



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

Report of the Committee on the Application of Standards

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

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

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

A Government representative of Ireland indicated her Government's commitment with respect to reports without replies to comments of the supervisory bodies, to submit shortly most of these. She also indicated that in relation to submission, the competent authorities of the Government were in the process of consideration of ILO instruments, with a view to obtaining a Government approval to either ratify the Conventions or to adopt the Recommendations in question, or to obtain agreement to defer the ratification or adoption until the national legislation and practice would conform with the provisions of the instruments in question. This process was in accordance with the approach adopted by Member States of the European Union to ratify important and up to date Conventions.

A Government representative of the United Kingdom expressed apologies on behalf of the non-metropolitan territories of British Virgin Islands, Falkland Islands and St Helena, as they had been unable to provide the reports requested under article 22 of the Constitution. He indicated that his Government tried to ensure that all non-metropolitan territories met their reporting obligations in full and in time. He announced that Gibraltar had completed and submitted all its outstanding reports. He emphasized that the failure in meeting the reporting obligations was not due to a lack of political commitment on the part of the territories, but rather a lack of capacity. He recalled that non-metropolitan territories were usually very small and largely autonomous island administrations with limited human and financial resources. Heavy reporting schedules burdened even the largest of administrations, and for small administrations, the disruption of work schedules resulting from the difficulty in recruitment or retention of staff or from their retirement could often stretch their resources. In general terms, his Government was working with the Governments of the non-metropolitan territories to ensure that they continued to raise their human rights standards. Work was currently under way for the extension to them of a number of fundamental ILO Conventions. In that respect, it was to be welcomed that the Turks and Caicos Islands had requested the extension of Convention No. 182 and the necessary process was under way.

A Government representative of the United Republic of Tanzania expressed his Government's commitment to submit the reports due in time. In case of any difficulties arising during the preparation of reports, the Government approved the recourse to appropriate technical assistance.

A Government representative of Argentina referred to the mention of the Malvinas Islands in the General Report and entered a reservation on behalf of Argentina, expressing the opinion that that was a colonial issue that should be resolved within the United Nations.

A Government representative of the United Kingdom, in response to the remarks made by the Government representative of Argentina, expressed his Government's view that the question of the sovereignty of the United Kingdom over the Falkland Islands should not be put into question.

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

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

In these circumstances, the Committee expressed the firm hope that the Governments of Burundi, Guinea, Guinea-Bissau, Guyana, Sierra Leone, Somalia, United Republic of Tanzania (Tanganyika, Zanzibar), United Kingdom (British Virgin Islands, Falkland Islands (Malvinas)), Vanuatu, which to date had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

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

A Government representative of Eritrea stated that her Government had submitted all reports under article 22 of the Constitution relating to the seven ratified Conventions and she wished to be clarified about the reason for the mention of her Government in the corresponding paragraph of the General Report.

The Committee took note of the information by the Government representative who took the floor and of the explanations provided and recalled the vital importance of the transmission of first reports on the application of ratified Conventions. In this respect, the Committee recalled that the ILO could provide technical assistance to contribute to compliance with this obligation.

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

- **Antigua and Barbuda**
 - since 2004: Conventions Nos 161, 182;
- **Armenia**
 - since 2008: Conventions Nos 97, 143;
- **Dominica**
 - since 2006: Convention No. 147;
- **Equatorial Guinea**
 - since 1998: Conventions Nos 68, 92;
- **Kyrgyzstan**
 - since 1994: Convention No. 111;
 - since 2006: Conventions Nos 17, 184;
- **Sao Tome and Principe**
 - since 2007: Convention No. 184;
- **Seychelles**
 - since 2007: Conventions Nos 73, 144, 147, 152, 161, 180;
- **Vanuatu**
 - since 2008: Conventions Nos 29, 87, 98, 100, 105, 111, 182.

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

A Government representative of the Congo explained that the failure to supply reports was due to the fact that seven out of eight labour inspectors had left the Ministry. The Congo sought technical assistance from the ILO to train other labour inspectors. Regarding the submission to the competent authorities, the Congo was working to clear the backlog. The Ministry of Labour was preparing for the

submission and the ratification at the same time in order to save time. Five instruments would be submitted in 2010. Other Conventions would be submitted in 2011, 2012 and 2013.

A Government representative of Liberia supplemented the written information provided to the Office, in particular concerning Conventions Nos 29 and 98 and on the elaboration of a new Labour Code to be adopted in June 2010. While apologizing for their late submission, he stated that his Government had submitted the reports concerning the application of Conventions Nos 22, 53, 55, 58, 92, 105, 112, 113, 114, 133, 144 and 147. With regard to the failure to submit instruments to the competent authorities, Conventions Nos 100 and 138 were currently before the National Legislature for ratification and he reiterated his Government's commitment to submit other instruments to the competent authorities.

A Government representative of Ethiopia regretted that his Government was unable to provide in time a full report replying to the comments made by the Committee of Experts. He recalled that his Government had submitted partial information to the Committee and that a full report was currently being prepared to be submitted in due time.

A Government representative of Togo completed the written information submitted by his Government and indicated that in September 2009, three trade unions had been established in free economic zones which were affiliated with the national centre. The reform of the Labour Code dealt with social conflicts in the free economic zones.

A Government representative of Libyan Arab Jamahiriya stated that his country was not able to participate in the Conference in 2009, as the delegates could not obtain visas to come to Geneva. In addition, he explained that his Government had received comments on the reports of the Government only in April 2010 in English instead of Arabic in accordance with the usual practice, and, therefore, that it had been necessary to request translation. Once they would become available, the Government would review the comments and provide replies supplemented with statistics and the legislation. He added that a new Labour Code, Act No. 12/2010, had been enacted to replace the 1970 Code. This law took into account the comments of the Committee of Experts, including, in particular, domestic and farm workers, as well as the formal and informal sectors. The new Code contained explicit provisions prohibiting forced labour and child labour. He said his Government looked forward to cooperating with the ILO and had requested technical assistance.

A Government representative of Uzbekistan expressed general support for the work of the ILO in the framework of the four strategic objectives and reported on various efforts currently being made by his country in this regard. Concerning the failure to supply information in reply to the comments made by the Committee of Experts, he assured that all necessary measures would be taken to submit the relevant information on Conventions Nos 29, 105, 135 and 154 in due course. Technical assistance would, however, be necessary in respect of the following areas: harmonization of national legislation with international labour standards; establishment of a flexible labour market to better protect women, children, retired persons and other vulnerable groups; vocational training for young people and women; and improved occupational safety and health.

A Government representative of Pakistan regretted the delay in submitting information in reply to the comments made by the Committee of Experts, which was due to a lack of capacity and awareness as well as financial constraints. He trusted that the difficulties encountered would soon be overcome with the support of the social partners and the Office. The reports requested on Conventions Nos 11, 45, 87, 105, 144 and 182 had already been submitted to the Office, and reports on Conventions Nos 29, 81, 96

and 159 would be submitted within the next days. He assured the Conference Committee that his country was very much committed to complying with its constitutional obligations.

A Government representative of Luxemburg clarified that the delay in submitting reports was due to administrative problems and not to substantive issues. Replies to the comments of the Committee of Experts would be submitted in a short time.

A Government representative of Nigeria indicated that his Government was mindful of the responsibility to supply information in reply to the Committee of Experts' comments in respect of 18 Conventions. While action had already been taken within the limits of capacity, he requested ILO technical assistance to enable Nigeria to comply with the obligation enshrined in article 19 of the ILO Constitution.

A Government representative of Uganda recognized the importance of the constitutional obligation to report on ratified Conventions but signalled financial and administrative difficulties in collecting the information. The Office had undertaken a mission to Uganda last year to identify national constraints to meet this obligation. A tripartite national delegation had just met the Director-General to discuss the way forward, and discussions would continue so as to find solutions enabling compliance.

The Worker members highlighted the importance of ILO technical assistance, in particular for developing countries, as well as the need for an increase in resources to enable the Office to provide such technical assistance. Governments that had indicated that labour legislation was being elaborated at national level should ask the Office for guidance on the conformity of the draft texts with ratified Conventions. Reports on ratified Conventions should be submitted to the social partners to enable them to provide comments.

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

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

The Committee requested the Governments of Armenia, Burundi, Congo, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, France, Guinea, Guinea-Bissau, Guyana, Ireland, Kyrgyzstan, Libyan Arab Jamahiriya, Luxembourg, Nigeria, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, United Republic of Tanzania (Tanganyika), The former Yugoslav Republic of Macedonia, Uganda, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St Helena), Uzbekistan and Zambia to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph in the General Report.

(d) Written information received up to the end of the meeting of the Committee on the Application of Standards¹

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

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

Armenia. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 87, 138, 160 and 182.

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

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

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

Cape Verde. Since the meeting of the Committee of Experts, the Government has sent all reports due concerning the application of ratified Conventions and replies to all of the Committee's comments.

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

Czech Republic. Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions.

Eritrea. Since the meeting of the Committee of Experts, the Government has sent all the reports due concerning the application of ratified Conventions and replies to all of the Committee's comments.

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

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

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

Liberia. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 133 and replies to most of the Committee's comments.

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

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

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

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

Sao Tome and Principe. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 135, 138, 151, 154, 155 and 182.

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

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

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

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

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

Turkmenistan. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 29, 87, 98, 100, 105 and 111.

United Kingdom (Gibraltar). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

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

B. Observations and information on the application of Conventions

Forced Labour Convention, 1930 (No. 29)

MAURITANIA (ratification: 1961)

A Government representative said that all the recommendations of the fact-finding mission that visited Mauritania in 2006 had been implemented and as a result considerable progress had been made in a number of areas. For example, a law criminalizing and penalizing forced labour had been adopted in 2007 and a public-awareness campaign had been organized throughout the territory. In addition, the capacities of the National Human Rights Commission (NHRC) had been enhanced and an ambitious programme had been introduced to combat the vestiges of slavery.

The adoption of Act No. 2007/48 criminalizing and penalizing slave-like practices was followed up by a vast public-awareness programme that included the organization of seminars and meetings on the Act's goals and content. The seminars were open to the public, the territorial administrative authorities, the judicial authorities, the police, the *ulemas* and prominent citizens. A national public-awareness campaign was also organized in which all the parties concerned were involved, in particular human rights organizations, elected officials and judicial authorities and which was conducted in all administrative centres in every *wilaya*. In 2009 regional workshops were held in the *wilayas* of Brakna, Assaba and Gorgol.

The Government was aware of the link between slave-like practices and poverty and since March 2009 had been implementing a programme aimed at eliminating the vestiges of slavery, with a budget of 1 billion ouguiyas made available from the State's own financial resources. The programme was designed to reduce economic and social inequalities and to improve the living standards and conditions of emancipation of the population affected by traditional practices and the vestiges of slavery. Under the programme, more than 1,000 events involving over 93,000 people were organized in 282 locations.

The speaker also provided information on the current Programme on Conflict Prevention and Social Cohesion in Mauritania, which had allowed identifying development projects for certain regions and organizing regional workshops on the prevention and management of conflicts, one of which was aimed at women leaders.

With regard to the legal and judicial assistance for vulnerable groups provided for in sections 12 and 15 of the 2007 Act, which was a particular concern of the Government, a project financed by the Japan Social Development Fund had been launched to strengthen the institutional capacity of human rights organizations, so as to promote the access of the poor to justice. The administrative and judicial authorities had also been instructed to maintain reliable statistics of infringements of the law and of the action taken. The statistics would be communicated to the ILO along with the Government's next report on the Convention.

To conclude, the speaker stated that the question of the vestiges of slavery was central to the President's policy and that clear instructions had been given on the subject to all members of the Government. Despite the political difficulties that the country had had to cope with, the Government was determined to eradicate all vestiges of slavery, and hoped to be able to count on the ILO's technical assistance to this noble end.

The Worker members stated that the case had been examined for the first time in 1982, and for the last time in 2005, so five years ago. The Committee of Experts had taken note of the progress made on the legislative level with the adoption of Act No. 2007/48 criminalizing and

penalizing slave-like practices. This Act constituted an important step forward in the fight against forced labour in the country, albeit not sufficient.

For numerous years, the Committee of Experts had been examining the issue of persons who were descendants of former slaves and were subjected to labour conditions covered by this Convention, since they were obliged to work for a master. The continued existence of that type of forced labour was further highlighted in the reports of different non-governmental organizations such as SOS Slavery and the NHRC which worked on the issue. Such information revealed that forced labour was structural and widespread in Mauritania and that the phenomenon of slavery was deeply rooted in the country's history, and was considered as an integral part of society. Slavery existed in different groups of the population and had different forms. It affected thousands of children, men and women who were living in inhumane conditions in Mauritania. It was precisely those conditions that needed to be addressed, since they pertained to the Convention. Being descendants of slaves, they had an inferior status by birth, worked as peasants, shepherds and domestic workers, were completely dependent on their master for their survival, and could not refuse executing certain tasks. It was thus shocking to note that the Government was of the view that the problem pertained to vestiges of an over-come social system, or that it involved isolated cases, and that slavery had disappeared from Mauritanian society.

The Act of 2007 constituted a positive step, and could be seen as a signal of the Government's recognition of the existence of the problem. Laws existed, but actions needed to follow. It was thus important that the Act be known among the population, especially to the victims, to the organizations defending them, as well as to the authorities in charge of enforcement so that legal proceedings could be initiated in an effective manner and harsh sanctions be imposed. The Act stipulated sanctions but it was unknown whether such sanctions had been imposed in practice. The Government had also been requested to give detailed information on whether the victims could freely, without danger of reprisal, turn to the police and the judicial authorities with a view to asserting their rights, and whether the authorities conducted the investigations in a rapid, effective and impartial manner.

Besides the administrative and judicial measures, it was necessary to adopt economic, social and educational measures so as to enable victims to acquire the necessary autonomy for reintegration. Trade union organizations, non-governmental organizations (NGOs) and other relevant organizations should participate in a plan of action aimed at eradicating this form of forced labour.

The Worker members took note of the national programme to combat the vestiges of slavery which had been put in place, and requested information on its application, and its impact. As the problem went beyond the vestiges of slavery, and pertained to practices which were still widespread, affecting thousands of persons, the Government had to formulate a plan of action consisting of concrete commitments and a well-defined timetable to bring its practice into conformity with the Convention. In this context, the Government was requested to: (1) strengthen the efforts to raise awareness of the Act and on slavery; (2) put in place mechanisms to facilitate victims' access to the judicial system, enabling them to escape the situation of dependency; (3) collaborate with trade union organizations, NGOs, and other social and civil society organizations; (4) formulate an economic and social plan of action to combat poverty and slavery; and (5) provide concrete information on the measures taken in its next report on the application of the Convention.

The Employer members recalled that the Committee had analysed the case for the sixth time and that the most recent discussion had taken place in 2005. They took note of the observation of the Committee of Experts, which stressed the following. In 2006, an ILO mission was carried out, which had permitted to observe some positive changes as regards the Government's commitment to combat slavery and its consequences and, in 2007, Act No. 2007/48 criminalizing and penalizing slave-like practices had been adopted. That Act defined and criminalized the concept of slavery and provided for penalties of five to ten years of imprisonment. It also created a series of related offences such as the appropriation of the benefits resulting from the labour of a purported slave or deprivation of access to education for children who were purported slaves. Public officials who did not follow up reports of slave-like practices were subject to imprisonment and fine. If the Committee of Experts felt that the adoption of that law was a first step, then this indicated that the real challenge consisted of its effective application. The Government reported a campaign to promote awareness about the contents of the law implemented in 2008 with the participation of public and religious organizations, the NHRC and NGOs. Despite the fact that Article 25 of the Convention required that States ensure the effectiveness of their standards and apply effective penal sanctions to cases of forced labour, the Government had not reported complaints submitted by victims or the commencement of legal actions. In 2008, a technical assistance mission visited Mauritania and studied the follow-up to the recommendations of the investigation mission. It was informed that the NHRC had received several complaints relating to slavery. Furthermore, in its report, the Government indicated that it had not adopted the national strategy for combating slavery because of a lack of agreement with the United Nations Development Programme (UNDP) and the European Union concerning the required financing. The Committee of Experts also declared that the Government did not have reliable data in order to evaluate the extent of the phenomenon.

The Employer members stated that they appreciated the information provided by the Government about efforts to implement the Convention. Nonetheless, the scourge of forced labour continued to spread in Mauritania, but its extent was unknown because of a lack of reliable data. The country had made progress in adopting legislation, from the approval of an initial decree abolishing slavery in 1905 to the 2004 Labour Code, which prohibited all forms of forced labour. The problem was not a question of regulation but of practical application of related domestic legislation by the state authorities. It was important that the Government provided information about the appropriate jurisdiction for receiving complaints, the number of complaints received and the sanctions imposed.

A Worker member of Mauritania declared that slavery existed and continued in all its forms in Mauritania with the complicity of political leaders. Harassment, intimidation and discrimination in employment had become common practice on the part of the administration, police and judiciary, which synchronized their actions to perpetuate the feudal system of slavery. In 2007, the Government adopted a law criminalizing and penalizing slave-like practices, and a vast campaign of awareness had been undertaken, but the actions and measures taken in 2007 had been abandoned in practice. However, following adoption of that 2007 law, many slaves who wanted to leave their masters had requested assistance, and several missions of the NHRC and SOS Slavery Mauritania, as well as the Independent Confederation of Mauritanian Workers (CLTM), had been carried out in Mauritania. Concrete cases existed and were documented in the reports of those organizations. In conclusion, the speaker

stressed that, despite the absence of structures for receiving former slaves and of any material assistance, and of any real political will to curb slavery, slaves continued, nonetheless, to express their desire to leave their master.

Another Worker member of Mauritania recalled that a law criminalizing slave-like practices had been adopted in 2007 and that public-awareness committees had travelled all over the country explaining its content and emphasizing that this law was mandatory. As the Committee of Experts had stated, slave-like practices were linked to traditional social customs. Combating those practices was a long-term proposition, and regular and generalized campaigns needed to be conducted in all social circles to convince people at the grass-roots level that all citizens were equal. The recent changes in the composition of the NHRC, which did not include the most representative NGOs independent of the Government and trade unions, were a cause for concern. A radio broadcast on slavery had been censored only the week before. In his opinion, the State was responsible not only for enforcing the law but also for involving both the citizens and the victims in any policy to combat slavery. If everyone concerned (former victims, former slave owners, citizens) were to be heard, then all available means of communication such as television and radio should be made use of. Finally, Mauritania's partners in development must support its implementation of participatory development programmes so that the victims of slavery could become autonomous.

The Employer member of Mauritania stated that important progress had been made which was clearly the result of the organization of awareness campaigns and the adoption and implementation of legislation and regulations, including the law of 2007 reflecting the requirements of the Convention. That progress was also reflected by the significant accomplishments of the NHRC and had been consolidated through the conduct of many projects to combat precariousness and poverty. Mauritania did not deserve to be called before the Committee but rather merited being encouraged and receiving technical assistance in order to continue its efforts to apply the Convention.

The Worker member of Colombia recalled that Mauritania had ratified the Convention in 1961 and that slavery had been outlawed in the country with the incorporation of the Universal Declaration of Human Rights into the national Constitution. He nevertheless expressed concern about the non-application of legislation in practice, as could be seen from the complaints submitted by the Mauritanian League for Human Rights and the fact that many people were still being kept in slavery. Despite certain gaps, Mauritanian law provided the Government with sufficient tools to eradicate slavery once and for all. Unfortunately, the persistence of slavery was a phenomenon seen in many countries in the forms of debt bondage, prostitution, renting of children and other even more unacceptable forms. He took note of the awareness-raising campaigns mentioned by the Government, but expressed concern about the Government's statements that no national strategy to fight slavery had yet been prepared, at a time when firm commitment to eradicating forced labour practices was more vital than ever.

The Government representative stated that Mauritania considered itself to be a "State of Law" and, to that effect, mechanisms had been included in the Act of 2007 in order to ensure its application. The provisions of the Act clearly sanctioned authorities which did not follow up cases of violations. Moreover, NGOs and trade unions had the right to make denunciations and benefit from free judicial proceedings. The NGOs and trade unions concerned were members of the NHRC and the Social and Economic Council, and were therefore a party to all matters within the remit of these organizations. Although the national strategy to combat the vestiges of slavery had not yet been

adopted for financial reasons, it was important to reiterate that the Government had recently launched two major programmes the main activities of which had already been presented. Finally, he called on the trade unions to join the Government in its fight to achieve human dignity.

The **Worker members** stressed that the Economic and Social Council to which the Government representative had referred was not yet operational and that independent NGOs were not represented therein. The information provided by the Government covered issues that dated from before the coup d'état and the current Government had not yet taken steps forward. While progress had been made on the legislative level, the practical implementation was problematic. The Government needed to establish an action plan including commitments and a precise timetable, in order to prove its real willingness to end slave-like practices. Consequently, the Government had to take all measures required to achieve progress through the following: (1) reinforcement of its efforts to promote awareness about the 2007 Act, in particular regarding vulnerable groups; (2) establishment of mechanisms that allowed victims to assert their rights and break out of a situation of dependence; (3) cooperation with trade unions, NGOs and other organizations that provided assistance to those persons; (4) implementation of an economic and social action plan to combat poverty and slavery; and (5) provision of concrete information about the efforts made in the next report on the application of the Convention.

The **Employer members** observed that forced labour appeared to be a persistent problem in the country. They recalled that Convention No. 29 was one of the eight fundamental ILO Conventions and, as such, was a key aspect of decent work. According to Article 1 of the Convention, any State which ratified the Convention undertook to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. In Mauritania's case the problem was not one of standard setting but one of effective implementation of national legislation. A national plan to combat slavery and provide assistance to those subjected to it was therefore necessary. Labour inspection needed to be strengthened in order to improve monitoring in both the formal and informal economies. A public-awareness campaign should also be organized. Given the contradictory information on the extent of forced labour practices, it was fundamental that there be reliable statistics to describe accurately the extent of the problem of forced labour. The Government should also provide detailed information on the judicial authority responsible for receiving complaints, conducting proceedings and imposing sanctions. Finally, the Employer members called on the Government to continue requesting technical assistance from the ILO and other donors in order to overcome the difficulties in the application of Convention No. 29.

Conclusions

The Committee noted the statement by the Government representative and the discussion that followed. The Committee recalled that it had discussed the present case on several occasions and that a fact-finding mission had visited Mauritania in 2006, at the request of the Conference Committee.

The Committee observed that the Committee of Experts had noted a number of positive developments which demonstrated the Government's commitment to combating slavery and its vestiges, and particularly the adoption of Act No. 2007/48 criminalizing and penalizing slave-like practices and the awareness-raising campaign undertaken following the adoption of the Act. The concerns of the Committee of Experts principally related to the effective implementation of the Act in practice, including the lack of information showing that victims were able to assert their rights.

The Committee noted the information, including statistical data, provided by the Government representative on the programme for the eradication of the vestiges of slavery, which had commenced in March 2009 and was targeted at reducing economic and social inequalities by improving means of existence and the conditions for the emancipation of the population categories affected by slavery and its vestiges. The Committee also noted the information on the awareness-raising activities undertaken and the legal and judicial assistance measures for vulnerable social groups. It further noted that the Government had requested technical assistance from the Office.

The Committee expressed awareness of the fact that slavery and its different manifestations had various causes which had their origins in the weight of tradition, culture and beliefs, and were aggravated by the economic situation. Considering that it was an issue that first needed to be addressed by Mauritanian society as a whole, the Committee called on the Government to play a key role in raising the awareness of the population and the authorities in relation to the issue and to adopt, in the very near future, a national plan to combat slavery, in close collaboration with the social partners and independent civil society organizations that were active in this field.

The Committee expressed concern at the absence of information concerning cases brought to justice. It considered, in the same way as the Committee of Experts, that this tended to show that victims were still encountering problems in being heard and asserting their rights. The Committee urged the Government to take all appropriate measures to ensure that victims were in practice in a position to turn to the police and the judicial authorities to assert their rights and that rapid, effective and impartial investigations were carried out. The Committee requested the Government to provide information on the number of complaints made to the competent authorities or to NGOs, the manner in which such complaints were dealt with and the judicial procedures set in motion.

While considering that the measures adopted to combat poverty were an important element in the strategy to overcome slavery, the Committee hoped that the Government would take into account the fact that the programmes implemented needed to have the objective of ensuring the economic independence of those who were victims of slavery and to include support and reintegration measures for victims. The Committee requested the Government to take measures to improve the economic situation of the most vulnerable categories of the population so that they could escape from the vicious circle of dependence. The Committee requested the Government to provide information on the measures adopted in this respect in its next report on the application of the Convention, including reliable quantitative and qualitative information on the characteristics of slavery and its vestiges in Mauritania, and particularly on the population affected and the geographical areas concerned.

Finally, noting that the Government had reaffirmed its commitment to eradicate slavery and its vestiges, the Committee hoped that the Committee of Experts would be able to note the progress achieved in its next examination of the case and for that purpose it requested the Office to provide all appropriate technical assistance, as requested by the Government.

MYANMAR (ratification: 1955)

See Part Three.

SUDAN (ratification: 1957)

The Government has provided the following written information in a *note verbale*.

Elections were successfully held in all parts of Sudan in April 2010. This resulted in the election of the President

of the Republic who will form a Government in the next coming days, and of the President of the Government of southern Sudan. In addition to members of the National Assembly, the Legislative Assembly for southern Sudan and legislative councils for all provinces, mayors of the provinces (*welayat*) were also elected. This demonstrates that the Sudan is seriously on the path towards democracy and sound rule, and that it is moving steadily towards a full implementation of the Comprehensive Peace Agreement, as already attested by a number of countries, international and regional organizations in 2005. In accordance with this Comprehensive Peace Agreement, it was agreed to hold a referendum next January so as to decide on self-rule for southern Sudan. The Government hoped that the Conference Committee would take this information into account and support and encourage the Sudan in its process towards achieving a comprehensive democracy.

The Government annexed to the *note verbale* referred to above a document containing information which reflected the exact substance of information already provided by it to the Committee of Experts in November 2008, in response to a communication by the ITUC dated 29 August 2008. This information from the Government was examined by the Committee of Experts in the observation regarding the Sudan on the application of this Convention, which is included in the 2010 report of the Committee of Experts and reproduced in C.App/D.4/Add.2, pp. 149–154.

In addition, before the Committee, a **Government representative** reaffirmed the full commitment of his Government to comply with its international obligations, and particularly Convention No. 29. He added that his Government appreciated the work of the Committee of Experts and reaffirmed its willingness to cooperate fully with the supervisory system.

With regard to the comments made by the Committee of Experts concerning the Committee for the Eradication of Abduction of Women and Children (CEAWC), which had been established in 1999, he indicated that full and detailed replies had been made to all the comments. He recalled that the CEAWC addressed the problems encountered at the tribal level, with particular reference to those of families and children. Although the CEAWC had been established before the signature of the Comprehensive Peace Agreement in 2005, it had been found to be an appropriate response to the problem and its operation had been continued. He added that the action of the CEAWC had received the endorsement of the United Nations Human Rights Council, the United Nations General Assembly and the United Nations Children's Fund (UNICEF).

As regards the number of people not returned to their families, he indicated that these people could no longer be called abductees because they had become citizens who had chosen to stay where they had property, and the Government could thus not force them to return.

With regard to the issue of bringing to justice those who were implicated in the abductions, other international bodies had agreed that this would have negative impacts on helping people return or settle. The Government had, however, credited those who wished to submit claims with available information. He stated that the Government had done what it could to bring people to justice, but that it could not force people to bring complaints, just encourage them to do so. It seemed that the abductions and forced labour were only a passing phenomenon, but this phenomenon was now over and had only been part of the civil war.

He further stated that the International Trade Union Confederation (ITUC), in its various communications, was merely repeating allegations already made and was giving incorrect information in order to keep Sudan on the

list of individual cases. He regretted that the process for selecting cases was politicized, which was problematic and would have a negative impact on the credibility of the Conference Committee. He stated that the Government expected the ILO to take into account the fact that it had always been present and had always submitted its reports on time. Finally, he indicated that Sudan was building peace and democracy and had held the most elaborate elections in April 2010 for the southern government, the legislative councils and the provincial council, and he hoped that the ILO would provide support to help the new Government. He also hoped that the Committee would reach a positive result, and that this case would be closed.

The Employer members thanked the Government for the detailed information provided, including the information on the elections that took place in April 2010. The application of this fundamental Convention was being discussed for the 12th time in 21 years. When discussing this case, the humanitarian situation in the country as a result of years of conflict, as well as the fact that Sudan was one of the poorest countries in Africa, had to be taken into account. Combating forced labour was therefore an enormous challenge for the newly elected Government. With regard to the application of Articles 1, 2 and 25 of the Convention, the Employer members could only provide comments on the basis of the last discussion of this case by the Committee in 2008. The prohibition of forced labour was a fundamental pillar of civil society and the free market economy. Violations of the Convention could take different forms, and the existence of extreme poverty, weak state institutions, lack of information and education, and cultural and traditional factors had to be taken into consideration.

The extent of forced labour in Sudan was not clear. However, the Government maintained that it had been eliminated. This contradicted the information on the situation from the ITUC, the United Nations Security Council and the Special Rapporteur on the Situation of Human Rights in Sudan. The Employer members did not share the view of the Government that the ILO should not deal with this case because it was already being dealt with by other international organizations. Supervising the application of Convention No. 29 was part of the mandate of the Committee. They also did not agree with the Government that bringing to justice the perpetrators of forced labour would obstruct the national reunification process. The Employer members recognized the difficulties the Government was experiencing in implementing the Convention, due to its lack of influence in certain areas. Against this background, they noted with concern that, despite the Committee of Experts' request in 2009, the Government had not provided information on the application of the Convention in all parts of the country. They urged the Government to intensify its efforts to combat forced labour and to provide accurate information so as to clarify the current contradictions as to the actual situation.

