussion on the strategic objective of fundamental principles and rights at work, to be held at the 106th Session (2017) of the Conference under the follow-up to the 2008 Social Justice Declaration. In the outcome it adopted following its discussion of the General Survey, the Committee highlighted the link with other topical issues currently being tackled by the ILO, such as the transition from the informal to the formal economy, labour migration, economic development, poverty reduction, non-standard forms of employment, decent work in global supply chains, and significant environmental and climatic pressures. It noted the persistence of obstacles to the implementation of the instruments concerned, and stressed that agricultural and rural workers should enjoy full freedom of association in law and in practice, in common with other workers and employers.

The Committee considered that the Office should provide the opportunity for member States to share experiences and information concerning the ways in which the instruments may be implemented in practice and conduct capacity building to enable existing rural workers’ organizations to more effectively represent workers, in particular through collective bargaining. The importance of labour inspection to facilitate and monitor the application of legislation and policy in rural areas was also emphasized.

I would like to thank the Chairperson, Ms Gaviria, along with the Employers’ and Workers’ Vice-Chairpersons, Ms Regenbogen and Mr Veyrier. I would like to now recommend that the Conference approve the report of the Committee on the Application of Standards.

Ms REGENBOKEN (Employer Vice-Chairperson of the Committee on the Application of Standards)

On behalf of the Employers’ group, I commend the report of the Committee on the Application of Standards to this plenary today and recommend its approval. As you know, the Committee on the Application of Standards is one of the two pillars of the supervisory system that supervises the application of Conventions ratified by member States. It is a key element of the supervisory system and therefore its work is crucial to the proper and credible operation of the supervision of international labour standards.

The work of the Committee took place this year in a constructive and open atmosphere. We are very pleased to report that the Committee, on the Application of Standards demonstrated its ability to lead a meaningful and results-oriented tripartite dialogue. It reaffirmed its role as a cornerstone of the ILO supervisory system, where the ILO’s tripartite constituents debate the application of international labour standards on the basis of the Committee of Experts’ technical preparatory work. While divergences on the substantial issues remain among the tripartite constituents, these were voiced in a spirit of mutual respect, constructive dialogue and understanding.

The Committee on the Application of Standards successfully adapted its work to the shortened two-week session of the ILC this year. This new format did not impede the work of the Committee in our view, and this is in large part due to the excellent time management by the Chairperson of our Committee and the full cooperation of the members of the Committee who took the floor to make interventions. The Employers took the discussion of the general part of the experts’ report. We took this opportunity to highlight a number of positive measures included in the 2015 Committee of Experts’ report and to make some recommendations on areas where the experts’ work could be improved.

First, we welcome the Committee of Experts’ clarification of its mandate, which is contained in paragraph 29 of the experts’ report. We think that this is a very helpful clarification and trust that it will be visibly reproduced in future experts’ reports. The Employers’ group also welcomes the fact that there is ongoing close cooperation that has been established between the Committee on the Application of Standards, the experts and the Office, and that this close cooperation was reflected by the experts in their report. We appreciated the presence of the Chairperson of the Committee of Experts, Mr Koroma, in our debate. The constant and direct dialogue between the Committee on the Application of Standards and the Committee of Experts along with representatives of the secretariat of the Office is of the utmost importance to facilitate the experts’ understanding of the realities and needs of the users of the supervisory system – the users of the supervisory system being the tripartite constituents. The supervisory system, in our view, must have and con-
continue to have the trust and support of the tripartite partners.

We are hopeful that possibilities for additional dialogue between the members of the Committee on the Application of Standards, the experts and the Office will continue to be explored. We also appreciate that the Committee of Experts has taken close note of the work of the Committee on the Application of Standards in its report, including taking note of divergent views of the tripartite partners on issues related to interpretation and application of Conventions. The Employers’ group welcomed the increased focus on essential application and compliance issues in the report. The Employers noted that the experts’ report was shortened this year, which has been achieved in part by the more frequent use of direct requests rather than observations. In this regard, the Employers requested that we have continued collaboration and information on the use of observations and direct requests.

We noted, positively, an increased number of comments from the social partners included and considered by the experts in their report. In our view, this shows a greater interest of the social partners in standards supervision, which is in turn an indicator for the increased relevance of the Committee of Experts’ work. We trust that the Office will continue to provide capacity building to the social partners for a better and more efficient contribution to the work of the experts.

