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Vingt et unième séance, 8 juin 2016, 10 h 10
Vigesimoprimera sesión, 8 de junio de 2016, 10.10 horas

Chairperson: Ms Cecilia Mulindeti-Kamanga

Work of the Committee

PVs 12 and 13 were adopted, as amended.

Travaux de la commission

Les PV 12 et 13 ont été adoptés tels qu'amendés.

Trabajos de la Comisión

Las actas 12 y 13 fueron adoptadas en su tenor modificado.

Discussion on individual cases (cont.)
Discussion des cas individuels (suite)
Discusión de los casos individuales (cont.)

Conclusions
Conclusions
Conclusiones

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

Ireland (ratification: 1955). **The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.**

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

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

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

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

Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949

Irlande (ratification: 1955). **La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi sur les points soulevés par la commission d'experts.**

La commission s'est félicitée de l'indication du gouvernement suivant laquelle une étape importante a été franchie avec l'introduction de la loi n° 27 (modifiée) sur les relations professionnelles, 2015, qui est entrée en vigueur le 1er août 2015.

La commission a exprimé sa déception du fait que le gouvernement n'ait pas soumis en temps voulu un rapport permettant son examen par la commission d'experts. Elle a noté l'indication du gouvernement suivant laquelle il a soumis un rapport en avril 2016, s'employant à répondre pleinement aux questions soulevées par la commission d'experts, de sorte que les experts puissent examiner en profondeur les réponses du gouvernement sur l'ensemble des points soulevés dans ce cas.

La commission a noté que ce cas concerne des questions se rapportant aux droits de la concurrence irlandais et de l'Union européenne. A cette fin, la commission suggère que le gouvernement et les partenaires sociaux identifient les types de modalités contractuelles qui auraient des incidences sur les mécanismes de négociation collective.

La commission invite le gouvernement à fournir des informations détaillées à la commission d'experts avant sa prochaine session (novembre 2016).

Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

Irlanda (ratificación: 1955). **La Comisión tomó nota de la información proporcionada por el representante gubernamental y de la discusión que tuvo lugar a continuación sobre las cuestiones planteadas por la Comisión de Expertos.**

La Comisión celebró que el Gobierno haya señalado que se ha dado un importante paso con la aprobación de la Ley de Relaciones Laborales (enmienda), de 2015 (núm. 27), que entró en vigor el 1.º de agosto de 2015.

La Comisión manifestó su decepción por el hecho de que el Gobierno no hubiese suministrado su memoria a tiempo para su examen por la Comisión de Expertos. Tomó nota de que el Gobierno informó que había presentado una memoria en abril de 2016 y que se comprometía a garantizar que su memoria respondería plenamente a las cuestiones planteadas por la Comisión de Expertos, de modo que los expertos puedan examinar detenidamente las respuestas del Gobierno a todas las cuestiones suscitadas por este caso.

La Comisión tomó nota de que el presente caso se refiere a cuestiones de derecho de la competencia de la UE y de Irlanda. Al respecto, la Comisión sugiere que el Gobierno y los interlocutores sociales deberían identificar los tipos de modalidades contractuales que podrían relacionarse con los mecanismos de negociación colectiva.

La Comisión invita al Gobierno a que informe a los expertos detalladamente antes de su próxima reunión en noviembre de 2016.

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

Kazakhstan (ratification: 2000). **The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.**

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

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

- **Amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan, without any further delay.**

- **Amend the provisions of the Trade Union Law of 2014 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 section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one.**

- **Indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" and indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Labour Code.**

- **Amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union.**

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

- **Accept ILO technical assistance to complete the above noted conclusions.**

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

Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948

Kazakhstan (ratification: 2000). **La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi sur les questions soulevées par la commission d'experts.**

La commission a exprimé sa profonde préoccupation face à l'absence de progrès du gouvernement en ce qui concerne la suite donnée aux conclusions de 2015 de la commission.

Prenant en compte la discussion qui a eu lieu, la commission a demandé instamment au gouvernement de prendre les mesures suivantes:

- **modifier les dispositions de la loi sur la Chambre nationale des entrepreneurs de manière à garantir sans plus tarder la pleine autonomie et l'indépendance des organisations d'employeurs libres et indépendantes au Kazakhstan;**

- **modifier les dispositions de la loi sur les syndicats de 2014 conformément à la convention, notamment les questions relatives aux restrictions abusives concernant la structure des syndicats visées aux articles 10 à 15, qui limitent le droit des travailleurs de constituer des syndicats et d'adhérer aux syndicats de leur choix; et modifier l'article 303(2) du Code du travail afin de veiller à ce qu'un service minimum soit véritablement et exclusivement un service minimum;**

- **indiquer quelles organisations relèvent de la catégorie des organisations réalisant des «activités industrielles dangereuses», et indiquer également toutes les autres catégories de travailleurs dont les droits peuvent être restreints, comme le dispose l'article 303(5) du Code du travail;**

- **modifier la Constitution et la législation pertinente pour permettre aux juges, aux sapeurs-pompiers et au personnel pénitentiaire de constituer des syndicats et d'y adhérer;**

- **modifier la Constitution et la législation pertinente afin de lever l'interdiction empêchant les syndicats nationaux de recevoir l'aide financière d'une organisation internationale; et**

- **accepter une assistance technique du Bureau pour donner pleinement suite aux conclusions précédentes.**

Le gouvernement devrait accepter une mission de contacts directs cette année afin de donner suite à ces conclusions.

Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

Kazajstán (ratificación: 2000). **La Comisión tomó nota de la información facilitada por el representante gubernamental y del debate que se celebró a continuación sobre las cuestiones planteadas por la Comisión de Expertos.**

La Comisión expresó su profunda preocupación por la falta de progresos por parte del Gobierno en relación con la aplicación de las conclusiones de la Comisión en 2015.

Teniendo en cuenta el debate sobre el caso, la Comisión instó al Gobierno a que:

- **enmiende las disposiciones de la Ley sobre la Cámara Nacional de Empresarios de tal manera que asegure la plena autonomía e independencia de las organizaciones de empleadores libres e independientes en Kazajstán, sin mayor dilación;**

- **enmiende las disposiciones de la Ley de Sindicatos de 2014 poniéndola en conformidad con el Convenio, incluidas las cuestiones relativas a las limitaciones excesivas de la estructura de los sindicatos previstas en los artículos 10 y 15, que limitan el derecho de los trabajadores a constituir los sindicatos que estimen convenientes y a afiliarse a los mismos, y enmiende el artículo 303, 2) del Código del Trabajo, con el fin de asegurar que cualquier servicio mínimo sea verdadera y exclusivamente mínimo;**

- **indique qué organizaciones entran dentro de la categoría de organizaciones que realizan «actividades laborales peligrosas» y señale todas las demás categorías de trabajadores cuyos derechos pueden limitarse, a tenor de lo dispuesto en el artículo 303, 5) del Código del Trabajo;**

- **enmiende la Constitución y la legislación apropiada para permitir que los jueces, los bomberos y el personal penitenciario puedan constituir sindicatos y afiliarse a los mismos;**

- **enmiende la Constitución y la legislación apropiada para levantar la prohibición de que una organización internacional preste asistencia financiera a sindicatos nacionales, y**

- **acepte asistencia técnica de la OIT con el fin de llevar a cabo las conclusiones señaladas anteriormente.**

El Gobierno debería aceptar una misión de contactos directos este año con miras a realizar un seguimiento de estas conclusiones.

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

Malaysia (ratification: 1961). **The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.**

The Committee noted with interest the Government's indication that it is undertaking a holistic review of its key labour legislation – the Employment Act 1955, the Trade Unions Act 1959 and the Industrial Relations Act 1967 (IRA).

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

- **Provide further detailed information regarding the announced repeal of section 13(3) of the IRA on the limitations with respect to the scope of collective bargaining.**

- **Report in detail on the holistic review of the national labour legislation described above to the next meeting of the Committee of Experts in November 2016.**

- **Ensure that public sector workers not engaged in the administration of the State may enjoy their right to collective bargaining;**

- **Provide detailed information on the scope of bargaining in the public sector.**

- **Review section 9 of the IRA in order to guarantee that the criteria and procedure for union recognition are brought in to line with the Convention.**

- **Undertake legal and practical measures to ensure that remedies and penalties against acts of anti-union discrimination are effectively enforced.**

- **Ensure that migrant workers are able to engage in collective bargaining in practice.**

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

Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949

Malaisie (ratification: 1961). **La commission a pris note des informations que le représentant gouvernemental a fournies et de la discussion qui a suivi concernant les points soulevés par la commission d'experts.**

La commission a noté avec intérêt l'indication du gouvernement selon laquelle il entreprend actuellement une révision globale de ses principales lois du travail – loi

pour l'emploi, 1955, loi des syndicats, 1959, et loi des relations professionnelles (IRA), 1967.