The Worker members recalled the conclusions of the Committee in 2008, which had taken note of the broad consensus among the various United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of Sudan. While welcoming the results obtained by the CEAWC, the Committee was of the view that it had no verifiable evidence that forced labour was completely eradicated in practice. Since then, in Resolution No. 1881 (2009), the UN Security Council expressed deep concern over the continued seriousness of the humanitarian situation in Darfur and reiterated its condemnation of all violations of human rights and international humanitarian law in Darfur.

The Worker members were of the view that there were still numerous questions that remained unanswered. Did abductions and recourse to forced labour stop? Were the victims liberated and did they receive assistance on being returned to their region of origin? Were the perpetrators punished? To that effect, they were of the view that although peace was a necessary condition for such practices to cease, it was not sufficient to put an end to violations of human rights. They underlined that even at the present day, there was no verifiable evidence that forced labour was eradicated. With respect to the reintegration of victims, figures seemed contradictory and the information provided by the Government was insufficient. Finally, with respect to knowing whether the perpetrators had been brought to justice or whether they were convicted, the Government had replied negatively, and gave an unconvincing explanation in that regard. Thus, impunity was all the more reinforced. Moreover, the Worker members stressed the fact that a non-application of penal sanctions and a general amnesty could not be efficient unless they were part of a transitional process during which new structures and institutions would ensure that the same violations would not be repeated. In conclusion, they stressed the fact that the Government should accept a technical assistance mission of the ILO, in order to find solutions to such complex problems.

The Worker member of Sudan indicated that this was a difficult question, as demonstrated by the Committee of Experts. The case should be placed in the context of the situation of the country. In 1989, when the case was first discussed by the Committee, under-aged children were abducted during the civil war. This ended after the Comprehensive Peace Agreement and a solution was found to the problem. The Committee of Experts did not refer to the resolution of 6,000 out of 14,000 cases in which abducted children were returned home and it also had to be kept in mind that many of the abducted children were now adults. The issue of Darfur was a matter for the UN Security Council and should not be discussed in the Committee. He referred to the report of the Special Rapporteur on the Situation of Human Rights in Sudan which showed improvement. The Committee should follow-up on the positive efforts that had been made by the Government, instead of punishing it. ILO technical cooperation to the Government needed to continue in order to close this case.

The Employer member of Sudan noted that this case had been discussed by the Committee many times, last in 2008. The Committee of Experts had noted the observation of the ITUC on the situation in Sudan which had taken into account the November 2007 report on the situation of human rights in Darfur by the UN group of experts, and Resolution No. 1881 (2009) of the UN Security Council concerning the security and humanitarian situation in Darfur. He considered that the Committee of Experts sometimes lacked precision in its comments, making allegations without proof. The Committee of Experts referred to conflicts that had taken place during the civil war. Changes had taken place since then. The Comprehensive Peace Agreement had been signed and a general election had taken place, electing women to constitute 25 per cent of the National Assembly. The country was moving towards an open and transparent democratic society. All those who had been abducted had been released and returned home. The laws were applied through consultations with the 14 tribes. These were positive measures leading to stable peace and economic progress. The principle of self-determination was guaranteed under the Peace Agreement. He emphasized the importance of ensuring transparency in the effort to tackle problems based on accurate information. He expressed the desire to take

on a leading role in eradicating poverty in the country and called on relevant organizations to provide assistance.

The Worker member of Brazil recalled that for the past 20 years Sudan had almost always been on the list of individual cases of the Committee, invariably because of the problem of forced labour and abductions in the Darfur region. The region, like southern Sudan, had vast and as yet unexploited reserves of petroleum and it was where separatist conflicts financed by the major powers had been encouraged. In 2005 the Committee of Experts had based its findings on information from the United States State Department and this year they were based on unidentified sources. The real reason why Sudan was on the list of individual cases again was because the country was using its petroleum to develop its economy independently. Instead of echoing the propaganda campaign of some countries, orchestrated by the major powers, that sought to divide nations and create conflicts so that they could pillage their resources, the Committee should insist on discussing the murder of trade union officials in Colombia, the crimes committed against the workers and the Palestinian people and the right to strike in the United Kingdom.

The Government member of Kenya noted with encouragement the information provided by the Government concerning the measures it had taken and its commitment for further efforts in ensuring the application of Convention No. 29. He regretted that the circumstances, as explained by the Government of Sudan, had impacted the progress on the application of the Convention. His Government, however, remained hopeful that the Government of Sudan would continue its efforts in this regard. He indicated his Government's support for the request made by the Government of Sudan for continued technical assistance of the ILO to help overcome the challenges, and requested the Office to provide such assistance.

The Worker member of Mauritania indicated that the case of Sudan on forced labour was a recurring one, and that although many problems mentioned were documented and denounced, the Government was not fully aware of the magnitude of the phenomenon. In its 2009 report, the UN Security Council had recognized the seriousness of the humanitarian situation in Darfur. Despite positive steps made in the area of human rights, hundreds of civilians had been killed in attacks by the Lords Resistance Army and many women and children had been abducted. In addition, this report had denounced the impunity, the absence of investigation and judicial proceedings, and the lack of compensation for victims. Contrary to the Government's statements that there were no longer cases of abductions and forced labour within the country, many reports continued to report these problems. He acknowledged the efforts by the Government to reunite the abductees and their families, although there was no further information in this regard since 2008. He also stressed that because information on the number of victims remained disputed, it was important to establish the facts. In conclusion, he indicated that to solve issues of forced labour it was important to ensure the implementation of relevant legislation.

Another Government representative indicated that he would respond to the legitimate questions asked during the debate. It was most unfortunate that abductions of women and children had taken place during the civil war, but as a result of the Comprehensive Peace Agreement signed in 2005 such abductions no longer occurred. The government of southern Sudan controlled its territory and had a strong army and police force, the Sudan People's Liberation Army, which had prevented abductions from taking place since October 2005. The Government of National Unity had established the CEAWC which, with the help of the United Nations, had determined the number of

people that had been abducted and had managed to return some people home. In Sudan, people still lived in tribes and this had caused problems in bringing the perpetrators to justice. There was not a police force in every village; instead the youth performed the function of the police and the elderly the function of judges. In the interest of all parties to the peace and national reconciliation process, it was important to leave the issue in abeyance for a while. The repeated discussion of the case in the Committee was difficult, and it was better to let the issue rest with the Government for some time. The Government took a high stance on this issue and he promised to provide detailed statistics at the next session of the Conference so that this case could be closed. He asked the Committee to refer to the latest report of the Special Rapporteur on the Situation of Human Rights in Sudan of May 2010, which had indicated that Sudan had met all the criteria through laws adopted and action taken. The Government had worked hard to prevent the reoccurrence of abductions. He informed the Committee that the Interim Constitution had in fact criminalized abductions.

The Employer members thanked the Government for the information, in particular relating to the new provisions in the Constitution. They reiterated that problems in the implementation of Convention No. 29 mostly occurred in countries without a market economy, where poverty prevailed and where the functioning of the market was hampered by conflict. While recognizing the difficulties in the country, the Employer members encouraged the Government: (1) to cooperate closely with all relevant international organizations to combat forced labour; (2) to bring to justice the perpetrators of forced labour and provide information on the application of penalties in practice; (3) to support the work of the Office in combating the abduction of women and children; and (4) to request the ILO's technical assistance to ensure full respect of Convention No. 29 in practice.

The Worker members said that it was clear from the information provided by the Government representative that the application of Convention No. 29 still posed problems and that the information provided was insufficient, especially given the magnitude of the problem. They noted with grave concern that abductors continued to enjoy impunity. They requested the Government to redouble its efforts in order to totally eradicate forced labour practices; resolve cases of abduction, which had afflicted the whole country; provide the means for victims of abduction to return to their families; adopt measures to put an end to impunity including non-application of penal sanctions; and to urgently take the measures set out in the recommendations of the relevant international organizations and agencies with a view to ending all human rights violations, thus contributing to establishing the conditions for the full respect for the Conventions on forced labour. Noting that the Government had not shown the will to request ILO technical assistance, they urged the Government to do so.

The representative of the Secretary-General read a statement provided by the Government representative of Sudan informing the Committee that the Government would accept technical assistance for a Decent Work Country Programme and for the effective implementation of Convention No. 29.

Conclusions

The Committee took note of the oral and written information provided by the Government representative and of the detailed discussion which followed. The Committee recalled that it was an extremely serious case affecting fundamental human rights, which had been discussed in this Committee on numerous occasions during more than 20 years, and several times it was included in a special paragraph. The Com-

mittee noted that, for many years, the Committee of Experts had been referring to the existence of the practices of abduction and forced labour, which affected thousands of women and children in a situation of civil war that took place in the country.

The Committee noted the statement of the Government representative concerning the recent elections in his country in April 2010. The Government confirmed its strong commitment to completely eradicate abductions, by providing continued support to the Committee for the Eradication of Abduction of Women and Children (CEAWC). The Government indicated that, as regards the persons not returned, they could no longer be called "abductees", since they had become citizens who had chosen to stay in particular regions of the country, and the Government therefore could not force them to return. Regarding the prosecution of perpetrators, the Government stated that it could have a negative impact, since it could not build peace among the tribes and did not correspond to the spirit of national reconciliation. The Government indicated that, while this opinion was also shared by the Joint Tribal Committee and the UNICEF, it had nonetheless encouraged those who would like to file complaints and provided the necessary assistance, although it could not force people to bring complaints. The Government representative also stated that his Government always complied with its reporting obligations and provided on time all the information requested by the ILO supervisory bodies. He also referred to a mistake committed by the Office in 2008 as regards the processing of the information received from the Government, which prevented the timely examination of this information by the Committee of Experts.

The Committee noted the Government's efforts to improve the human rights situation in the country, and in particular, information about the recent elections which were held in the country, which were considered as a new step towards the full implementation of the Comprehensive Peace Agreement of 2005. While noting these positive developments, as well as the Government's renewed statement that after the end of the civil war abductions had stopped completely, the Committee observed that there was no verifiable evidence that forced labour had been completely eradicated in practice. In this regard, the Committee noted with regret that the latest statistics concerning CEAWC activities (showing the numbers of cases of victim identification and reunification with their families) dated back to May 2008, and that no updated information of this kind had been provided by the Government. The Committee noted once again the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of the country. It also noted with concern that there was a lack of accountability of perpetrators and that victim rehabilitation measures were not sufficient.

The Committee fully supported the observations of the Committee of Experts and strongly urged the Government to pursue its efforts, including through the CEAWC, in order to ensure the full application of the Convention, both in law and in practice. It expressed the firm hope that the Government would provide detailed information in its next report for the examination by the Committee of Experts, indicating, in particular, whether the cases of the exaction of forced labour had stopped completely, whether the victims had been reunified with their families and received adequate compensation and rehabilitation, and whether perpetrators had been punished, particularly those unwilling to cooperate. Noting the Government's request for technical assistance from the Office, the Committee invited the ILO to provide the necessary assistance, including as regards an independent verification of the situation in the country, so that the Committee of Experts could record the progress

made by the Government in the near future to comply with its obligations under Convention No. 29 and to ensure that forced labour practices were completely eradicated. The Committee requested the Government to provide a full report for the examination by the Committee of Experts at its forthcoming session.

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

BELARUS (ratification: 1956)

The Government communicated the following written information concerning measures taken to implement the recommendations of the Committee on the Application of Standards (“Conference Committee”) of the Commission of Inquiry since the last examination of this case by the Conference Committee in June 2009.

Over the past few years, the Government of Belarus has been taking concrete steps to develop social dialogue in the country. The Government initiated the inclusion of all trade unions, including those not affiliated to the largest trade union association, the Federation of Trade Unions of Belarus (FPB), and employers’ associations into the social dialogue process and intensified negotiations with the ILO regarding the implementation of the recommendations of the Commission of Inquiry. The Government, together with the social partners and with the assistance of the ILO, is promoting respect for the ILO fundamental principles and their full observance in Belarus.

In June 2009 during the 98th Session of the International Labour Conference, the Government of Belarus informed in detail the Conference Committee about the work of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere which is empowered to examine the whole set of issues resulting from the recommendations of the Commission of Inquiry: from specific situations related to trade union registration or conclusion of collective agreements, to consideration of amendments to the legislation.

Following the wishes expressed by the members of the Council and the recommendations made by the ILO, the Council’s sitting held on 26 November 2009 had an open agenda. All the parties represented on the Council had an opportunity to propose for discussion those issues which they believed were of high importance. During the sitting the Council discussed the issues of legislative regulation of trade union registration and conclusion of collective agreements.

The main topic of the Council’s sitting held on 14 May 2010 was the legislation and prospects of work aimed at fulfilment of the Plan of Action on implementation of the Commission’s recommendations. The Council made an important decision on the improvement of the procedure for preparation and consideration of legislative issues. In particular, the Council decided to establish a working group (six members), which should include the representatives of all parties concerned (the Government, the FPB, the Congress of Democratic Trade Unions (CDTU) and employers’ associations), to examine the issues identified by the Council’s members and prepare suggestions regarding the Council’s decisions, taking into account positions of all parties.

The tripartite Council is carrying out its work relying on fully transparent and democratic principles and taking into account interests of all the parties represented on the Council. In its work the Council is adhering to the principle which has been supported by the social partners and according to which conclusions on the most important and fundamental issues are to be adopted on the basis of a position approved by all members of the Council. At the same time, the Council’s members and other persons in-

vited to participate in its sittings have an opportunity to express their opinion freely and are completely independent as concerns developing their points of view.

In the course of its work aimed at the implementation of the Plan of Action, the tripartite Council managed to resolve a number of issues related to the promotion of trade unions’ rights:

- The primary-level organization of the Belarusian Independent Trade Union (BITU) at enterprise “Belshina” (Bobruisk) was rendered assistance in the registration. This primary-level organization was registered on 10 October 2009.
- On the basis of the conclusions made by the tripartite Council, the Ministry of Justice issued an Explanation note according to which the requirement to have 10 per cent of employees to establish a trade union in an enterprise, laid down in Presidential Decree No. 2, does not concern primary trade union organizations. Since, at the moment, there are only primary trade union organizations acting at the enterprise level (which are organizational structures of sectoral trade unions), the Explanation of the Ministry of Justice is to be applied to all trade union organizations acting at the enterprise level without any exception.
- There are no cases of unjustified refusals to register trade unions. In 2009, the competent authorities did not register three trade union organizations (structures of the REWU in Mogilev, Vitebsk and Gomel). Before that, on 14 April 2009, the tripartite Council examined the situation with those three trade union structures and, following the discussion all members of the Council, including representatives of the FPB and the CDTU, unanimously decided that those trade union structures could not be registered as trade union organizations.

At present, there are 35 registered trade unions and more than 22,000 registered trade union organizational structures, including primary-level trade union organizations in Belarus. There are also two trade union associations – the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU).

The work carried out by the Government in cooperation with the social partners and the ILO to implement the Commission’s recommendations creates conditions for the employers to pay attention to the observance of trade unions’ rights and stimulates courts and prosecutors to examine complaints alleging violation of trade unions’ rights in a thorough way. Where violations of the current legislation are confirmed, trade unions and trade union members have their rights reinstated.

In December 2009, following a complaint from the Belarusian Free Trade Union (BFTU), the court of Chashniksky Region (Vitebsk Oblast) examined a case of dismissal for the reason of trade union membership (a complaint of this kind was lodged by trade unions for the first time) and took a decision in favour of the trade union. Following the court decision, Mr Aleksey Gabriel, the dismissed leader of a primary-level organization of the BFTU at the Lukoml Power Station (Lukomlskaya GRES, Vitebsk Oblast), was reinstated in his previous employment.

Positive changes can also be noted in the sphere of collective bargaining. According to the Labour Code of Belarus, the right to collective bargaining can be enjoyed by all trade unions regardless of their representativeness. It means that all trade unions have equal opportunities as concerns their participation in the collective bargaining process. For example, at some of the largest enterprises of the country, the Republican Unitary Enterprise “Bela-

ruskaliy” and Joint Stock Company “Mozyr Oil Refinery” collective agreements have been signed by several trade unions affiliated to both the FPB and the CDTU.

After the International Labour Conference of June 2009, issues of concluding collective agreements at the Open Joint Stock Company “Naftan” and the Lukoml Power Station were settled positively: structures of the BITU and the BFTU joined the collective agreements signed by the employers and trade unions affiliated to the FPB.

Collective bargaining is taking place at the national, sectoral and local levels, as well as at the enterprise level in Belarus. On 1 April 2010, there were: one general agreement, 46 sectoral tariff agreements, 483 local agreements and 18,181 enterprise-level collective agreements concluded in Belarus.

On 8 April 2010, the National Council for Labour and Social Issues decided to start the process of preparation of a new general agreement for 2011–13 to be signed by the Government of Belarus and the republic-level employers’ and trade unions’ associations.

While implementing the Plan of Action adopted on 20 February 2009, the Government of Belarus has made considerable progress as regards the observance of the freedom of association principles. Measures taken by the Government of Belarus were given a positive assessment by the Committee of Experts, which welcomed the commitment to social dialogue demonstrated by the Government.

The Government of Belarus demonstrates its firm attitude and consistency in its work aimed at the implementation of the Commission’s recommendations. It is evident that the progress observed during the 98th Session of the International Labour Conference in June 2009 is of a stable nature and has a real impact on due observance of the trade unions’ rights in Belarus.

In addition, before the Committee, a **Government representative** indicated that over the past few years the Government of Belarus had been taking concrete steps to develop social dialogue in the country. All trade unions, including those not affiliated to the Federation of Trade Unions of Belarus (FPB), the largest trade union organization, and employers’ associations had been participating in this process. The FPB and the Congress of Democratic Trade Unions (CDTU) were both members of the National Council of Labour and Social Issues (NCLSI), the main social dialogue body. The following positive developments had taken place in the country in previous years: a General Agreement for 2009–10 had been signed by both trade union organizations, the FPB and the CDTU; at the beginning of 2009, a tripartite seminar on the implementation of the recommendations of the Commission of Inquiry had been held in Minsk with the participation of the Government and the social partners, the ILO, the International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE); a plan of action on the implementation of the recommendations of the Commission of Inquiry had been adopted and approved by the NCLSI; and the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere had been established. The latter had been empowered to examine the whole range of issues resulting from the recommendations of the Commission of Inquiry. In 2009, the Council had held three meetings to discuss the issues of the registration of trade union organizations, anti-union discrimination, collective bargaining and the improvement of trade union legislation. All the members of the Council could express their views freely and the Council’s decisions reflected the opinions of all the interested parties. As a result of the work of the Council, Mr Stukov had been reinstated without loss of benefits and Mr Shaitor had found new employment. Furthermore, the

primary trade union organization of the “Belshina” enterprise in Bobruisk had been registered in October 2009.

On the issue of collective bargaining, pursuant to the Labour Code, the right to collective bargaining could be enjoyed by all trade unions, regardless of their representativeness. That meant that all trade unions had equal opportunities in terms of their participation in the collective bargaining process. In practice, at some of the largest enterprises of the country, such as “Belaruskaliy” and the “Mozyr Oil Refinery”, collective agreements had been signed by several trade unions affiliated to both the FPB and the CDTU. After the 2009 International Labour Conference, issues of collective bargaining at the “Naftan” enterprise and the “Lukoml Power Station” had been settled: the structures of the Belarusian Independent Trade Union (BITU) and the Belarusian Free Trade Union had joined the collective agreements signed by the employers and trade unions affiliated to the FPB. Those were concrete examples of cooperation between large and smaller trade unions, whether or not they were affiliated to the FPB.

As a result of the collaboration between the Government, the social partners and the ILO, employers had been paying due attention to trade union rights and there had been no complaints alleging interference by employers in trade union affairs. At the same time, the courts and prosecutors had been examining allegations of violations of trade union rights and had imposed appropriate remedies in cases where the violations were proven. In this respect, she referred to the case in Soligorsk where the court had taken a decision in favour of the BITU, ordering the employer to transfer trade union dues using the check-off facility.

In 2009, there had been no cases of unfounded denial of registration. While she confirmed that three trade union structures of the Radio Electronics Workers Union (REWU) had not been registered, she noted that this question had been discussed by the tripartite Council and that all of its members, including the CDTU representatives, had supported the decision. She underlined that there had been no cases of denial of registration due to the absence of a legal address. She added that the issue of trade union legislation was one of the questions that had been constantly discussed by the Council.

At the Council’s meeting of 14 May 2010, it had been decided to establish a tripartite working group, consisting of six people responsible for examining the issues raised by the members of the Council and preparing suggestions for Council decisions taking into account the positions of all the parties concerned.

The Government of Belarus considered that all these positive developments demonstrated its positive attitude and the consistency of its action in the implementation of the Commission of Inquiry’s recommendations. This had been already acknowledged by the Committee of Experts, which had welcomed the Government’s commitment to social dialogue. It was evident that the progress observed at the 98th Session of the International Labour Conference in June 2009 had been of a stable nature and had a real impact on the due observance of trade union rights in Belarus.

The Worker members thanked the Government for the information provided verbally and in writing. They recalled that the case had been discussed without interruption since 2000 and that the Government had had all the elements for the implementation of freedom of association in accordance with Convention No. 87 since the Commission of Inquiry had made 12 clear and firm recommendations following its visit in 2003. However, despite that, the Conference Committee had re-examined the case on several occasions, including in 2007, when it had taken due note of the progress achieved in relation to cer-

tain recommendations, while at the same time expressing concern at the draft Trade Union Law; in 2008, when it had expressed confidence in the Government for organizing a seminar on anti-union discrimination with the participation of the ILO; and in 2009, when it had noted the establishment of the Council for the Improvement of Legislation in the Social and Labour Sphere to deal with future developments in trade union legislation, as well as the Government's commitment to begin discussions on firm proposals, which would include the members of the CDTU. The Worker members noted that the Government reported holding meetings in November 2009 and May 2010 on, among other matters, a plan of action for the implementation of the recommendations of the Commission of Inquiry. However, they questioned the establishment within the Council of groups and subgroups.

The Worker members noted that the information provided to the Conference by the Government on trade union rights had already been mentioned in the report of the Committee of Experts, which had indicated that the issue of the registration of trade unions had not been resolved due to the lack of dialogue. The Government's instructions relating to the registration of trade unions, to which reference was made in the recommendations of the Commission of Inquiry, were unclear and had only resulted in the registration of certain trade unions that had succeeded in obtaining a legal address. The requirement of a legal address raised difficulties and continued to act as an obstacle, according to the CDTU, to the establishment and functioning of trade unions.

The Worker members regretted that the Government had confined itself to reporting the continuation of work on trade union legislation, without specifying the measures taken to amend Presidential Decree No. 2 and the texts issued thereunder, even though it had been criticized by the Commission of Inquiry since 2003. Moreover, despite the repeated expressions of concern by the Committee of Experts, various trade unions, including the CDTU, were still facing a refusal by the Government to authorize picketing and meetings. The legislative provisions which prevented the exercise of trade union rights in accordance with Conventions Nos 87 and 98 had still not been repealed, despite the time that had passed. It was therefore difficult to believe the Government's claims that substantial progress had been made in achieving compliance with the principles of freedom of association or the strength of its conviction in implementing the recommendations of the Commission of Inquiry. The Worker members regretted that, despite the lack of progress in the situation, the United Nations Conference on Trade and Development (UNCTAD) and the European Union (EU) would intensify exchanges and cooperation with Belarus without taking into account the violations of fundamental workers' rights. It was unacceptable for a Government to fail to respect the work of this Committee, or of the Organization in general. The Committee's conclusions would need to reflect this point.

The Employer members recalled that this serious and longstanding case had been discussed every year since 2001 and had resulted in a Commission of Inquiry. In 2007, the Government's position had changed: the Government had recognized that the recommendations of the Commission of Inquiry did not need to be adjusted to national conditions, had dropped legislative proposals going in the wrong direction and had instituted social dialogue. At present, the Government cooperated with the ILO and a positive social dialogue process was ongoing. However, there was still a long way to go, since fundamental legislative issues had failed to be addressed. While noting that the Government was faced with the diverging interests of employers and workers, the recommendations of the Commission of Inquiry concerned, among others,

issues such as anti-union discrimination and registration of trade unions, that could be addressed regardless of the difference of opinion between the social partners. The Employer members therefore believed that it was time for the Government of Belarus to implement the recommendations of the Commission of Inquiry in law and in practice. They were looking forward to discussing at next year's Conference Committee the substance of legislative proposals submitted to the ILO for review.

The Employer member of Belarus stated that, in the opinion of employers in Belarus, the action taken by the Government to give effect to the recommendations of the Commission of Inquiry to improve relations with workers and to normalize the trade union situation had been constructive and had resulted in tangible improvements in the situation with regard to social dialogue. In particular, the tripartite Council had been functioning on the basis of consensus and mutual understanding and all trade union organizations could participate and conclude collective agreements. While not all the problems had been resolved, he considered that there had been sustained progress on the major points. While there were cases of dismissals, they were due to the non-renewal of contracts and workers could seek protection against anti-union discrimination in the courts. There was still friction between the FPB and the CDTU, but that was normal trade union life. The employers wanted to see the Government improve the climate for enterprise activity and create more favourable conditions for foreign investments. Belarus was a member of the European Union Eastern Partnership Programme and it was to be hoped that its membership would continue. He emphasized that partnership with the EU was of great importance in developing the economy of Belarus and in helping workers find employment. The sanctions imposed by the EU had been preventing small and medium-sized enterprises from flourishing. He therefore called for the removal of the sanctions in the interests of all the workers in Belarus.

The Worker member of Belarus explained that there were two trade union centres in Belarus. His organization, the FPB, with its 28 member organizations, was by far the largest trade union structure. The CDTU represented not more than several thousand workers and was composed of five trade unions. Despite this, both trade union centres had the same rights. His organization welcomed the opportunity of working together with all trade unions in Belarus. He stressed the following positive developments in his country: despite the recent financial crisis, there had been no major mass dismissals; pensions and salaries had been paid on time; social dialogue had continued; problems with the registration of trade unions and collective bargaining had been solved; there had been no further allegations of interference and abuse; and the tripartite Council had been established and functioned. With regard to the latter, he was pleased that all the members of the Council could freely express their opinions and that the Council had an open agenda, thereby allowing members to bring their issues before it. While the Government could do more and the Council could be more active, substantial progress had been made. The Government would continue working hard to achieve compliance with Convention No. 87 in cooperation with the social partners in Belarus and with its international partners.

An observer representing the International Trade Union Confederation (ITUC) recalled that this year marked the tenth anniversary since Case No. 2090 had been lodged with the ILO. In 2009, the Conference Committee had noted the progress made by the Government of Belarus and, in particular, the plan of action it had adopted and the first steps taken towards its implementation. He noted with regret, however, that the Government had missed the chance given to it the previous year. The number of viola-

tions of trade union rights had been increasing. Members of trade unions affiliated to the CDTU were still suffering from anti-union discrimination, including dismissals and the non-renewal of labour contracts, pressure and harassment. In these circumstances, the real problem was to preserve the existing trade union organizations and to establish and register new ones. The Government had deliberately waged a campaign against independent trade unions and thereby confirmed that it was not ready to implement the ILO's recommendations. The Government refused to use the tripartite Council to discuss in substance the issues of the violation of trade union rights. As a result, millions of workers in Belarus were deprived of the right to establish and join trade unions of their own choosing. Despite this negative background, he would not call on the Committee to deliver a guilty verdict for several reasons. Firstly, the position of the Minister of Labour and Social Protection had remained vacant for some time, which of course affected the implementation of the ILO's recommendations. Secondly, throughout the year, social dialogue had continued at all levels with the participation of independent trade unions. Thirdly, all interested parties had made common efforts to find mutually agreed solutions. The Government should show flexibility and patience and look for ways to implement all the recommendations.

The Government member of Spain, speaking on behalf of the Government members of the Committee Member States of the European Union (EU), and indicating that the Government of Norway aligned itself with the statement, expressed concern at the situation of freedom of association and the right to organize and collective bargaining in Belarus. He welcomed the seminar held in 2009, jointly with the ILO, on the implementation of the Commission of Inquiry's recommendations, as well as the plan of action adopted by the tripartite National Council on Labour and Social Issues. While noting the positive steps taken by the Government to implement the recommendations of the Commission of Inquiry and the 2009 Conference Committee's conclusions, the EU considered that the current situation did not yet ensure full compliance with ILO Conventions. It was regrettable that national legislation still did not guarantee the right of workers to organize their activities free from interference by the public authorities and that the requirement of a legal address continued to hinder the establishment of trade unions. The EU also expressed regret at the human rights violations that had occurred since the beginning of 2010, such as harassment of national minorities, several death sentences imposed and carried out, and irregularities during the local elections of 25 April 2010. The Government of Belarus needed to address the concerns regarding democracy, and the situation of human rights and fundamental freedoms in the country. The future policy of the EU vis-à-vis Belarus would take into account the conclusions adopted by this Conference Committee.

The EU called on the Government to ensure freedom of association by simplifying the registration procedure for trade unions and removing the prohibition of any activity by non-registered associations. Reiterating its readiness to cooperate with Belarusian authorities, the EU urged the Government to implement Convention No. 87 in close collaboration with the social partners and with ILO assistance.

The Government member of the Bolivarian Republic of Venezuela said that due account should be taken of the positive aspects and the significant progress that had been made in the framework of the implementation of the recommendations of the Committee of Experts. He mentioned the 2009 plan of action that had been adopted on a tripartite basis for implementing the recommendations and the setting up of a National Council of Labour and

Social Affairs and of a Council for Improving Social and Labour Legislation, both of which were tripartite. He recalled that at the 98th Session of the Conference, the Committee on the Application of Standards had recognized that progress had been made in the case and that the report of the Committee of Experts published in 2010 noted with interest the improvements in registering trade unions and the positive developments in the country's legislation as it related to Conventions Nos 87 and 98, all of which had involved tripartite discussions. He stressed that his Government considered that further progress was being made and that the Committee ought to mention the fact in its conclusions, in the firm belief that the advances would continue.