Furthermore, we highlighted a number of very positive developments in the experts’ report and welcome these new measures. We did, however, also make a note of an area that continues to give us concern. The experts’ interpretation on the right to strike in the context of Convention No. 87 continued to be of concern to the Employers’ group. In the 2015 report, 30 out of 45 experts’ observations were almost all of the experts’ 45 direct requests regarding the application of Convention No. 87 dealt either in part or in whole with the issue of the right to strike. As a result, this continues to be a concern and an area in which the Workers and Employers have, in a divergent opinion on this matter. Aware, the Employers’ view on this issue is that the matters relating to the right to strike fall outside of the scope of Convention No. 87 and outside of the experts’ mandate to direct governments with respect to specific action in that regard. Furthermore, as the Governments underlined in their February and March statements, the scope and conditions of the right to strike may be regulated at the national level. Therefore, in the Employers’ view, governments concerned can legitimately determine the terms and conditions of the right to strike at national level.

Turning now to the discussion of the General Survey, this discussion on the range of challenges in relation to freedom of association and collective bargaining in the rural economy. Rural workers often are not able to enjoy full freedom of association rights. The Employers express their view that most obstacles to the implementation of the instruments were not legal challenges but related instead to the nature of the rural economy, such as geographical isolation, lack of access to technology and means of communication, lack of capacity in the labour inspectorate, low levels of skills and education, and the high incidence of child labour, forced labour and discrimination.

Reference was made to the need for an overall strategy to include measures to promote investment, entrepreneurship, and modernization of means and methods of production which ensures the conditions of an enabling environment for agricultural enterprises. In terms of ILO means of action, the Committee considered that the Office should conduct background work with a view to understanding better the barriers to ratification and implementation of the instruments and enabling a consideration of the up-to-dateness of the instruments concerned to ensure that international labour standards effectively respond to the many and varied challenges for rural communities. An appropriate process in the Employers’ view could be undertaken with the Standards Review Mechanism, to consider both instruments specific to agriculture and the rural economy as well as other relevant instruments of broader application.

I will spend a few moments now talking about the discussion of the individual country cases in respect of the application of Conventions. The list of 24 country cases was negotiated in good faith and was delivered by the proposed deadline. We view this as a very positive measure and an indication of the spirit of cooperation and collaboration that existed between the social partners this year.

The Employers note that it is unfortunate that we did not have an opportunity within the 24 cases to discuss any cases of progress. We trust that next year further efforts will be devoted to include cases of progress among the 24 cases to showcase good practice in the application of international labour standards and to commend, on a tripartite basis, governments’ efforts in this regard.

Perhaps one of the most important positive steps taken in our Committee was the way in which conclusions were drafted. According to the February agreement, the Workers and Employers played an active role in drafting the conclusions. We saw real tripartite ownership of the outcomes of the Committee as a result.

The conclusions of the Committee in relation to the individual cases reflect only consensus recommendations. This is now clear with the insertion of a new paragraph of options. At this stage, we noted, positively, an increased number of comments from the social partners included and considered by the experts in their report. In our view, this shows a greater interest of the social partners in standards supervision, which is in turn an indicator for the increased relevance of the Committee of Experts’ work. We trust that the Office will continue to provide capacity building to the social partners for a better and more efficient contribution to the work of the experts.

Therefore, controversial issues or issues of disagreement are not reflected in the conclusions. Instead, divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions. “The Committee on the Application of Standards (CAS) has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. The CAS has adopted conclusions on the basis of consensus. The CAS has only reached conclusions that fall within the scope of the Convention being examined. If the work of the Committee or the experts had divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions.” Therefore, controversial issues or issues of disagreement or divergence of views are not covered by the conclusions. Therefore, divergence of views with respect to our differing opinion on the inclusion of the right to strike in Convention No. 87 is not reflected in the conclusions. Instead, these divergent views are set out in the Record of Proceedings, both in Part 1, the General Report, and Part 2, the report of the discussion of individual cases. In their operational part, the conclusions adopted are short, clear and straightforward, thereby providing clear direction to governments on the concrete
measures that must be taken in order to achieve compliance with the Convention in question.

We think that this is an achievement within the Committee that should be commended and that heralds a step in a very positive, collaborative and constructive direction.

We would highlight in respect of a couple of individual cases some areas in which the conclusions reflect very serious issues of non-compliance with obligations under international labour standards. In particular, we highlight the case of the Bolivarian Republic of Venezuela, Convention No. 87, which related to the continued acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders, as conducted by the Government as well as the exclusion of FEDECAMARAS from the social dialogue process.