Prenant en compte la discussion qui a eu lieu, la commission prie le gouvernement de:

- **communiquer d'autres informations détaillées concernant l'abrogation annoncée de l'article 13(3) de l'IRA sur les restrictions au champ de la négociation collective;**
- **rendre compte en détail à la prochaine réunion de la commission d'experts en novembre 2016 de la révision globale de la législation nationale du travail susmentionnée;**
- **veiller à ce que les fonctionnaires qui ne sont pas commis à l'administration de l'Etat puissent jouir de leur droit de négociation collective;**
- **communiquer des informations détaillées sur le champ de la négociation collective dans le secteur public;**
- **réviser l'article 9 de l'IRA afin de garantir que les critères et la procédure de reconnaissance des syndicats sont mis en conformité avec la convention;**
- **prendre des mesures, en droit et dans la pratique, pour garantir que les recours et les sanctions contre les actes de discrimination antisyndicale sont effectivement mis en œuvre;**
- **veiller à ce que, dans la pratique, les travailleurs migrants puissent participer à la négociation collective.**

La commission appelle le gouvernement de la Malaisie à se prévaloir de l'assistance technique du Bureau, en vue de donner suite à ces recommandations et

garantir que la législation et la pratique nationales sont conformes à la convention nº 98.

Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

Malasia (ratificación: 1961). **La Comisión tomó nota de la información proporcionada por el representante gubernamental y del debate que tuvo lugar a continuación sobre las cuestiones planteadas por la Comisión de Expertos.**

La Comisión tomó nota con interés de la indicación del Gobierno de que está llevando a cabo una revisión general de sus leyes laborales principales, a saber, la Ley de Empleo de 1955, la Ley de Sindicatos de 1959 y la Ley de Relaciones Laborales (IRA) de 1967.

Teniendo en cuenta la discusión sobre el caso, la Comisión pidió al Gobierno que:

- **proporcione más información pormenorizada sobre la derogación anunciada del artículo 13, 3) de la IRA relativo a las limitaciones con respecto al alcance de la negociación colectiva;**
- **informe detalladamente sobre la revisión general de la legislación laboral nacional descrita con anterioridad a la próxima reunión de la Comisión de Expertos en noviembre de 2016;**
- **asegure que los trabajadores del sector público que no trabajan en la administración del Estado puedan gozar de su derecho de negociación colectiva;**
- **suministre información detallada sobre el alcance de la negociación en el sector público;**

- **revise el artículo 9 de la IRA con el fin de garantizar que los criterios y el procedimiento para el reconocimiento de los sindicatos se pongan en conformidad con el Convenio;**

- **adopte medidas jurídicas y prácticas para garantizar la aplicación efectiva de las vías de recurso y de las sanciones contra actos de discriminación antisindical, y**

- **se cerciore de que los trabajadores migrantes puedan entablar negociaciones colectivas en la práctica.**

La Comisión realiza un llamamiento al Gobierno de Malasia para que recurra a la asistencia técnica de la OIT con miras a aplicar estas recomendaciones, y para que se asegure de que su legislación y su práctica cumplen con el Convenio núm. 98.

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

Mauritius (ratification: 1969). **The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.**

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

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

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

- **Take concrete measures to promote and encourage the greater development and utilization of procedures of voluntary negotiations between employer/employer organizations on the one hand and worker organizations, on the other, in order to regulate the terms and conditions of employment through collective bargaining agreements. This includes collective bargaining in export processing zones, in the garment sector and in the sugar industry.**

- **Provide detailed information on the current situation of collective bargaining in the export processing zones and on the concrete measures to promote it in those zones.**

- **Refrain from infringing Article 4 of the Convention and not commit similar violations in the future.**

- **Cease all interference in collective bargaining in the private sector respecting principles related to mandatory arbitration.**

- **Accept technical assistance from the Office to comply with these conclusions.**

Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949

Maurice (ratification: 1969). **La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi sur les points soulevés par la commission d'experts.**

La commission a noté avec intérêt les informations du gouvernement concernant les mesures prises pour favoriser la négociation collective dans les zones franches d'exportation (ZFE), mais s'est déclarée préoccupée par le fait que le gouvernement n'ait respecté la négociation collective dans l'industrie du sucre.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a prié le gouvernement de:

- **cesser d'intervenir dans les processus de négociation collective libre et volontaire entre les employeurs et les travailleurs de l'industrie sucrière;**

- **prendre des mesures concrètes pour promouvoir et encourager la mise en place et le recours accru aux procédures de négociations volontaires entre, d'une part, les employeurs/organisations patronales et, d'autre part, les organisations de travailleurs, dans le but de réglementer les conditions d'emploi par le biais de conventions collectives. Cela inclut la négociation collective dans les ZFE, dans le secteur de la confection et dans l'industrie sucrière;**

- **fournir des informations détaillées sur l'état actuel de la négociation collective dans les ZFE et sur les mesures concrètes destinées à la promouvoir dans ces zones;**

- **s'abstenir d'enfreindre l'article 4 de la convention et se garder de commettre pareille violation à l'avenir;**

- **cesser toute ingérence dans la négociation collective au sein du secteur privé en ce qui concerne les principes relatifs à l'arbitrage obligatoire;**

- **accepter l'assistance technique du Bureau pour la mise en œuvre de ces conclusions.**

Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

Mauricio (ratificación: 1969). **La Comisión tomó nota de la información facilitada por el representante gubernamental y de la discusión que tuvo lugar a continuación sobre las cuestiones planteadas por la Comisión de Expertos.**

La Comisión tomó nota con interés de la información proporcionada por el Gobierno en relación con las medidas adoptadas para favorecer la negociación colectiva en las zonas francas industriales. No obstante, manifestó su preocupación por

el hecho de que el Gobierno no haya respetado la negociación colectiva en la industria del azúcar.

Teniendo en cuenta la discusión sobre el caso, la Comisión solicitó al Gobierno que:

- **cese su intervención en los procesos de negociación colectiva libre y voluntaria entre empleadores y trabajadores en el sector azucarero;**
- **adopte medidas concretas para promover e impulsar el desarrollo y una mayor aplicación de los métodos de negociación voluntaria entre, por una parte, los empleadores o las organizaciones de empleadores, y por otra, las organizaciones de trabajadores, con objeto de reglamentar las condiciones de empleo mediante convenios colectivos. Esto incluye la negociación colectiva en las zonas francas industriales, en el sector textil y en la industria azucarera;**
- **suministre información detallada sobre la situación actual en materia de negociación colectiva en las zonas francas industriales y sobre las medidas concretas para promover dicha negociación en estas zonas;**
- **se abstenga de infringir el artículo 4 del Convenio y de cometer infracciones de índole similar en el futuro;**
- **deje de injerir en la negociación colectiva en el sector privado y respete los principios relativos al arbitraje obligatorio, y**
- **acepte la asistencia técnica de la Oficina para el cumplimiento de estas conclusiones.**

Forced Labour Convention, 1930 (No. 29)

Mauritania (ratification: 1961). **The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.**

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

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

- **Strictly enforce the 2015 anti-slavery law to ensure that those responsible for the practice of slavery be effectively investigated and prosecuted and receive and serve sentences that are commensurate with the crime.**
- **Strengthen the labour inspectorate and other relevant enforcement mechanisms to combat the exaction of forced labour.**
- **Ensure that prosecutions at the special courts for slavery crimes are supported and processed in a timely manner, with training for law enforcement officials around the country on the identification and referral of cases, and with public awareness-raising campaigns around the convictions.**
- **Implement fully the Road Map to Combat the Vestiges of Slavery, including comprehensive victim support and prosecutions. This should include the following:**

– **reinforcement of the capacity of the authorities to prosecute and administer the justice system in relation to slavery;**

– **anti-slavery prevention programmes;**

– **specific programmes enabling victims of slavery to reintegrate into society;**

– **awareness-raising programmes.**

- **Facilitate the overall social and economic integration of those subjected to slavery into society, including the Haratine and other marginalized groups affected by slavery and slavery-like practices, and ensure they have access to services and resources.**

- **Provide necessary support to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or "Tadamoun", for its programmes to specifically focus on reaching, supporting and empowering slavery-affected communities and individuals; involve the social partners in the fight against slavery through those programmes and, in particular, in the working of the Tadamoun agency.**

- **Develop and implement awareness-raising campaigns for the general public, victims of slavery, police, administrative and judicial authorities and religious authorities.**

- **Collect detailed data on the nature and incidence of slavery in Mauritania, as recommended by the Committee of Experts in 2016, and establish procedures for monitoring and evaluating implementation of efforts to end slavery.**

In this regard, the Committee urged the Government to avail itself of ILO technical assistance and of a direct contacts mission. The Committee also asked the Government to report in detail on the measures taken to implement these

recommendations, in particular on the enforcement of the 2015 anti-slavery law, to the next meeting of the Committee of Experts in November 2016.