The Worker member of Poland observed that the situation in Belarus had not changed significantly in law and in practice and that the efforts made by the Government were directed at technical issues instead of the substance of the recommendations of the Commission of Inquiry. The Government's efforts were focused on demonstrating steps rather than making them. This was a case of "process" rather than "progress" as shown by the continuing obstacles to trade union registration under Decree No. 2 and the continuing pressure exercised on independent trade unions through the short-term contract system. In sum, the law and practice in Belarus had not changed in such a way as to ensure a friendly environment for independent trade union activity and social dialogue. Of course, poor social dialogue was better than no dialogue at all, but it still needed to be developed and reinforced. The Government had to do much more to improve the situation of workers, and especially the following: (i) to implement fully the recommendations of the Commission of Inquiry; (ii) to amend Decree No. 2 on trade union registration in order to ensure that the right to organize was effectively guaranteed; (iii) to improve legal and administrative measures to ensure that workers enjoyed the rights enshrined in the Convention without any discrimination in law and in practice; (iv) to ensure that social dialogue was authentic and dealt with the substantive issues with the involvement of all social partners, and that the tripartite mechanism set up to address trade union rights was fulfilling its role; and (v) to stop immediately the harassment and discrimination, particularly through massive use of short-term contracts, against independent trade union organizations.

The Government member of the United States noted that, although the Government believed that it had made considerable progress in implementing the recommendations of the Commission of Inquiry, her Government was still awaiting firm evidence and tangible progress with regard to the Government's commitment to social dialogue. She expressed concern that workers still faced obstacles to the registration of trade unions, particularly with regard to the legal address requirement, and that unions were prevented from holding pickets and meetings, organizing their activities and defending their occupational interests. Notwithstanding the requests by the supervisory bodies, the legal provisions in question had not been amended. The Government was urged to take in due course the necessary measures to guarantee the right to organize in law and practice. To this end, she encouraged the Government to continue working closely with the social partners and the ILO, so that the Committee of Experts would be in a position to assess substantive results next year. Her Government was looking forward to the day that full respect for freedom of association was a reality in Belarus, without barriers to the right of workers to organize, register their unions and express their opinions without threat of interference or reprisal.

The Government member of the Russian Federation noted that it was evident that clear and substantial pro-

gress had been made in the implementation of international labour standards and the recommendations of the Commission of Inquiry. Constructive dialogue had been taking place with all social partners on a range of issues, including the implementation of the ILO's recommendations. In cooperation with the ILO, a tripartite seminar on freedom of association, social dialogue and the implementation of the recommendations of the Commission of Inquiry had been held in Minsk. Pursuant to the Plan of Action formulated with the assistance of the ILO, the Council for the Improvement of the Legislation in the Social and Labour Sphere had been empowered to examine the issues of the registration of trade unions and protection against acts of anti-union discrimination. In its meetings in 2009–10, the Council had examined several complaints of denial of registration and acts of anti-union dismissals, and considered the issue of trade union legislation. In accordance with the Council's decision, the procedures for the registration of primary-level trade unions had been improved, certain dismissed trade union activists had been reinstated and a tripartite working group, responsible for making proposals aimed at improving trade union legislation, was established within the Council. Substantive progress had therefore been achieved on the basis of social partnership. The Government had entered into sincere and constructive cooperation with the ILO as it had repeatedly demonstrated through its actions.

The Government member of Switzerland concurred with the statement made by the Government member of Spain on behalf of the European Union.

The Government member of Canada noted with regret that the principles of human rights and democracy, including the rights of workers to organize and defend their occupational interests peacefully, continued to be disregarded by the Government. The Government was urged to amend the legal address requirement in national legislation, which continued to serve as a barrier to the establishment and functioning of independent trade unions. Furthermore, the Government was requested to create a positive democratic environment by abolishing all obstacles to the development of democratic trade unions, and removing the restrictions on freedom of association and speech for all sectors of civil society. The Government should also fully adopt the recommendations of the supervisory bodies and respond to their requests.

The Government member of India stated that the development of tripartite dialogue, the promotion of ILO standards and the protection of trade union rights constituted some of the encouraging initiatives undertaken by the Government of Belarus to give effect to Convention No. 87. The National Council on Labour and Social Issues and the Council for the Improvement of Legislation in the Social and Labour Sphere had both been strengthened and made more representative. Moreover, the general agreement of cooperation for 2009–10 adopted as a result of social dialogue and tripartism provided a useful plan of action for the implementation of the recommendations of the Commission of Inquiry. The manner in which the Government of Belarus had been engaging the social partners in this process represented a useful and participatory approach that needed to be encouraged. He thus concluded that the constructive engagement and cooperation of the Government of Belarus and the progress achieved towards compliance with Convention No. 87 were heartening, and commended the ILO for its technical cooperation and assistance in the Government's efforts to comply with the recommendations of the Commission of Inquiry.

The Government member of the Islamic Republic of Iran considered that the Government of Belarus had shown its determination to implement the recommendations of the Commission of Inquiry and comply with the relevant provisions of Convention No. 87, through the prevailing at-

mosphere of constructive dialogue and consultation with social partners, the efforts to bring national trade union legislation into compliance with relevant ILO Conventions and the constructive cooperation with the various ILO and ITUC missions. Along with the Committee of Experts, her Government therefore welcomed the continued commitment of the Government of Belarus to social dialogue and encouraged the Committee to take positive note of the progress achieved by the Government of Belarus towards compliance with Convention No. 87.

The Government member of China stated that the Government had paid close attention to the recommendations of the Commission of Inquiry and had made significant efforts and progress to strengthen tripartism, social dialogue and freedom of association. The Government's sincere determination to strengthen cooperation with the ILO to improve implementation of the Convention should be noted by the Committee.

The Government representative emphasized that her Government was very open to dialogue and would consider all the issues discussed today as guidance for its future actions. The Government understood that it had to make further efforts in order to improve the legislation and resolve the difficulties arising in practice. The tripartite Council would play an instrumental role in this regard, and had already discussed the issues mentioned in the recommendations of the Commission of Inquiry, including the issue of improving the legislation. She acknowledged that it had been difficult to reach unanimous decisions and that certain divergences of opinion existed, particularly with regard to the question of trade union representativeness and the obligation imposed on employers to provide trade unions with office spaces. On these and other matters, while the Government could have taken independent decisions, it preferred to take into account the interests of all the parties concerned. Therefore it had been decided to establish, within the Council, a tripartite working group responsible for examining the issues raised by its members and developing position papers taking into account the views of all the parties concerned. She emphasized that her Government had a great deal of respect for the ILO and its supervisory procedures, had always complied with its reporting obligations, and had cooperated with the ILO, allowing various missions to take place and joint seminars to be organized. The ILO's support for the constructive dialogue had strengthened the authority of the tripartite Council. The Council, in addition to the regular judicial remedies available, could ensure the protection of workers against acts of discrimination. She called on the social partners to examine such cases in the framework of the Council. Finally, she indicated that the Committee of Experts had welcomed the Government's commitment to social dialogue and that the Government would continue taking all the necessary measures in order to live up to such a high assessment by the Committee of Experts.

The Employer members stated that there was cause for optimism, particularly in view of the developments that had occurred from 2007 onwards. Nevertheless, the current situation presented a crossroads of sorts: progress could continue as it had, at a gradual, piecemeal rate, or the Government could redouble its efforts to secure compliance with the provisions of the Convention. They stated that the social dialogue process should continue, as it was essential to make progress on the basis of tripartite consensus. Noting nevertheless that social dialogue was time consuming, and at times produced results that were not always solid or broadly applicable, they underscored that full application of the Convention could only be secured through the adoption and strict implementation of the necessary statutes and regulations. They consequently urged the development of legislation as a matter of ur-

gency to implement the 12 recommendations of the Commission of Inquiry.

The Worker members indicated that they had noted the offer of assistance made by the European Union and observed that they had originally considered proposing the inclusion of the present case in a special paragraph of the report in view of the numerous promises made by the Government, which had not yet been kept. Nevertheless, they would not be pursuing their request, for one last time, so as to give a little more time to the Government. The elements that could provide the basis for a negotiated solution to the problems included the recommendations made by the Commission of Inquiry, the consultations held with the ILO up to 2007 and the recommendations made by the Committee on Freedom of Association. The Government should therefore continue its collaboration with the ILO and should pursue social dialogue with all the social partners, including unions that were not affiliates of the FPB, with a view to making the legislative changes required to give full effect to the Convention.

Conclusions

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

The Committee noted the information provided by the Government representative in relation to the developments since the discussion of this case last year. In particular, the Committee noted that two sittings of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere were held in November 2009 and May 2010, at which issues of trade union registration, trade union legislation and collective bargaining had been discussed. The Government explained that the members of the Council had recently decided to establish a working group – which would include representatives of the Federation of Trade Unions of Belarus (FPB), the Congress of Democratic Trade Unions (CDTU) and employers' associations – responsible for examining the issues raised by the members of the Council and preparing suggestions for the Council's decisions taking into account the positions of all the parties concerned.

The Committee noted with interest that as the result of the work of the tripartite Council, the primary trade union organization of "Belshina" enterprise in Bobruisk was registered in October 2009 and that CDTU affiliates and the FPB had concluded collective agreements at "Naftan" enterprise and Lukoml Power Station.

While noting this information, the Committee regretted that there were as yet no concrete proposals to amend Presidential Decree No. 2 dealing with trade union registration, the Law on Mass Activities, or Presidential Decree No. 24 concerning the use of foreign gratuitous aid, as requested by the Commission of Inquiry six years ago. The Committee recalled the intrinsic link between freedom of association and democracy and trusted, in particular, that Presidential Decree No. 2 would be amended or repealed so as to eliminate remaining obstacles to organizational rights.

In light of the continued commitment to social dialogue expressed by the Government, the Committee encouraged it to intensify its efforts to ensure full implementation of the Commission of Inquiry recommendations without delay, in close cooperation with all the social partners and with the assistance of the ILO. It expected that the Government would submit detailed information on proposed amendments to the abovementioned laws and decrees, as well as on the time-bound plan requested last year, to the Committee of Experts at its meeting this year and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.

CAMBODIA (ratification: 1999)

A Government representative stated that the matters raised were considered as key in the ongoing process of development, in which the implementation of the "Rectangular Strategy" for Growth, Employment, Equity and Efficiency played an important role. Since 1996 the trade union movement had grown in tandem with the growth of the garment, hotel and tourism industry. The Government had made great efforts to address the issues raised by the supervisory bodies relating to respect for freedom of association and collective bargaining, in line with the policies and objectives of the Rectangular Strategy. The Government strongly believed in the establishment of a legal and institutional basis for development towards the promotion of individual rights and dignity, private ownership and free market mechanisms. Based on this vision, the Government had enacted numerous laws and made efforts to enhance the legal and judicial system, as well as good governance. The legal and judicial reform formed a core part of the Rectangular Strategy. The Government was aware of the need to enhance the capacity of the judiciary to ensure and protect fundamental labour rights, including the right to organize and bargain collectively, as well as the need to provide training on industrial relations. To this end, his Government welcomed the ILO's technical assistance.

With regard to the investigation of the three cases concerning trade union leaders, some progress had been made. In the case of Chea Vichea, the two persons who had been convicted earlier had been released on bail after the Supreme Court found inadequacies in the criminal procedure, particularly as regards the evidence. In the case of Ros Sovannareth, the appeal against the conviction of Thach Saveth by the Appeal Court in April 2009 was still pending before the Supreme Court. The case of Hy Vuthy was still being investigated. The Government was making efforts to address these cases in line with its policy of ensuring accountability through the overall reform of the legal system. In addition, many other cases were still in the process of being investigated and the Government also suspected that at least some of the cases (for example, Case No. 2318 of the Committee on Freedom of Association) had been brought as a result of anti-union rivalry and ordinary crime.

The efforts of the Government had to be considered in the context of the growing development of the garment industry, the considerable growth of trade unions, as well as the immature state of industrial relations and labour disputes. The Arbitration Council, which had been established with the assistance of the ILO, had settled labour disputes peacefully and, due to its existence, the number of strikes had been reduced by about half over the past three years. In cooperation with the ILO, the Government was working on a draft Trade Union Law to be adopted by Parliament in 2011. The Government expected the Law to guarantee the right of workers and employers to organize and bargain collectively through the streamlining of rules for the certification of the union with the most representative status and the minority union, the creation of a legal framework for collective bargaining agreements and the definition of unfair labour practices by employers and workers. In view of the evolving progress, the Government was considering the creation of a labour court in accordance with international standards.

In the context of the public administration reform policy, and as part of the Rectangular Strategy, the Government was considering guaranteeing the right of freedom of association and collective bargaining to public personnel. Public servants had already benefited from an increase in their monthly salary and the Government was committed to continuing efforts to increase the base salary. In conclusion, he emphasized the cooperation of his

Government to enhance the living standards of workers and hoped that the ILO would continue to provide technical assistance to strengthen capacity building in Cambodia, particularly in the field of freedom of association and industrial relations.

The Employer members noted that this was a “double-footnoted” case concerning one of the fundamental Conventions. They observed that the Government had provided information on various points, but that it was only partially related to the points raised in the comments of the Committee of Experts. This was the second occasion on which the case had been discussed since 2007 and the Committee of Experts had still not been provided with sufficient information. They recalled that the main issues in this case concerned the assassination of trade unionists, death threats, the climate of impunity, the allegation of irregularities in trials, corruption, and systematic violence and repression. However, the Government had not specifically commented on these points. They referred to the conclusions of the direct contacts mission that had visited Cambodia in April 2008, mentioned in the 2009 observation of the Committee of Experts, which had reported the lack of capacity and independence of the judiciary, the procedural irregularities in the trial for the murder of trade unionists, and the absence of Government action for review of the outstanding cases.

In the 2009 direct request, the Committee of Experts had, in relation to Article 2 of the Convention, called on the Government to take appropriate measures to ensure that judges and temporarily and permanently appointed officials in the public service enjoyed the right to establish and join organizations. They were of the opinion that the Government needed to provide a comprehensive report on these points, as it had not addressed them in its statement to the Conference Committee. With respect to the right of workers to establish organizations without previous authorization, the Committee of Experts had requested the Government to indicate whether workers’ and employers’ organizations could be refused registration and the permissible grounds for such refusal. This was a normal part of the supervisory process. Regarding Article 3 of the Convention, the Committee of Experts had requested the amendment of section 269(3) of the Labour Law, which disqualified persons convicted of any crime from holding office in trade unions, and section 269(4) of the Law, which required that trade union members had to be engaged in the profession for at least one year before being elected to trade union office. They called on the Government to respond to these comments, as it had not yet done so. With respect to the right to strike, they indicated that the Government should address the issue in light of its national circumstances. Concerning the issue of affiliation with international organizations, they recalled that the Government had indicated that there were no legal obstacles for unions of professional organizations to affiliate with international organizations. If the practice was in place, it was in effect the policy.

Finally, they were of the view that this was a serious case because the Government was not fulfilling its constitutional obligations to report to the ILO and to respond to the requests of the Committee of Experts. The Government was also failing to discharge the international obligation that it had taken on voluntarily to implement the Convention in law and practice. This needed to be remedied as an urgent matter.

The Worker members stressed that the non-respect for Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was aggravated by the continuous lack of the submission of reports by the Government. In the case of Convention No. 87, they recalled that the observations concerned the assassi-

nation of trade union leaders in 2004 and the legal consequences of these murders, namely the conviction of two innocent men. More generally, they referred to a climate of violence and intimidation towards union members, including death threats, suppression of the right to strike, anti-trade union discrimination, false accusations and pay docking. The Independent Workers Union of the Kingdom of Cambodia was the systematic target of repression. All of those acts remained unpunished, primarily because of lapses in the Cambodian legislation. There was, in fact, no means for resolving conflicts because the tribunals provided for by law had not yet been established, and intimidation and corruption replaced any legal means of conflict resolution. In addition, recognition of the most representative trade unions could be refused by the Ministry of Labour for arbitrary reasons. The right to collective bargaining was not recognized for judges, teachers and civil servants. Furthermore, the Cambodian Independent Teachers’ Association (CITA) was not recognized as a trade union. The Worker members recalled that the Government had accepted a direct contacts mission in April 2008. At the end of 2008, the Supreme Court had ordered the release of two persons accused of the murder of a trade union leader. The Government had done nothing to ensure respect for trade union rights, guarantee the independence of the legal system, establish labour tribunals or revise the law on trade unions. The Worker members noted the announcement by the Government of a new draft law on trade unions, and they expressed their strong hope that the new law would be in full compliance with the principles contained in Conventions Nos 87 and 98.

The Worker member of Cambodia referred, first, to the murder of the three trade union leaders, Chea Vichea, Ros Sovannareth and Hy Vuthy, for which the murderers had not yet been found. He called on the ILO to urge the Government to take decisive action to investigate the three cases as soon as possible and to ensure that the murderers were found and brought to justice. He also called upon the Government to stop threats, and violence against and killings of trade union leaders and activists. Second, he indicated that since the global financial crisis of 2007, there had been numerous cases of violence against trade unionists and of dismissals of trade union leaders. He claimed that many employers, approximately 60 per cent, used subcontractors and short-term contracts to avoid unions in their company, thereby destroying freedom of association. Under short-term contracts, the rights of the staff were curtailed, especially the freedom to join a union and the right to maternity leave, years of service and annual leave. He added that employers had dismissed 230 union leaders since early 2009 and threatened that if they continued their union activities, they would dismiss workers or take them to court for incitement of violence, which was a criminal offence in Cambodia. He referred to numerous cases of dismissed union activists, including 58 workers of the Naga company, 169 workers in 14 garment factories and three union leaders in the TTP Company, and emphasized that union leaders always lost their cases in Cambodian courts. He called on the ILO to appeal to the Government to respect and apply the legislation and ILO Conventions, to ensure that employers complied with them, stopped dismissals, violence and threats, and reinstated all workers involved in trade union activities. Finally, he indicated that trade unions did not have equal rights to participate in the Eighth Working Group, a body for social dialogue. He called for full rights to be given to trade unions in this body so that the Eighth Working Group was truly tripartite.

The Employer member of Cambodia stated that freedom of association was strongly promoted by the Government of Cambodia. The Cambodian employers welcomed the right to freedom of association and collective bargaining.

A high number of trade unions existed in Cambodia, mostly in the garment industry. Cambodian labour law allowed for multi-enterprise unions, which caused many practical problems for employers. Most garment factories had at least three or more unions and many workers belonged to more than one union at one enterprise. As a result, various demands came from various unions, operations were often disrupted and many strikes took place, which were illegal because the legal procedures had not been followed. He regretted that in Cambodia strikes were often used as a first, instead of a last, resort for dispute settlement. The Cambodian employers welcomed a trade union movement, but one which was consolidated and genuine. The ILO Better Factories Cambodia was an example of a programme in which trade union rights were fully respected. In response to the allegation made by the Worker member of Cambodia that there was no mechanism for the settlement of disputes, he recalled that the Arbitration Council which dealt with freedom of association had already been in existence for five years. The revision of the Trade Union Law was currently being studied by employers and workers and was expected to be passed by Parliament in 2011. With regard to the murder of trade union leaders, he expressed his regret at the loss of human lives, but asserted that employers were not involved, and hoped that justice would be done.

The Worker member of the Philippines expressed his concern over the restrictions on trade unionists in Cambodia. While the 1997 Labour Code provided that workers were free to form and join trade unions, the law, in practice, did not apply to officials working at the local and national levels, judges and teachers, contrary to Conventions Nos 87 and 98. In particular, he emphasized the crucial role of teachers, whose working conditions remained unsatisfactory, with their monthly salaries ranging from US\$20 to 40, making it difficult to fulfil their tasks of educating children and young persons who would shape the future of the country. The fact that 10 per cent of Cambodian teachers were organized under the CITA showed that there was an urgent need and a wish to improve their working conditions. The CITA, however, was not recognized as a trade union. Therefore, the Government had to explain the measures taken to remove continued obstruction of the activities of the CITA, as well as of the Cambodian Independent Civil Service Association (CICSA). The Committee on Freedom of Association (CFA) in its 334th Report had already requested the Government to amend the Common Statutes of Civil Servants so as to guarantee the right to collective bargaining of civil servants not engaged in the administration of the State. He therefore requested the Government to use the current process of drafting a trade union law to include relevant provisions ensuring this right.

The Worker member of France emphasized that the Cambodian Government had much to explain. He recalled the latest developments in the three murder cases, which had intimidated the trade union movement in Cambodia and silenced its legitimate leaders. First, there had been no serious investigation to find the murderers of Chea Vichea. The charges against Born Samnang and Sok San Oeun, who had been wrongfully imprisoned for five years, were still pending and no new developments had occurred since the Court of Appeal had sent a list of specific points for the investigation of Chea Vichea's murder to the Phnom Penh Municipal Court in the autumn of 2009. Second, on 21 February 2009, the Court of Appeal had upheld the 15 year prison sentence of Thach Saveth for the murder of trade union leader Ros Sovannareth in a trial that had been marked by procedural irregularities, which had cast doubt on the conviction. An appeal to the Supreme Court had been lodged, but there was no news as to its status. Third, no investigation had been made into

the killing of Hy Vuthy, a union leader of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), in 2007. Evidence had disappeared and witnesses had been intimidated. An impartial investigation into these three murders needed to be carried out and the Government should be requested to report on this to the ILO next year. Thach Saveth should be released and the charges against Born Samnang and Sok San Oeun dropped. He urged the Government to finally give an undertaking to the victims and their families that justice would be done and to work towards the establishment of a climate free from fear for genuine trade unionists.

The Worker member of the United States shared the concerns expressed by the previous speakers with regard to the culture of impunity in Cambodia which enabled the intimidation and violent repression of trade unionists to continue. The absence of an effective system to prosecute and convict the intellectual and material authors of such violence and repression needed to be addressed. Cambodian workers were also subject to blacklisting, illegal wage deductions and exclusions from promotion due to their trade union activity. The Labour Ministry rarely took legal action against violators, instead advising workers to go to court, which was costly and ineffective, or to accept a cash settlement. Given their low pay, labour inspectors were especially vulnerable to bribery. The Committee of Experts had called on the Government to solve this judicial and administrative corruption, which had hampered the establishment of truly effective labour courts, employment generation, job security and decent work in general. Efforts to eliminate impunity were therefore not only essential for the protection of trade union rights, but also for the creation of an atmosphere of stability and certainty for employers and foreign investors. At this critical moment, it was important for Cambodia to save its reputation as a source country that was improving its compliance with international labour standards by means of the contributions already made under the ILO's Better Work Programme. He urged the Government to use ILO technical assistance to ensure that the new law on trade unions was in full compliance with Conventions Nos 87 and 98. In this respect, the new law should overhaul article 269 of the Labour Code, and enable trade unions to freely elect representatives of their own choosing and freely administer their own system of internal governance. The new law should also prohibit the establishment of yellow and employer controlled organizations, such as the Khmer Youth Federation Trade Union, and should guarantee full legal trade union status and collective bargaining for teachers and civil servants.

The Government representative of Cambodia thanked the Employer and Worker members for their contributions to the debate. Despite the challenges his Government was facing, he reiterated that the Government was committed to promoting the rights and dignity of all people, including workers. This objective was also incorporated in the Rectangular Strategy referred to earlier. Impunity was not the policy of the Government and the legal and judicial system was undergoing reform. He regretted the death of the trade union leaders and reiterated the Government's commitment to bringing those responsible to justice. The reality was that the Government was not only currently engaged in a reform process, but was also dealing with the effects of the economic crisis. Moreover, the international community should acknowledge the progress made by the Government so far.

The Employer members, while appreciating the additional information provided by the Government, indicated that it remained unclear whether its report submitted to the Office contained replies to the requests made by the Committee of Experts and whether the legislation under consideration would fill the gaps identified. In any case,

the Committee of Experts would provide its observations on this report at its next session. He suggested that it might be useful for the Government to provide the draft legislation to the Office for its technical advice so that the legislation adopted would fully meet the requirements of Convention No. 87. He indicated that the adoption of a right policy was only the first step and its implementation in practice had to follow.

The Worker members had noted the Government's intention to give priority to the competitiveness of the Cambodian economy, even at the cost of disregarding the ILO's fundamental standards. The Worker members insisted therefore on the Government's obligation to comply with those standards. They called on the Government once and for all to complete the legal proceeding surrounding the killing of trade unionists and, specifically, to release Thach Saveth and drop all charges against Born Samnang and Sok Sam Oeun, and to take all necessary steps to apply Conventions Nos 87 and 98. They requested, specifically, that the Government guarantee judges, teachers and public officials the right to form and join trade unions and to bargain collectively and that, with the technical assistance of the ILO, it finalize the drafting of the new laws on trade unions and labour courts. They appealed to the Government to ensure that there was genuine social dialogue and, above all, that trade unions participated on an equal footing in meetings of the Eighth Working Group on Industrial Relations, where important labour issues were discussed.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee recalled that the Committee of Experts had referred to the climate of impunity in the country within the context of the assassination of three trade union leaders, as well as certain discrepancies between the legislation and the practice, and the Convention.

The Committee took note of the information provided by the Government concerning the efforts made to strengthen the legal and institutional framework in the country, emphasizing legal and judicial reform as a core element of its strategy. The Government also referred to the preparation of a draft trade union law and the consideration being given to the creation of labour courts. The Government highlighted the importance of capacity-building for the country and welcomed ongoing ILO technical assistance in relation to all of these efforts.

The Committee deplored the continued failure on the part of the Government to provide full reports to the Committee of Experts. The Committee observed that the recurrence of reporting difficulties appeared to be the result of serious institutional shortcomings and expected that the necessary technical cooperation would be provided to the Government to ensure that these difficulties would be rapidly overcome. While the Government's reports have now been received, the Committee must now await their assessment by the Committee of Experts.

The Committee regretted the lack of information relating to the long-awaited independent investigations to be carried out into the assassinations of the trade unionists Chea Vichea, Ros Sovannareth and Hy Vuthy. The Committee, like the Committee of Experts, recalled that the freedom of association rights of workers and employers could only be exercised in a climate free from violence, pressure and threats of any kind. It urged the Government to take the necessary measures to ensure respect for this fundamental principle and bring an end to impunity by taking the necessary steps as a matter of urgency to ensure full and impartial investigations into the murders of the abovementioned Cambodian trade union leaders and to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice.

Given the serious flaws observed in the judicial process to date, as already observed by the Supreme Court, it expected that the criminal charges against those earlier convicted for these murders would be immediately dropped and that the Supreme Court would rapidly review the appeal by Thach Saveth and ensure his release.

As regards the legislative discrepancies remaining, the Committee trusted that the reform process would bring the legislation into greater conformity with the Convention and requested the Government to transmit any draft texts to the ILO for an informal opinion in this regard. It expressed the hope that the necessary measures would be taken in the near future to ensure freedom of association rights for teachers, judges and the public service and called upon the Government to ensure full consultation with the social partners concerned with respect to labour law reform and to ensure their full and equal participation in all relevant social dialogue forums.

The Committee requested the Government to provide a full report on all measures taken in this regard to the Committee of Experts at its next meeting in November 2010 and expressed the firm hope that it would be in a position to see significant progress with respect to all of these matters at its next session.

CANADA (ratification: 1972)

A Government representative first outlined the main elements of the Canadian labour and human rights system to demonstrate how the principle of freedom of association was recognized and protected in her country. Under Canada's Constitution, the federal Government, and each of the ten provincial and three territorial governments, had exclusive authority to legislate with respect to labour matters within their respective jurisdictions which meant that the federal jurisdiction only covered about 10 per cent of the workforce. Freedom of association was guaranteed under the Charter of Rights and Freedoms which was part of the Constitution. It was also enshrined in the Canadian Bill of Rights and in Quebec's Charter of Human Rights and Freedoms, which applied to the Government of Quebec and to the private sector in that Province. Canadian industrial relations legislation guaranteed the workers' right to join unions and to participate in their lawful activities. The Labour Code and equivalent laws in each jurisdiction ensured not only that the right to organize existed, but also that it was protected. Each jurisdiction had an independent labour board with equal worker and employer representation to administer its labour relations legislation. Bargaining agents and employers concerned had a duty to meet and bargain in good faith. Where good faith bargaining was felt to be absent, a complaint could be made to the appropriate labour board by either party in order to obtain a remedial order. The importance of conciliation and mediation as a means of helping the parties to reach an agreement voluntarily was recognized across the country.

Not all workers in Canadian jurisdictions were covered by industrial relations legislation. It was true, as the ILO supervisory bodies had recalled on various occasions, that groups such as members of the medical, dental, architectural, legal and engineering professions, agricultural workers and privately employed domestics were excluded from coverage under the legislation in some Canadian jurisdictions. However, even where workers were excluded from legislative regimes, they were entitled to join associations of their choosing and negotiate with their employers on a voluntary basis.

She recalled that the autonomy of the various jurisdictions inevitably gave rise to a diversity of provisions that provided opportunities for the Committee of Experts' to make comments, more so possibly than in a country with a unified labour market. She drew attention to the fact that

ensuring full implementation of international labour obligations in a context where the federal Government had the authority to ratify ILO Conventions, but was bound to rely on the provinces and territories to implement their provisions in areas of their exclusive authority, was a challenging task. It was in this context that the federal Government engaged the provinces and territories on a continuous basis with a view to promoting implementation of Canada's international labour obligations and ensuring that full and transparent information was made available to the ILO supervisory bodies.

The speaker highlighted developments since the Government's last report was submitted to the Committee of Experts in 2009. She mentioned first that there were questions currently before the Canadian courts related to access to statutory collective bargaining regimes and the scope of freedom of association protection. Of particular interest was the decision of the Supreme Court of Canada which was expected later this year on the constitutionality of the Ontario Agricultural Employees Protection Act, 2002, and collective bargaining rights for agricultural workers. This decision would no doubt have an impact on Canada's future conformity with Convention No. 87. The Governments of Alberta and Ontario had advised that once the Supreme Court decision was delivered, reviews of its implications would be undertaken and further information would be provided to the Committee of Experts.