In addition, the case of El Salvador, considering the application of Convention No. 87, concerned the lack of autonomy of workers’ and employers’ organizations to select their representatives on tripartite bodies, where, due to the interference of the Government, the Higher Labour Council could not meet and has not met for the last two years.

The case of Mauritius, in relation to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), concerned the Government’s undue interference in private-sector collective bargaining that is damaging to the employers’ and workers’ ability to negotiate a collective agreement in good faith.

Finally, the case of Kazakhstan, in relation to Convention No. 87, concerned, among other issues, a serious infringement of the employers’ freedom of association as a result of the adoption, in July 2013, of the Law on the National Chamber of Entrepreneurs. Furthermore, we deeply regret the fact that the Government of Kazakhstan did not attend the discussion of the case, as a result of which the case was referred to in a special paragraph of our report.

In conclusion, the Employers’ group feels very positive about the way in which the Committee on the Application of Standards operated this year. We held rich and diverse debates, we reached consensus whenever possible and we highlighted our divergence of views when necessary. We think that this process is healthy, and we think that this process of open dialogue and debate will only strengthen the supervisory system and not in any way take away from its authority.

In our view, the supervisory system is here to guide member States on key matters relating to the governance of labour and social policy, thus enabling member States to find ways to promote the adequate protection of workers and promote full employment and sustainable employment. We think that if we do not take a moment to express our deep thanks and appreciation for Ms Doumbia-Henry, this is the last session of the Committee, it will be a very positive step in the development of the Maritime Labour Convention, 2006 (MLC, 2006), as well as collaborating with shipowners’ and seafarers’ organizations to ensure effective national implementation of the Convention. We must thank Ms Doumbia-Henry not only for her technical competence, but also, above all, for her deep commitment to the work of the supervisory system as well as her deep and firm understanding of the importance of tripartism. This understanding assisted the parties in moving forward in a constructive spirit. Also, with an innovative and pragmatic spirit, she has been the engine of many positive developments within the supervisory system, within the Standards Department and within this house more broadly. On a personal level, her energy and leadership allowed for the innovation and modernization of the working methods of the work of our Committee, as well as inspiring parties to attempt to match her tireless energy and taking us through late working evening sessions. We wish her all of the best in her future endeavours.

Also, a special thank you to our Chairperson, Ms Gaviria, from the Government of Colombia, for the fair parliamentary running of the Committee’s meetings this year and her effective time management. Without her able skills in this regard, the work of our Committee would not have been as effective and constructive.

We also thank our Reporter, Ms Mulindeti, who this year ensured that the Committee’s work was properly kept on record, and thank her for her assistance in the adoption of conclusions.

I must also take a moment to thank the secretariat of the International Labour Standards Department who assisted us in our work. Without their tireless work and their enthusiasm, the work of our Committee would not be possible, so we thank them for all of their hard work.

It is my privilege to represent the Employers’ group in the work of the Committee this year and I wish to take a moment to thank the Employers’ group as a whole for their support, their hard work, their careful analysis of the legal issues and the input of information regarding situations at national level.

I want to specifically thank the Employers’ working group, which included Alberto Echavarria, Juan Mailhos, John Kloosterman, Renate Hornung-Draus, Françoise Andrieu, Paul Mackay, Nick Huffer, Guido Ricci, Sandra D’Amico and Sifiso Lukhele, for the help they provided in the preparation and presentation of cases, as well as for the background and information regarding their regional circumstances.

I would also like to express my deep gratitude for the invaluable support given by Maria Paz Anzorreguy, Alessandra Assenza and Roberto Sáez Santos of the ILO. Christian Hess of ACT/EMP and Catalina Peraflán of ANDI Colombia. Certainly, without their very helpful support and their preparation, this job and our work would not have been possible.

Last and certainly, by no means least, I thank Mr Veyrier, the Worker spokesperson, and his team for their constructive collaboration. I believe we have had an extremely constructive session and in large part that goes to the very positive spirit in which the Workers approached our work and the tasks before us this year. So I thank them for all of their hard work.

Finally, in closing, let me reiterate the Employers’ very deep support for the supervisory system and
express our intention that we look forward to continued collaboration and cooperation with the Committee of Experts. Furthermore, we look forward to continuing to work within our role in the supervisory system related to the application of Conventions by member States. This work is so very important and we are grateful and privileged to be a part of it.

Original French: Mr VEYRIER (Worker Vice-Chairperson of the Committee on the Application of Standards)

First of all I would like to thank all my colleagues from the Workers’ group, including, of course, those involved in the ongoing preparations for the Committee on the Application of Standards and who have played an absolutely essential role in our work. They did me the honour of entrusting me with the role of spokesperson for them and I am very proud of that.