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

Convention (n° 29) sur le travail forcé, 1930

Mauritanie (ratification: 1961). **La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi sur les points soulevés par la commission d'experts.**

La commission a pris note des informations fournies par le gouvernement, mais s'est dite profondément préoccupée par le fait que, dans la pratique, le gouvernement doit encore prendre les mesures voulues pour combattre l'esclavage, bien que le gouvernement ait été à de nombreuses reprises appelé devant la commission. Elle est en particulier préoccupée par le fait que le gouvernement a engagé très peu de poursuites à l'égard des auteurs du crime d'esclavage et qu'il a imposé des sanctions pénales légères qui n'ont eu que peu ou pas d'effet dissuasif.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a invité instamment le gouvernement:

- **à appliquer strictement la loi de 2015 contre l'esclavage pour veiller à ce que les actes d'esclavage fassent effectivement l'objet d'une enquête, à ce que les auteurs de tels actes soient traduits en justice et condamnés, et à ce que ces derniers purgent des peines proportionnées au crime commis;**

- **à renforcer l'inspection du travail et les autres mécanismes d'application de la loi afin de combattre l'imposition du travail forcé;**

- **à veiller à ce que les poursuites engagées auprès des tribunaux spéciaux pour des crimes d'esclavage soient traitées dans les délais requis, les responsables de l'application des lois dans tout le pays étant formés à la qualification des actes commis et au renvoi des cas devant les tribunaux spéciaux, et des campagnes d'information de la population sur les condamnations encourues étant menées;**

- **à mettre pleinement en œuvre la feuille de route pour la lutte contre les séquelles de l'esclavage, y compris en apportant un soutien complet aux victimes et en engageant des poursuites contre les auteurs de tels actes. Cela devrait comprendre:**

  - **un renforcement des capacités des autorités en matière de poursuites et d'administration du système judiciaire quant à l'esclavage;**

  - **des programmes de prévention de l'esclavage;**

  - **des programmes visant spécifiquement à permettre aux victimes d'esclavage de réintégrer la société;**

  - **des programmes de sensibilisation;**

- **à faciliter l'intégration sociale et économique complète des personnes soumises à l'esclavage dans la société, y compris les «haratines» et d'autres groupes marginalisés ayant été soumis à l'esclavage et à des pratiques assimilées à l'esclavage, et à veiller à ce qu'elles aient accès aux services et aux ressources;**

- **à fournir l'appui nécessaire à l'Agence nationale pour la lutte contre les séquelles de l'esclavage, l'insertion et la lutte contre la pauvreté, ou «Tadamoun», afin que ses programmes mettent particulièrement l'accent sur la sensibilisation des communautés et personnes soumises à l'esclavage, sur l'appui à ces dernières et sur leur autonomisation; à associer les partenaires sociaux à la lutte contre**

l'esclavage par le biais de ces programmes et, en particulier, les activités de l'agence Tadamoun;

- **à élaborer et à mettre en œuvre des campagnes de sensibilisation en direction du grand public, des victimes d'esclavage, de la police, et des autorités administratives, judiciaires et religieuses;**

- **à recueillir des données précises sur la nature de l'esclavage et les cas d'esclavage en Mauritanie, comme recommandé par la commission d'experts en 2016, et à établir des procédures de contrôle et d'évaluation des efforts déployés pour mettre fin à l'esclavage.**

A cet égard, la commission a instamment prié le gouvernement de solliciter l'assistance technique du BIT et une mission de contacts directs. Elle a également demandé au gouvernement de communiquer des informations détaillées sur les mesures prises pour mettre en œuvre ces recommandations, en particulier celles concernant l'application de la loi de 2015 contre l'esclavage, à la prochaine réunion de la commission d'experts, en novembre 2016.

La commission a également pris note avec préoccupation du fait que le gouvernement n'a pas fait en sorte que des visas soient délivrés aux délégués travailleurs pour leur permettre de participer aux travaux de la commission.

Convenio sobre el trabajo forzoso, 1930 (núm. 29)

Mauritania (ratificación: 1961). **La Comisión tomó nota de la información suministrada por el representante gubernamental y de la discusión que tuvo lugar a continuación sobre las cuestiones planteadas por la Comisión de Expertos.**

La Comisión, al tiempo que tomó nota de la información facilitada por el Gobierno, expresó su profunda preocupación de que en la práctica el Gobierno no haya aún tomado suficientes medidas para combatir la esclavitud, a pesar de las numerosas

ocasiones en las que había sido llamado ante la Comisión. En particular, preocupa a la Comisión que el Gobierno haya procesado a un número reducido de los responsables del delito de esclavitud y que se hayan impuesto sanciones penales leves, cuyo efecto disuasivo, de tenerlo, es escaso.

Teniendo en cuenta la discusión del caso, la Comisión urgió al Gobierno a que:

- **haga cumplir estrictamente la ley contra la esclavitud de 2015 a fin de que los responsables de imponer la esclavitud sean efectivamente investigados y procesados y que reciban y cumplan condenas que sean proporcionales al delito cometido;**
- **fortalezca la inspección del trabajo y demás mecanismos de control pertinentes para combatir la imposición del trabajo forzoso;**
- **vele por que los procesos judiciales ante los tribunales especiales por delitos de esclavitud se sustancien y procesen en el debido plazo, capacitando a los funcionarios encargados de hacer cumplir la ley en el país en materia de identificación y remisión de los casos y realizando campañas de sensibilización pública en relación con las condenas;**
- **dé pleno cumplimiento a la Hoja de ruta para combatir los vestigios de la esclavitud, incluyendo el apoyo exhaustivo a las víctimas y los procesamientos. Ello debe comprender lo siguiente:**
  - **el fortalecimiento de la capacidad de las autoridades de juzgar y de administrar el sistema de justicia en relación con la esclavitud;**
  - **programas de prevención de la esclavitud;**
  - **programas específicos que permitan a las víctimas de la esclavitud reintegrarse en la sociedad;**

— **programas de sensibilización;**

- **facilite la integración general social y económica en la sociedad de las personas sometidas a esclavitud, incluyendo el acceso a servicios y a recursos de los Haratine y otros grupos marginalizados afectados por la esclavitud y prácticas afines a la esclavitud;**

- **proporcione el apoyo necesario a la Agencia Nacional para la Lucha contra las secuelas de la Esclavitud, la Inserción Social y Lucha contra la Pobreza, o «Tadamoun», para que sus programas se concentren específicamente en acercarse a las comunidades y a las personas afectadas por la esclavitud, apoyarlas y empoderarlas; involucre a los interlocutores sociales en la lucha contra la esclavitud mediante estos programas y en particular en la labor de la Agencia Tadamoun;**

- **elabore y lleve a cabo campañas de sensibilización para el público en general, las víctimas de la esclavitud, la policía, las autoridades administrativas y judiciales y las autoridades religiosas, y**

- **reúna información detallada sobre la naturaleza y el impacto de la esclavitud en Mauritania, según lo recomendado por la Comisión de Expertos en 2016, y establezca procedimientos para controlar y evaluar la aplicación de las medidas encaminadas a poner fin a la esclavitud.**

A este respecto, la Comisión urgió al Gobierno a que recurra a la asistencia técnica de la OIT y a una misión de contactos directos. La Comisión también pidió al Gobierno que en su memoria a la próxima reunión de la Comisión de Expertos, en noviembre de 2016, informe con detalle sobre las medidas adoptadas para aplicar estas recomendaciones, en particular para hacer respetar la ley contra la esclavitud de 2015.

La Comisión también tomó nota con preocupación de que el Gobierno no haya logrado asegurar que se proporcionen visados a los delegados de los trabajadores para permitirles participar en la labor de la Comisión.

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

Mexico (ratification: 1950). **The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.**

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

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

- **continue to fulfil without delay its existing legal obligation to publish the registration of trade unions in the local boards in the 31 states in the country;**
- **engage in social dialogue with a view to enacting the President's proposed reforms to the Constitution and federal labour law as soon as possible and reinforce social dialogue with all workers' and employers' organizations including through any additional complementary legislation;**
- **ensure that trade unions are able to exercise their right to freedom of association in practice;**
- **submit a report to the Committee of Experts on the application of Convention No. 87 both in law and practice.**

Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948

Mexique (ratification: 1950). **La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi sur les points soulevés par la commission d'experts.**

La commission a noté avec intérêt les propositions de réformes de la Constitution et de la législation du travail.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a prié le gouvernement:

- **de continuer à observer sans tarder la disposition existante obligeant les conseils de conciliation et d'arbitrage des 31 Etats du pays à publier les registres des syndicats;**
- **d'engager un dialogue social en vue d'adopter dès que possible les réformes de la Constitution et de la loi fédérale du travail proposées par le Président et de renforcer le dialogue social avec toutes les organisations de travailleurs et d'employeurs, y compris par l'adjonction de toute autre législation complémentaire;**
- **d'assurer que les syndicats sont en mesure d'exercer dans la pratique leur droit à la liberté syndicale;**
- **de soumettre à la commission d'experts un rapport sur l'application de la convention nº 87, dans la loi comme dans la pratique.**

Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

México (ratificación: 1950). **La Comisión tomó nota de la información facilitada por el representante gubernamental y la discusión que tuvo lugar a continuación sobre las cuestiones planteadas por la Comisión de Expertos.**

La Comisión tomó nota con interés de las propuestas de reforma de la Constitución y de la legislación laboral.