The New Brunswick Government had already undertaken discussions on the potential for amendments to the Industrial Relations Act to remove or modify the exclusion for domestic workers as well as the limits to collective bargaining for agricultural workers. In April 2010, a Bill was passed in the New Brunswick Legislature extending collective bargaining rights to casual government employees. With respect to the right of community workers to establish and join organizations of their own choosing, a review was undertaken by the Ontario Government taking into account the Committee of Experts' observations and recent court decisions on related matters. The review of the 1998 amendments to the Ontario Works Act had been completed and the next steps were being considered by the Government of Ontario. Concerning part-time employees of Ontario colleges, the Government of Ontario was in the process of adopting new legislation which reviewed collective bargaining rights at colleges and recommended extending collective bargaining rights to part-time college workers.

With regard to Quebec, the speaker recalled that the right to freedom of association was enshrined in the Quebec Charter of Human Rights and Freedoms and the Quebec Labour Code. The unionization rate of 40 per cent represented a very high proportion for North America. A total of 8,788 collective agreements were in force, covering almost 1 million employees, mainly in the tertiary sector. In fact, specific provisions had sometimes been adopted to take account of the particular situation of certain groups of workers. Such had been the case in 2009 for female nursery education workers and family-type resources, in respect of which legislative measures had been adopted, providing in particular for recognition of associations representing such persons and the rules of collective bargaining.

The speaker also referred to some inconsistencies identified by the Committee of Experts which nonetheless worked well in the Canadian context and had not raised concerns at the national level. For instance, concerning the Manitoba Public Schools Act, the current system of binding arbitration for collective bargaining disputes had been in place for more than 50 years and none of the interested parties had raised concerns about these provisions. Another example was the provision of Manitoba's

Labour Relations Act on compulsory arbitration to end lengthy work stoppages. This mechanism could only be used where a strike or lockout had lasted for at least 60 days, if the party making the application had bargained sufficiently and seriously, conciliation or mediation had been attempted without success, and the Board had determined that the parties were in a situation of clear deadlock and not likely to conclude a collective agreement within 30 days. In the Government's view, this was a sensible and balanced approach to resolving lengthy work stoppages and applications under this provision were very rare.

In conclusion, her Government recognized that a number of inconsistencies persisted with respect to Convention No. 87, but considered that significant progress had been made in addressing the Committee of Experts' comments and that Canada remained committed to observing the Convention.

The Employer members highlighted at the outset that Canada had ratified Convention No. 87 but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), nor the Labour Relations (Public Service) Convention, 1978 (No. 151). Consequently, they urged that the present examination would focus only on the ratified Convention. They noted that the federal Government had assumed its obligations under the ILO, whereas criticisms regarding its application of the Convention had historically been directed at legislation enacted by the various provincial governments.

In the interest of time efficiency, the Employer members limited their remarks to the following general observations: (1) while workers in agriculture and horticulture in some provinces, i.e., Alberta and Ontario, were excluded from provincial labour relations legislation, agriculture and horticulture workers in Ontario were expressly included in the Agricultural Employees Protection Act (AEPA); however, the scope of freedom of association protection under this Act was currently before the Supreme Court of Canada and thus, until a decision from the Court, the Conference Committee could not make a conclusion; (2) the exclusion of domestic workers, architects, dentists, land surveyors, lawyers and doctors from statutory protection of freedom of association under the 1995 Labour Relations Act appeared to violate Convention No. 87, as these workers should enjoy the same rights, prerogatives, and means of recourse as others; (3) the Committee on Freedom of Association was not a body mandated to assess compliance with ILO Conventions and thus the Conference Committee should exercise caution when considering their observations on the application of Conventions; (4) the right to organize of university staff in Alberta provided that the appointment of academic staff was conditioned on the prohibition of joining a professional organization, in violation of the Convention; and (5) the trade union monopoly established by law in Prince Edward Island, Nova Scotia and Ontario in the education sector constituted a clear violation of the Convention because it effectively excluded other unions from the possibility of engaging in collective bargaining.

In addition, the Employer members reaffirmed that Convention No. 87 guaranteed neither the right to strike nor certain strike action. Recalling the firm view expressed on this question in this year's general discussion, they requested that the following observations be clearly set out in the conclusions in this case: Article 11 of the Convention required members to undertake "all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise"; the Conference decided in 1948 that the right to strike was not included in the Convention; the Committee of Experts could not regulate in detail a general right to strike as it was seeking to do in this case; and a "one-size-fits-all"

approach to Canada failed to recognize the difference in economic and industrial development throughout its provinces. They made reference to the 1953 General Survey on Conventions Nos 87 and 98, which stated that the object of Convention No. 87 was to define as concisely as possible the principles governing freedom of association, whilst refraining from prescribing any code or model regulations. They further stated that members had the right to define “essential services” and concluded that the Conference Committee was tasked with considering Canada’s application of the Convention and not more.

The Worker members observed that the case of Canada could be summed up as a catalogue of exclusions, exceptions, limitations and derogations from the right to organize, the right to collective bargaining, the right to strike and the exercise of freedom of association in a whole series of provinces. In several provinces, whole categories of workers did not benefit from the exercise of freedom of association, while in others the legal monopoly of a single trade union was set out in law. The right to strike was limited in some provinces to certain sectors or by the imposition of compulsory arbitration after 60 days of work stoppage. In the same way as the Committee of Experts, the Worker members recalled that they considered that the right to strike formed part of the protections afforded by Convention No. 87 and that any restriction on this right should be confined to essential services in the strict sense of the term, and that neither teaching nor the whole of the health sector, and certainly not the whole of the public sector, could be considered as an essential service.

To bring an end to all these restrictions, the federal Government needed to ensure that the provincial governments brought their legislation into conformity with Conventions Nos 87 and 98, but it did not seem to have the power to impose such changes. The federal Government was not guilty, but it had to answer for this failing, while the provincial governments were guilty, but were sheltered from any condemnation. In these circumstances, the 2007 decision by the Supreme Court of Canada could augur a favourable outcome, as it held that freedom of association and collective bargaining were protected by the Canadian Charter of Rights and Freedoms and referred explicitly to Convention No. 87. Certain texts had accordingly been amended, although the changes remained insufficient in view of the substantial number of legislative texts that were contrary to ILO instruments. The whole of the national legal arsenal needed to be re-examined in the light of this decision. This would make it possible to prevent the federal composition of the country in Canada, as elsewhere, becoming a means of circumventing the international treaties that the country had ratified.

The Employer member of Canada thanked the Government for the measures it had taken and processes put in place, like the Advisory Committee on International Labour Affairs, to engage in social dialogue with the social partners regarding labour law, policies, and implementation of international labour objectives. She stated that the Canadian Employers Council did not believe that cases arising under the Committee on Freedom of Association were directly relevant to the consideration of the application of Convention No. 87. She also reminded the Committee that it was only examining Canada’s application of Convention No. 87, and not Convention No. 98, which Canada had not ratified. Moreover, she noted that, contrary to the findings of the Committee of Experts regarding the freedom of association of agricultural workers in certain provinces, these workers in Ontario were granted the statutory right under the Agricultural Employees Protection Act (AEPA) to form and join employees’ associations and the right to protection against interference, coercion and discrimination in the exercise of freedom of as-

sociation, that this issue was being examined by the Supreme Court of Canada, and that meaningful statutory protections concerning freedom of association could be contained in legislation other than the Labour Relations Act. Finally, she stressed that the Canadian Employers Council shared the view of the Employer spokesperson in this year’s general discussion that the Convention did not contain the right to strike. Thus, a government could regulate strikes and lockouts in accordance with its national requirements and remain in compliance with the Convention. It appeared inappropriate that the Committee of Experts made efforts to regulate in detail the ability to strike under this Convention.

The Worker member of Canada pointed out that, as evidenced by the Committee of Experts’ report, there was little progress with respect to Canada’s compliance with the Convention since provinces continued to violate both the letter and spirit of Convention No. 87. She called upon the Office to undertake a direct contacts mission with a view to discussing the issues raised in the Committee of Experts’ report not only with the federal Government but also with provincial and territorial governments. An ILO mission would be able to observe the constant undermining of the right of freedom of association in Canada and would confirm concerns regarding the many barriers or exclusions affecting numerous categories of workers in direct violation of Articles 2 and 3 of the Convention.

In February 2009, the federal Government released a report with the explicit aim of identifying mechanisms to limit the frequency and duration of work stoppages. Similarly, in November 2009, the federal Government introduced Bill C-61 requiring striking railway workers to return to work, much like another piece of legislation introduced in 2007. A number of provinces had repeatedly manipulated the use of the term “essential services” to prohibit or restrict workers from taking strike action, even in situations without so-called “serious national impact”.

Referring to the landmark decision by the Supreme Court of Canada in 2007 confirming that freedom of association and collective bargaining were protected by the Canadian Charter of Rights and Freedoms, the speaker indicated that what was needed was the undertaking of a comprehensive legal inventory and analysis of Canadian law relative to provincial, territorial and national legislation to identify possible inconsistencies with ILO Conventions. This comprehensive review needed to be a tripartite process involving the social partners, the federal Government and the provinces and territories for defining a legislative agenda for the implementation of new legislation and regulations.

Across Canada, restrictions had been placed on the rights of workers to organize in both public and private sectors. Collective agreements had been sidelined, freely negotiated wages and benefits had been revoked and employer-dictated processes had been legislatively imposed on workers. For example, as noted in the Committee of Experts’ report, in Quebec, collective bargaining was eliminated for public sector workers, the right to strike directly removed, and severe sanctions were imposed on unions and individual workers for contravening the legislation. Saskatchewan public sector workers had effectively had their right to strike removed by expansion of the definition of “essential services” and workers had new restrictions placed on their right to organize. These restrictions on workers traditionally represented by unions were further exacerbated by the restrictions and exclusions placed on other workers such as agricultural and domestic workers and live-in caregivers. Governments had continued to exclude these workers from protections, and where they had made attempts to include them, such as in Quebec for domestic workers, the legislation had restrictions that continued to exclude large numbers and

thereby undermined the protections of those who had finally gained some recognition.

The speaker stressed that, in this era of globalization, it was important to establish the credibility of labour standards as a cornerstone of international trade and development. The Government had signed the North American Free Trade Agreement (NAFTA) with Mexico and the United States in 1994. A key feature of NAFTA was the inclusion of the North American Labour Cooperation Agreement, as a side deal, which was promoted as a means of ensuring that there would be no downward pressure on labour standards in North America, but contained very weak provisions for enforcing labour standards, and no provisions for improving labour standards. Yet, clearly, weak enforcement of ILO Conventions within trade agreements was synonymous with adopting a policy of "a race to the bottom" on social standards.

She believed that the way forward to achieve a positive industrial relations climate was for the federal Government to set an example for the provinces and territories through policies and actions that sought to respect ILO Conventions. The ILO should be requested to facilitate such a process by undertaking a direct contacts mission that would help define the terms of reference for a study and a follow-up in a spirit of genuine dialogue and tripartite consensus.

The Worker member of Colombia stated that there could be no doubt of Canada's failure to comply with its obligations under the Convention and recalled the repeated comments of the Committee of Experts concerning restrictions on certain workers' exercise of freedom of association, collective bargaining and the right to strike. He indicated that, despite serious violations of the Convention, Canada signed trade agreements in which it undertook to guarantee compliance with the fundamental ILO Conventions, including with countries that, according to him, also failed to meet their obligations under those Conventions, as was the case with his country. He deplored the fact that Canada hid behind provincial autonomy to systematically violate the provisions of the Convention, and called on the Conference Committee to find ways of ensuring that such evasion by certain countries did not continue with impunity. He urged the Government to implement the provisions of the Convention and to guarantee trade union freedoms for all workers, without exception. Lastly, he requested the Committee to call in its conclusions for a mission to be sent to examine the situation and recommend ways to resolve it, and for the Committee to be informed of any activities at the next session of the Conference.

The Government member of Belarus stated that the Committee of Experts had noted the decision of the Supreme Court of Canada that Convention No. 87 was an international legal instrument that was binding on Canada. Unfortunately, the right to freedom of association did not apply to the agricultural workers in Alberta and Ontario. The speaker asked the Government to put pressure on those provincial governments to ensure that the rights of specific groups of workers in those provinces were recognized. The governments in those provinces were not implementing fully the provisions of Convention No. 87, as was noted by the Committee of Experts with regret. It was necessary to ensure that the Convention's provisions were implemented fully and that the Conference Committee and the ILO assisted the Government in their implementation. He stated that the Committee's conclusions should address only the federal Government, and not ask the federal Government to bring its influence on local governments.

The Worker member of Sweden observed that specific elements of this case were worrying and that it was clear from the Committee of Experts' report that the federal

structure in Canada was being used as a shield to avoid international obligations arising from its ILO membership. He expressed concern on behalf of the Nordic Trade Union Confederations about such practice and recalled that similar developments were observed within the European Union. All federal entities were founded upon a division of competence and jurisdiction between federal and state levels. It was important, however, that no entity within a federal structure escaped its responsibility to adhere to the core ILO Conventions. The federal Government of Canada could not therefore escape its obligations simply on account of the country's federal structure. The speaker stated that it was ironic that the federal Government demanded adherence to the ILO's core Conventions in trade agreements with third countries while provincial governments continued to apply legislation that at times breached ILO core labour standards. He regretted such policy of double standards and stressed the need for appropriate solutions. Perhaps it was time the ILO invited provincial governments directly to participate at the ILO Conference. Thought could also be given to the possibility of a direct contacts mission. At the very least, the federal Government should seek technical assistance from the ILO with a view to familiarizing provincial governments with the obligations arising from ratified international labour Conventions.

Speaking on two points of order, the **Employer members** objected to any comparisons to, or analogy drawn with, any country which was not in the Committee's list of cases for discussion and they requested that any such reference be struck from the record. In response to these objections, the **Worker member of France** and the **Worker member of the United States** expressed their surprise at the attempted censorship and cautioned against the risk of setting dangerous precedent.

The Worker member of Brazil wished to refer to the situation of domestic workers excluded from the protection afforded by the legislation in relation to freedom of association at a time when the Conference was discussing the adoption of an instrument on this category of workers. The situation was all the more worrying as the provinces concerned indicated that they had no intention of changing the situation, even though those workers were covered by the Convention. In view of the links that existed between the principles of freedom of association, the role played by unions and collective bargaining, the legal restrictions placed on the exercise of collective bargaining by agricultural workers and part-time workers in public colleges in the Province of Ontario were also a cause for concern. As an illustration of the limitations imposed by law on the right of trade unions to defend the interests of their members, he referred to the case of a Brazilian enterprise installed in the Provinces of Newfoundland, Ontario and Manitoba. The workers in the enterprise who had taken part in a strike, following the failure of negotiations for a collective agreement, had been the victims of intimidation and harassment. Legal action had been taken against the union, the enterprise had made use of other workers to replace the striking workers, mediation had not been successful and the enterprise had rejected the union's request for compulsory arbitration. This was only one example of the numerous enterprises that were in violation of Convention No. 87 in Canada by failing to engage in bargaining in good faith, attempting to go to court against trade union action and restricting access to the machinery that was intended to give effect to the right to strike.

The Government representative thanked the Committee members who participated in the discussion and reiterated her Government's commitment to the Organization and to full cooperation with the supervisory bodies. She recalled that Canada's Constitution represented certain challenges

for the federal Government due to the fact that it gave authority to provincial governments on labour issues. However, the federal Government was engaged in constant dialogue with the provincial governments through annual meetings and regular tripartite round tables, often with the participation of ILO officials who were invited to explain the scope and content of international labour standards. She concluded by stating that the results of these discussions would be communicated to the Office, and the Committee of Experts would be kept fully informed of all future developments concerning the application of Convention No. 87.

The Worker members emphasized that the Canadian authorities should stop using their country's institutional structure as a pretext for not implementing the Convention, at the same time ignoring the provisions of the Canadian Charter of Rights and Freedoms and Supreme Court decisions on freedom of association and collective bargaining. The present discussion should form the starting point for a process of positive social dialogue, to include, in the near future, a direct contacts mission to the country to explain to the various courts the exact scope of the principles and provisions set out in Conventions Nos 87 and 98. Subsequently, the entire body of Canadian legislation should be examined in order to identify provisions that were not in conformity with the Convention, with technical assistance from the Office if necessary.

The Employer members cautioned to take careful note of what was said with reference to Convention No. 87 and the adoption of federal, provincial, and territorial legislation on freedom of association and the right to organize. They reiterated that the conclusions should focus on Convention No. 87 only and not issues arising under Convention No. 98, Committee on Freedom of Association cases or trade agreement disputes. They urged the federal Government to ensure that provincial governments fully complied with strict freedom of association and right to organize requirements for the benefit of all workers. They did not, however, consider that an ILO direct contacts mission was a reasonable or proportionate response to the Committee of Experts' report and categorically objected to such a proposal. They further stated that the Conference Committee's conclusions should only focus on Canada and not draw comparisons to cases that were not before the Committee, as set out in article 7 of the Standing Orders. Moreover, conclusions should reflect that Convention No. 87 did not embody the right to strike.

The Worker members stressed that they did not intend to open a discussion on the right to strike. However, as the Employer members had raised the issue, the Worker members reaffirmed their interpretation of the right to strike in the context of Convention No. 87. Furthermore, with regard to the Committee's working methods, it ought to be possible to compare various situations during the examination of certain cases.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed.

It noted that the comments of the Committee of Experts related to a number of discrepancies between the laws and practices in various provinces, on the one hand, and the Convention on the other. The Committee noted that the issues that were pending related in particular to the exclusion of a variety of workers from the coverage of the labour relations legislation in a number of provinces.

The Committee took note of the information provided by the Government representative that, while it was true that not all workers in Canadian jurisdictions were covered by industrial relations legislation, they were entitled to join associations of their own choosing. In addition, the Government maintained that some inconsistencies raised by the

Committee of Experts actually made sense within the Canadian context and had not raised concerns at the national level. The Government representative further referred to a variety of efforts made by the Federal Government to bring the provincial authorities and the social partners together to review the matters raised, on several occasions with the collaboration of the ILO.

The Committee recalled that certain legislative texts needed to be amended in some provinces with a view to guaranteeing the full application of the Convention. In particular, it stressed the importance of ensuring to all workers, without distinction whatsoever, the right to form and join the organization of their own choosing. The Committee accordingly expressed the firm hope that all the necessary measures would be adopted in the near future to provide full guarantees of the rights set forth in the Convention for all workers. It noted with interest in this regard the general invitation extended by the Government for continuing ILO advice and assistance. The Committee requested the Government to provide detailed information in its next report to the Committee of Experts on the measures adopted in this connection, including as regards developments on appeals before the Supreme Court of Canada.

EGYPT (ratification: 1957)

A Government representative was of the view that the Committee of Experts' observation, which included comments of the International Trade Union Confederation (ITUC) of 2008 referring to alleged events of 6 April 2008, merely repeated events which had already been discussed by the Conference Committee in 2008 and to which allegations the Government had objected as they lacked precision. After the Government had provided clarifications, the discussion had been concluded and a recommendation, including an invitation to accept an ILO technical assistance mission that took place in April 2009, had been issued. Following the mission, a tripartite workshop in which the social partners, relevant national bodies, non-governmental organizations (NGOs) and ILO officers participated, had been conducted in April 2010. The workshop had focused on promoting social dialogue and ensuring the conformity of national laws with the requirements of the Convention and allowed for the exchange of views on the principles and practices of various trade unions, the institutional capacities needed to exercise the right to bargain collectively, the role of the Government and the social partners in promoting a culture of social dialogue, as well as the practical steps necessary in the future.

As a follow-up to the April 2010 workshop and after consultations with the ILO, a tripartite committee had been set up. This committee was charged with collecting and evaluating the proposed texts with a view to amending the national legislation, a process which should be finalized shortly, in collaboration with the ILO. She also informed the Conference Committee of the ILO project "Promoting fundamental principles and rights at work and social dialogue" that was carried out in Egypt, which her Government considered of great importance as it contributed to raising the institutional capacities of the social partners in the long run and to improving labour relations, thus being an essential element in implementing the 2008 recommendations of the Conference Committee.

Reiterating Egypt's commitment to full compliance with international labour standards, she expressed the hope that the discussions in the Committee would result in a positive recommendation that took into account the steps taken by the Government.

She stated that the protection and welfare of all workers was a priority and a national aim pursued by the State, which had been reflected in the Government's work programme. This was in line with the President's call to re-

view and develop labour relations and mechanisms to achieve a balance between the duties and rights of all social partners, which were part of the democratic exchange at all levels of society. Workers' protection and welfare had to continue to be a national duty to strive for and honour.

The Employer members noted that before the discussion in 2008, the case had not been dealt with for two decades. Following the 2008 discussion in this Committee, the Government had been asked to reply to the allegations made by the ITUC in 2007. While the Government provided a significant amount of information submitted to the Committee of Experts, they requested that this information also be provided in writing. The Government provided information on the seminar held in 2010 and reported that as a result, a tripartite expert committee had been set up with ILO assistance. The Employer members hoped that the Government would be in a position to define goals and address the issues raised by the Committee of Experts with regard to discrepancies between the Trade Union Act No. 35 (Act No. 35) of 1976 and Convention No. 87. The main discrepancy related to the institutionalization of a single trade union system, since several sections of Act No. 35 were contrary to the possibility of trade union pluralism called for in Article 2 of the Convention. Furthermore, Act No. 35 granted control to higher level trade unions over the nomination and election procedures of first-level unions, which constituted a violation of Article 3 of the Convention, which provided for an absolute right of unions to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. In addition, the Committee of Experts had pointed out that Act No. 35 enabled the Government to interfere with the financial independence of unions. With respect to the right to strike, the Employer members recalled that Convention No. 87 did not expressly provide for a right to strike. At most it contained a general right to strike but that could not be regulated in detail under the Convention; the Government could regulate this right in accordance with its needs and conditions. However, this discretion was subject to the caveat that the personal human rights and civil liberties of individuals participating in the labour action were to be respected. They recalled that the Government had to provide a report on the allegations made by the ITUC to the Office. The report should also establish a legislative timeline for the rectification of all issues raised.

The Worker members observed that the Committee had again been called upon to examine the present case, which had already been discussed in 2008. Although it had ratified Convention No. 87 more than half a century earlier, Egypt persistently refused to amend its legislation to bring it into line with the Convention.

The Committee of Experts had drawn attention to numerous violations of freedom of association in the country and had identified, based on irrefutable facts, situations that demonstrated the Government's obstinate refusal to implement the Convention. It had referred in particular to the police's violent suppression of a demonstration by workers in 2008, even if the facts were apparently contested by the Government. The Committee of Experts had stressed the importance of holding an independent judicial enquiry to identify those responsible and impose penalties, and the need to take preventive measures to avoid such situations from reoccurring in the future. According to the Committee of Experts, based on reliable sources, workers' rights were still being flouted in special economic zones, where working conditions were unbearable (long hours, low wages and poor safety standards) and union activists found it difficult to carry out their activities because of restrictions on collective bargaining and a

ban on strikes. The majority of workers in the Tenth Ramadan City were required to sign letters of resignation prior to being hired, allowing employers to dismiss them at will.

For many years, the Committee of Experts had been referring to significant discrepancies between national legislation and the Convention: the right of workers to establish and join organizations of their own choosing was severely restricted; legislation established a single trade union system; and authorization to carry out activities was granted only to unions belonging to one of the 23 industrial federations affiliated to the sole legally recognized trade union confederation. Above all, legislation allowed enterprises to dismiss without justification workers who acted outside the established trade union structure. Although trade union unity was important, it should not be imposed through legislation that created a trade union monopoly. By institutionalizing a single trade union system under Act No. 35 of 1976, as amended by Act No. 12 of 1995 (sections 7, 13, 14, 17 and 52; 41, 42 and 43), the Government had placed numerous trade unions representing professional groups (doctors, engineers, lawyers, pharmacists) under judicial control, which was exercised over trade union organizations at the highest level by controlling procedures for nominating and electing executive committees, in violation of Article 3 of the Convention. The Committee of Experts had mentioned serious cases and acts of interference, such as the Government's attempt to control which candidates stood in trade union elections and to prevent certain candidates from standing. Furthermore, the law allowed the Confederation of Trade Unions to exercise control over the management of workers' organizations, thereby preventing trade unions from having any financial independence. First-level organizations also had to pay a certain percentage of their income to higher-level national organizations. Such a decision to cede trade union dues was normally taken by an organization's executive committee and should not be imposed by law.

The Worker members emphasized that the law also allowed the removal from office of the national executive committee of a trade union which had caused work stoppages or absenteeism in a public service or community services. With regard to the right to strike, the Committee of Experts had recalled the need to amend section 192 of the Labour Code, which required prior approval by the Confederation of Trade Unions before calling a strike and required the duration of a strike to be specified in the strike notification. It had also indicated that section 69(9) of the Labour Code, which provided that workers who participated in a strike and were in breach of section 192 could be dismissed, was in violation of Convention No. 87. The Worker members also emphasized that restrictions on the right to strike and recourse to compulsory arbitration in services that were not essential in the strict sense of the term, as well as the penalties provided for in section 194 of the Labour Code, were in violation of the Convention.

The Worker members recalled that the technical assistance mission that had visited the country in April 2009 had led to the signature of a memorandum of understanding between the social partners in which they agreed to participate in a tripartite seminar to examine the questions raised in relation to the application of the Convention, study comparable experiences in other countries and draft proposals. While the Government representative had indicated that that seminar had taken place in April 2010, the Worker members emphasized that they did not have any information confirming the Minister's statements.

The Worker members urged the Government to amend the labour legislation to bring an end to the institutionalization of a system of trade union monopoly which ex-

cluded the possibility of establishing different federations independent of the Confederation of Trade Unions. The Government was also requested to take the necessary measures to amend the Labour Code so that: (1) no restrictions on the right of workers to organize freely were allowed or promoted; (2) any interference in the determination of electoral procedures was prohibited; (3) there was no legal obligation to specify in advance the duration of a strike; (4) workers participating in a strike the duration of which had not been specified in advance were not subject to penalties; and (5) sections 179, 187, 193 and 194 were repealed. Finally, measures needed to be taken immediately to guarantee workers' rights and to address the concerns of the world of work.

The Worker member of Egypt felt that a long-standing disagreement should not entail the abandonment of dialogue, and that this was valid for all trade unions. Regarding the information contained in the report of the Committee of Experts concerning discrepancies between the provisions of this Convention and national practice, in particular the information relating to the murder and imprisonment of workers, he regretted having to note that most of that information had either not been confirmed or did not correspond to reality and probably stemmed from questionable sources. As confirmed by the Committee of Experts, the constitution of Egypt and national legislation provided for the independence of trade unions, prohibiting outside interference. He agreed with the ILO mission that trade unions in Egypt had been able to initiate necessary changes to ensure the application of international labour standards. As regards the legislation concerning trade union affiliation and the right to strike, the relevant draft law had been submitted to the ILO for review in 1994 and no objections had been raised. Trade union unity was a strength that should be preserved. While the existence of various trade unions in a sector in a given country could be justified, trade union division was normally not beneficial to workers. The Egyptian Confederation of Trade Unions, founded in 1898, comprised 23 national trade unions and over 2,000 committees and had recently signed important agreements with employers wishing to lay off workers, which had been presented to the ILO mission. He hoped that the Egyptian Confederation of Trade Unions would be allowed to continue its relentless efforts.

The Employer member of Egypt expressed surprise that Egypt had been included on the list of cases under examination by the Committee, given the important measures that had been taken by the Government. These measures included the ILO technical assistance mission in 2009, which had resulted in a memorandum of understanding to hold a tripartite workshop on freedom of association, which had been held in April 2010. This tripartite workshop had yielded positive discussions and outcomes, and had resulted in a call for the establishment of a tripartite committee. Turning to the comments of the Worker member of Egypt, the speaker emphasized that workers in Egypt were benefiting from protection and enjoyed rights. The allegations of the Worker members that the majority of workers in the Tenth Ramadan City area were made to sign letters of resignation prior to being hired were not true. He invited any mission to come and verify these facts. Workers in Egypt enjoyed the right to strike, when notification was given. Some workers had been striking without advanced notice, which was not acceptable. There was no reason to review this case, as the available data and information indicated that the Government was respecting its obligations under the Convention. The situation in Egypt was positive, and the discussion of this case caused unnecessary tension between the social partners. The case should have been removed from the list.

The Government member of Lebanon underlined that it was appropriate to consider the specific situation and the culture of each country. The Government representative had shown that her Government had put everything in place to correct the identified gaps. One should not keep silent about the efforts that had already been undertaken with a view to bringing the legislation into conformity with the Convention.

The Worker member of Spain stated that article 56 of the Egyptian Constitution guaranteed the right to establish trade unions. However, only one trade union confederation was legally recognized in Egypt, and all other unions were subjugated to it, which made both unionization and union representation difficult. The right to form and join unions was severely restricted. Act No. 35 of 1976, amended by Act No. 12 of 1995, institutionalized a single trade union system, and the contents of the Act were of concern to workers, as it was they who suffered the consequences. The Act granted the Confederation of Trade Unions almost complete authority; indirectly, through a single trade union, the Government controlled the process of creating and legalizing trade unions and procedures for nominating and electing their executive. At the same time, some organizations existed with the aim of defending workers' rights, improving working conditions and promoting social dialogue and independent trade unionism, but their members were persecuted and harassed in various ways. There had also been attempts to obstruct the activities of an independent trade union, which had been formally established in April 2009, becoming the first independent trade union in Egypt in more than 50 years and operating outside the Confederation of Trade Unions. In this regard, the union's president, Mr Kamal Abu Eita, had declared at an international seminar held in Cairo, that his union continued to be the subject of a campaign of aggression and harassment against its members. It was not democratic to impose a single trade union by law and worker unity would not be achieved by such means. Unity came from objectives discussed and accepted by all workers, even if they were organized into different unions. She concluded by calling on the Government to adopt and implement adequate instruments to provide workers with the real and effective enjoyment of the right to organize freely in whatever unions they chose to establish.