I would also like to thank our Chairperson, Ms Gaviria, and our Reporter, Ms Mulindeti, without whom we would not have been able to carry out our work so efficiently. Lastly, I would like to pay tribute to the Governments and the Employers for their full involvement in the intensive work which was compressed into two weeks.

In particular, I would like to pay my respects to Ms Regenbogen, the Employer spokesperson, because I appreciated – as well as having cause to experience – not only her tenacity and her expertise but also her grasp of what is involved in debate and consensus. I think it could be said that we have just been given another example of that. So it is up to me now, as it was on previous occasions, to demonstrate equal tenacity and, literally, an equal grasp of debate and consensus. I hope that I was able to achieve the same level of expertise.

The Workers’ group welcomes the fact that the Committee on the Application of Standards was able to complete its work and is therefore in a position to propose the approval of its report containing, inter alia, the conclusions concerning the 24 cases that it examined.

After three Conference sessions dominated by the “standards crisis”, after intense debate and controversial discussions involving all the constituents, there was an urgent need to re-establish our Organization’s function of examination and supervision.

In many regions of the world, conflicts, war and their accompanying phenomena of barbarity and terror are a continuing scourge. Labour conditions which involve injustice, hardship and privation for large numbers of people, as referred to in the ILO Constitution and which the ILO seeks to eliminate, still prevail and no country is spared. Inequalities have never been so great.

More than 200 million workers are without employment. Precariousness is becoming widespread. In Europe, social protection systems are impacted by austerity policies. However, the essential function of the Committee on the Application of Standards is itself attached to the Preamble of the ILO Constitution. That task is to ensure that no nation can adopt conditions of labour which are not truly humane. It was therefore a pressing duty for us to re-establish the functioning of our Committee. There could be no better place than here to demonstrate that through bipartite negotiations and tripartite social dialogue the most difficult conflicts could be resolved.

The decision taken by the Governing Body last March, on the basis of the agreement between the Employers and the Workers and statements made by Governments, required us to take an important first step. We managed to do this but we still have a long way to go and the roadmap still involves stages which will be difficult. This roadmap is particularly based on the mandate of the Committee of Experts recalled in paragraph 29 of its report. It takes into account the concerns of all parties, including those of the Employers concerning the legal scope of the experts’ observations. Accordingly, the Committee of Experts must be able to continue its work in a spirit of cooperation with the Committee on the Application of Standards, with independence, objectivity and impartiality.

And, if the Employers have told us that they did not always agree with some of the experts’ observations, believe me when I say that this is also the case for the Workers, who would sometimes expect firmer, more precise observations from the experts, albeit not always reflecting, of course, the views expressed by the Employers and the Governments.

As the revolutionaries of 1789 proclaimed, a society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all. This is a universal principle which is true for the Workers here, but it is also true for the Employers and the Governments.

The Employers recognize that workers have the right to collective action, and one of the ways in which this is expressed is the right to strike. They have repeatedly told us, however, that they did not consider that the right to strike can be derived from the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). But repetition does not always succeed in getting the message across. In this case, the repetition by the Employers does nothing to weaken the Workers’ conviction that the right to strike is an essential part of freedom of association and the right to collective bargaining, as established by Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). If it is necessary for us in turn to repeat this, we will do so as many times as is needed. The right to strike, like many other social rights, before being recognized and accepted as a right, often of a constitutional nature because of being tied to the exercise of democracy, had to be fought for by the workers. The right to strike is a victory won by the working class after fighting tooth and nail.

History has shown us that banning the exercise of legitimate rights never prevents vigorous protest. I would even add that banning the exercise of legitimate rights is often what causes vigorous protest. Nowadays it is very difficult for employers to unlawfully ban that workers tend to have recourse to it, because they have no other way of being heard.

So I would make an appeal for reflection rather than repetition. Recognizing the right to strike means recognizing the right of workers to organize and to bargain collectively on equal terms with the employers. The right to strike is not an end in itself; it is a tool used in the last resort. It jeopardizes the worker’s wage, which is his only resource in exchange for his labour. This is why I insist: recognizing the right to strike is having the courage of one’s convictions, showing a real commitment to collective bargaining as the means to settle labour dis-
putes through compromise agreements moving towards social progress, taking into account the needs of the real, productive economy driven by enterprise.

With the exception of the cases which have been given particular attention, where it was agreed to devote a special paragraph or decide on a high-level mission, I will not single out individual cases here because I have no wish to create any other hierarchy than that established in the supervisory system.