Teniendo en cuenta la discusión de este caso, la Comisión pidió al Gobierno que:

- **siga cumpliendo sin demora su actual obligación legal de publicar el registro de sindicatos en las juntas locales de los 31 Estados del país;**
- **entable el diálogo social con miras a promulgar lo antes posible las reformas propuestas por el Presidente a la Constitución y a la Ley Federal del Trabajo y refuerce el diálogo social con todas las organizaciones de trabajadores y de empleadores, incluso a través de cualquier legislación complementaria adicional;**
- **vele por que los sindicatos puedan ejercer en la práctica su derecho a la libertad sindical, y**
- **presente una memoria a la Comisión de Expertos sobre la aplicación del Convenio núm. 87 tanto en la legislación como en la práctica.**

A Government representative of Ireland (Mr NOWHAM) thanked the Chairperson for conveying the conclusions.

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

Un représentant gouvernemental de la Mauritanie (M. T'FEIL BOMBE) a déclaré avoir écouté avec intérêt les conclusions de la commission. La plupart des recommandations formulées ont déjà été mises en œuvre ou sont en voie de l'être. Ces questions font partie des priorités du gouvernement, qui continuera à travailler pour les résoudre. Pour ce qui est des allégations d'obstruction dans la délivrance de visas aux représentants des travailleurs à la Conférence, le gouvernement a bien fait le nécessaire dans les délais impartis. A cet égard, dans l'intérêt du développement normal du mouvement syndical et de la promotion du dialogue social auquel le gouvernement est profondément attaché, il serait souhaitable que les parties intéressées s'inspirent des principes de la Résolution concernant l'indépendance du mouvement syndical adoptée en 1952 par la Conférence, notamment en ce qu'elle précise que, «lorsque les syndicats décident, en se conformant aux lois et usages en vigueur dans leurs pays respectifs et à la volonté de leurs membres, d'établir des relations avec des partis politiques ou d'entreprendre une action politique conformément à la Constitution pour favoriser la réalisation de leurs objectifs économiques et sociaux, ces relations ou cette action politique ne doivent pas être de nature à compromettre la continuité du mouvement syndical ou de ses fonctions sociales et économiques.» La Mauritanie a donné les preuves tangibles de son engagement résolu à se conformer aux normes de l'OIT comme priorité absolue.

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

Zimbabwe (ratification: 1998). **A Government representative (Ms MUPFUMIRA)** referred to the information supplied in writing in document D.14. In addition, she stated that the High-level Technical Mission to Zimbabwe, requested by the Conference Committee in 2013 to assess progress in implementing the recommendations of the 2009 Commission of Inquiry, had been well received by both the Government and the social partners in February 2014. Various activities had been undertaken and were still being pursued by the Government and the social partners to give effect to the recommendations of the Commission of Inquiry: labour law review, capacity-building of state actors and judicial

officials, as well as the development of a customized user-friendly handbook on international labour standards to be used for the training of law enforcement agencies and other state actors. She recalled that since the Conference Committee's conclusions in 2013, the Committee of Experts had noted with interest progress made on a number of issues, including on full domestication of the principles and provisions of 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). She further specified that the withdrawal of a number of cases involving trade unionists that had been pending before the courts had greatly improved the scope of trade unionists to freely enjoy their fundamental rights, especially the right to organize. Moreover, numerous knowledge-sharing seminars on international labour standards for diverse state actors, including the police, prosecutors, magistrates and Judges of the Supreme Court, High Court and Labour Court organized from 2011 to 2015 had resulted in a remarkable decline in the number of incidences of clashes between trade unionists and law enforcement agencies.

Recalling the most recent observations of the Committee of Experts and its points of concern, she indicated that progress had been made with regard to harmonization of labour laws. The review of the Public Service Act to ensure that it gave effect to the principles enshrined in Convention No. 98 was based on principles agreed upon at a Tripartite Negotiating Forum meeting held on 4 August 2014 in Harare, and the Government intended to convene a National Joint Negotiating Council meeting to consider the draft Amendment Bill no later than September 2016 to give public service workers an opportunity to contribute to the law development process. With regard to the Labour Act, the new set of Principles for the Amendment of the Labour Act, agreed to in the Tripartite Labour Law Reform Advisory Council in 2016, addressed, among other aspects, the revision of the entire section 79 of the Labour Act cited in the 2016 report of the Committee of Experts in order to rationalize the powers of the Minister with respect to the registration of collective bargaining agreements. Some sections of the Labour Act which were directly or indirectly linked to collective

bargaining were also to be amended: (1) sections 14, 25 and 81, so as to ensure that collective agreements were not subjected to Ministerial approval on the grounds that the agreement was or had become "… unreasonable or unfair" or "contrary to public interest"; (2) section 63A(7), so as to remove the powers of the Minister to appoint a provisional administrator and to give the power to the Labour Court to appoint the administrator having given the parties concerned the right to be heard in compliance with Article 69(2) of the Constitution; (3) section 104, so as to streamline procedures for declaring a strike; and 4) sections 107, 109 and 112, so as to remove excessive penalties and to decriminalize collective job actions and ensure protection against anti-union discrimination. Other principles not necessarily relating to freedom of association and collective bargaining should be agreed upon by 30 June 2016, in order for the drafting of the Amendment Bill to commence. She expressed the belief that the Worker and Employer delegates from Zimbabwe could corroborate the Government's submission to the Conference Committee and emphasized that her Government cherished social dialogue that was at the heart of labour market governance.

Apart from addressing the concerns of the Committee of Experts under Convention No. 98, the Government and the social partners had also made progress in a number of areas related to labour market governance, including the strengthening of social dialogue by negotiating and agreeing on a chamber for social dialogue; to that end the Attorney-General's Office was working on the second draft of the Tripartite Negotiating Forum Bill, which sought to incorporate the comments and recommendations of the social partners on a first draft Bill published in November 2015. Moreover, in August 2015, the Government had acted swiftly by amending the Labour Act in order to halt massive lay-offs following a Supreme Court ruling that stated that, in law, employers in Zimbabwe had the right to terminate contracts on notice based on common law. To conclude, the Government representative indicated that her delegation was looking forward to a constructive engagement and dialogue with other Governments and the representatives of the workers' and employers' organizations in the Conference Committee.

The Employer members recalled that the examination of the application of Convention No. 98 by the ILO supervisory bodies had a long history: it had been the subject of 11 observations of the Committee of Experts since 2002; a Commission of Inquiry had been set up in 2009 in accordance with article 26 of the ILO Constitution; the present Committee had discussed the case four times, in 2002, 2003, 2004 and 2005; a complaint had been made before the Committee on Freedom of Association (Case No. 3128); and a High-level Technical Mission of the Office had taken place in February 2014. Most of the recommendations made had been carried out, as explained by the Government representative, but the Committee of Experts had identified some outstanding issues of concern in its latest observation.

The first was about protection against anti-union discrimination. Following allegations of anti-union acts by the Government, including the arrest and harassment of trade unionists and trade union leaders, made by the trade union movement in Zimbabwe and the International Trade Union Confederation (ITUC), the Committee of Experts had requested the Government to provide statistical information on the number of complaints of anti-union discrimination lodged and examined, sample judicial decisions issued, the average duration of procedures, and sanctions applied. The Government had responded that, due to the lack of a proper labour market information system, it was not possible to provide such statistical information. As the ITUC and the Zimbabwe Congress of Trade Unions (ZCTU) had made more allegations of anti-union activities in 2015, the response of the Government had been that it was for the trade unions to submit more details to enable an investigation. In this context, the Committee of Experts noted with concern the absence of specific information regarding the protection granted in practice to victims of anti-union discrimination, and requested the Government to make every effort to submit detailed elements in this respect and to reply to the observations of the ITUC and the ZCTU. The further information submitted in writing by the Government showed the progress made to ensure that labour laws comply with Article 1 of the Convention: sections 4 and 7 of the Labour Act provided

for penal sanctions for violation of workers' rights to join trade unions and workers' committees and to democracy in the workplace. The initiative of the Government to train, with assistance from the ILO, all Labour Court Judges on better protection of workers against anti-union discrimination was welcome. Its commitment to engage with social partners to consider legal and practical reforms to make protection against anti-union discrimination a reality was also to be commended. Concerning the Government's response to the request for statistical information about complaints, the Employer members observed that such information already existed, although only in manual format; the Government was encouraged to consider gathering that information for submission to the Office, and to explore the possibility of developing a labour market information system or to implement alternative measures allowing the tracking, monitoring and reporting of incidents of non-compliance, with the support of technical or other assistance from the ILO if needed.