The Government member of India noted the proactive measures that had been taken by the Government of Egypt in follow-up to the conclusions of this Committee in 2008. In 2009, there had been a technical assistance mission to the country, followed by the tripartite workshop in 2010. This participative approach needed to be encouraged. He looked forward to further measures taken by the Government with ILO technical assistance.

The Worker member of the Republic of Korea expressed concern at the restrictions on the right to organize and the right to strike of workers. Sharp discrepancies existed between the principles set out in the Convention and the national legislation. The single trade union system and the requirement of the prior approval of the General Confederation of Trade Unions for the organization of strike action were worrying. Highlighting several restrictions to the right to strike imposed by the Labour Code of 2003, she indicated that these were just a few examples of how the Government was inhibiting workers to use strike action as a means of collective bargaining. In the private sector workers were left without any organizational support structure and had to rely on self-organization without legal protection. A legal basis should be provided so that all workers could benefit from the rights derived from ratified ILO Conventions. In the context of a severe social and economic crisis in which workers were fighting for better working conditions and against low and unpaid wages, it would be important to amend the Labour Code

and Trade Union Act. A good start had been made with the visit of the ILO technical assistance mission but laws should now be brought into conformity with the Convention.

The Government member of Belarus emphasized that the positive measures taken by the Government of Egypt could not be overlooked. The tripartite workshop held in April 2010 addressed many important questions. This was a clear manifestation of the Government's willingness to proceed forward, with assistance from the ILO. Positive steps continued to be taken and the desired result would eventually be achieved. The cooperative spirit demonstrated by the Government should be recognized.

The Worker member of Malaysia pointed to a range of issues hampering collective bargaining in Egypt. The single trade union system prevented workers from designating representatives of their own choosing. With growing privatisation, workers were left without any organizations to defend their interests, as the only legally recognized union was not well established in the private sector. Furthermore, collective bargaining was not allowed in the public sector where the Government unilaterally set wages and other terms and conditions of employment. Under the Labour Code of 2003 a collective agreement was valid only if it complied with the law on public order or "general ethics", a concept that had never been defined by the Government, as requested by the Committee of Experts. In addition to legal limitations to the right to strike, fundamental workers' rights were being compromised through the use of security forces in industrial disputes. State security investigations officers had repeatedly intervened in labour disputes even without legitimate security purposes. Lastly, he mentioned the strike organized by the trade union committee in a textile company in the Mahalla Al-Kubra Special Economic Zone, and the subsequent disbanding of this committee, as another example of severe limitations of trade unions rights. Clearly, workers were facing serious limitations to their rights guaranteed by the Convention, and the Government had to bring its legislation into conformity with ratified ILO Conventions.

The Government member of Sudan welcomed the cooperation between the Government of Egypt and the ILO. During a technical assistance mission ILO representatives had met with many parliamentarians. The speaker commended the Government on its efforts, in particular with regard to the legislative amendments which had been agreed upon and submitted to the ILO and to Parliament.

The representative of the Secretary-General replying to requests for clarifications from the Worker members during the discussion indicated that an ILO mission had indeed visited Egypt on 25 and 26 April 2010 during which a one-day workshop was held on freedom of association and development. All actors were present on that day and had a lively debate on trade union pluralism. The second day, follow-up meetings were held on the necessary action to be taken. On the question whether the Government had replied to the comments from the International Trade Union Confederation (ITUC), dated 29 August 2009, under article 23 of the ILO Constitution referring to the alleged violent repression of a demonstration of workers on 6 and 7 April 2008, she stated that the Committee in its conclusions in 2008 had requested the Government to provide full particulars in reply to the allegations of violent attacks against trade unionists in its report to the Committee of Experts; the Committee of Experts had also requested the Government to provide information in this regard.

The Government representative thanked the representative of the Secretary-General for the precise information she had provided. She indicated that the statement made by the Worker members was based on inaccurate informa-

tion. She wondered why the Worker members doubted the information that she had provided concerning the convening of the tripartite workshop. Egypt had been one of the first member States to ratify the Convention, and had always indicated its confidence in the ILO and vice versa. A Worker member had also asserted that the Labour Code had not been amended since the 1950s, while it had been amended for the last time in 2003, after ten years of discussions. Moreover, half the members of Parliament who had adopted the Code were workers. The speaker underlined her respect towards the ITUC but was astonished that it had obtained information from illegal non-governmental organizations, which received funds from abroad, which had no links with the worker movement, and whose aim was to destabilize the country. She indicated that, since November 2008, she had met with the officials of the International Labour Standards Department on five occasions, and had transmitted to them the information pertaining to the issues which needed to be resolved in Egypt. A Worker member had also asserted that the majority of workers were victims of oppression. Yet, 140 collective agreements had been concluded, 138 of which were at enterprise level. A number of countries had a single trade union system, but in Egypt, this was not the case as it had a specific system. Since assuming her functions as the Minister of Labour in 2005, the Government representative had worked, with the rest of the Government, towards promoting freedom of association. Considerable progress had been made: the trade union movement had acquired a high level of autonomy; the most recent union elections were held in all freedom, as had been communicated to the ILO. In conclusion, the Government representative requested that all the information supplied by the Government should be made available to the competent bodies of the ILO. She expressed her hope that the Committee would take into account the historical status of Egypt, and the measures taken by the Government in promoting international labour standards, in collaboration with the ILO.

The Worker members thanked the Government representative for the information provided, but regretted that this information had not been submitted before the sitting of this Committee. In response to an issue raised by the Government representative, they stated that the report of the Committee of Experts was their main source of information. Other information came from the ITUC, of which they were members and which carried out studies on the situation in various countries. Following the declaration of the Employer member of Egypt, they recalled that the list of cases to be reviewed by the Committee had been the subject of an agreement between the representatives of employers and workers. The Worker members also took note of the information provided by the representative of the Secretary-General, indicating that in their preliminary declaration, they had admitted that the workshop on freedom of association and development in April 2010 had in fact taken place. The Worker members constituted a unified group that sought respect for labour rights in Egypt. The single trade union system was a violation of the Convention. Each worker must have the right to join an organization of their choice. The situation of the single trade union system was also the reason for the refusal to grant workers the right to organize union elections as they wished. The situation of a union monopoly was not the result of free choice of workers, but the result of the law, and it was important that the Government accept the conclusions of the workshop that had been held under the aegis of the ILO and make the necessary changes in legislation in accordance with the comments of the Committee of Experts.

Promotion of collective bargaining and healthy professional relations were as important as the social dialogue to

which the Government referred and required an appropriate legal framework. Conflicts, in the form of industrial action and strikes, were normal within the context of healthy industrial relations, and the legal restrictions on the right to strike must be repealed. This was the same case for mandatory arbitration in services that were non-essential services in the strict sense of the term. In this regard, the Government representative had not mentioned concrete measures that the Government had the intention of taking in order to change its legislation.

The Worker members requested that the Government adopt immediately an action plan in order to harmonize its legislation and practices with Convention No. 87. They strongly requested that the single trade union system, which was in flagrant contradiction with freedom of association, be changed in order to allow the existence and active role of other workers' organizations in the social dialogue at all levels. As in the other countries, it was up to labour organizations to decide whether they wanted or not to join up. The Worker members also requested that the law on trade unions and the Labour Code be amended concerning the various issues raised in the comments of the Committee of Experts and that the Government submit a report on application of the Convention for the next session of the Committee of Experts. The Government had not yet expressed a real willingness to resolve the problems raised and the Worker members would follow the evolution of the situation very closely, as the ILO must likewise do. The workers found themselves in a difficult situation and must have the right to organize. In conclusion, the Worker members stressed that only respect for Convention No. 87 should guide the discussion.

The Employer members congratulated the Government for getting organized to address the legislative issues identified by the Committee of Experts, but regretted that this had taken two years. The Government had not contested that legislative issues needed to be addressed, and this was demonstrated by the establishment of the tripartite committee to begin this work. The Government understood that freedom of association was a cornerstone of the ILO. The Convention was a fundamental one, and only partial compliance with the Convention was not acceptable. Tripartite discussion and consultation was also essential, but it did not replace freedom of association. Therefore, the tripartite committee needed to address two fundamental aspects of the Convention to achieve compliance: firstly, trade union pluralism required by the Convention and, secondly, that trade unions be free to set up their rules and organizational structure, without governmental interference. These obligations had been accepted upon ratification. Therefore, the tripartite committee needed to make quick progress and produce legislative proposals by the end of the year. These legislative proposals should be forwarded to the ILO, to ensure their compliance with the Convention.

Conclusions

The Committee took note of the statement made by the Government representative and of the discussion that followed.

The Committee observed that the comments of the Committee of Experts concerned a number of long-standing discrepancies between the labour legislation and the provisions of the Convention, in particular as regards a legislative framework for a single trade union system.

The Committee noted the Government's indication of the steps that it has taken since 2008 when the Committee last discussed this case. The Government representative referred, in particular, to the tripartite understanding that had been signed by the Government and the principal social partners in April 2009 and an all-inclusive workshop on freedom of association which was held this past April. She

added that the Government planned to engage in a review of the legislation with the assistance of the ILO in order to ensure full conformity with the Convention and that, to this end, a tripartite expert committee had been established to examine the laws. The Government would report back to the Committee of Experts on the progress made in this regard.

The Committee, while observing the recent steps taken by the Government, nevertheless regretted that no concrete progress had yet been made to bring the legislation into full conformity with the Convention on these fundamental points. Encouraged by the recognition now shown by the Government with respect to these unresolved issues in relation to the application of the Convention, the Committee once again urged it to continue with the important democratic reforms it had referred to and which necessarily included ensuring full respect for freedom of association.

The Committee expressed the firm expectation that the Government would elaborate a fast-track programme for ensuring that tangible steps would be taken in the very near future to amend the legislation in order to ensure that all workers may freely form and join the organization of their own choosing and that all forms of Government interference in the activities of workers' organizations, including through legislative reference to the authority of a single trade union in this regard, are eliminated. The Committee requested the Government to provide the necessary proposals for amendments, especially to the Trade Union Act, by the end of this year to the ILO for advice on their conformity with the Convention. The Committee further requested the Government to provide detailed written information on all steps taken in this regard, as well as in reply to the allegations of violence made by the International Trade Union Confederation, to the Committee of Experts at its meeting this year.

GUATEMALA (ratification: 1952)

A Government representative indicated that, in view of the two natural disasters that had occurred recently in his country, the Minister of Labour and Social Welfare had not been able to attend the Conference, although the presence of two magistrates from the Supreme Court of Justice and the Chairperson of the Labour Commission of the Congress of the Republic bore witness to the commitment of the three authorities of the State on this subject.

He said that, following the conclusions of the Committee in 2009, the Government had repeatedly convened the Tripartite Commission on International Labour Matters to formulate the road map, but that, as unfortunately no agreement had been reached with the social partners, the Government had taken the decision to draw up the road map itself, with the technical assistance requested from the ILO. With regard to the comments of the Committee of Experts referring to the insufficient political will of the Government as the road map had been drawn up only a few days prior to the session of the Committee of Experts in 2009, he considered it necessary to make the following clarifications. The Government had requested ILO technical assistance on 2 July 2009. The Ministry of Labour had convened the social partners on five occasions, without achieving consensus. A technical assistance mission had taken place from 16 to 20 November 2009, at which time the Government had drawn up the road map on its own, although with the technical assistance of the ILO. The Committee of Experts stopped examining these facts, their role and the needs of the Office itself for the provision of the requested technical assistance. He then provided information on the action taken in relation to the cases before the Committee on Freedom of Association, the recommendations of the Committee of Experts and the strengthening of inter-institutional coordination mechanisms.

With regard to the cases before the Committee on Freedom of Association, he indicated that the International

Affairs Unit had been strengthened with two further persons and a seminar had been held to raise awareness of the importance and the Government's commitment with regard to international labour standards among those government institutions responsible for sending the replies to cases and reports. With reference to the recommendations of the Committee of Experts concerning legislative amendments, a proposal had been submitted to the ILO technical official as a follow-up to the technical assistance provided. In relation to the strengthening of the coordination mechanisms, he reported that the Multi-institutional Commission for Labour Relations in Guatemala had been reactivated to facilitate assistance to the investigation of crimes against trade unionists and to maintain the flow of institutional information.

Referring to the inadequacies of the General Labour Inspectorate, he noted that, with ILO assistance and support, a programme for its modernization had been initiated, 30 inspectors had been recruited and measures had been adopted to increase resources and recruit further inspectors. At present, three services were operating which had recuperated wage arrears and fines to the amount of \$1.5 million.

With reference to the export processing sector, he indicated that an operation had been carried out by the labour inspectorate in 21 enterprises, in some of which violations had been reported and preventive measures outlined, while in others charges had been brought because inspectors had been refused entry. A total of 28 workers had been reinstated.

With regard to freedom of association, he reported that there were 356 registered trade union organizations, and that 70 unions and 45 collective labour accords had been registered in 2009, which were the highest figures for the past five years. With a view to promoting the right to organize, the Government had concluded agreements with educational institutions to train trade union leaders. It had been decided to establish a labour training school in the City of Guatemala and another in Quetzaltenango. He added that, in terms of the establishment and registration of unions, once the founders had complied with the legal requirements, they were recognized, their status approved, they were registered and the constituent act was published.

Between November 2009 and March 2010, the Government had established four tripartite social dialogue round tables, three of which were in the interior of the country. In May 2010 a "tripartite social dialogue meeting for decent work" had been held in the presence of the Director of the ILO Subregional Office. Guatemala was also the beneficiary of an ILO regional and subregional project on social dialogue.

With reference to the issue of impunity, he observed that impunity and generalized violence were matters of concern to the authorities and that there had been 6,000 murders during the course of 2009. With regard to the investigation of acts of violence against trade unionists, the Ministry of Labour was endeavouring to determine precisely whether or not the persons whose names appeared on complaints against the Government belonged to a union, the situation with regard to the legal action taken and the organization of which they were members. He added that in most reports it was found that the death was not due to reasons related to trade union activities. One of the greatest problems confronting the Government was that in many cases the complaints were put forward by de facto bodies, as a result of which the members were not recorded in the Labour Register of the Ministry of Labour, which therefore lacked essential information to determine whether the victims were members of unions.

He recalled that in October 2009 the new Supreme Court of Justice had become operational and had been

informed, taking into account the respect for the independence of the powers of the State, of the need to improve the judicial system in order to address the issue of impunity and the crimes committed against unionized workers. The Supreme Court was taking action to accelerate procedures. In the case of the murder of Mr Pedro Zamora, the Office of the Public Prosecutor had appealed against the ruling of the first level court which had found the person charged innocent and the ruling of the second level court was awaited. The new Attorney-General had also requested certain measures to combat impunity.

With regard to legislative matters, he recalled that an intersectoral dialogue round table had been established to review the Civil Service Bill, which was still before Parliament, although the necessary consensus had not been reached.

He concluded that his country was implementing the road map, institutional strengthening and social dialogue. The ILO was providing continuous support for the action taken. Freedom of association and the right to organize were recognized and protected in law and practice. The establishment of trade unions was subject to compliance with the requirements set out in law and trade union and vocational training were being promoted. He added that he would provide information to the ILO in support of his statement.

The Worker members recalled the number of comments made by the Committee of Experts concerning Guatemala with regard to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the number of cases examined by the Committee on Freedom of Association, ten of which were currently under examination, and the five high-level and direct contacts missions carried out in the country since 2005. Despite a tripartite agreement signed at the conclusion of a high-level mission in 2008, the absence of improvements in the functioning of justice was obvious. The resignation of the Director of the International Commission against Impunity in Guatemala (Mr Castresana) was cause for concern as it tended to indicate that he felt unable to accomplish his mission, because the Government had broken its commitment to combat impunity by appointing an Attorney-General linked to drug trafficking. This resignation was a great blow to the workers and the people of the country in general, who yearned for the rule of law. The Committee of Experts had itself denounced the slowness and inefficiency of the justice system.

An ILO technical assistance mission carried out in November 2009, in order to implement the recommendations of the Conference Committee, had not produced any results in the absence of consensus among the social partners. The road map adopted had very little substance and everybody agreed that social dialogue was in great difficulty in the country.

The attacks by the Government were so effective that the violence against the trade union movement had led to the weakening and restriction of the trade union movement. Violence, murders, discrimination, attacks, harassment towards trade unionists and their families were the daily reality of the trade union movement in Guatemala. To the point that after 24 years of democracy, the rate of trade union representation had fallen to 0.5 per cent.

Despite the promises made at the highest level, impunity remained the rule and took place in a subtle manner. The Government withdrew the recognition from trade union organizations which had nevertheless, in certain cases, participated in the work of this Committee, and as a result, the violent acts committed against the trade unionists were prosecuted simply as ordinary crimes. Moreover, when the harassment and murders of trade unionists became at last the subject of a judicial decision, their clas-

sification as ordinary offences made them trivial. Thus, the action of the judiciary raised questions as long as the Government did not show any willingness to respect the various conclusions and recommendations formulated by the Committee of Experts, the various missions and this Committee. The report of the Committee of Experts could seem measured in the face of such a desperate situation, but the problems raised showed clearly the violations of fundamental rights and civil liberties of trade unionists who demanded from the Government to act. The only comfort for the workers remained the constant attention that the ILO paid to their situation.

The Employer members observed that this case was being discussed in the Committee since the 1990s. Although initially the comments of the Committee of Experts on legislative issues had covered a whole page of its report, today, that list was much shorter. The Government had therefore demonstrated its willingness to address the issues over the years and had received many types of technical assistance from the ILO, including the bipartite high-level mission which had visited the country the previous year with the participation of the Worker and Employer Vice-Chairpersons of this Committee.

The observation of the Committee of Experts could be reduced to two sets of issues: impunity and legislative issues concerning the free establishment and functioning of trade unions. The question of impunity was very complex. It affected society as a whole and was not only directed against trade unionists as such. During the bipartite high-level mission, the Employer members had observed that a basic problem faced by the Government was the lack of resources to be devoted to fighting impunity, since taxes were a small share of the gross domestic product. There were not enough police officers, prosecutors, investigators, judges, etc., and more was needed to strengthen the judicial system in particular.

Following the 2009 session of the International Labour Conference, the Government had put together a road map to address the legislative issues on the basis of tripartite consensus. However, at this stage, it was not possible to reach conclusions as to the appropriateness or effectiveness of this road map. Certain obstacles to the establishment and activities of trade unions persisted. The statistics provided on trade union membership, if they were confirmed, referred to an astoundingly small percentage of trade union representation in the country.

In conclusion, the most important issue at this stage was the problem of impunity. The Employer members considered that the Government's opening statement had accorded very little attention to this problem and that more information should be provided by the Government of its plans to address this problem.

A Worker member of Guatemala said that Guatemala had been the subject of similar observations by the Conference Committee, the Committee of Experts and the Committee on Freedom of Association, some of which were even more serious than those made between 1980 and 1995, during the war. He stated that Guatemala was failing to comply with almost all of its obligations before the various supervisory bodies and high-level missions. The tripartite agreements made as a result of the high-level missions in 2008 and 2009 had not been effective, as due follow-up had not been carried out under the road map.

The main problems were that the Office of the Public Prosecutor had not increased institutional capacity to deal with the serious acts of violence that occurred every day against trade unionists. The Office of the Special Prosecutor for crimes against trade unionists, which had come into being through the Committee, had been weakened and reduced to a special unit, with insufficient resources and working methods that did not take account of relevant

factors in examining instances of anti-union discrimination. There was a reluctance to invoke anti-union discrimination. With a weak structure in place, the State was incapable of identifying obvious cases of violence against trade unionists, or of finding and punishing the culprits.

As a result of weak labour inspection services – there were only 15 labour inspectors within the metropolitan area – employers could destroy trade unions and prevent new ones from being formed with complete impunity.

There was no coordination among institutions. Trade unions had requested the promotion of the Multi-institutional Commission's conflict resolution body, but to no avail. There was corruption and a lack of independence within the labour courts and other institutions, and action was taken in a fragmentary and unconcerned manner. The election of new courts of justice had not changed the situation, as many candidates vetoed by the unions for their anti-union attitudes were now magistrates. Export processing was a particularly vulnerable sector: a company was currently engaged in mass dismissals and acts of intimidation against trade unionists and their advisers. Additional legislative reform must also be undertaken, in line with the comments of the Committee of Experts.

In concluding, he said that, although the Government of Guatemala claimed not to pursue an anti-union policy, neither had it demonstrated that it had a policy of respecting freedom of association, as this Committee had borne witness for more than ten years. He therefore requested the Committee to include the case in a special paragraph drawing attention to the severity of the case, the lack of progress in fulfilling commitments, and the climate of widespread violence that had led to murders of trade unionists, intimidation, and the weakening of the individual guarantees that underpinned the exercise of freedom of association.

An observer representing the International Trade Union Confederation (ITUC) stated that for 15 years the Committee had been bringing to the attention of the Government serious problems with regard to Convention No. 87. Guatemala had the second highest number of active complaints before the Committee on Freedom of Association in the world. From 2005 to 2010, five high-level missions and innumerable technical assistance missions had taken place. He emphasized that the Committee of Experts and other supervisory bodies had indicated that the situation had deteriorated.

Among the most serious violations which had recently become more frequent than ever, were: the obstacles to the creation and registration of trade union organizations, which took more than a year; serious acts of anti-union violence which remained unpunished; criminalization and stigmatization of trade union activity, lack of independence and effectiveness of the labour justice system reflected in excessive delays in the pronouncement of judgements and the reinstatement of trade unionists which took more than eight years, and lack of collective bargaining and effective social dialogue.

He emphasized that the situation was so serious that a few days ago, Mr Castresana, Head of the International Commission against Impunity in Guatemala had resigned, stating that there was nothing more he could do for Guatemala, given the lack of will by the Government to eradicate impunity and the designation of an Attorney General who was described by Mr Castresana as belonging to groups linked to organized crime and drug trafficking.

Since 2007, 47 trade unionists of the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) had been assassinated without any progress by the justice system in the investigation; certain activists were seriously threatened like Lesbia Amezcuita whose case had been examined by the Committee in 2009; the harassment against her had continued and even the Hu-

man Rights Ombudsperson had requested personal security measures which had not been provided. In March 2010, Luis Felipe Cho had been tortured and murdered after having received threats as a result of his trade union activities. Nevertheless, the Labour Ministry had indicated that Luis Felipe Cho was not a trade unionist. The speaker requested that the documents testifying the trade union registration of Luis Felipe Cho should appear in the records. He indicated that the programme for the protection of trade unionists was in the same state as the public prosecution service for crimes against trade unionists, to which the Government kept referring in each Conference although it had been abolished since 2005.

To conclude, he requested that the conclusions be included in a special paragraph with concrete proposals to resolve immediately the serious anti-union situation.

The Employer member of Guatemala regretted the lack of regional balance in the composition of the list of cases to be examined by the Committee, which affected the credibility of the supervisory system, especially when it was the result of reasons that had no place in the world of labour. In its observation, the Committee of Experts had referred to three basic questions: violence against trade union members; legislative issues; and problems that affected the export processing sector (*maquilas*), which in fact was the clothing and textile industry.

As for violence against trade union members, he reiterated the Employers' commitment to investigate and identify responsibilities. In this respect some contacts have been made with the General Prosecutor of the Republic. Support had also been given to strengthening and professionalizing the labour inspection. However, it should be remembered that the climate of indiscriminate violence in the country had affected all the sectors of the population and that many of the acts of violence against trade union members could have had motivations other than their trade union activities. That should be taken into account, because it could not be confirmed that there existed a climate of anti-union violence in Guatemala. The existing low rate of trade union membership must not be attributed to those motives, but rather to the informality of the economy and the crisis in trade union leadership.

Some legislative aspects, such as the right to strike were not covered by Convention No. 87. He noted, however, that within the framework of the Tripartite Commission on International Labour Affairs, employers had been promoting changes in the system of strikes so that strikes could be declared more easily as long as they took into account the right of workers who did not support it to continue working. This initiative had not been supported by workers. As for the requirement of Guatemalan nationality in order to become a trade union leader, that was difficult to change because it would be necessary to change the Constitution.

The positive results of social dialogue, which allowed for a consensus on the need to reform the system of sanctions in cooperation with the ILO and pursuant to the guidelines agreed upon in the Tripartite Commission on International Labour Affairs, should be emphasized. It was hoped that the other pending legislative questions could be solved through social dialogue. As for the clothing and textile sector, he stressed that this sector represented 23 per cent of the country's exports and 8 per cent of formal employment, and was one of the sectors that offered the best employment guarantees. He added that collective bargaining was carried out in that sector directly, without conflicts, between workers or their delegates and employers, resulting in greater benefits for workers and greater productivity for businesses. However, when there were conflicts, those were dealt with on two levels: first through voluntary mediation by the Centre for

Alternative Resolution of Conflicts of VESTEX; and then through the general labour inspectorate.

The Government member of the Bolivarian Republic of Venezuela spoke on behalf of the Government members of the Committee Government members of the Group of Latin America and the Caribbean (GRULAC) countries. He observed that the Committee of Experts had noted that the Government had held consultations on the development of a road map but that consensus had not been reached between the workers' and employers' organizations. He nevertheless welcomed the fact that a road map had been developed in compliance with the Committee's recommendations in June 2009. The GRULAC countries also drew attention to the technical assistance that the ILO had provided on the modernization of the country's legislation and urged that the Government's request be granted that all necessary assistance be made available rapidly and as an integrated package. The Government had shown its intention to collaborate by accepting the high-level mission in 2008, as well as other technical assistance missions.

The Government member of Belgium, speaking on behalf of Austria, Belgium, Germany and the Netherlands, declared that the Government of Guatemala had, since 1991, and up until 2010, been the subject of several observations of the Committee of Experts for non-observation of freedom of association. Since 2005, five high-level missions and several technical assistance programmes had been sent by the ILO to Guatemala without achieving concrete legislative results. A Tripartite National Commission for full implementation of the Convention as well as a road map had been established. The tripartite nature of that Commission must be preserved in order to guarantee the full participation of the social partners in that process. It was urgent that adequate measures be taken to punish those responsible for acts of violence committed against trade union members and that the results of the investigations carried out were made public. Through such steps, the Government would prove its political willingness to combat credibly violence committed against trade union members, to combat impunity and to adhere to the recommendations accepted by Guatemala within the framework of periodical review by the United Nations Human Rights Council. Creation by the Government of a committee of experts for nominating candidates for the Supreme Court could be favourably received, especially if the committee permitted the participation of civil society.

The Worker member of Colombia recalled that the present case had been examined on 14 occasions over the last 20 years for the same reasons. The Committee had adopted various recommendations that had been ignored by the Government. Consideration should be given to what measures the ILO could take in cases of persistent violence and harassment against trade unionists, impunity, legal and institutional obstacles to forming or joining trade unions, and lack of social dialogue. The measures taken so far by the ILO had not succeeded in improving the situation. What could be done in the face of a Government that, though professing goodwill, had not taken action to change the situation? The Employer and Worker members of the Committee should devise more effective measures. The situation could not be ignored and hoping that it would improve over the coming year was not sufficient. Deeper and more sincere political will was needed, based on democracy and effective social dialogue, to remove obstacles to the exercise of freedom of association. Such will did not exist in Guatemala.

The Government member of the United States, referring to a public submission that had been received in 2008, from the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) and six Guatemalan unions under the Labour Chapter of the United States—

Dominican Republic–Central America Free Trade Agreement stated that her Government was reviewing many of the issues the Committee of Experts had been examining with regard to Guatemala's application of the Convention. Effective enforcement of Guatemalan labour laws and the human and trade union rights of Guatemalan workers were a high priority for her Government. Her Government was disappointed by the lack of progress that had been made to date. The Government of Guatemala had acknowledged the serious challenges before it and had availed itself of ILO technical assistance on several occasions, including a number of high-level missions, the latest of which had led to the elaboration of a road map, prepared by the Government, that had outlined steps needed to be taken to address the observations of the Committee of Experts. In light of the ILO's efforts to provide necessary assistance, it was especially troubling to note that the grave violence against trade unionists had not been stemmed, that the numerous shortcomings in the operation of the criminal justice system persisted and that the situation of impunity remained as serious as ever. There was a clear and continuing need to improve labour law enforcement to ensure that workers could establish organizations in full freedom, including in export processing zones, and that those organizations could plan and carry out their activities freely. She urged the Government to redouble its efforts, in close cooperation with the ILO and with the full involvement of the social partners, to bring about as soon as possible concrete and sustainable improvements with regard to all aspects of freedom of association and the right to organize in Guatemala.

The Worker member of Brazil drew attention to the long-unresolved legislative problems, which consisted of restrictions on the establishment of organizations, as half plus one of the number of workers at an enterprise was required; restriction of the right to freely elect union leaders, as they must be Guatemalan and work at the enterprise or in the same economic activity to be eligible for election; restriction of the free exercise of activities, given that a majority of workers were needed to declare a strike; the possibility of imposing compulsory arbitration in disputes in the public transport sector and fuel-related services; prohibition of solidarity strikes; and a bill requiring high percentages for the establishment of trade unions. Furthermore, official union registration had been delayed for up to a year and a half. The right of unions to join federations and confederations had also been obstructed. He highlighted in particular the situation of the Trade Union Confederation of Guatemala (UNSITRAGUA), which, though formed in 1985, had yet to be registered; the Government had recently, and with surprising rapidity, accepted the registration of a new federation with the same name, made up of four organizations of doubtful activity. Taking into account the background of violation of the Convention in various respects, a high-level mission in 2008 had approved a tripartite agreement to modernize legislation and bring it into line with the Convention. In addition, the Committee of Experts had taken note of the ongoing technical assistance in the country. Such measures, like the Government's promises, had been repeated since the year 2000. The Committee, however, should not maintain the same attitude as it had for the last ten years.