The Committee on the Application of Standards proposes to the Conference to adopt its conclusions on several cases concerning the protection of freedom of association. The primary goal of these conclusions is to protect real and effective freedom, particularly in those countries where workers are still suffering discrimination and sometimes violent repression, simply because they believed they were protected in terms of fundamental principles and rights at work. We can only invite and urge the governments concerned to take urgent action. We appeal to them not to remain on the sidelines of the international community that upholds the observance of human rights.

In the same way, our conclusions urge countries where serious violations of elementary rights persist – in the form of forced labour, all forms of slavery, child labour and the worst forms thereof – to act without delay to prohibit them. Do not seek refuge in expressions of surprise or incomprehension or by claiming economic or cultural problems. However real these difficulties may be, they cannot be used as an excuse for failing to observe human rights. The ILO community invites you to avail yourselves of all the means of assistance that it can and does offer you. Do not miss out on this.

I put particular emphasis on the cases which are the subject of special paragraphs: Swaziland, where trade unionists are imprisoned; Kazakhstan, for Convention No. 87; and Mauritania, for the Forced Labour Convention, 1930, despite the fact that we have just launched the campaign for the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930. A high-level mission to Bangladesh also has to be organized as soon as possible.

“Each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”: This reads almost like poetry and sounds like utopia. But it is merely the opening provision of the Employment Policy Convention, 1964 (No. 122), which was adopted at this very Conference more than 50 years ago. So how is it that two European countries have come under examination this year by the Committee on the Application of Standards on account of their policies in this sphere? As I have already said, no country today is untouched by unemployment, precarity and poverty.

More than ten years ago, the ILO was wondering about the reasons for the weakness of the social dimension of globalization. In 2008, it reaffirmed its commitment to social justice. In 2009, in reaction to the financial crisis, we adopted, on the initiative of the Employers’ group, the Global Jobs Pact, which set as its objective the re-establishment of a productive economy geared to meeting the needs of our peoples and ensuring decent work. But governments, which are in disarray, gripped by the turmoil of the economic crisis and caught in the clutches of uncontrolled financial markets, seem to have lost sight of these commitments.

Our conclusions on these cases appeal for men and women, social justice, and employment in quantity and quality to be placed once again at the heart of economic policy objectives, rather than just being a secondary consideration or an adjustment variable. These conclusions call for the spirit that inspires the ILO, that of genuine social dialogue based on consultation, collective bargaining and freedom of association, to prevail over short-term financial accounting. Workers have no intention of paying with their rights and their social protection for a crisis which was not of their making but stemmed from the capitalist system.

What we are saying for these two countries, as in the other cases, must serve as a lesson for many other countries, whether or not they were included in the list of 24 cases examined this year. Let there be no mistake: the Workers’ group feels an extraordinary degree of solidarity.

Important conclusions were adopted concerning the rural and agricultural sector, which represents a major proportion of the world’s population. Very many in that sector, however, are denied the effective application of labour standards, while being exposed to specific risks connected with health, occupational safety, access to education, forced labour and child labour. And yet this sector is directly impacted by major issues such as food security, climate change and supply chains. The conclusions, in particular, emphasize the promotion of the right to organize collectively on the basis of the principles of freedom of association and collective bargaining, which is of vital importance in ensuring that these workers are consulted and listened to with regard to any policy which concerns them.

A few weeks ago, and even when the Committee on the Application of Standards got under way, we did not know what the results would be in view of the damage caused by the tensions of the previous years. The fact that we are in a position today to present our report for adoption is a success. We owe this success to the men and women assembled here who are convinced that international labour standards, drafted and implemented by means of tripartism, carry with them the hope of social justice. The Workers’ group invites you to adopt the report.

Finally, I could not finish without mentioning Ms Doumbia-Henry. First of all, I am very happy that it falls to me to say these words on behalf of the Workers. Cleo, if I may call her that, has always shown extreme, constant and resolute commitment towards international labour standards. As Director of the Department that bears that fine name, her authority derives from her sincere determination to find solutions to the most difficult situations and conflicts without ever undermining the status of the rights established by labour standards. There is no doubt that she and her team have played just as crucial a role in the success of our work in what is such an important year. In leaving to embark on other projects, she can be happy in the knowledge that she has fulfilled the humanist assignment she set herself.

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.

Firstly, I would like to thank the Governments for the trust that they placed in me in nominating me to be Chairperson of the Committee. I have been very pleased to see the enormous amount of interest that the constituents of this Organization have shown in the work of the Committee, which is the cornerstone of the ILO supervisory system. This Committee is a tripartite body in which the Organization is able to discuss the application of international labour standards and the operation of the supervisory system.