The second issue raised by the Committee of Experts related to the promotion of collective bargaining. It noted the Government's efforts to harmonize its labour and public service legislation with the Convention, as well as the adoption of a new Constitution in 2013, which guaranteed collective bargaining rights to all workers, negotiations with social partners in the Tripartite Negotiating Forum, the passing of Labour Amendment Act No. 5 in August 2015, and the ongoing labour law reform process. The Employer members welcomed the progress made to date and urged the Government to continue consultations with the social partners to complete the harmonization process.

Concerning the right to collective bargaining of civil servants, the Committee of Experts had noted with interest that the new Constitution guaranteed that right to all workers, but remained concerned that it was not enjoyed by all public servants. It encouraged the Government to seek technical assistance from the Office to ensure that civil servants not engaged in the administration of the State effectively enjoyed the right to collective bargaining. According to the information submitted by the Government to the present Committee, the process of amending the Public Service Act to put it in line with the

Constitution was at an advanced stage. The information supplied by the Government made clear that the right to collective bargaining of all public servants, with the exception of "members of the security services", was protected by the Constitution. In the view of the Employer members, this was laudable progress. They urged the Government to finalize the last legislative amendments needed to ensure the full harmonization of public service laws with the Convention.

The final concern of the Committee of Experts was that, by giving to the authorities the right to approve or reject collective agreements based on considerations such as the agreement having become unreasonable or unfair, section 79 of the Labour Act was contrary to the principle of voluntary bargaining protected by the Convention. It requested the Government to repeal the offending provisions. The information provided by the Government showed progress in that respect: section 79 of the Labour Act had been amended, by agreement with the social partners and on the advice of the Tripartite Labour Law Reform Advisory Council, to limit the grounds for refusing registration of collective agreements to "procedural flaws and representations made by the parties themselves". The Employer members were pleased to note progress on this aspect, and believed that the amendment enhanced compliance with the Convention.

In conclusion, the Employer members believed that notable progress had been made to comply with the Convention and, given the history of the case, commended the Government for that. While accepting that the process to harmonize national laws with the Convention was not yet complete, they considered that much had been done, and they urged the Government to cooperate with the social partners and to avail itself of technical and other assistance from the Office to complete the harmonization process.

The Worker members observed that eight years had passed since the present Committee had discussed Zimbabwe's "flagrant disregard for the most basic freedom of association rights" and recommended the establishment of a Commission of Inquiry. In March 2010, the Commission of Inquiry had concluded that there were systemic violations

of Conventions Nos 87 and 98 in the country, with a clear pattern of arrests, detentions, violence and torture of trade union leaders and members by the security forces, in a calculated attempt to intimidate and threaten members of the ZCTU, and expressed particular concern over the routine use of the police and army against strikes, widespread interference in trade union affairs, and failure to guarantee judicial independence and the rule of law. The Government had repeatedly expressed its commitment to give effect to the recommendations of the Commission of Inquiry, including during a High-level Technical Mission to the country in February 2014. The Worker members were not only deeply disappointed at the absence of progress despite the promises made, but also alarmed about regressive measures and steps recently undertaken.

Although the right to collective bargaining was recognized as a fundamental right by article 65 of the Constitution of 2013, labour laws did not give it effect in practice. Indeed, none of the shortcomings raised by the Committee of Experts for the past 15 years had been effectively addressed. Under section 17 of the Labour Act, the Minister of Labour continued to maintain their prerogative to issue regulations on an extensive list of matters, including conditions of employment, while denial of registration of collective agreements considered "unreasonable or unfair" continued to be allowed by sections 78 and 79. These provisions were clearly contrary to the principle of voluntary bargaining protected by Article 4 of Convention No. 98. Nevertheless, the Government had reinforced its discretionary powers with the adoption of the Labour Amendment Act of 2015 which provided that collective agreements had now to include measures to "promote high levels of productivity" and "economic competitiveness". In addition, section 19(1) of the Public Service Act continued to deny public employees the right to collective bargaining.

The Government continued to blatantly violate Article 1 of the Convention, which required that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment. The Commission of Inquiry had concluded that there was no such adequate protection in the country. Not only had there been no progress in this regard,

but workers were increasingly victimized for their trade union activity without access to effective remedies. Among many examples, Ms Mutsambirwa, a union leader in the banking sector, had first been transferred and then dismissed in 2015 on accusations of inciting to strike, although she had successfully challenged her transfer in the Labour Court. Mr Katsande, President of the Zimbabwe Banks and Allied Workers' Union, who had been suspended from his position in his employment bank, had his case heard in June 2014 by the Constitutional Court, which had yet to deliver its judgment.

Another worrying development was the Special Economic Zones Bill, which sought to exempt from the application of the Labour Act investors operating in these zones. Instead of the Labour Act, the Minister would provide rules for conditions of service, termination, dismissal and disciplinary procedures to apply in the zones. This meant that workers in these zones would be excluded from the right to collective bargaining and subject only to regulations unilaterally made by the Special Economic Zones Authority, which might consult with the Labour Minister but not with Worker representatives. Since the Bill vested the Special Economic Zones Authority with the power to declare any area or premise a special economic zone, the impact on workers could be devastating.

The right to collective bargaining was inextricably linked to the right to freedom of association and the right of workers and employers to establish their independent organizations. The Commission of Inquiry and the Committee of Experts had found provisions of the Labour Act and the Public Order and Security Act contrary to the right to freedom of association with respect to issues such as registration of trade unions, supervision of the elections of trade union officers or regulation of trade union dues. The Labour Amendment Act of 2015 only made the situation worse by empowering, under section 120, the Government to appoint an administrator to run the affairs of a trade union it believed was mismanaged. This provision contravened Article 3 of Convention No. 87 which protected the right of trade unions to administer their activities without interference by the public authorities.

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

Finally, the non-remittance of union dues by employers had become a widespread practice that had brought unions into serious financial difficulties. The Labour Act prescribed that employers violating agreements with unions for the collection and transfer of union dues were liable to a fine or imprisonment of up to two years. However, the Zimbabwe Construction and Allied Trades Workers Union was still owed US$485,000 by various employers in the construction industry, the Ceramics and Associated Products Workers Union $15,700 by various employers in the ceramic industry, and the National Mine Workers Union of Zimbabwe $39,360 by employers in the mining industry, with devastating consequences for the unions affected.

Zimbabwe was facing an acute jobs crisis and the workers of the country were bearing the brunt of repeated failed economic policies of the Government. Most workers earned salaries far below the poverty level, and many workers went for months without receiving their wages. Repression had never helped any government in tackling economic crises while collective bargaining and social dialogue had proven to be effective tools against job losses.

The Government was therefore called to bring its laws and practices in line with the Convention as a matter of urgency.

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

The Worker member of Zimbabwe (Mr NKIWANE) indicated that five and a half years had elapsed since the Commission of Inquiry had formulated its recommendations. Despite the Government's promise to bring all the pertinent labour laws into conformity with Conventions Nos 87 and 98, little progress had been made, with the exception of the 2013 Constitution. In August 2014, principles to align national laws were agreed upon in a

tripartite manner. In 2015, the Government had promulgated Labour Amendment Act No. 5, ignoring the agreed principles. Labour Amendment Act No. 5 specified that a freely concluded collective bargaining agreement would not be registered if "contrary to public interest". Furthermore, the said Act imposed a minimum retrenchment package. Moreover, the Act permitted ministerial interference in the administration of national employment councils. The speaker was of the view that the principles discussed on 22 May 2016 had been merely agreed upon for the purpose of reporting progress to the present Committee. Also in May 2016, the Special Economic Zones Bill had been discussed and passed by the lower house of Parliament, without consultations being held. The Bill sought to exempt Special Economic Zones from the application of the Labour Act.

The speaker stated that acts of anti-union discrimination were widespread, trade union members were being dismissed, as was the case of the President of the Railways Association of Enginemen, Mr Honest Mudzete, the President of the Zimbabwe Catering and Hotel workers Union, Mr Muzvidziwa, and the union's national executive member, Ms Sophia Bwera. Selective dismissals of workers were taking place during strikes, especially in the case of trade union officials and Worker representatives. Moreover, the Constitutional Court had yet to determine the constitutionality of section 104 of the Labour Act that restricted the right to strike. He denounced late payments of wages and the difficulty for workers to dispose of their wages, due to limited availability of money in banks. As workers' wages had not been paid, trade union dues had not been remitted, thereby crippling unions' operations. The speaker called on the Committee to insist, with stronger measures, on the effective implementation of the Convention.