The Employer member of Spain observed that the climate of increasing violence in Guatemala could be demonstrated by the deaths of more than 6,000 people, as had been indicated by the Government. The increase in drug trafficking was also a matter of concern. First, priority must therefore be given to ensuring a climate of stability and normality in all activities and to strengthening the fight against impunity. Second, it was important to identify and investigate whether acts of violence and crimes against trade unionists were a consequence of their union

activities. Although some progress had been made with regard to constitutional protection (*amparo*), steps must be taken to expedite freedom of association proceedings and guarantee effective penalties. Third, the road map formulated by the Government was a positive step; it must be implemented as a priority in an incisive manner, in line with the conclusions of the two high-level missions. Fourth, it should be borne in mind that the issue involved the whole of Guatemalan society: not only did it require firm political will on the part of the authorities; but employers' and trade union organizations must assume responsibility too. A constructive attitude, open to finding regulatory solutions and ready to work effectively against alleged acts of intimidation and violence, was key.

The Worker member of France stated that the gravity and the number of violations of trade union rights in Guatemala remained appalling, making it one of the most dangerous countries in the world for trade unionists. The types of crimes committed against both trade unionists and agricultural workers' leaders stood out because of their cruelty and were allowed to happen, because they remained unpunished, and because trade unionists were seen as targets. Luis Felipe Cho had been tortured and brutally murdered after being threatened for carrying out trade union activities. His severely mutilated body was found on 6 March 2010. He was one of the six unionists from the real trade union movement, united in the MSICG, murdered since the beginning of 2010. He called upon the Government to bring the killers and instigators behind this murder to justice.

Referring to the conclusions this Committee made in 2009, he regretted that, since then, the situation had only degraded. The latest comments of the Committee of Experts were particularly severe when it concluded that the Government had failed to demonstrate sufficient political will to combat violence against trade union leaders and members and to combat impunity. The Committee of Experts also indicated that the conclusion of the Conference Committee concerning the lack of significant progress despite the repeated ILO missions and the very clear and firm recommendation of the ILO supervisory bodies, continued to be globally valid. Over the past 17 years, there had been technical missions and numerous reports from the Committee of Experts, recommendations from the Conference Committee and conclusions from the Committee on Freedom of Association. The latter had condemned the Government for letting the violence and impunity go on, and for refusing to cooperate with it. An international commission to combat impunity in Guatemala had been established. A road map had been drawn up last minute, but had not been implemented. The Government had refused to grant domestic workers the right to organize in trade unions. The Prosecution Service had not investigated crimes against trade union members, despite its commitment to do so. It was clear that, despite its declarations, the Government was unwilling to act to create a safer climate for trade unions, workers and peasants.

He expressed the hope that the Government would fully cooperate with its international partners and the ILO and was disappointed that no statement had been made by the European Union, which had been promoting and supporting human rights and democracy worldwide. He supported the request for a special paragraph on Guatemala in this year's report and called on the ILO to give more publicity to the allegations made against the Government and its negative attitude.

The Government member of Panama supported the statement by GRULAC and recognized the Government's efforts to apply the Convention and put into practice the Committee's recommendations. Panama and Guatemala, as members of the Central American Integration System (SICA), recognized the importance of freedom of associa-

tion as a basic human right, closely linked to freedom of expression, and the basis of democratic representation and governance. He therefore requested that all the requested assistance for effective application of the road map be provided to the Government.

The Worker member of Germany expressed his deep concern at the situation of trade unionists in Guatemala who continued to be exposed to harassment, physical violence and disappearances. He saw no improvement in this case: crimes committed against trade unionists had remained unpunished; impunity prevailed; labour laws continued to be violated and neglected; the registration of trade unions continued to be hindered; trade union activists were stigmatized and union members dismissed. Moreover, as an employer, the State itself had taken anti-union measures against its own employees, as was the case with the Gualpapa municipal service workers and workers of various ministries. The Guatemalan unions had repeatedly drawn the Committee's attention to the many onerous anti-union practices that existed, including the blacklisting of union members and the requirement, when applying for a job, of indicating one's membership in a union. The latter was found not only in the private sector but in state enterprises as well, although this clearly infringed upon the guarantees set out in the Constitution. He expressed profound dismay over the prevailing situation and called upon the government representatives of countries of the European Union (EU) to take a strong position with respect to workers' rights in Central America; he urged that labour rights be enshrined in a special clause in the EU Association Agreement, together with an attendant mechanism to ensure compliance with those rights.

The Worker member of Spain said that Guatemala was a paradigm for the systematic violation of fundamental rights. Moreover, in addition to direct and extreme forms of anti-union violence (killings, kidnappings, rape, threats), other kinds of violence were perpetrated against freedom of association, such as the criminalization of trade union activities, the ineffective justice and labour inspection systems and the lack of protection against intimidation, discrimination and interference in trade union affairs or the refusal to recognize them. The purpose behind this was to destroy the independent trade union movement, as in the case of the MSICG which the Government had not accredited to the Conference. In addition to the other major problems facing Guatemala, such as the informal sector situation and the lack of equality between men and women, there was no social dialogue, as was evidenced by the adoption of a road map by the Government without consulting the social partners. The road map was adopted in November 2009, with most of the deadlines for adopting the measures falling on 31 December 2009 and some even before the adoption of the road map. Like every one of the Government's other commitments to the supervisory bodies, the road map had not been respected. There was no political will to develop social dialogue. For all those reasons, he requested that the case be included in a special paragraph of the Committee's report and urged that social dialogue be encouraged by compliance with the Convention, that the whole context of workers' representation be revised so as to include representatives freely elected by the workers, and that the Government complied with the observations of the supervisory bodies.

The Worker member of the United States recalled that this case had been on the agenda of this Committee for the last 13 years and regretted that nearly all its conclusions and recommendations had been ignored by the Government. The Committee of Experts had made this point clear when it had referred to lack of political will. There were two types of ongoing impunity for which the Gov-

ernment was unmistakably responsible: the impunity in relation to the authors of violence committed against Guatemalan trade unionists; and the impunity in relation to the overall supervisory and standard-setting function of the ILO.

With regard to the first point, just in the last three years, there had been at least 40 unresolved cases of brutal assassination of trade unionists for having exercised their freedom of association and collective bargaining rights. This represented an increase as compared to the at least seven murders for the 2005–06 period. At least six killings had occurred in 2010, including the murder and dismemberment of Luis Felipe Cho and the murder of Pedro Antonio Garcia of the Municipal Workers of Malacatán in San Marcos. According to the 2009 Report on Human Rights of the United States State Department, despite some limited investigations by the Public Ministry, there had been absolutely no known progress in numerous cases of assassination of trade union leaders. The State Department had also reported that the suspect Valiente Garcia, arrested for the 2007 murder of Pedro Zamora, Puerto Quetzal Dock Workers Union General Secretary, had been acquitted and released, with a second suspect, Dremier Fuentes, remaining at large. In a meeting at the Guatemalan Embassy in Washington in 2009, the speaker indicated to have been informed that the Zamora assassination case had been satisfactorily resolved with the responsible parties investigated and pursued, following a complaint jointly filed by the Guatemalan trade union movement and the AFL-CIO pursuant to the Labour Chapter of the Dominican Republic–Central America–United States Free Trade Agreement. The 2009 ILO high-level mission had received evidence of “the general lack of independence of the judicial authorities and Government bodies” in relation to violent crimes committed against trade unionists. According to the 2010 ILO report on labour inspection in the Central American region, Guatemala had reduced its budgetary allocation for inspection. It had thereby further contributed to the impunity and had wilfully disregarded its commitment made in the Tripartite Commission following the conclusion of the 2008 ILO high-level mission.

The Government had also shown its contempt for the ILO supervisory bodies. According to the MSICG, a member of the Committee of Experts had attempted to meet with the Labour Ministry, the Supreme Court of Justice and the Prosecution Service of the Public Ministry, but had been ignored. In response to the concerns and findings of the Committee on Freedom of Association published in November 2009, the Government had completely evaded the Committee's queries by stating that it had no knowledge of the existence of the complainant organization, MSICG, despite the fact that this organization consisted of ITUC affiliates, including the CGTG, CUSG and UNSITRAGUA. Accordingly, in March 2009, the Committee on Freedom of Association had expressed its concern at the Government's dilatory responses in Case No. 2709, as well as its objections to the eligibility of the complainants. He therefore called for this case to be included in a special paragraph.

The Government representative stated that the main problems facing the country, as well as its society in general, were violence and impunity. Guatemala had requested assistance to combat impunity, which had resulted in the establishment of the International Commission against Impunity in Guatemala (CICIG) in 2007. The President of the CICIG had resigned just a few days earlier, after lodging complaints against the new Public Prosecutor. The President of the Republic had ordered that the complaints be investigated. However, the current situation had not affected the Government's commitment

to the CICIG, whose mandate continued to be in force and necessary and had to be strengthened.

With regard to the comment of the Worker members concerning the lack of substance of the road map, he noted that it had been drawn up with the assistance of the ILO and regretted that there had been no consensus in the Tripartite Committee. As for work in *maquilas*, the proposed amendments to the Labour Code contained provisions in this respect. The Government had repeated its request for technical assistance in, at least, reviewing the road map, as well as the issues of social dialogue, legislation and trade union training, and hoped that it could be rapidly made available as an integrated package and directed to the social partners and the Government. With respect to the labour training school, a project for which the Government had attempted to find sources of assistance, the Government representative signalled the inclusion of a component aimed at strengthening the capacity of trade unions to submit proposals. Regarding the judicial system, eight additional courts were operating, a new Appeals Chamber was due to be established and the recently revised Code of Penal Procedure was now in force and was speeding up procedures with the introduction of public hearings. The Legislature had committed itself to increasing the budget of the judicial authorities.

With regard to the murder of Pedro Zamora, the Public Prosecutor's Office had appealed against the sentence handed down in the first instance, which had declared the person concerned innocent, and was awaiting the outcome. The next report of the Government would contain information on other pending issues.

The Worker members, after having heard the explanations given by the Government representative, asked specifically that the Committee's conclusions appear in a special paragraph of its report. Including the conclusions in a special paragraph should serve to remind the Government, and the international community and the social partners as well, just how important was the full and complete exercise of freedom of association in strengthening democracy, notably in Guatemala. The Committee's conclusions should mention the following points: (1) the promulgation of a law guaranteeing all workers, including workers in the public sector, the effective exercise of freedom of association in accordance with Convention No. 87; (2) the inclusion within the law on the protection of rights (*ley de amparo*) of a recourse along the lines of that provided for in article 25 of the American Convention on Human Rights, of which Guatemala was a signatory; (3) the amendment of the national legislation so that the observations of the ILO supervisory bodies could be invoked as binding provisions; (4) the immediate reinstatement of all trade unionists who had been suspended by the country's state institutions; (5) the strengthening of social dialogue by means of a redefinition of all the workers' representative institutions, and guaranteed access to those institutions for all freely elected representatives of all workers' organizations in the country, in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); (6) the registration of UNSITRAGUA, which like other trade unions has been seeking registration for over a year; (7) an increase in the financial resources of the labour inspectorate so that it could monitor effective compliance with the country's labour legislation; and (8) the proper functioning of the machinery for protecting trade unionists and defenders of freedom of association and other human rights.

The Employer members stated that this case was important. However, they disagreed with the Worker members that the case merited a special paragraph in the Committee's report. The Government, over many years, had taken advantage of technical assistance, and had made improvements to the labour legislation. However, two key

issues remained: impunity and legislative gaps concerning interference with the activities of workers' organizations which prevented them from operating in full freedom. Technical assistance had been provided on these two subjects, including visits from the Worker and Employer Vice-Chairpersons of this Committee, although nothing seemed to have worked. Impunity continued to be a problem, which affected all members of society, including trade unions. They emphasized the need to think of solutions beyond the standard tools used by the ILO to address the issues. The Employer members proposed sending an important and recognized personality to Guatemala, with high-level ILO support, to study the situation and make recommendations regarding impunity.

Conclusions

The Committee noted the Government representative's statement and the discussion that followed, as well as the numerous cases examined by the Committee on Freedom of Association.

The Committee noted that the Committee of Experts continued to raise with concern the following issues: numerous serious acts of violence, including murders and threats against trade union members; the stigmatization of trade unions; and legislative provisions and practices that were not in conformity with the rights set out in the Convention. The Committee of Experts had also noted the ineffectiveness of criminal procedures in relation to acts of violence, excessive delays in the judicial procedures and the lack of independence of the judicial authorities which was giving rise to a serious situation of impunity.

The Committee noted the indication by the Government representative that the situation of violence and impunity was generalized and did not exclusively affect the trade union movement. The Government had requested the support of the United Nations to combat impunity and the International Commission against Impunity in Guatemala (CICIG) had been established for that purpose. The Government had requested reports to determine whether or not the murders of trade unionists referred to were due to reasons related to trade union activities. The Government had on many occasions requested ILO technical assistance in relation to all of the problems raised, including violence, impunity and the legislative changes requested, as well as the drawing up of the road map. The Government representative stated that tripartite social dialogue had been taking place in the National Tripartite Commission and that four tripartite dialogue round tables had been created at the regional level. He indicated that, following the latest ILO high-level mission, inter-institutional coordination mechanisms had been strengthened. In addition, action had been undertaken for the reinstatement of workers in export processing zones. Training activities had been carried out and the decision had been taken to establish two labour training schools. He stated that, although measures had been taken to reinforce the labour inspection services and the unit in the ministry responsible for relations with the ILO, further technical assistance from the ILO was needed.

The Committee noted that this was an important case that had been discussed for many years and that the Government had received numerous technical assistance missions with a view to bringing the law and practice into conformity with the Convention.

The Committee noted with deep concern that the situation of violence and impunity appeared to have worsened and recalled the importance of guaranteeing on an urgent basis that workers were able to carry out their trade union activities in a climate free from fear, threats and violence. It noted further with concern that the Commissioner of the CICIG resigned on 7 June 2010. The Committee urged the Government to take the necessary measures to ensure the effective operation of schemes for the protection of trade union-

ists and defenders of freedom of association and other human rights.

The Committee noted with concern that the Government had not shown sufficient political will to take action to combat violence against trade union leaders and members and to combat impunity. The Committee emphasized the need to make substantial progress in sentencing in relation to acts of violence against trade unionists and in ensuring that, not only the direct authors of the crime, but also the instigators were punished. The Committee requested the Government to intensify its efforts to bring an end to impunity, including by considerably increasing the budgetary resources allocated to the judiciary, the prosecutors, the police and the labour inspectorate.

Also observing with concern the generalized climate of violence, the Committee recalled that freedom of association could not be exercised in a climate where personal safety and basic civil liberties were not guaranteed. The Committee urged the Government to ensure simple and prompt recourse or any other effective recourse to competent courts or tribunals for protection against acts that were in violation of fundamental rights.

The Committee requested the Government to take measures to strengthen social dialogue, redefine the representation bodies and guarantee access for workers' representatives that have been freely elected by the organizations existing in the country, in accordance with the comments of the supervisory bodies. In this regard, the Committee requested the Government to clarify the situation of the Trade Union Confederation of Guatemala (UNSI TRAGUA) without delay, with ILO assistance.

The Committee considered that innovative solutions needed to be examined with a view to addressing as a priority the issue of impunity and the pending legislative questions. The Committee requested the Government to accept the possibility of the visit of an important international public figure, accompanied by the ILO at a high level, to examine these matters and make recommendations.

The Committee requested the Government to provide a detailed report to the Committee of Experts this year with information on tangible progress on all the above matters and expressed the firm hope that it would be in a position to note substantial improvements in the application of the Convention next year.

The Worker members emphasized that this was a very serious case and that the conclusions adopted were well drafted. It was nonetheless difficult to understand why the Employer members refused to include this case in a special paragraph of the Committee's report. Economic interests should not prevail over fundamental social rights. The Worker members stated that they had considered not accepting these conclusions. However, as they were aware of the danger this would represent for the ILO's supervisory system, the conclusions had been adopted even though they were not included in a special paragraph.

MYANMAR (ratification: 1955)

A Government representative stated that Myanmar was fully cognizant of its obligations under Convention No. 87. During the visit of the ILO Executive Director for Standards and Fundamental Principles and Rights at Work to Myanmar earlier in 2010, the Government Working Group had had the opportunity to discuss with the Deputy Director of the International Labour Standards Department matters relating to freedom of association, particularly in the process of drafting legislation for the formation of workers' organizations. The drafting process would be based on three pillars: the new Constitution of Myanmar, continued assistance and advice from the International Labour Standards Department and the Convention itself.

Citizens' rights were guaranteed in the new Constitution under Chapter VIII on Citizenship, Fundamental Rights and Duties of Citizens. Citizens' rights included the right to express their convictions and opinions freely, the right to assemble peacefully and the right to form associations and organizations. There could be no doubt that workers' organizations would soon come into existence once the new Constitution came into legal effect. Myanmar was in transition and was in the process of being transformed into a democratic society. Even at this critical juncture, all efforts were being made in order to lay the foundations for observance of Convention No. 87. After the elections scheduled for later in 2010, the *Pyidaungsu Hluttaw* (parliament, which would comprise two houses: *Amyotha Hluttaw* and *Pyithu Hluttaw*) would be formed. In accordance with the Constitution, draft legislation to implement the Convention would be presented to the *Pyidaungsu Hluttaw*. This was just a matter of time. In this legal process, promulgated laws that were not contrary to the Constitution would remain in force unless they were repealed or amended. The Constitution, as in all countries, was the supreme law of the land. This process, however, would not open the door to any unlawful association or terrorist organization. There was no place for them.

With regard to the alleged cases of grave violations mentioned by the Committee of Experts in its report, the Government had provided written information on previous occasions. The speaker reiterated that no one had been or was apprehended in Myanmar for their implicit or explicit exercise of rights that might derive from the Convention. However, the rights that might derive from the Convention could not be abused or used as a pretext to violate the law. Any person who violated the law would be dealt with according to the law.

In conclusion, the speaker noted that the situation of the observance of Convention No. 87 by Myanmar did not warrant any urgent attention by the ILO. It would be misleading to listen to some quarters that wanted to exploit the current, important political process of Myanmar to their advantage, for personal motives. The ILO should not be seen by the outside world as a platform to meet the political objectives of some on the pretext of workers' rights. The speaker emphasized that the efforts by Myanmar to put in place domestic legislation that was in line with Convention No. 87 was not a question of "if", it was just a matter of time.

The Worker members said that the same situation had been occurring without change for 20 years. The Committee of Experts expressed its regret at having to raise the same issues in its report, the Government repeated the same information and the Worker members were obliged to denounce murders, arrests of trade unionists and violations of freedom of association.

The Worker members indicated that they were once again under the obligation to list the persons arrested, imprisoned or murdered merely for having exercised trade union or political activities. Six workers, Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, had been sentenced to imprisonment for having participated in the 2007 May Day demonstration, and for their association with the Federation of Trade Unions of Burma (FTUB). The Committee on Freedom of Association had called for their release. A member of the Petro-Chemical Corporation Union, Mr Myo Aung Thant, had been imprisoned for 12 years for maintaining contacts with the FTUB. The Committee on Freedom of Association had called for his release. An FTUB member, leader of the Education Workers' Union, Mr Saw Mya Than, had been killed by the army in retaliation for acts that it claimed amounted to a rebel attack. The Committee on Freedom of Association had called for an independent inquiry into the circumstances of his death. Mr U Tin Hla,

a railway electrician, had been arrested with his whole family on 20 November 2007 and sentenced to seven years' imprisonment for the possession of explosives, which were in fact merely a harmless toolbox, but in reality for having incited railway workers to support the popular uprising of September 2007. Ms Su Su Nway, who had lodged a complaint for forced labour with the ILO which had resulted in the conviction of four guilty persons, had been arrested in November 2007 and detained by reason of her support for the September 2007 movement. Two trade union activists, Ms Lay Lay Mon and Ms Myint Soe, had disappeared at the end of September 2007 after having participated actively in the protest. Moreover, in 2006, FTUB activist Thein Win had been arrested with seven members of his family. Three of his children had been sentenced to 18 years in prison. One of his children had been tortured and had become mentally unstable. Ms Naw Bey Bey, a member of the Karen Health Workers' Union (KEWU), had been sentenced to four years hard labour. Mr Saw Thoo Di, an activist in the Karen Agricultural Workers' Union, had been arrested, tortured and murdered on 28 April 2006 by Infantry Battalion 83. On 30 April 2006, the village of Pha had been shelled with mortars and grenades because the authorities considered that the FTUB and the Federation of Trade Unions – Kawthoolei (FTUK) had been holding a demonstration. In June 2005, ten FTUB activists had been arrested and then tortured and sentenced by a special court set up in the prison, and prison sentences of between three and 25 years had been imposed for having used satellite phones to convey information to the ILO and to the international trade union movement through the FTUB.

The Worker members affirmed that it was the responsibility of the Conference Committee to denounce these serious cases of arrest, long prison sentences and murders to suppress the mere exercise of ordinary trade union activities, such as public speeches on socio-economic issues, the commemoration of May Day, or sending information to the trade union movement. The authorities of Myanmar had never granted those concerned any of the fundamental rights envisaged in Convention No. 87, nor any public freedom. There was no right of appeal in these cases, as in cases of forced labour, and the authorities claimed that they consisted of illegal acts, terrorist organizations or interference in domestic matters.

While Article 8 of Convention No. 87 established the obligation for trade unions to respect the law of the land, the same provision provided that national legislation should not impair the guarantees provided for in the Convention. Every member State of the ILO was under the obligation to comply with the Conventions that it had ratified freely.

The previous year, the Conference Committee had emphasized the intrinsic links between freedom of association and democracy. However, the Government was now organizing elections without first having created the required conditions for their reliability, namely the recognition of freedom of association and trade union rights. The truth was that there was, at present, no legal basis in Myanmar for freedom of association. The new Constitution subjected the right to freedom of association "to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality". Several legislative provisions directly or indirectly restricted freedom of association: Order No. 6/88 requiring prior authorization for the establishment of an organization; Order No. 2/88 prohibiting the gathering, walking or marching in procession by a group of five or more people; the Unlawful Association Act of 1908; the 1926 Trade Union Act; and the 1964 Law instituting an obligatory system of organization and represen-

tation of workers. In short, there was still no freedom of association in Myanmar.

The Employer members recalled that Myanmar had ratified the Convention 50 years ago, that this case had been discussed at the Conference Committee for 20 years, and that the previous year the Committee of Experts had marked the extreme gravity of this case through a double footnote. The Committee of Experts had included in its report serious acts of murder, arrest, detention, torture, and sentencing to many years imprisonment for exercising normal trade union activities. The Committee of Experts had stressed, and the Employer members had also highlighted during last year's discussion, the fundamental impact of the right to life and other civil liberties as fundamental prerequisites to the implementation of Convention No. 87. The Government had mentioned that it was evolving into a democracy, but it was hard to see this as really being the case. The legislative issues raised by the Committee of Experts constituted fundamental violations of the Convention. The Government had referred, as in 2009, to the adoption of the new Constitution but it had not mentioned any steps to adopt legislation allowing for the establishment of trade unions. There was obviously a need for ILO assistance in drafting legislation which would be in compliance with the Convention, whether or not the Constitution provided an adequate basis for freedom of association.

It was clear that independent and free trade unions did not exist in Myanmar. The Credentials Committee had found, again this year, that the delegation was not tripartite. The non-government delegate was not therefore entitled to vote at the Conference. The Employer members emphasized that tripartism was the cornerstone of the ILO and of a fully fledged freedom of association system. This was a serious case which needed to be placed in a special paragraph of the report like last year.

The Worker member of Indonesia expressed regret at the lack of progress in this serious and long-standing case. Although the ASEAN countries had decided two years ago to take the big step of promoting human rights by establishing the ASEAN Human Rights Committee, Myanmar remained the only country in the region which was still considered a dictatorship. Despite some answers by the Myanmar Government, it was difficult to believe that any progress had been made in this case, given that arrests, disappearances, intimidation and imprisonment of labour and democratic activists had continued. Evidence of just some of the killings by the military which had taken place in 2010 included the following: Saw Mya Kaw Htoo, member of KEWU, killed on 17 January 2010 by SPDC soldiers at Keh Der village, Kyauk Kyi district, Taungoo; Saw Aye Mu, a member of Karen Agriculture Workers' Union, was shot and killed on 19 January 2010 by the same infantry. In addition, excessive sentences had been imposed on many labour and democratic activists, including Myo Aung Thant, FTUB central committee member, who had remained imprisoned since 1996, and Pho Toke, an organizer of FTUB, whose sentence had been extended by eight years, on top of the 24 years he had already received, simply for protesting to a prison officer.

Having participated in the FTUB congress at the Thailand border at the end of 2008, the speaker could testify that the policy and action plan of the FTUB constituted normal trade union activity and that there was not a single FTUB activity directed against the country and its people. The speaker therefore wondered why the Myanmar Government kept accusing the FTUB of being a terrorist organization. The ITUC unanimously supported the full membership of the FTUB in the ITUC, the recognition of the Seafarers Union of Burma (SUB) within the International Transport Workers' Federation (ITF) and the inclu-

sion of the FTUB as a new member of the ASEAN Trade Union Confederation. The Myanmar Government should therefore immediately change the 1964 Law that imposed a single trade union and the 1929 Trade Disputes Act which contained numerous prohibitions on the right to strike and recognize the FTUB.

The Government member of China observed that the Government had reported on its efforts to apply the fundamental principles of freedom of association, the drafting of revised legislation, and technical assistance received from the ILO. It should be acknowledged that concrete and effective measures had been taken by the Government to promote and give effect to trade union rights. The Government of Myanmar should continue its dialogue and cooperation with the ILO with a view to promoting Convention No. 87.

The Worker member of India expressed his deep, heartfelt anguish at the way the ruling junta had been curbing the minimum rights of the working people of Burma for ventilating and demonstrating their woes. Strike was the universal democratic action of the aggrieved workers to express their sufferings and obtain improvements when all other avenues had been closed. It was a sacred right, like those of freedom of association and collective bargaining, guaranteed under various instruments of the ILO and hailed as cornerstones of democracy. From December 2009 to March 2010, 22 workplace disputes had taken place in Burma in the industrial zones of the suburbs of Rangoon. Almost all the cases related to unfair pay, denial of public holidays, basic workplace amenities, compulsory overtime, lack of compensation for workplace injuries, and the issues that workers faced all over the world. Contrary to workers in most other countries, however, these striking workers had no organized representation or legal assistance, as workers had learned the hard way that it was too dangerous to select union leaders or worker representatives. Thus, negotiations with management were very difficult. By denying the workers the right to organize or to go on strike and thus the right to collective bargaining, the junta was condemning the Burmese people to live in sheer poverty and slavery. These recent reports of strikes were just the tip of the iceberg in a country where fundamental workers' rights were being violated on a daily basis. Burma should adopt legislation allowing for free trade unions in the country and protect the right of the workers to organize and bargain collectively.

The Government member of the United States observed that once again, the Committee of Experts had used the strongest language available to it to deplore the persistent failure of the Government to guarantee the fundamental and inalienable right of freedom of association. It was deeply disturbing that people in Burma were punished for exercising their basic human rights and that even the most ordinary trade union activities were considered to be criminal offences, subject to severe punishment. Worse yet, were the alleged acts of murder and torture as the result of trade union involvement. As noted by the Committee of Experts, there was no legal basis for the respect for, and realization of, freedom of association in Burma. The speaker called on the Government to take the necessary steps to remedy this situation.

Recalling the link between freedom of association and the elimination of forced labour, the speaker was pleased to note that a meeting on freedom of association had been held in the context of the ILO mission to Burma last January, and that the Government had requested further exchanges and advice on the issue. She hoped that these discussions would lead to an extension of the ILO presence in Burma to cover matters relating to freedom of association. In the meantime, however, the speaker called upon the Government to urgently address the concrete

measures recommended by the Committee of Experts. The Government should rectify the complete absence of freedom of association and cease the systematic persecution of those who attempted to exercise the right to organize.

An observer representing the International Trade Union Confederation (ITUC) stated that the Credentials Committee of this year's session of the International Labour Conference had decided that, due to incomplete and non-accredited delegations, the Myanmar non-governmental delegate should be excluded from voting in accordance with article 4(2) of the ILO Constitution. This underlined the fact that there were no trade unions or workers' organizations in the country and that the Government ignored the long-standing recommendations by the Conference Committee and the Committee of Experts in this regard.

From December 2009 to March 2010, 22 strikes had taken place in factories in industrial zones, as reported by the FTUB to the ITUC. All these cases had been resolved through talks under the orders of the local military commander and not through regular negotiations. Despite the denial of freedom of association, many FTUB members and trade union activists tried to raise awareness on basic trade union rights and develop underground trade unions. The junta had arrested 34 FTUB members, eight of whom were women, for attempting to hold May Day events, host discussions on organizing, and raise awareness and disseminate documentation on basic trade union rights, workers' rights and human rights. These were according to the junta, criminal activities. The speaker called for the immediate release of these trade unionists. The speaker also called for the immediate release of Myo Aung Thant, who had been arrested in June 1996 and remained in Myitkyina prison, having reportedly developed mental problems. Many other political prisoners who had been arrested at the same time had been released, but he had not.

In March 2010, certain persons from Burma had been arrested with arms in a neighbouring country and were reported to have been sent by the SPDC Military Intelligence to assassinate the FTUB leaders. The Constitution, which had been forced on the people immediately after Cyclone Nargis, did not guarantee freedom of association. Article 354 of that Constitution stated that trade unions could only be formed if they assembled peacefully in processions and did not disturb tranquility and security. This left no room for freedom at all. In accordance with the resolution adopted under article 33 of the ILO Constitution in 2000, the ILO and its constituents should consider implementing targeted sanctions on the junta and its income. Sanctions could focus on areas that would not hurt the general population, who did not have any kind of involvement in international investments. An example was the insurance sector, which, if targeted, would have an immediate impact on international trade and investment controlled by either the junta or its cronies.

The Government member of India expressed appreciation for the ongoing collaborative efforts between the Government of Myanmar and the ILO, acknowledged the process of transition that Myanmar was undergoing towards a democratic society, and welcomed the new Constitution, the rights of citizens and the intention to enact laws for labour organizations in line with Convention No. 87. These steps were progressive, indicating the commitment of the Government of Myanmar to address the issues arising out of the Convention and further encourage a climate of dialogue that facilitated constructive cooperation between Myanmar and the ILO. He concluded by commending the technical assistance which was being rendered by the ILO in this direction.