The conclusions adopted by the Committee and the technical work done by the Committee of Experts, together with the recommendations of the Committee on the Freedom of Association and technical assistance from the Office, are essential tools for the application of international labour standards by member States.

The Committee has repeatedly demonstrated its usefulness in terms of social dialogue and supporting the tripartite constituents in complying with international labour standards. A spirit of dialogue has made it possible to hold discussions of a very high technical level, an outstanding example of which was the examination of the General Survey prepared by the Committee of Experts concerning the right of association and rural workers’ organizations instruments. The Committee adopted conclusions by consensus at the end of the discussion of the General Survey and hopes that full account can be taken of the results of its work in the context of the recurrent discussion on fundamental principles and rights at work, which will take place at the 106th Session of the Conference in 2017.

With regard to the individual cases considered, the positive point has been made that a list of 24 cases was adopted at the beginning of the Committee’s work within the established deadlines and this enabled all the cases to be discussed. The selected cases dealt with the application of fundamental Conventions and Conventions of a technical and promotional nature, and also reflected a regional balance. The extensive participation of the Governments and social partners in the Committee’s discussions clearly demonstrates their solid commitment to the ILO and its supervisory system. The Committee adopted conclusions on all the cases which were considered. I trust that those countries whose cases were examined were able to find in the discussions that took place the necessary guidance to avail themselves of technical assistance from the ILO if need be and will be able to find solutions to all the issues raised.

I should like to express my thanks for the presence of Henry Koroma, the Chairperson of the Committee of Experts, who once again attended the sessions of the Conference Committee. The presence of the Chairperson of the Committee of Experts during the Committee’s work is an indication of the strong relationship between the two committees based on a spirit of mutual respect, cooperation and responsibility.

I would like to convey special thanks to the President and Vice-Presidents of the Conference for visiting the Committee. It was a pleasure to be able to welcome you. I would also like to thank Ms Mulindeti, the Reporter of our Committee, for doing her job so efficiently. Thank you also to the Employers Vice-Chairperson, Ms Regenbogen, and the Worker Vice-Chairperson, Mr Veyrier, and to your teams for the courteous cooperation which you showed me as Committee Chairperson.

I would like to pay a very special tribute to the representative of the Secretary-General, Ms Doumbia-Henry, to whom we have said “see you soon” with great regret but also with deep affection. Her unfailing dedication, firmness, professionalism, cooperation and tenacity have all been essential to the work of the Committee and in ensuring compliance with international labour standards. As we all know, this will be the last Conference at which Ms Doumbia-Henry will be assisting us in that role.

I would also like to thank the other members of the secretariat for their commitment and for the complex tasks that they have accomplished. Lastly, I would like to compliment the interpreters on their excellent work. It only remains for me to invite you to approve the Committee’s report.

The PRESIDENT

I now open the discussion on the Report of the Committee on the Application of Standards.

Ms ARMELLIN (Government, Italy)

On behalf of the Government group, I wish to express the Governments’ profound satisfaction that the Committee on the Application of Standards successfully concluded its work in the current session of the International Labour Conference, and was able to adopt consensual conclusions on all of the cases under its consideration.

The Government group notes that, during the various proceedings of the Committee on the Application of Standards, the statement of the Government group, delivered during the February 2015 Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, was repeatedly quoted.

We would like to recall that the common position of the Government group is expressed in a comprehensive statement that should be quoted in its entirety to avoid any misunderstanding.

On behalf of the Government group, I would therefore like to state again our common position: “The Government group recognizes that the right to strike is linked to freedom of association, which is a fundamental principle and right at work of the ILO. The Government group specifically recognizes that, without protecting the right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers’ interests, cannot be fully realized. However, we also note that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level.”

I also wish to join previous speakers in thanking, on behalf of the Governments, Ms Doumbia-Henry for her professionalism, determination, tireless work and leadership at the head of one of the most complex departments of a complex organization. Dear Cleo, we will miss you very much and wish you all the best in your future life.

Mr SAHA (Worker, India)

Representing the Indian working class, I speak on the very important subject of the right to strike.
To strike is the most powerful weapon of the democratic trade union movement. In the course of united strike action, the working class realizes that they are not alone and that unity makes them powerful, while the employers are shown that it is the workers and not the employers who are the real masters. The working class has earned the right to strike as an industrial action after long struggles and sacrifices; no one has gifted them that right. The right to strike is organically linked to 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), and will remain an inalienable part of the trade-union struggle of working people in a class-divided society.