The Government member of Botswana (Mr MOJAFI), speaking on behalf of the Member States of the Southern African Development Community (SADC), noted the progress made by the Government in addressing the issues raised, in particular in relation to the recommendations of the Commission of Inquiry. He noted the Constitutional amendments adopted in 2013 which formed a good basis for addressing the concerns raised

by the Commission of Inquiry regarding compliance with the Convention. He also noted the tripartite agreement on principles which formed the basis for the amendment of the Labour Act and the Public Service Act, in the context of the labour law reform. Progress was also noted concerning the capacity building of the stakeholders. The speaker stressed the necessity to rapidly harmonize various statutes with the new Constitution. While some outstanding issues still needed to be addressed expeditiously to fully comply with the Convention, he trusted that the regular review and monitoring of the implementation of regional instruments on employment and labour, such as the SADC Decent Work Programme 2013-2019, would help the Government in this regard. The continued technical assistance provided by the Office to the Government and the social partners would also facilitate compliance with the Convention.

The Employer member of Malawi (Mr MUNTHALI) expressed his solidarity with the Government on behalf of the SADC Private Sector Forum (SPSF). There was a conducive space for reforms in Zimbabwe and the employers were contributing to the current changes. The SPSF, the subregional body representing the private sector, approached tripartite consultations and social dialogue with objectivity. Interventions made by the Employer member of Zimbabwe demonstrated such commitment. Employers had agreed in the context of the national social dialogue platform, to repeal section 79(2)(b) and (c) of the Labour Act. When instances of non-compliance with fundamental Conventions were reported, it was crucial that the situation be addressed first at the national level, and if these institutions had failed, at the subregional level, in order to ensure that existing structures with competent authority were given an opportunity to understand the reasons for the problems. In that regard, it was encouraging that the Employers Federation of Zimbabwe (EMCOZ) was using the national platforms to raise their concerns regarding the Labour Amendment Act No. 5 of 2015. The EMCOZ had not brought these concerns to the attention of the relevant subregional or international structures. National structures had to be taken advantage of, especially where governments, with the technical assistance of the ILO, had

demonstrated their willingness to iron out concerns raised by the Conference Committee. The request made by the employers to the Government was legitimate and demonstrated the employers' objective approach towards social dialogue. To conclude, the Employer member of Malawi acknowledged the positive spirit of the Government in facilitating progresses to address the concerns raised by the Committee and was satisfied that the Government and the social partners would continue the positive developments.

The Worker member of Botswana (Mr LENTSWE) recalled that Zimbabwe had been a recurrent case before this Committee due to gross breaches of the provisions of this Convention and the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87). The severity of these breaches, notably the serial and brazen physical and psychological attacks on workers and their trade union leaders, had led to the appointment of a Commission of Inquiry to investigate and draw out recommendations. However, the Conference Committee was familiar with the fact that these recommendations had been poorly implemented. The situation had not changed substantially as harassment and intimidation were still waged against workers and trade unions and had impacted the process of collective bargaining. On 8 August 2015, the police had prevented the Zimbabwe Congress of Trade Unions (ZCTU) from demonstrating against the increase in job losses. Prior to the planned demonstration, the police raided the ZCTU offices in Harare and detained seven union leaders, including the President and the Secretary-General of ZCTU, and several journalists. Those arrested had later been released and were intimidated physically and psychologically by police officers patrolling in the Harare's Central Business District with anti-riot equipment. On 11 April 2015, the ZCTU had obtained permission to demonstrate in six cities to denounce a range of practices contrary to the existing collective bargaining agreements, including wage freezes and cuts, the unilateral labour market flexibility, the non- and late payment of salaries, and, the failure to remit trade union membership dues to the unions. To conclude, the Worker delegate stressed that the

Government had failed to align its laws and practices with the requirements of the Convention.

The Government member of Malawi (Mr MUSSA) expressed his satisfaction concerning the progress made by the Government in the implementation of the recommendations made by the ILO Commission of Inquiry in 2010. Employers, Workers and the Government had to work together for the country to move forward economically and socially. The formation of a Tripartite Negotiating Forum, responsible for charting and overseeing the improvement and implementation of labour laws and other instruments was welcomed. This forum created an auspicious climate for the social partners to work together in designing a greater country to live and do business in. The commitment and progress made by the Government to improve the implementation of the Convention was commendable and should be encouraged. The measures taken by the Government to amend its Constitution was also a step in the right direction. Government, Workers, and Employers were to be encouraged to work together to ensure that the issues raised by the Commission of Inquiry were addressed in earnest. To conclude, the speaker encouraged the ILO to continue to provide technical assistance in the ongoing reforms to enable the Government to achieve economic growth through the development of a good, sustainable and sound social dialogue.

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

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

The Worker member of Swaziland (Mr MCONGWANE) expressed solidarity with the workers of Zimbabwe whose challenges were similar to the ones faced by workers in Swaziland. It was unfortunate that Zimbabwe had appeared recurrently before the Committee. When Zimbabwe had signed the 2011 Charter of Fundamental Social Rights in the SADC, it was believed that it did so with a view to achieve uniformity in respect for human and worker rights throughout the region. However, instances where deductions had not been remitted to the unions to whom they were due, continued to happen. These practices were intended to frustrate, cripple and undermine the trade unions' capacity to defend and advance their members' rights and interests. The speaker called on the Government to fulfil its commitment to respect the Convention and the Charter of Fundamental Social Rights in the SADC and to protect the rights of the trade unions. Governments should assist the Government of Zimbabwe to comply with the obligations agreed upon, within the context

of the ILO, but also in the regional and other international contexts. The workers of Zimbabwe were entitled to enjoy their rights. It was clear that no progress had been made by Zimbabwe regarding the implementation of the Convention and the conclusions should urge the Government to take action.

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

The Worker member of the Republic of Korea (Ms RYU) recalled that the Committee of Experts had reminded the Government of the need to effectively reform its labour laws to promote genuine and acceptable collective bargaining practice in full collaboration with the social partners. The Government had continued to poorly implement the requests of the Committee of Experts. Furthermore, the Government had unilaterally changed the principles that had been agreed upon by the social partners. Specifically, in August 2014, the tripartite partners had adopted, in the context of the Tripartite Negotiating Forum, 13 principles to guide the reform process. These principles had been accepted by the Cabinet in December 2014 without any changes. The Labour Amendment, which later became law in August 2015, had made significant unilateral changes to the agreed principles. The Act included provisions on the creation of a new workers–employers bipartite structure, on inspection and examination, and on the administration of the employment councils. These provisions had never been discussed nor agreed upon with the social partners. The provisions

undermined the Convention and reversed the progress achieved through past national reforms, as they increased the powers of the Registrar of Unions and allowed the Minister to take control over the employment councils. Collective bargaining could not take place under the new law, which was intended to intimidate the social partners. The patience of this Committee should not be taken as a pretext to delay the implementation of the Convention.

The Government member of China (Mr LU) emphasized that the Government had implemented the recommendations of the Commission of Inquiry, in particular by adopting amendments to the Constitution and revising the labour legislation. This progress should be welcomed, since it enabled the protection of the social partners' rights and the promotion of collective bargaining. The member States needed to shoulder the responsibilities that arose from the Conventions which they had ratified and, to do that, they needed time and also technical assistance from the ILO. In conclusion, the speaker supported the efforts of the Government and expressed the hope that the assistance provided would continue.

The Worker member of the United Kingdom (Ms BROWN) recalled that the Convention should be applied both in law and in practice. The right to collective bargaining was protected under article 65 of the Constitution adopted in 2013. However, when the labour law reform was discussed, the situation did not reflect the promising disposition of the Constitution. Those who had attended the tripartite discussions could not recognize the legislation that was supposed to have emerged from the tripartite process. The section agreed upon by the social partners had already been highly criticized, including by the Commission of Inquiry and the Committee of Experts for interfering with collective bargaining through requiring approval of the collective agreements by the Minister before they could be registered. Instead of bringing the law into compliance, the Government inserted a new section that had compounded the infringement of core rights. The Minister had been given even more discretion and could choose when an agreement was or was not in "the public interest" before deciding whether to register it. Thus, the section gave the Minister full discretion in granting prior approval, which was a very clear violation of the principle of

autonomy of the parties. In relation to public-sector bargaining, Government agencies were able to take over employment councils. These examples showed a tightening grasp of control by the Government over what should have been a negotiated process between the social partners. The same had happened regarding retrenchment or redundancy payments, and the fixing of public sector terms and conditions. Despite the inclusion of article 65 in the 2013 Constitution, collective bargaining free of government control was not a reality in Zimbabwe.