The Worker member of Colombia reaffirmed that the case was particularly serious for at least three reasons, and

necessitated the adoption of special measures to contribute to the restoration of freedom of association in Myanmar and to give credibility to the ILO standards system. The first reason related to the extremely serious situation with regard to political and civil liberties in which those who attempted to organize in trade unions were murdered, detained, tortured and sentenced to imprisonment. The ITUC had documented these cases fully over the years. The second reason was that freedom of association did not exist in Myanmar in law or in practice, since it was a State which, through violence and institutional means, prevented workers from being able to exercise freedom of association. He recalled that the Committee of Experts had once again called for guarantees of the right to associate freely, to organize programmes, and to affiliate with federations and international confederations without any interference. The third reason why the case was serious was that these and other situations in relation to Myanmar had been raised for many years and the situation had still not been resolved. Total failure to comply with Convention No. 87 persisted and this seriously prejudiced the credibility of the ILO supervisory bodies. For these reasons, he reiterated the need for special measures to unblock the situation. He noted that the Committee of Experts had requested Myanmar to accept an extension of the ILO presence in the country, but he hoped that the Committee would be able to propose other measures.

The Government member of the Russian Federation said that his country recognized the importance of ILO member States respecting ILO Conventions, particularly Convention No. 87. In the present case concerning Myanmar, it must be observed that a wide-reaching constitutional reform was under way and that national elections were planned for the end of the year. The policy of reform was aimed at guaranteeing freedom of association for independent trade unions, as enshrined in Chapter VIII of the new Constitution of Myanmar. The Government had also reported that a new act on trade unions was being drafted, with ILO assistance. In such circumstances, it was important to strengthen cooperation between the Government and the ILO in order to ensure the success of the legislative reforms being undertaken. It was also to be hoped that the reforms referred to by the Government representative in his opening speech would become reality.

The Worker member of Japan observed that despite the recurrent examination of this case by the Committee and the repeated inclusion of its conclusions in a special paragraph, trade unionists were still under the threat of acts of murder, arrest, detention, torture and sentencing to many years of imprisonment for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day rallies. Still no concrete measures had been taken to enact legislation guaranteeing all workers the right to establish and join organizations of their own choosing, or to repeal Orders Nos 2/88 and 6/88 as well as the Unlawful Associations Act, which constituted the most serious obstacles to the right to organize. The Government was confined to repeating that several sections of the Constitution would give effect to the provisions of the Convention and that new laws would be drafted. However, the Constitution should be amended as it contained broad exclusionary clauses in its controversial article 354 which would lead to continued violations of freedom of association in law and in practice.

The workers could not wait much longer. This very serious situation was a persistent breach of the Convention which had been going on for several decades. The words by the Government were empty, fundamental human rights were given no importance and even the dignity of life was being treated like a mere commodity by the Government. The Government should understand that society

was not sustainable without free, independent and democratic trade unions and that genuine freedom of association could not be realized without civil liberties and respect for civil society. In this regard, Aung San Suu Kyi and more than 2,100 political prisoners, including labour activists, should be released immediately. Faced with the Government's failure to implement the recommendations of this Committee after many years of discussion on this alarming case, the speaker felt strongly that additional and stronger measures were necessary.

The Government member of Cuba expressed appreciation for the presentation given by the Government of Myanmar, which had illustrated the efforts made to apply Convention No. 87. Technical cooperation and bilateral dialogue between the Government of Myanmar and the ILO were fundamental tools for the effective implementation of the Convention, and he therefore encouraged further technical cooperation and open and unconditional dialogue, along with analysis of the domestic situation.

The Worker member of France stated that Burma continued to commit grave violations of the Convention. National laws on freedom of association should be reformed urgently and, in any case, before the forthcoming elections. Appropriate pressure should be maintained on the regime to carry out such reform, which was of fundamental importance both for trade unions and democratic political movements. While the ILO continued to condemn the grave violations of the Convention, it should also remind multinational companies that operated in Burma and their unions that they had an important role to play in bringing about respect for the Convention in the country. Many such multinationals had their head offices in OECD countries covered by the OECD Guidelines for Multinational Enterprises which included reference to fundamental principles such as the fundamental ILO Conventions. The National Contact Points (NCPs) set up in each OECD country, including in several Asian countries, acted on these companies when they breached labour standards in Burma. The governments, unions and employers' organizations, together with the NCP, could and did condemn the practices of multinationals operating in Burma which did not respect Convention No. 87. They should play an active role in relation to Burma in this respect and the ILO should closely follow developments. Multinationals must keep persuading the Burmese regime that trade unions were not scary, by showing that they had trade union structures in their companies, that social dialogue did take place and resulted in freely negotiated collective agreements, and that worker participation could exist on issues such as health and safety in the workplace. Observing that the country exported every year tens of thousands of metric tons of gas and timber, the speaker called for economic pressure to be exerted on Burma in a targeted manner so that it did not affect the population but effectively made the regime change the Constitution and allow for free and fair elections.

The Government member of Canada expressed continuing concern about the critical human rights situation in Burma and referred to the real concerns reported regularly by the ILO and other United Nations bodies in this regard. The speaker underlined the importance of respecting and implementing commitments to freedom of association as it was the condition *sine qua non* for the realization of all labour rights and commitments to the ILO made by the Government. The Government had announced plans to implement legislation on freedom of association after the adoption of the Constitution pursuant to the 2010 elections. This presented a historic opportunity to commit to legislation that incorporated the best international standards. To this end, it was important that the authorities took advantage of the wealth of knowledge and experience that the ILO possessed and could share with them.

The speaker therefore urged the Government to invite a tripartite ILO delegation to engage in dialogue on the review of national legislation and the drafting of new laws in line with Convention No. 87. Such an invitation would send a clear signal and further demonstrate the Government's commitment to labour rights. Although the commitment to legislation after elections was to be welcomed, some reforms were needed immediately. The speaker also urged the Government, as part of its renewed commitment to freedom of association and labour rights, to take immediate steps to release labour activists currently imprisoned.

The Worker member of South Africa emphasized that the FTUB was a genuine trade union fighting for workers' rights, including the right to freedom of association. Yet, it was a banned organization wrongly accused of terrorism. Freedom of association and worker representation could only be meaningful if workers' organizations were allowed to exist in conditions of freedom. Free and fair elections were an essential step towards meaningful democracy, genuine social stability and dialogue, and progress towards the eradication of forced labour.

The military junta in Burma had characterized the upcoming elections as a fifth step on its "road map to democracy". But how could there be democracy when the Government was based on the rule of military might; the regime had identified workers as one of the key and prime targets of state terrorism; when the election law had been deliberately designed to exclude several parties from the election process, especially the National League for Democracy (NLD) led by Daw Aung San Suu Kyi; when the design by the junta ensured that the military and the junta's political creation, the Union Solidarity and Development Association (USDA), would each take 25 per cent of the parliament seats, effectively excluding all other parties from political power.

These sham elections should not be allowed to justify business with Burma and the FTUB should be supported on a continuous basis in its struggle for legal recognition and the right to represent workers of Burma. Coming from a country where sanctions had finally led to the dismantling of the Apartheid system, the speaker expressed support for the call for disinvestment in Burma. All ILO constituents were already under an obligation to review their economic ties with the military junta, under the resolution adopted under article 33 of the ILO Constitution in 2000. This should apply not only with regard to forced labour but also freedom of association. The resources brought into this country through multimillion investments by large corporations unfortunately went directly to the military junta which trampled on the people's rights and were reportedly also funding a nuclear project.

Twenty years after the last democratic elections in Burma, the junta should urgently revise its action and finally allow for full and free elections. The authorities should be urged to reflect on a national process of genuine, meaningful and lasting dialogue, as well as cessation of aggression against the people and workers, so as to advance towards the restoration of democratic civilian rule and meaningful workers' representation.

Another Government representative categorically rejected all comments not relevant to the ILO's work, as well as all comments and criticism concerning his country's political process. He viewed these comments as attempts to interfere in his country's internal affairs. He believed that the destiny of Myanmar should be decided by its own people. The democratization process was moving forward steadily. Democratic elections would take place later in the year, as the fifth step of the road map to democracy. Laws necessary for the elections had already been promulgated and 32 political parties had been registered and permitted for the upcoming elections. The Con-

stitution had been approved by 92.48 per cent of eligible voters. This overwhelming support had clearly reflected the will of the people and should be respected by all. The new Constitution had been thoroughly discussed with the participation of all interested parties. Its section 354 adequately captured the spirit of the Convention, and the process for promulgating new legislation would begin once the Constitution came into legal effect. Meanwhile, the drafting process had already begun and any legislation ensuing from this process would be in accordance with the Constitution and the Convention.

With regard to the FTUB, he referred to what had already been said in the statement by the Permanent Representative of Myanmar, Ambassador U Wunna Maung. In accordance with the Constitution, a drafted legislation to implement the Convention would proceed to the *Pyidaungsu Hluttaw*. Promulgated laws not contrary to the Constitution would remain in force. This process, however, would not open the door for any unlawful association or terrorist organization. A fictitious account relating to a criminal by the name of Maung Maung and his associate Thein Win had been dramatized and made important. These persons were not Myanmar nationals and were residing outside Myanmar. The Government had no interest in them or responsibility for them. Perhaps the insecurity of living abroad illegally as fugitives and hiding from the law over decades had compelled them to such a story, to draw attention and generate sympathy. These persons were endangering and violating the security of Myanmar's people by plotting, financing and carrying out several bomb attacks leading to loss of lives and numerous injuries. His Government had reported their terrorist acts to Interpol and the Executive Directorate of the Counter-Terrorism Committee, guided by Security Council Resolutions Nos 1373 (2001) and 1624 (2005).

The Worker members denounced the killings, tortures, detentions and arrests of trade unionists for activities that would pose no problems in other countries. These persistent violations of freedom of association, in law and in practice, would continue as long as the basic civil liberties were not restored and respected. It was therefore appropriate to request the following five measures: (1) the revision of the Constitution, especially the articles on freedom of association and forced labour; (2) the repeal of ordinances and laws on illegal associations; (3) the legalization and recognition of the FTUB; (4) the immediate release of Ms Aung San Suu Kyi and all trade union activists and political prisoners who had exercised their freedom of expression and freedom of association rights; and (5) the cessation of impunity for criminal acts of violence against trade unionists and acts of forced labour. They requested the Office to use all legal and practical means at its disposal, including the designation of a liaison officer dealing with complaints relating to the exercise of the rights contained in the Convention. In conclusion, given the gravity and persistence of the situation, the Worker members considered that all means available to the ILO should be used, including the establishment of a new commission of inquiry, as well as the designation of a liaison officer responsible for dealing with complaints relating to the exercise of the rights enshrined in Convention No. 87.

The Employer members expressed scepticism with regard to this case. There appeared to be no democracy, no civil liberties, no tripartism and no freedom of association in the country, where a climate of fear, violence and intimidation prevailed. The existing legislation violated freedom of association. The Government urgently needed the help of the ILO: it needed to submit the text of section 354 of the new Constitution to the Committee of Experts and to adopt specific legislation which would guarantee the application of the Convention. They concluded

by stating that the case should be noted as a case of continued failure to implement the Convention.

Conclusions

The Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996.

The Committee observed that the Committee of Experts had for many years now deplored the gravity of the allegations of arrest, detention, long prison sentences, torture and denial of workers basic civil liberties, as well as the long-standing absence of a legislative framework for the establishing of free and independent trade union organizations.

The Committee took note of the statement made by the Government representative in which he stressed that, in accordance with its road map, Myanmar was committed to pursuing its transformation to a democratic society. Freedom of association rights, as well as other basic civil liberties, were provided for in the new Constitution and would set out the framework within which new trade union legislation would be developed. The Government representative added that no one has been or is apprehended in Myanmar for implicit or explicit exercise of the rights derived from the Convention. As regards requests for recognition of a certain organization, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and it could therefore not be recognized as a legitimate workers' organization.

Recalling the long-standing and fundamental divergences between the national legislation and practice, on the one hand, and the Convention, on the other, and observing that the Government itself has admitted that there can be no legal trade unions in the country as yet, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. It once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act.

The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed with regret that the Government had yet to ensure the freedom of association ground rules necessary for any credible transition to democracy. The Committee therefore called upon the Government to take concrete steps prior to the upcoming election process to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention. It emphasized that it was crucial that the Government take all necessary measures to ensure a climate wherein workers and employers could immediately exercise their freedom of association rights without fear, intimidation, threat or violence.

The Committee continued to observe with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite the calls for their release. The Committee was bound once again to call upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the FTUB, and urged the Government immediately to put an end to the practice of persecuting workers or other persons for having

contact with workers' organizations, including those operating in exile.

The Committee recalled its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize. It reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87 and to establish a complaints mechanism for violation of trade union rights.

The Committee urged the Government to transmit any relevant draft laws as well as a detailed report on the concrete measures taken to ensure significant improvements in the application of the Convention both in law and in practice to the Committee of Experts at its meeting this year. In light of the assurances provided by the Government, the Committee expected that it would be in a position to observe significant progress on all the above matters at its next session.

The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.

SWAZILAND (ratification: 1978)

A Government representative, Minister of Labour and Social Security, said that his Government attached great importance to the work of the Conference Committee and the goals of the ILO and undertook to continue observing the letter and spirit of ratified ILO Conventions including Convention No. 87. He would seek to demonstrate that Swaziland had achieved significant progress towards compliance with international labour standards.

With respect to the Industrial Relations Act (IRA), the Government had published the Industrial Relations (Amendment) Bill and had tabled it in Parliament where it was currently under consideration. The Bill addressed several issues raised by the ILO high-level mission as well as the Committee in that it: (1) granted the right to organize to domestic workers by broadening the definition of "undertaking" (clause 2(1)(b)); (2) provided for the establishment of a minimum service in the event of strikes in sanitary services; (3) removed the statutory restrictions relating to the nomination of candidates and eligibility for union office (clause 3); (4) shortened the dispute settlement procedures (clauses 5 and 6); and (5) ensured that the Conciliation, Mediation and Arbitration Commission (CMAC) would only supervise strike ballots at the union's request (clause 6(b)).

With regard to the status of social dialogue, the Government representative announced that the National Steering Committee on Social Dialogue had been appointed and comprised the Minister of Labour and Social Security as the Chairperson, representatives from the two workers' and two employers' federations, as well as the Principal Secretary, Labour Commissioner and Legal Advisor of the Ministry. The Committee was fully operational and had agreed to a schedule of monthly meetings for 2010. In addition, the discussions on the Decent Work Country Programme had been concluded and the social partners intended to sign it shortly.

The Government representative vehemently denied the alleged indiscriminate use of the Public Order Act of 1963 to repress lawful and peaceful strikes. The Act did not apply to meetings of lawfully registered trade unions. In the event, however, that a meeting turned violent, police might intervene to maintain law and order. Its presence was essential to protect both the rights of persons participating in strike action and of innocent citizens. He also drew the Committee's attention to the appointment in September 2009 of the members of the Commission on Human Rights and Public Administration. This autonomous body, the mandate of which covered human rights

including workers' rights, had commenced its work. With reference to collective bargaining for prison staff, the Government had taken the decision to amend the Prisons' Act in line with the recommendation of the ILO high-level mission.

As to the practical application of section 40 of the IRA concerning civil and criminal liability of workers and their organizations, the Government representative believed that the provision did not impair the right to strike. However, strike and protest action became increasingly violent and destructive to private property. The Government not only had to ensure that workers freely enjoyed the right to strike but also to protect the rights of others. The worker groups should thus ensure that only their members took part in lawful strikes and instil a sense of responsibility in them. Regarding the repeal of the 1973 Decree/State of Emergency Proclamation (1973 Decree), he reiterated that the 2005 Constitution was the supreme law of the country. Finally, the Government representative reaffirmed that Swaziland was committed to complying with international labour standards and would continue to respect its reporting obligations.

The Worker members stated that Swaziland had a long tradition of trade union repression and that the case was therefore regularly discussed by the Committee. The previous year it had even been mentioned in a special paragraph. The facts were unfortunately familiar and, even if the Government's replies varied slightly, they did not contain much promise of improvement.

With regard to the facts of the matter, it was worth recalling that they involved acts of violence and brutality by the police against trade unionists and union demonstrations, threats of dismissal of union members who had gone on strike in the textiles sector and the summoning and arrest of union leaders such as the General Secretary of the Swaziland Federation of Trade Unions (SFTU). Only recently, that very week, private houses had been raided and bombed.

In terms of legislation, the Committee had found on every occasion that it had discussed the case that the Government had not adopted the amendments that had been called for years, despite the technical assistance it had received from the ILO and the visit of a high-level mission in 2007. They reminded the Committee that the IRA needed to be amended, specifically on the following points: control over the appointment of union officials, supervision of votes on strike action, the ban on strikes in the health sector and the requirement that a trade union's membership comprise 50 per cent of the workers for it to be recognized. The Government had only very recently submitted to Parliament the amendments to the IRA to which the Labour Advisory Board (LAB) had agreed upon in 2009. There was therefore no guarantee that the new Act would be adopted and implemented in the near future. There were, moreover, several other laws that directly or indirectly undermined trade union activities: the 1973 Decree, which had supposedly been repealed by the new Constitution, which nevertheless contained the same provisions; the 1963 Public Order Act which had been used to suppress lawful strikes and peaceful demonstrations; the Police Act which had been used to arrest union officials and confiscate union property; the Prisons' Act prohibiting prison staff from forming trade unions; and, above all, the Suppression of Terrorism Act which served to justify measures taken against union activities.

Social dialogue was also a source of concern. The Government spoke of a high-level commission on social dialogue, but if the commission had ever existed it had been dissolved in 2009 and replaced by a much lower level committee composed of the social partners and only ministers of labour and charged with social affairs, which had not met for months. This wordless social dialogue illus-

trated the Government's approach to the subject, which involved announcing reforms and establishing committees without any actually happening in practice.

The Employer members recalled that this case had a long and disappointing history of failure to comply with the Convention. It had been the subject of 17 observations by the Committee of Experts and was being examined by the Conference Committee for the ninth time. With reference to their earlier intervention during the general discussion, the Employer members wished to emphasize that, in their view, Convention No. 87 neither provided for the right to strike nor guarantee certain forms of strike action. They could not therefore agree with the comments of the Committee of Experts in respect of recognizing the right to strike in sanitary services, ensuring that penalties imposed on strikers did not impair the right to strike and guaranteeing that workers might engage in sympathy strikes without incurring sanctions. They also noted that it would have been useful for the Committee's discussion to be able to consult the 2009 International Trade Union Confederation (ITUC) comments concerning the alleged detention of the General Secretary of the SFTU and the Government's reply.

The Employer members believed that there remained two fundamental issues in this case: (1) the continuing failure to adopt national legislation guaranteeing freedom of association and the protection of the right to organize; and (2) the failure to engage effectively in social dialogue. Regarding the first issue, the stark fact was that, more than 30 years after the ratification of the Convention and despite last year's mention of the case in a special paragraph of the Committee's report and ILO technical assistance, including the 2006 high-level mission, the Industrial Relations (Amendment) Bill had not yet been adopted. It was therefore difficult to remain anything other than highly sceptical that the legislation would finally be amended. Recalling that through ratification of the Convention the Government had committed itself to giving effect to Articles 2, 8 and 11, the Employer members stated that the Government should continue to avail itself of ILO technical assistance, in order to address as a matter of urgency all pending legislative issues mentioned in the observation of the Committee of Experts.

With regard to the second issue, noting that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months and in the absence of any information concerning a new lower level committee, the Employer members urged the Government to reinvigorate all efforts to engage in social dialogue without delay. The failure to do so up to now gave rise to serious doubts about the Government's will to comply with the requirements of the Convention, given the allegations of the continuing violations in this case of repression of freedom of speech, police brutality and oppression. When considering the report of the Committee of Experts, it was challenging to accept that there had been genuine progress. The Employer members therefore respectfully invited the Government to provide today: (1) a clear and unequivocal time frame for the adoption of national legislation giving effect to the Convention, in particular Articles 2, 8 and 11; and (2) a clear and unequivocal commitment to engage effectively in social dialogue.

The Worker member of Swaziland affirmed that the denial of freedom of association had reached deplorable levels in Swaziland and that the atmosphere had become so threatening and oppressive that workers died in their quest to associate and assemble freely. The lack of social dialogue was one of the key contributing factors to the social, political and economic challenges faced by the country. Despite the promise made by the Government at the 2009 discussion to convene the High-level Social Dia-

logue Committee to be chaired by the Deputy Prime Minister, the Government had done the opposite by dissolving the Committee in December 2009 and replacing it with a low-level committee to be chaired by the Minister of Labour and Social Security. Unlike the previous body, the current National Social Dialogue Committee had no budget, as the social partners were expected to bear the costs, and had not yet discussed any matter of importance, nor was any cluster committee in place. The arrangements were clearly intended to impede the Committee's work, given the Government's preference for a so-called smart partnership dialogue process which was not representative, but was fully funded. The above clearly demonstrated that the Government did not support social dialogue.

In relation to the amendment or repeal of inconsistent legislation, the Worker member indicated that the 2005 Constitution could not revoke the effects of the 1973 Decree, since the Constitution only nullified legislation that was inconsistent with its provisions. The Decree therefore clearly remained in force. Peaceful trade union protest actions continued to be violently disrupted under the guise of enforcing the Public Order Act or the Suppression of Terrorism Act. Unions remained civilly and criminally liable for any acts occurring during protest action under section 40 of the IRA. In this context, he contested that there had been any acts of violence initiated by workers during protest action. The Government had only submitted the Industrial Relations (Amendment) Bill to the LAB in May 2010, although the tripartite drafting process had been completed before June 2009, which proved the Government's claims of progress misleading. Moreover, he was not aware of any proceedings instituted to amend the Prisons' Act to grant correctional service employees the right to organize.

The Suppression of Terrorism Act was used to repress voices of dissent of trade unions and political parties. It defined the term "terrorist act" as any act or action that compelled the Government to do or refrain from doing something. Given the monitoring role of trade unions as to whether government actions were in the interest of workers, trade union actions could easily fall under this broad definition which covered both peaceful and violent means. The Act was used to suppress union activities under the guise of suppressing terror. The Workers' Day celebration on 1 May 2010 had been violently disrupted involving physical searches, confiscations and arrests. Mr Siphosile Jele was charged under the Suppression of Terrorism Act and, after three days of custody, was reported to have hung himself in prison. Contrary to police instructions to bury him on the following day, the family had requested an independent autopsy. His burial on 15 May was brought to a halt by 400 armed police and at the funeral on 21 May the leader of the Peoples United Democratic Movement (PUDEMO) had been arrested. The Government had since instituted an inquest into the death of Mr Jele, which was, however, limited to the causes of death and did not cover the police conduct on 1 May. In November 2009, police officers had detained organizers of the Swaziland Transport and Allied Workers Union, confiscated membership forms and interrogated all union officers on the grounds of orders to prevent the unionization of public transport workers. The Worker member concluded that Swaziland had turned into a police State. The Government should be encouraged to remove urgently all obstacles to fundamental rights and freedoms.

An Employer member of Swaziland commended the Government for the significant progress made so far on the legislative amendments. The Industrial Relations (Amendment) Bill sought to recognize the right to organize of domestic workers and the right to strike in sanitary services, remove the statutory restrictions on the nomina-

tion of candidates and eligibility for union office, ensure that the CMAC could not supervise strike ballots unless requested to do so and shorten dispute settlement procedures. Although practical implementation was still a challenge, she was optimistic that the country had taken a step in the right direction.

It was regrettable that once again the application of this fundamental Convention by Swaziland was being discussed in the Committee. The issues raised in this case could have been easily resolved if the Government had been genuinely committed to the process of social dialogue. The Swaziland employers strongly believed in social dialogue, in particular in light of the difficult economic situation of the country, and appreciated the establishment of the National Steering Committee on Social Dialogue, which had scheduled monthly meetings to address key issues of concern to the social partners. She expressed disappointment at the slow pace of the social dialogue process and indicated that this issue had repeatedly been brought to the attention of the relevant authorities. While the Ministry of Labour and Social Security had displayed good will, this was not evident in other parts of the Government. As long as both social partners and the Government were committed to the process of social dialogue, progress on all pending issues of the case could be achieved. She therefore strongly recommended that an effective social dialogue framework be put in place as a matter of priority and looked forward to the non-inclusion of Swaziland in a special paragraph in the Committee's report.

Another Employer member of Swaziland saw a solution only in the process of constructive social dialogue and was committed to persuading the Government to deal with all the issues raised by the Committee. Requiring a stable and free political environment in which enterprises could operate, his organization was not involved in politics and aimed to undertake a moderating role. Meetings of the Steering Committee on Social Dialogue had commenced and the social partners had vowed to make it a success and he therefore emphasized that the case should not be included in a special paragraph of the Committee's report.

The Government member of Norway, speaking on behalf of the Government members of Denmark, Finland, Iceland, Norway and Sweden, noted with growing concern the continued negative developments of the human rights situation in Swaziland in general and the lack of compliance with the Convention in particular. She was further deeply concerned at the aggravated situation in relation to political opposition and trade unions in Swaziland, including freedom of expression, as well as the right to organize. Noting that the ITUC had reported "serious acts of violence and brutality of the security forces against trade union activities and union leaders in general", she deplored the death in custody of PUDEMO member Siphosile Jele, who had been arrested on Workers' Day.

The Committee of Experts had once again highlighted several pieces of legislation because of their non-conformity with the Convention. While considering the steps taken to amend the legislation, she urged the Government to ensure that its legislation be fully compliant with the Convention. The human rights situation in the country, including the right of workers to organize and to arrange and participate in legal strikes in accordance with Convention No.87, was a long-lasting case and had been discussed in this Committee several times. She therefore urged the Government to continue to benefit from the technical assistance of the ILO in order to bring the legislation into compliance with Convention No. 87 and to ensure the effective enforcement of the legislation. She further urged the Government to provide detailed information regarding the reported acts of violence against

trade union activists and those participating in lawful and peaceful strikes.

The Worker member of South Africa regretted that Swaziland had become southern Africa's tragedy. South African workers had worked closely with Swazi trade unions in support of the struggles for workers' rights and democracy. It had become clear that there could be no meaningful freedom of association, social dialogue or improvement in the lives of workers without democracy. In the region, patience with the ever-deteriorating conditions in Swaziland was growing thinner and far more drastic steps were required to turn things around. The mysterious death of Mr Sipho Jele and the intensified ruthless persecution of workers and political activists pointed to a regime determined to intensify the harsh treatment of its people. The King's order for the strangling of opposition, targeting particularly activists of the Swaziland Youth Congress (SWAYOCO) and the PUDEMO, with its President Mario Masuku, had laid the basis for the current unacceptable levels of worker persecution. The Suppression of Terrorism Act, the Public Service Bill and a series of other laws confirmed the increased militarization of society, further limiting and worsening the possibilities for freedom of association. Army personnel were all around intimidating people. The persecution of political and workers' activists was a systematic attack on those people demanding democracy and social justice. The Swazi State had never felt as threatened and desperate. This was manifested in the increased attacks on workers and all those fighting for democracy and was similar to the tactics used by South Africa's Apartheid regime, which had also bombed and raided activists' homes. As Swaziland was permanently represented on the ILO's list of violators of Convention No. 87, decisive steps had to be taken to achieve the desired impact. She therefore supported the call for an ILO high-level delegation whose findings should form the concrete basis for real progress; called for meaningful, genuine and lasting social dialogue that would help Swaziland out of the current quagmire; and also called for an independent inquiry into the death of Mr Sipho Jele and the behaviour of the Swazi security forces in relation to workers' activities.

The Worker member of Ghana observed that the environment for workers to exercise the right of freedom of association and protection of the right to organize, as enshrined in Convention No. 87, remained very bad. The Government had made little progress in ensuring and guaranteeing workers' rights in general despite, as observed by the Committee in 2009, the country benefiting from ILO technical assistance and high-level missions. This was compounded by the absence of a true pluralistic democratic environment in Swaziland and the suppression of freedom of choice. The repeal of the draconian 1973 Decree through the enactment of a new Constitution in 2005 had merely maintained the political status quo in force since 1973, giving executive, legislative and judicial powers to the King and setting a ban on political parties and meetings, including union meetings, as demonstrated in the brutal disruptions of the 2010 May Day celebrations by state security. Intimidation, arbitrary arrests and brutality against trade union activists had continued with impunity. Of particular concern was the use of state security to intimidate and harass workers and trade union leaders, which had instilled awe and insecurity in workers and the wider society and undermined the very essence of freedom of association.

The enactment of the Suppression of Terrorism Act had further worsened the environment for exercising the rights enshrined in the Convention. Based on this Act, the Government had started categorizing actions of workers, trade union associations, political activists and civil society at large as acts of terrorism. Such criminalization of trade

union and workers' activities was not acceptable as it violated fundamental workers' rights and to the contrary of the Government's assertions, social dialogue in its true sense did not exist.

There could be no meaningful progress in respect of workers' rights in particular as they related to Convention No. 87 as long as the Government denied its citizens, including the workers, a democratic environment and space and continued to apply repressive legislation. The recent amendment of some pieces of legislation, as brought forward by the Government, was not enough, but merely cosmetic, as the practice on the ground showed that little or no improvement at all had been achieved.

Taking into account that freedom of association was particularly important to attain the ILO's objectives, he strongly urged the Government to work with the social partners and other stakeholders swiftly towards removing all repressive pieces of legislation, including the Suppression of Terrorism Act, and to create a true democratic environment enabling the exercise of the right to freedom of association.

The Government member of Mozambique, speaking on behalf of the Government members of the Committee, Member States of the Southern African Development Community (SADC), endorsed the report and Swaziland's commitment to apply and respect all ratified ILO Conventions, and notably Convention No. 87. Considering the observations of the Committee of Experts, the SADC countries felt that the steps currently being taken, to which the Employer members had referred, were pointing in the right direction. The meeting of Ministers of Labour and the social partners of the SADC countries had welcomed the fact that all the ILO's fundamental Conventions had now been ratified. The members of the SADC were endeavouring to ensure the implementation of the Conventions.