Now the ruling class has launched an attack to take away the right to strike by eliminating decades-old ILO jurisprudence. Questions arise concerning the motive behind the attack. The decadent and moribund capitalist economies are in an unprecedented systemic crisis that is deeper than that of the great crisis of the 1930s. This crisis of the world market economy is insoluble, as it is inherent in the capitalist system itself.

The birth of the ILO is associated with the establishment of the USSR, which emancipated the Russian working class from capitalist exploitation. The strong presence of the powerful and inspiring Socialist Bloc helped the working class to achieve ILO instruments guaranteeing the right to association and protecting the right to organize and collective bargaining, together with the core and other ILO Conventions.

Now, with the setback in the socialist camp, the emergence of a unipolar world, with globalization and finance capital-driven neoliberal policies, accompanied by the ruthless exploitation of the working class of both the industrially developed and developing countries, has resulted in the rapid impoverishment of the exploited common people.

In such a situation, the working class is confronting a global challenge and there is an imperative need for united struggle. The ruling class fears that, if workers continue to be allowed to exercise their fundamental rights, including the right to strike, the exploitative system of capitalism is bound to be endangered, and this is why there is this current onslaught against workers’ fundamental right to strike.

It is relevant to quote Lenin on the question of the right to strike. He said: “However, strikes, which arise out of the very nature of capitalist society signify the beginning of the working-class struggle against that system of society … Strikes, therefore, always instil fear into the capitalists, because they begin to undermine their supremacy … Every strike brings thoughts of socialism very forcibly to the worker’s mind, thoughts of the struggle of the entire working class for emancipation from the oppression of capital.”

The move to refer the question of the right to strike to the International Court of Justice is not acceptable. In class-divided capitalist societies, the judiciary is one of the four pillars of the capitalist system. We firmly believe that the right to strike, earned by the working class at the cost of the lives of martyrs all over the world, cannot be left to the judiciary of a class-divided social system. What has been earned by this struggle must be protected by struggle alone.

I conclude by urging workers all over the world to take part in mighty struggles, including strike action under worthy leadership, to protect the right to strike and other fundamental rights, and also to expose class collaborationists to show that the workers’ movement can be strengthened and replace the exploitative system to establish a society free from exploitation of man by man.

Mr WABA (Worker, Nigeria)

The work of the ILO as a tripartite standard-setting institution is important for the processes and struggles to achieve a world where the gains of prosperity are shared and enjoyed in peace and freedom.

For persons bonded, trapped and trafficked into forced labour, as well as victims of practices of modern slavery, in the present precarious times to anticipate the future seems only imaginable in another life. However, we are glad to see that this Committee, through its hard work and report, has effectively demonstrated the essence of our humanity and conscience by dealing strongly with the issues around and connected to forced labour and the contemporary forms of slavery.

We are hopeful that the governments concerned will implement the specific and practical actions contained in the conclusions. While commending the Committee for its wonderful contribution to the cause of social justice, I urge all to continue to support the initiatives aimed at combating forced labour and contemporary forms of slavery. Working towards the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, at national level would be one such effort.

Original Spanish: Mr MANCILLA GARCÍA (Worker, Guatemala)

On behalf of the Workers’ delegates of Guatemala, I would like to place on record, as this 104th Session of the International Labour Conference draws to a close, our satisfaction with the important work that is being carried out by the Committee on the Application of Standards in the Conference, where tripartite discussions on highly sensitive, important issues affecting workers in the Americas take place.

It is true that in our countries the basic and fundamental rights of workers are often flagrantly and systematically violated. That is why we consider it important that, after all the hard efforts of the Committee on the Application of Standards, the decisions issued and adopted by it should serve as the instrument to guide member States and their governments in assessing and readjusting their systems, so that workers’ rights are effectively demonstrated the essence of our human rights encompassing the principles of freedom, solidarity and social justice. These great banners of the ILO were created precisely to provide equality for those without it.

We recall that, for over 18 years, Guatemala has regularly been called to appear before this Committee because of its failure to respect freedom of association, in violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Nevertheless, we maintain the strong hope that our authorities will act on the Committee’s recommendations and that very soon things might be different.

We commend the work undertaken by the Committee on the Application of Standards, and would also like to join in the expressions of gratitude to
Ms Doumbia-Henry for her efforts over the years in the Committee, and particularly for her support to the various missions carried out in my country, Guatemala.