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

La miembro gubernamental de Cuba (Sra. LAU VALDÉS) acogió con agrado el reconocimiento que se hace en el informe de la Comisión de Expertos de los avances en la legislación, particularmente en lo que respecta a la enmienda de la Constitución, que reconoce ampliamente el derecho de negociación colectiva, y al hecho de que la legislación laboral se está armonizando con el Convenio. Considerando la voluntad expresada por el Gobierno de Zimbabwe de continuar avanzando en el cumplimiento de los compromisos contraídos, alentó a que se prime el espíritu de cooperación y se brinde al Gobierno la asistencia técnica necesaria.

The Worker member of South Africa (Mr MASUKU) expressed solidarity with the workers of Zimbabwe and recalled that the Committee had, in many occasions, discussed on the abuse, deprivation and denial of fundamental rights of workers in EPZs, which in turn undermined and eroded the spaces and latitude for collective bargaining. The Special

Economic Zones Bill was discussed in the Parliament of Zimbabwe in May 2016. Clause 56 of the Bill provides for the removal of the application of the Labour Act in Special Economic Zones. The effect of this provision would be that collective bargaining, as provided for in the Labour Act, would be impossible, giving employers and the authorities the power to determine conditions of work in these zones. Workers would be subjected to regulations unilaterally made by the Special Economic Zones Authority without consultation or negotiation with worker representatives. Moreover, recalling that the Special Economic Zones Bill, once adopted, would be administered by the Minister of Finance and the Minister of Public Service, the speaker feared that inputs from the Ministry of Labour and Social Welfare on the making of regulations would only be possible when the Authority decides to consult it. He requested that the Committee called upon the Government to accept a high-level mission to assess progress and to assist with proposals to make rapid and lasting changes to collective bargaining laws and practices.

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

The Government member of India (Ms NAYAK) expressed appreciation at the various measures initiated by the Government to harmonize its legislation with the provisions of the Convention. She was pleased to note that the Tripartite Negotiating Forum had agreed to finalize the discussions on the Labour Amendment Bill by the end of August 2016. Furthermore, the Government had already taken actions to implement most of the

recommendations of the Commission of Inquiry, including those related to protection against anti-union discrimination, the extension of the scope of collective bargaining, and the registration of collective bargaining agreements. The Government had also shown its willingness to engage in discussions with the social partners and had benefited from ILO assistance in the area of training and sensitization. The Committee should take into account the progress made and the commitment expressed by the Government to strengthen the compliance of its labour laws with the Convention.

The Government Member of Ghana (Mr KORLETEY) acknowledged the actions taken by the Government of Zimbabwe to address, through tripartite consultation, the issues raised by the Commission of Inquiry, in particular the ongoing labour law reform which was an important step towards compliance with the Convention. The speaker urged the Government to expedite these actions in order to achieve a harmonious industrial climate and respect of workers' rights.

The Government representative indicated that some of the issues discussed had not been raised by the Committee of Experts. Firstly, legislative issues should be discussed in the Tripartite Negotiating Forum and other national social dialogue structures and the Government was committed to address these issues with the social partners at the national level. Secondly, the overall economic performance of the country had to be taken into account. Thirdly, incidences of clashes between the law enforcement agencies and trade unions had been reduced and the Government had continued to work towards the improvement of working relations between state actors and trade unionists. The Government had always been ready to engage in dialogue with a view to finding mutually acceptable solutions to the issues discussed by the Committee.

Challenges had been encountered in the labour law reform. The Supreme Court ruling of July 2015 had exposed loopholes in the existing laws giving employers the right to terminate employment contracts without notice. Since this ruling had resulted in unprecedented massive job losses, the Government had taken measures to expedite the

enactment of labour legislation to stop those dismissals. The Labour Amendment Act No. 5 of 2015 prohibited the termination of employment without notice and retroactively entitling dismissed workers to compensation. While considerable progress had been realized since June 2015 with the agreement of the tripartite partners on the labour law reform based on all the comments of the ILO supervisory bodies, the need for urgent labour law amendments had meant that the reforms that had been agreed upon had to be temporarily set aside. However, this decision had been made in good faith and with the intention to benefit workers. As soon as the labour amendments had been passed, tripartite engagement had been resumed. The discussions, which had been initiated within the Tripartite Negotiating Forum, had been finalized by a tripartite Labour Law Advisory Council. The objective was to finalize the consultations by the end of June 2016 to pave the way for the drafting of a Labour Amendment Bill.

The socio-economic challenges faced by the country had been exacerbated by the El Niño induced drought. In this context, some employers had been failing to fully comply with collective bargaining agreements especially with respect to minimum wages. This had also led to delays in the payment of wages, in the remittance of trade union dues and in medical aid contributions. The Government had repeatedly intervened to encourage the parties to reach agreements on how the collective bargaining agreements could be honoured, notwithstanding the economic challenges at stake.

The Special Economic Zones Bill that was being discussed in Parliament could not undermine the fundamental rights of workers, especially those relating to Conventions Nos 87 and 98, as the Constitution of the country already guaranteed these rights (except for the security services). Moreover, it was the Government's intention to convene a tripartite seminar to build greater consensus on how the industrial relations framework for Special Economic Zones was to be configured.

In conclusion, she emphasized that the Government had demonstrated full respect for the comments of the ILO supervisory bodies, as well as for the diverse opinions of the social partners. The socio-economic challenges faced by the country required nothing short of social dialogue and inclusive participation. All efforts would be taken, in law and practice, to make sure that international labour standards were part of the country's development paradigm. She concluded by stating that the remarkably good record since the adoption of the recommendations of the Commission of Inquiry just six years ago spoke for itself.

The Worker members declared that collective bargaining was essential in safeguarding jobs during crisis. While the Government of Zimbabwe had committed itself to guaranteeing the right to collective bargaining by ratifying the Convention, it failed to comply with its obligations by resorting to violence and repression against those who were the most affected by the economic crisis. The Worker members trusted that the discussion clarified the need for the Government to hold without delay genuine consultations with the social partners in relation to the recommendations of the Commission of Inquiry with respect to the amendment of the Labour Act, the Public Service Act and the Public Order and Security Act. The Government was seeking to weaken the right to collective bargaining with the Special Economic Zones Bill, while there was no justifiable ground for denying the right to collective bargaining to workers in EPZs. The Government should be reminded that failure to implement a collective agreement, even on a temporary basis, infringes the right to collective bargaining and the principle of good faith, and therefore employers which refused to remit union dues in violation of existing collective agreements should be sanctioned. Moreover, the Government should ensure that dissuasive sanctions are imposed on employers engaging in anti-union discrimination and that all workers who have been targeted for discrimination have access to effective remedies. Recalling that the right to collective bargaining cannot be exercised in a meaningful way without independent and representative workers' organizations, the Worker members called upon the Government to refrain from interfering in public protests by arresting and intimidating trade union members

and leaders. Past incidents should be fully investigated and those who were found to be responsible should be held accountable.

The Worker members recalled that the last time the Committee called for a Commission of Inquiry with the agreement of the three groups was in 2008 concerning Zimbabwe, including on the application of Convention No. 98. The case being once again discussed this year, the Committee must therefore follow up on the recommendations already made and should call upon the Government to accept a high-level mission and to take all the necessary measures to allow the mission to note improvements before the next Conference.

The Employer members indicated that the discussion had shown that there remained challenges which affected trade unions, workers and employers. However, those challenges should not detract from the fact that progress had been made towards compliance with the Convention. This progress had been recognized by all social partners in Zimbabwe as well as by the Committee of Experts. The Conference Committee should encourage member States to resolve their labour problems through social dialogue at the national level. The Government and the national social partners had established tripartite structures to review labour law reforms. Agreements had already been reached at the tripartite level including with regard to the amendment of the national labour laws, which had resulted in the amendment of the Labour Act which provides, among other things, for criminal sanctions in the event of trade union violations. This progress should be commended. The Employer members believed that the tripartite structure of social dialogue would contribute to the finalization of the process for the harmonization of the national legislation with the Convention in the near future. The parties should work together to ensure compliance and enforcement of the laws that had already been enacted, especially those offering protection to workers. To build on the momentum of progress, the Employer members encouraged the Government to: (i) continue to work with the national social partners to finalize the outstanding legislative amendments to ensure full compliance with the Convention; (ii) explore all reasonable measures to track, monitor and report on incidents of anti-union

discrimination; and (iii) avail itself of any technical and other assistance it may require from the ILO to achieve full compliance with the Convention, both in law and practice.

(…)

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

Bangladesh (ratification: 1972). **A Government representative (Mr SHIPAR, Ministry of Labour and Employment)** referred to the Committee's conclusions of this case in 2015 and indicated that the Government had accepted to receive a high-level tripartite mission, which had taken place in April 2016. The report of the mission had been received by the Government only on 6 June 2016, i.e. two days prior to the discussion in the Committee, which was the reason that no comments could yet be made on the content of that report. In view of the strong commitment of the Government to engage and work with the social partners to improve rights at work, the inclusion of Bangladesh in the list of individual cases was unjustified.

The Government was committed to upholding international labour standards through promoting freedom of association of workers in line with the ILO Conventions. The right to organize was enshrined in the Constitution of Bangladesh, and trade unions and their leaders were also protected under various provisions of the Bangladesh Labour Act, 2006 (BLA). Anti-union discrimination and reprisals were contrary to the BLA and subject to stringent legal actions. Under the BLA, any aggrieved worker could submit a complaint on unfair labour practices or anti-union activities to the Department of Labour for remedial action, which would be properly dealt with in an appropriate time frame. Of the 38 complaints received at the Department of Labour, 20 had been settled and 16 criminal cases had been filed, while one case was still being investigated. A helpline for workers had been operational since March 2015, and a total of 490 complaints from the ready-made garment

(RMG) sector had been received between December 2015 and May 2016 through this helpline.

The BLA had been amended in July 2013, including with a view to promote freedom of association and collective bargaining. After the amendment of the Act, trade union registration had increased significantly, with 899 new trade unions and 21 new trade union federations that had been registered, including 366 new trade unions in the RMG sector. Following the introduction of an online registration system in March 2015, 412 online applications had been received. Moreover, workers in the agricultural sector now had the right to form trade unions. Both the amendments to the BLA and the Rules implementing the BLA had been adopted upon consensus following a wide range of consultations with the tripartite stakeholders. Referring to various technical assistance activities with various actors, including the ILO, he emphasized that awareness raising and capacity building of workers about the right to organize and collective bargaining, especially in the RMG sector, was of high importance to the Government. Those positive initiatives should contribute to a qualitative change in the right to organize and collective bargaining.

The EPZ Workers' Association and Industrial Relations Act adopted in 2004 was the first legal instrument that granted workers in EPZs the right to organize. Subsequently, the EPZ Workers' Welfare Association and Industrial Relations Act was adopted in 2010 to ensure freedom of association and collective bargaining of workers in EPZs in the form of workers' welfare associations (WWAs), which were acting as collective bargaining agents. Out of 409 eligible enterprises in the EPZs, referendums had been held in 304 enterprises. In 225 of these enterprises, WWAs had been established following the referendums held. Between January 2013 and December 2015, 260 charters of demands were submitted by WWAs and settled amicably with agreements being signed. This clearly showed that workers in EPZs were enjoying the right to organize and collective bargaining. Moreover, from January 2015, workers in EPZs were also enjoying the right to strike. The adoption of a comprehensive EPZ Labour Act was at its final stage, and a wide range of consultations

had been held with the elected worker representatives of EPZs, investors and other relevant stakeholders. The draft Act had also been shared with the ILO. It was evident that since the existence of EPZs, the labour rights within these zones had been gradually improving, and the EPZ Labour Act was expected to provide an even more effective protection of workers.

The effective enforcement of the BLA also played an important role in upholding freedom of association. Therefore, the recruitment of additional staff at the Department of Labour had been initiated. The trade union culture in Bangladesh was complex and awareness building of employers and workers played a vital role in building harmonious industrial relations. Since 2013, more than 14,000 workers and trade union representatives had received training on labour relations. In conclusion, the Government representative expressed appreciation for the constructive engagement of the ILO and the development partners as well as the technical cooperation provided, and stressed that there was a need for the greater engagement of the tripartite constituents in Bangladesh in the planning, designing and implementation of such technical assistance to promote rights at work.

The Worker members recalled that in more than three years since the Rana Plaza incident, the international community had repeatedly encouraged the Government to protect the right to freedom of association. However, despite *all* of the technical assistance and *all* of the resources provided, the Government had *utterly failed* to make any meaningful progress. The Committee of Experts and the Conference Committee had repeatedly expressed serious concern with regard to the exercise of the right to freedom of association. Recalling the main conclusions of the Committee on this case in 2015, they expressed the view that the Government had failed on all counts.

Firstly, concerning the amendments to the Labour Act and the adoption of Implementing Rules, some amendments to the BLA had been adopted in 2013. However, the revised BLA continued to fall well short of international standards with regard to freedom of association and collective bargaining. In its comments published in 2015 and 2016, the Committee of Experts had *"regret[ed] that no further amendments have been*

made to the BLA on certain fundamental matters." The Committee of Experts had also underscored *"the critical importance which it gives to freedom of association as a fundamental human and enabling right"* and urged *"that significant progress [] be made in the very near future to bring the legislation and practice into conformity with the Convention on all of the abovementioned points."* In October 2015, the Government had finally issued the Bangladesh Labour Rules, many provisions of which violated the Convention. Of particular concern was that employers had a role in the election and filling of vacancies of *worker* representatives in the Worker Participation Committees. Workers on temporary contracts were unable to vote in such elections. Where no union existed, which was the case in the vast majority of workplaces, Worker Participation Committees determined the representatives in the Safety Committees. The probability of management domination in these committees was high and clear and dissuasive sanctions for acts of interference appeared to be missing.

Secondly, concerning freedom of association in EPZs, they indicated that trade unions were banned and only worker welfare associations (WWAs) were permitted in these zones. WWAs did not have the same rights and privileges as trade unions. While the EPZ authorities claimed that collective bargaining was permitted, this was not the case. There were also numerous cases in which leaders of WWAs had been laid off in retaliation for the exercise of their more limited labour rights. On repeated occasions, the Committee had called on the Government to allow full freedom of association in EPZs. The Government had nevertheless refused to do so, pointing to the assurance given to investors years ago to keep these zones union free. The High-level Tripartite Mission *"observed with concern the separate legislation for factories in the EPZs and the limitations on freedom of association and collective bargaining in these zones."* In February 2016, the Cabinet had approved a draft Bangladesh EPZ Labour Act, which had been submitted to Parliament in April. However, the Government had failed to engage in consultations with Worker representatives concerning this draft. Under the proposed law, workers in the EPZs would still not be able

to form unions. All the provisions of the 2010 law in relation to WWAs had been incorporated into the draft. The Government claimed that it could not allow unions because of prior promises made to investors, but this was no excuse. The Government's obligations and the tripartite conclusions concerning this case could not be clearer.

Thirdly, with regard to the investigation and adjudication of cases of anti-union discrimination, there was a serious lack of commitment to the rule of law. At all levels, law enforcement was almost non-existent. Many union leaders of the unions registered after 2013 had suffered retaliation. Some union leaders had even been brutally beaten and hospitalized. Entire executive boards had been dismissed. In some cases, the police, at the apparent behest of factory management, had intimidated and harassed trade unionists. This was confirmed by the conclusions of the High-level Tripartite Mission report in paragraph 46, which *"noted with concern the numerous allegations of anti-union discrimination and harassment of workers"* as well as *"blacklisting, transfers, arrests, detention, threats and false criminal charges"*. The responses by the labour inspectorate had been extremely slow, and most union leaders or members illegally dismissed for trade union activity had not yet been reinstated, nor had the employers been punished for those egregious violations. Police routinely failed to carry out credible investigations in cases of anti-union violence, if such investigations were carried out at all. The Worker members were aware of over 100 acts of anti-union discrimination in factories where new trade unions had been registered. In the few cases where workers had been reinstated, this was due to international campaign pressure on brands, not because of labour inspection and enforcement. They finally indicated several complaints had been filed with the Ministry of Labour and Employment in a drastic case of anti-union discrimination to no avail.

Finally, with regard to trade union registration, the Worker members indicated that following the Rana Plaza collapse, the Government had temporarily reversed its no-union policy in the RMG sector in response to intense international pressure. Therefore, new unions had been formed and successfully registered. However, in 2016, the situation had

nearly returned to the pre-Rana Plaza days. In 2015 alone, the Joint Director of Labour (JDL) had rejected 73 per cent of all new union applications, in particular from the most active independent garment federations. The approval of a union's application remained at the absolute discretion of the JDL, allowing it to reject legitimate registration applications. With regard to the number of newly registered trade unions since 2013, the Government had failed to mention that this number had decreased by over 100, as nearly 50 unions were now inactive due to anti-union retaliation and over 50 factories in which trade unions had been established were now closed. According to the mission report, the procedure for registering unions *"had the likelihood of discouraging trade union registration"* and various tactics that had been used which had led to the high rate of rejection of new applications. This was a deliberate policy of the Government and not a technical issue. With increasing regularity, factory management were now seeking injunctive relief from the courts to stay union registrations that had been properly granted. This practice constituted a gross violation of the right to freedom of association; indeed, the post hoc resort to the courts itself was a highly questionable use of the judicial process to frustrate trade unions after the registrar had already found the registration application to be in order. The Government's hostility to freedom of association had been confirmed by the High-level Tripartite Mission. The Government had repeatedly broken the trust of the Committee with empty promises. It was time for this to finally change.

(…)

The sitting closed at 1 p.m.

La séance est levée à 13 h 00.

Se levantó la sesión a las 13 horas.