Original French: Ms CAPPUCCIO (Worker, Italy)

During the intense work of the Committee on the Application of Standards, and after rigorous and careful preparation, we had a sizeable discussion on the Employment Policy Convention, 1964 (No. 122). Attention had been drawn to the main aim of the Convention, which was for States to pursue an active policy designed to promote full, productive and freely chosen employment. The provisions of the Convention are more relevant today than ever before.

However, it is clear that the austerity policies introduced by European governments in 2008 to meet reduced budget targets have jeopardized the pursuit of these aims, affecting workers and the quality of their jobs, rights, lives and wages.

In addition, in a number of cases the crisis has been used as a pretext of emergency to change the structure of tripartite negotiations, industrial relations, social dialogue and collective bargaining, which rely on freedom of association and the right to strike – the fundamental and universal human rights at the heart of any democratic system. Here I would like to highlight the recent joint declaration between the Italian Government and trade unions on the right to strike as a universal right.

We would emphasize that only the strengthening, implementation and defence of these rights can effectively combat inequality, unemployment, poverty and social instability, together with strong macroeconomic policy, public investment and industrial policy programmes.

In accordance with the provisions of the 2013 Oslo Declaration, which is based on the aims of Convention No. 122, we stress the primary importance of the role of the ILO in promoting partnerships and strong and responsible social dialogue at all levels. This aids the fair distribution of wealth, social progress and stability, with particular attention given to the above-mentioned fundamental principles and rights at the heart of the Decent Work Agenda. This is the response required of the international community to ensure – finally – the creation of a more just world. Here, if we truly want to, we can help make that happen.

Mr YOSHIDA (Worker, Japan)

Two of the cases discussed by the Committee for the region of Asia and the Pacific are related to occupational safety and health: the Safety and Health in Mines Convention, 1995 (No. 176), with regard to the Philippines; and the Labour Inspection Convention, 1947 (No. 81), with regard to India.

Occupational safety and health is a prerequisite for ensuring a decent working environment. Without adequate safety and health policies and their effective implementation, work might be harmful and hazardous, and in many cases result in the loss of rights of working men and women.

From this point of view, it was very significant that we discussed Convention No. 176 with regard to the Philippines, and adopted conclusions with clear guidelines for the Government to improve safety and health in workplaces, particularly in unregulated small-scale mining.

In ensuring that the laws and regulations on safety and health are fully respected in workplaces, labour inspection should play a crucial role. Labour inspection exposes violations, not only of occupational safety and health regulations but also in the form of human trafficking and forced labour, in addition to violations of freedom of association.

Convention No. 81 is one of the governance Conventions of the ILO and discussions on this Convention confirm the importance of labour inspection, not only in India but also at the global level.

The Committee also discussed the Occupational Safety and Health Convention, 1981 (No. 155), with regard to Turkey. This basic Convention requires ratifying governments to consult both employers’ and workers’ organizations in formulating, implementing and reviewing national occupational health and working environment policies. However, disappointingly, this Convention has been ratified by only 63 Member countries. I urge the governments of the other 122 countries, including Japan, to make every possible effort to authorize ratification of the Convention.

In concluding, I would like to express my wish that the Committee’s discussions this year will encourage governments, employers and trade unions to work together to realize decent work for all, and I believe it will surely do so.

Original Spanish: Ms LONDONO (Government, Colombia)

May I begin, on behalf of the Government of Colombia, by expressing special thanks to the outgoing Director of the International Labour Standards Department, Ms Doumbia-Henry, for her tremendously diligent contributions. Her support, from the ILO perspective, which closely monitors anything to do with the regulations, has been extremely valuable. Colombia has come a long way, as the international community knows, and faces major challenges ahead, but the role of the ILO and of Ms Doumbia-Henry has been very important for all of us. We are well aware of this and will continue forging ahead in this direction with enormous commitment to increasing social dialogue, which will really help ensure that the tripartism promoted in this house will be maintained over time. We wish Ms Doumbia-Henry all the best in her new responsibilities and extend our heartfelt thanks to her.

The PRESIDENT

We will proceed to the approval of the report of the Committee on the Application of Standards.

If there are no objections, may I take it that the Conference approves the report of the Committee on the Application of Standards, as contained in Provisional Record No. 14, parts 1 and 2?

(The report is approved.)

I should like to take a moment to thank the Officers and members of this Committee for their work, as well as the secretariat, which has been particularly diligent in supporting the Committee. I was also able to observe that the atmosphere in the Committee on the Application of Standards was particularly constructive this session. Many thanks to all of you for your commitment, and congratulations on the results.