The Worker member of the United States emphasized that, since 1997, Swaziland had been reviewed in relation to Convention No. 87 on numerous occasions and the case had been included in a special paragraph of the Committee's report on several occasions, including in 2009. The Committee of Experts had explicitly called for authentic results to be produced at the 2010 session of the Conference Committee, in particular: (1) abrogating the 1973 Decree, which had been used to destroy the exercise of the right of workers to freedom of association; (2) amending the 1963 Public Order Act to avoid it being used to proscribe peaceful strikes; (3) amending the Prisons' Act to grant trade union rights to prison staff; and (4) overhauling those civil and criminal liability provisions of the IRA imposed on trade union leaders for having exercised their right to coordinate peaceful strike action. It was unfortunate that in this case the Employer members did not recognize the irrefutable jurisprudence of the ILO supervisory bodies stating that the right to strike was also at the heart of Convention No. 87.

In 2009, the Committee had called upon the Government to "transmit a detailed report to the Committee of Experts" for its 2009 session, containing a "time-line for resolution" of all pending questions. Since the Government had not implemented any of the requests made and even the Bill to amend parts of the IRA remained a Bill, the Government had once again acted in contempt of the ILO supervisory system's conclusions. The Government continued to use devices such as the 1973 Decree and the Public Order Act to victimize the SFTU through police harassment and arrests, as well as to justify death threats to Mr Jan Sithole's family. These devices had also been used to bust legitimate trade union activity in Swaziland's critical textile sector, which was dominated by Taiwanese companies. In March 2008, the police had conducted a

crackdown on a strike of thousands of textile workers with tear gas and gunshots.

This was most regrettable as the Government, even in the midst of the great global recession, could easily start overhauling the legislative and executive measures used to justify the arrest, beating, imprisonment and terrorization of Swazi trade unionists, especially in the textile and apparel sectors. It could also easily start complying with all requests made by the ILO supervisory bodies over the last decade. Compliance would be beneficial since trade and market access policies implemented by the United States, such as the African Growth and Opportunity Act, rewarded the observance of core labour standards, including freedom of association. While hoping that the Government would take serious steps to advance both the principle of decent work and those principles enshrined in Convention No. 87, he requested that the conclusions of the Committee be included in a special paragraph of the Committee's report and that a high-level tripartite mission be conducted.

The Worker member of the United Kingdom had been surprised when, in 2009, he had heard the Employer members' recollection that since 1997 the Government representative had repeatedly stated that legislation was being changed, the situation was improving and Swaziland would soon be compliant. The only change, however, had been a change for the worse, as shown by the adoption of the new law to remove the right to bail for anyone arrested for participating in protests. Therefore, the Government's statement had to be taken with a high degree of scepticism, as could be seen when the current discussion was put in a historical context. Swaziland had gained independence and, as was hoped, genuine freedom for its people in 1968 with the establishment of a constitutional monarchy. However, in 1973 the then governing party had effectively ceded absolute power back to the King and established a long-lasting state of emergency which, despite the hope invested in the 2005 Constitution, effectively remained in place today. Swaziland had become a member of the ILO in 1975 and had ratified numerous Conventions without, however, complying with the requirements of several of them, in particular Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

With political parties banned, trade unions had continued to play an essential role in representing the interests of ordinary Swazi citizens. Recalling the repressions enumerated by other speakers, he added that recently suspicious burglaries and thefts of computer equipment from union leaders' homes and a bomb attack on the house of Mr Alex Langwenya had taken place. While the culprits were unknown, the fact that the police had arrived minutes after the bomb attack and arrested Mr Langwenya himself was not very reassuring. One of the most recent violations had taken place on May Day 2010 when a trade unions festivity at the Salesian sports ground had been raided by the police based on the Suppression of Terrorism Act. Searching for people wearing T-shirts of banned organizations, many gatherers, including guest speakers, had been arrested by the police, partly even violently. The head of the Swazi Consumers' Association had been arrested on the ground that he was not a worker. Most of those arrested had later been released, but nothing had been heard of union member Sipho Jele, whose family had been interrogated for four hours without being told of his whereabouts. On 4 May 2010 his body had been released and it had been stated that he had hung himself from the rafters of the prison toilet and that he had had to be buried immediately. Very few people believed that he had killed himself. In light of the comments of the Committee of Experts, and taking into consideration the statements made by the Government representative, he empha-

sized that all those, like Mr Sipho Jele, who were fighting in Swaziland for their most basic rights should see that the ILO could take action that would lead to real change.

The Government member of South Africa aligned himself with the statement made by the Government member of Mozambique, who had spoken on behalf of the Government members of the SADC countries, and expressed his condolences to Mr Jele's family. He welcomed the report of the Committee of Experts and offered his country's assistance in promoting social dialogue in Swaziland, as dialogue had been key to his own country's success. He further welcomed the Government's commitment to working with the Committee and urged the ILO to support the promotion of meaningful and sustainable social dialogue in Swaziland.

The Worker member of Germany, speaking on behalf of the European trade unions, observed that Swaziland had been in a state of emergency for 35 years. All powers were vested in the King, and opposition parties and gatherings were prohibited. The population, of which 70 per cent lived below the poverty line, suffered most. The violation of trade union rights in the country had been included in a special paragraph of the Committee's 2009 report. Despite the Government's promises, the situation of trade unionists and worker representatives had not at all improved. Trade union rights had been curtailed and trade unionists engaged in the promotion of democracy and pluralism were persecuted, threatened and often had to pay for their commitment with their lives.

The Government had established national committees containing the word "dialogue" in their title and, according to the Government, "partnership" also seemed to be a concept with which the Government wanted to face national challenges. These were, however, deliberate deceptions and abuses of terms which were normally used to describe an equal exchange. However, the Government still took decisions unilaterally in its own best interests and to sustain its power, but not for the benefit of the people. This was exemplified, inter alia, with the High-level Steering Committee on Social Dialogue which, despite its nice name was not, however, linked to social dialogue, notwithstanding the Government's assurances that social dialogue was welcome. Social dialogue in Swaziland only meant one thing: the Government talked, if ever, with employers' and workers' representatives and at the end acted as it pleased. This was not social dialogue, but an anti social monologue.

Social dialogue meant that workers, employers and government representatives communicated in a way that enabled them to know and understand the respective positions and to reach agreed conclusions. Only on such a basis could a country's social and economic progress be promoted. Social dialogue was also key for reducing gaps between laws and their implementation. He was very concerned at the fact that, despite the demands of the international community based on the ratification of the Convention more than 30 years ago, the Government had for years been violating Convention No. 87 and had not therefore been in a position to close the big gaps that existed in national laws. The Committee of Experts had noted that the High-level Steering Committee on Social Dialogue had not met for months. He therefore urged the Government to: (1) include the social partners in all decisions in regard to adjusting the Constitution and national laws to the requirements of Convention No. 87; (2) be open to social dialogue not only euphemistically on paper, but to really end its anti-social monologue; and (3) align the legal basis and its practical action with the requirements of Convention No. 87.

The Government member of Zambia aligned his Government with the statement made by the Government member of Mozambique, who had spoken on behalf of

the Government members of the SADC countries. He expressed appreciation at the comprehensive statement made and the measures taken by the Government of Swaziland in an effort to respond to the recommendations of the Committee of Experts. He considered that the ratification of over 30 Conventions, including all eight fundamental Conventions, was also a positive and commendable action. He also expressed support for the legal reforms undertaken by the Government.

Another Government representative, Minister of Justice and Constitutional Affairs, recalled that the current Government had only come into office in 2008 and that one of its priorities was to align national laws with the Constitution. Thirty bills were being drafted by the Attorney-General, but this task was challenged by the limited staff of his office. The Commission on Human Rights and Public Administration, appointed in September 2009, would receive reports on human rights issues from all citizens. The amendment to the Prisons' Act was an executive decision to be taken by the Minister of Justice and Constitutional Affairs. Once the ongoing drafting process was complete, the Bill would be forwarded to the Minister for Labour and Social Security, for submission to the Labour Advisory Board (LAB.) The workers' allegation that nothing was being done with regard to the Prisons' Act was therefore misleading. Furthermore, the unions had met with the police prior to the May Day celebrations to discuss security arrangements. The police had not harassed workers, but had attended the meeting to enforce the law in relation to certain individuals who were violating it. The Government regretted the death in custody of Mr Sipho Jele and had immediately initiated a public investigation led by a Principal Magistrate. The Government had nothing to hide on this matter and therefore a family doctor had been allowed to undertake the post-mortem, together with a government pathologist, and a lawyer appointed by the family was attending the investigation to test the evidence. With regard to the previously alleged murder of a worker, he emphasized that the Government had been cleared of all allegations following a high-level mission.

When the 2009 Public Service Bill had been submitted to Parliament, workers had lobbied for the Bill to be referred to the LAB, and the recommendations of the LAB had subsequently been considered by the Cabinet. In case of further issues pertaining to the Bill, he urged the unions to lobby Parliament as the Bill was now before Parliament.

The Government contested the statement that it used the Suppression of Terrorism Act indiscriminately to intimidate workers. The drafting of the Act was in line with UN Security Council Resolution 1373 (2001) and the Model Legislative Provisions on Measures to Combat Terrorism of the Commonwealth Secretariat and had been inspired by the United Nations Office on Drugs and Crime. According to its objectives, the Act was used to suppress all acts of terrorism and all individuals contravening the Act were arrested. In conclusion, he urged the Committee to take note of the significant progress made by the Government in responding to the issues raised and therefore insisted that Swaziland should be removed from the special paragraph in the Committee's report.

The Employer members specified that, as their position was clear, they would not further address the comments of the Committee of Experts concerning the right to strike and the requirements of the Convention concerning freedom of association and the right to organize. As in the past, it was not possible to assess the technical information provided by the Government to this Committee. The Government's assertion that significant progress had been made was disputable. The Labour Bill had been tabled before Parliament, but the request for a specific time

frame for its adoption had not clearly been answered by the Government. The Employer members expressed their concern at the Minister of Labour's lack of staff. With regard to social dialogue, there had been no commitment to hold meetings of the High-Level Steering Committee, and the Government's indication that this Committee was fully operational was disputable. The Government's only express commitment on these issues had been to continue to provide further reports. The Ministry of Labour required support to ensure that national legislation was adopted in compliance with the Convention, that resources to support social dialogue were made available and that the Government provided reports on the real situation in the country. Thirty years after Swaziland's ratification of the Convention, scepticism remained. Unless positive measures were taken to comply with the Convention, this case risked remaining on the list of cases discussed by the Committee. The Employer members expressed support for the legislative steps that had been taken thus far. This case merited insertion in a special paragraph in the General Report. A high-level tripartite technical mission should be sent to Swaziland to inquire into the failure to adopt legislation to comply with the Convention, and to assess the current barriers to social dialogue.

The Worker members indicated that the situation in Swaziland had been a matter of concern for many years for a number of reasons: the harassment, persecution and murder of trade unionists; the numerous laws that were still contrary to the fundamental provisions of the Convention; and the lack of will by the Government to restore a climate of non-violence and full democracy. The Government should therefore cease all violent acts against trade unionists, all repression of trade union activities and any denial of human rights. They also called on the Government to commission an independent inquiry into the events of 1 May this year. The Government should finally complete the legislative reforms that had been recommended by the Committee of Experts, with particular reference to the amendment of the Industrial Relations Act and the 1963 Public Order Act, and to repeal the Decree/State of Emergency Proclamation and the Suppression of Terrorism Act. The Worker members insisted in particular that the Government finally keep its promises and create the conditions for meaningful and lasting social dialogue. They proposed for that purpose the organization of a high-level tripartite mission and called for the Committee's conclusions to be placed in a special paragraph of its report.

Conclusions

The Committee took note of the statement made by the Government representative and the discussion that took place thereafter. The Committee observed that the comments of the Committee of Experts had referred for many years to the need to amend the provisions of the legislation containing restrictions on the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and to organize their activities and programmes of action, as well as the need to repeal the 1973 Decree/State of Emergency Proclamation and its implementing regulations and to amend the 1963 Public Order Act, which could be used to repress lawful and peaceful strikes.

The Committee noted the information provided by the Government representative that an Industrial Relations (Amendment) Bill, which amended a number of provisions objected to by the Committee of Experts, was now before Parliament under consideration by the relevant committee. The Government representative had indicated that the tripartite National Steering Committee on Social Dialogue for Swaziland had been established and a schedule of monthly

meetings had been agreed. He had added that a Commission on Human Rights and Public Administration had been appointed in September 2009 to further strengthen the protection of human rights, including workers' rights. Finally, the Government representative had repeated the previous statements made on the 1973 Decree/State of Emergency Proclamation and its implementing regulations and on the 1963 Public Order Act.

The Committee recalled that this case had been discussed on numerous occasions over the past ten years and that last year it had decided to include its conclusions in a special paragraph of its report. The Committee noted with concern the continuing allegations relating to acts of brutality by the security forces against peaceful demonstrations, threats of dismissal against trade unionists and the repeated arrests of union leaders, and firmly recalled the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threats or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties.

The Committee expressed the firm hope that the Industrial Relations (Amendment) Bill would be adopted in the very near future and that its provisions would be in full conformity with the Convention. Recalling that it was the Government's responsibility to ensure an environment of credibility, the Committee urged the Government to take concrete and definitive measures without delay to effectively repeal the 1973 Decree and to ensure the amendment of the 1963 Public Order Act in order to fully comply with the requirements of Convention No. 87 so that they could no longer be used to prevent legitimate and peaceful trade union activities. The Committee urged the Government to accept a high-level tripartite mission in order to assist the Government in bringing the legislation into full conformity with Convention No. 87, to enquire into the May Day 2010 incident and to facilitate the promotion of meaningful and effective social dialogue in the country.

The Committee expressed the firm hope that the National Steering Committee on Social Dialogue for Swaziland would be immediately convened in order to achieve meaningful and expedited progress with respect to the issues raised. The Committee requested the Government to transmit detailed information in its next report due to the Committee of Experts, including on the progress made in the adoption of the Industrial Relations (Amendment) Act and the concrete steps taken on the pending issues. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

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

TURKEY (ratification: 1993)

The Government provided the following written information on the latest legislative developments relevant to the application of Convention No. 87 in Turkey.

The draft law amending the Constitution was enacted by the Grand National Assembly of Turkey (TBMM) on 7 May 2010 and published in the *Official Gazette* on 13 May 2010 as Act No. 5982. This Act is subject to a referendum to be held on 12 September 2010. The amendments of the Constitution of the Republic of Turkey which concern the application of the Convention include the following:

- (1) Article 51, fourth paragraph that provides that "Membership in more than one trade union cannot be

obtained at the same time and in the same branch of work" is repealed.

- (2) The heading of article 53 is amended to read: "A. The right to collective labour agreement and collective agreement" and third paragraph is repealed. The following provisions are added to the said article:

"Public servants and other public employees have the right to conclude collective agreement.

If a dispute arises during the conclusion of collective agreement, parties may apply to the Public Employees' Arbitration Board. Decisions of the Public Employees' Arbitration Board are final and valid with the force of collective agreement.

Scope of the right to collective agreement, its exceptions, persons to benefit from the collective agreement, manner and procedure for conclusion of a collective agreement and its entry into force, extension of the provisions of the collective agreement to the pensioners, establishment of the Public Employees' Arbitration Board, its working principles and procedures as well as other matters shall be regulated by law."

The right to collective agreement is fully recognized for public servants and other public employees. In case an agreement is not reached during the collective bargaining process, a decision of the Public Employees' Arbitration Board shall be final and become the collective agreement. As a result of this change, the existing discretionary power of the Council of Ministers shall cease. Moreover, pensioners are included within the scope of the collective agreement.

- (3) The fourth paragraph of article 53, that provides that "more than one collective labour agreement at the same workplace for the same period shall not be concluded or put into effect," is repealed.

- (4) The third paragraph of article 54, that provides that the trade union will be liable for any material damage in the workplace during the strike and the eighth paragraph of article 54, that provides that "politically motivated strikes and lockouts, solidarity strikes and lockouts, general strikes and lockouts, occupation of work premises, labour go-slows and other forms of obstruction are prohibited" are repealed.

- (5) A sentence is added to the second paragraph of article 128, so as to include social rights as well as financial rights in the scope of the collective agreement. The article now reads: "The qualifications of public servants and other public employees, procedures governing their appointments, duties and powers, their rights and responsibilities, salaries and allowances, and other matters related to their status shall be regulated by law. However, provisions of the collective agreement regarding financial and social rights are reserved." With this amendment it is stipulated explicitly that social rights as well as financial rights are included within the scope of the collective agreement and that these rights can be regulated by collective agreement.

- (6) The heading of article 166 is amended to read: "I. Planning; Economic and Social Council", and the following paragraph is added to this article: "An Economic and Social Council shall be established with the aim of communicating to the government

advisory opinions on determining economic and social policies. The establishment and functioning of the Economic and Social Council shall be regulated by law.” With this provision the existing Economic and Social Council has become a constitutional institution and an important player in the field of economic and social policies.

- (7) The third paragraph of article 129 is amended to read: “Disciplinary decisions cannot be outside the scope of judicial review” so as to ensure the right of the public servants and other public employees to have recourse to the judicial review of all of the disciplinary measures.
- (8) The following paragraph is added to article 20: “Everyone has the right to the protection of personal data concerning him or her. This right also includes the right to be informed of the personal data concerning him or her and the right of access to this data, and the right to have it rectified or deleted, and the right to know whether it is used appropriate to its purpose. Personal data can only be processed in cases specified by law or with the open consent of the person concerned. Principles and procedures regarding the protection of the personal data shall be regulated by law.”

As proposed by the Conference Committee on the Application of Standards during the 98th Session of the International Labour Conference (2009) and also requested by the Committee of Experts in its latest observation concerning Convention No. 87, a visit of a high-level bipartite mission to Turkey took place from 3 to 5 March 2010. Members of the mission met with high-level representatives of the Ministry of Labour and Social Security, representatives of the confederations of the trade unions and public servants’ confederations and confederation of the employers’ organizations as well as the Chairperson of the Parliamentary Commission of Health, Family, Labour and Social Affairs. As was noted by the mission, the Government had prepared a new draft law on trade unions which had been submitted to the ILO for review. This new draft law, which had been prepared as the draft law currently on the agenda of the Grand National Assembly of Turkey, did not comply fully with the provisions of the Convention as pointed out in detail by the Committee of Experts in its latest observation. Consultations with the social partners on the amendments to the trade union legislation will continue until consensus is reached in light of the constitutional reform enacted by the Parliament and on the basis of full compliance with the provisions of the Convention.

The Government believes that it will be able to report to the ILO the entry into force of the constitutional reform when reporting in 2010 on other matters that concern the application of the Convention in time for the Committee of Experts to examine in its meeting in November–December 2010.

In addition, before the Committee a **Government representative** expressed his disappointment that this case was under discussion, as Turkey was a case of progress. A number of significant constitutional amendments had been approved on 7 May 2010. A referendum on these amendments was scheduled for September 2010. The amendments included the repeal of the prohibition of political strikes, solidarity strikes, general strikes and lock-outs and labour go-slows. The provisions prohibiting membership in more than one union were repealed, in addition to the repeal of the prohibition of more than one collective labour agreement in one workplace. The amendments also recognized the right of public civil ser-

vants to conclude collective agreements. They included the establishment of the Public Employees’ Arbitration Board, with the power to establish a collective agreement when the parties were unable to, and the revocation of the discretionary power of the Council of Ministers in this respect. The liability of trade unions for any material damage caused in a workplace where a strike had been held was also repealed in these amendments. Lastly, the amendments provided constitutional status to the Economic and Social Council.

Pursuant to the 2009 conclusions of this Committee, and the request of the Committee of Experts, a high-level bipartite mission had visited Turkey in March 2010. The mission had noted the preparation of the draft Act on Trade Unions. A prior draft law on this subject had not been in full compliance with ILO Standards. Therefore a new draft Act on Trade Unions had been produced, following discussions at the Tripartite Consultation Board. The draft Act on Trade Unions involved the redesign of the main parameters of the industrial relations system and aimed to stipulate general principles rather than to regulate specific union activities. The important changes introduced in the draft law were: the lifting of the requirement for notary approval for union membership; the right to establish trade unions at the level of the workplace and occupation and the right to establish federations; the right of trade unions to determine their own statutes and to organize their activities; the repeal of the requirement of active employment for being a union official; the removal of restrictions on the establishment of trade unions in the radio broadcasting and television sector; the enhancement of protection for union officials and the simplification of the procedure for establishing a union. The draft Act on Trade Unions also contained provisions stipulating that financial audits of trade unions were to be conducted by independent auditors and that trade unions would not be closed due to the criminal acts of their officers. Prison sentences contained in the current Trade Unions Act would be replaced with judicial fines. Consultations with the social partners on this draft would continue until consensus was reached on the basis of full compliance with the Convention.

A peaceful celebration had been held on May Day on Taksim Square in Istanbul, 30 years after the decision to prohibit all demonstrations at this square. The security forces and trade unions had collaborated for this event. With regard to the comments of the Committee of Experts concerning the excessive use of force by security officials, several measures had been taken in 2009. Training for all police officers responsible for security at public marches and demonstrations had begun regarding the proportional use of force. Through this framework, training would be provided to 17,000 police officers annually. Riot police had also been equipped with helmets with communication devices and easily identifiable numbers. The speaker stated that the attendance of police officers at public trade union meetings was related only to the maintenance of public order. Pursuant to the legislation in force, security forces were not authorized to enter trade union premises unless they had obtained a court ruling. On the subject of the fire at the Egitim-Sen branch office in 2007, the speaker indicated that the security forces and fire brigades had intervened in a timely manner, and that three suspects had been arrested. One of these suspects had been sentenced to three years’ imprisonment. No trade union members had been harmed in the fire. The speaker expressed the hope that this progress would be taken into account in the Committee’s conclusions.

The Employer members appreciated the openness and transparency of the Government in the course of the high-level bipartite mission to the country which had taken place in March of this year. At this stage, however, they

could not make a determination as to whether this case constituted a case of progress since this issue should be determined by the Committee of Experts. This was a long-standing case and had been discussed for the last time the year before.

The Government had reacted to the high-level bipartite visit with astonishing speed amending the Constitution in just 16 days. The constitutional amendment covered both private and public sector issues and would have to be analysed by the Committee of Experts in order to see whether it addressed all issues raised in the past. It was important to accompany this constitutional amendment with legislative reform as the labour inspectorate would rely on national laws and regulations, not constitutional provisions, in carrying out inspections. The new draft law was likely to constitute a more difficult challenge as there was a long history of various drafts discussed and presented to this Committee in the past. The previous drafts contained a number of discrepancies in relation to Convention No. 87. The new draft presented by the Government followed a different paradigm. It was nevertheless difficult to evaluate whether this new draft met the requirements of Convention No. 87 and it should be submitted to the Committee of Experts for analysis.

With regard to the new approach to the use of force by the police referred to by the Government representative in the light of numerous comments made by the Committee of Experts under the heading of civil liberties, the Employer members emphasized once again, as they did last year, that civil liberties constituted an essential prerequisite to freedom of association. Time would tell whether the solution proposed would work. Training would have to be provided to the police and cultural change would have to take place and this would unavoidably take some time. The information provided to the ILO in this regard would be valuable in assessing progress made in the implementation of the Convention.

In conclusion, the Employer members considered that this was an exemplary case illustrating how governments should react to bipartite missions carried out in order to make a better assessment of the national situation and express a point of view on the application of the Convention. After having taken the steps described today, the Government now needed to submit the information to the Committee of Experts. The Employer members looked forward to continued and sustained progress in this case.

The Worker members thanked the Government representative for the information provided on the matters that had been raised for several years by the Committee of Experts and the Conference Committee. The previous year, the Conference Committee had called for a high-level mission in the present case. The mission had taken place in March 2010. The Committee of Experts had noted in its report that draft legislation on trade unions, collective bargaining and strikes was being reviewed. However, it was questionable whether the situation had changed.

The Worker members observed that the Committee of Experts had itself noted the excessive use of force by the forces of order against trade unionists, the interference by the Government in the formulation of the constitutions of trade unions in the public sector by prohibiting any reference to the concepts of strikes or collective disputes, the refusal to recognize unions of retirees and the presence of the police during trade union meetings. An anti-union climate had developed, emanating from both the authorities and employers for whom trade union membership was a reason for pressure and dismissal.

In the education sector, the economic crisis was leading the Government to make employment more precarious. In the new school year, 142,000 teachers would be recruited under precarious ten-month contracts without social bene-

fits. The increasing use of such contracts was leading to discrimination against unionized teachers, many of whom were forced to give up their membership to increase their chances of obtaining an employment contract in a context in which 327,000 teachers were unemployed. The teachers' trade union (Egitim-Sen), suffered regular intimidation. Its web site had even been closed down for several days for criticizing a decision by the authorities. In May 2009, trade unionists of the Confederation of Public Employees' Trade Unions (KESK), including 28 teachers from Egitim-Sen, had been arrested and imprisoned, in several cases for over six months. The judicial decision had been postponed and there had still been no ruling over a year after the arrests. The activities of the defendants were under close surveillance.

The Worker members denounced the worrying trend of the use of judicial harassment and charges of terrorist activities to keep trade unionists in detention or to ill-treat them.

Admittedly, the Committee of Experts had noted draft legislation on trade unions, collective bargaining, strikes and lockouts, although the Bills had still not been adopted or implemented. Although the Bills contained improvements, certain matters had not been addressed: certain categories of workers, such as the self-employed, domestic workers, high-level officials and prison officers were excluded from the right to organize; trade unions could only be established at the branch level, the branches being determined by the Ministry of Labour; and the right to strike was closely regulated. Finally, the 2004 Associations Act still allowed the Government to monitor the accounts of workers' and employers' organizations.

The Government had provided information on a draft amendment to the Constitution, which would be submitted to a referendum. The draft amendment would repeal certain provisions that were contrary to the Convention, by allowing several trade unions in the same branch, recognizing the right to collective bargaining in the public sector, allowing political, general and sympathy strikes, and abolishing the quasi-automatic liability of trade unions during strikes. Finally, the Government appeared to have changed its attitude concerning the commemoration of May Day.

While regretting that this information had not been provided to the high-level bipartite mission, the Worker members called upon the Government to submit a plan of action for bringing the legislation into conformity with Convention No. 87. Finally, they demanded an immediate cessation of the violence against trade unionists and of interference in the affairs of trade unions, without waiting for the legislation to be brought into conformity with the Convention.

A Worker member of Turkey expressed his appreciation for the ILO high-level mission and its contribution in making meaningful progress in terms of bringing the national legislation into conformity with Convention No. 87. Being in favour of the view that the constitutional amendments should precede the legislative reform, he noted that the Government had passed a constitutional amendments package at the Grand National Assembly which covered, among other things, part of the trade union demands on individual rights and freedoms. However, amendments making a clear distinction between contractual workers and civil servants, abolishing the prohibition of the right to strike in certain cases, and allowing trade unionists to preserve their trade union office in case of election to the Parliament were not included in the package.

The Government had communicated to the ILO a new draft law on trade unions which amended Acts Nos 2821 and 2822 just prior to the visit of the high-level mission. The draft had only been submitted for consultation at the

Tripartite Consultation Board, after it had been communicated to the ILO. The trade unions expected that the Government would negotiate this draft with the social partners.

Contrary to the official figures, the unionization rate in Turkey had been estimated at less than 10 per cent. Trade unions faced problems in determining their representativeness for collective bargaining purposes. That was the case, for instance, for the Textiles, Knitting and Clothing Workers' Union of Turkey (TEKSİF) trade union in textile factories employing thousands of workers in Denizli and Bursa. The draft amendments proposed to abolish the requirement of 10 per cent representativeness at branch level but maintained the absolute majority requirement at the workplace, thus generating a risk of inflating the number of employer-dominated unions in Turkey. The absolute majority requirement entailed a risk of dismissals of trade union members in order to prevent the unions from reaching the representativeness threshold, and constituted one of the most important obstacles to the exercise of the right to organize. Any draft which did not take these obstacles into consideration could not be accepted and would be contrary to Convention No. 87. Moreover, the Commission charged with fixing the industrial branches foreseen in section 5 of the draft, should be replaced by an autonomous and independent competency-fixing institution which should also deal with keeping the records of affiliation of new members. The draft would also prevent senior personnel who had the right under the current legislation to be union members, from joining trade union organizations. The draft amendments also abolished the current requirement to be active workers for founding trade unions or becoming executive board members. This might generate problems in practice as it would open the door to persons with no relationship to a trade union. The membership fees would moreover be fixed according to the principles and procedures identified in the trade union statute. This might restrict the members from joining a trade union of their own choice. The final draft also extended the restrictions regarding strike suspensions – which would be pronounced by a judicial body and not the Council of Ministers – as it would no longer be possible to continue a strike after the order for its suspension expired. Finally, provisions requiring trade union officials to give up their posts in order to run for office in municipal or general elections persisted.

Another Worker member of Turkey stated that the public sector trade union movement in Turkey had been facing significant problems which had already been discussed several times at the Conference Committee. Even though some theoretical changes had taken place following the high-level bipartite mission, nothing had changed in reality. The constitutional amendment which was under discussion concerned 21 different issues including some improvements in trade union rights like collective bargaining, but without the right to strike. The referendum was going to take place on 12 September if the proposed amendments were not blocked by the Constitutional Court in the meantime. Nevertheless, the adoption of legislative reform was more important than the constitutional amendment and a draft revising Act No. 4688 had already been agreed upon by the social partners since 2006. The new draft bill to amend Act No. 4688 would undermine some of the basic rights currently enjoyed by public workers' trade unions in Turkey. Even though the public workers in Turkey enjoyed the right to strike by virtue of a decision of the European Court of Human Rights and a decree of the State Council of Turkey, their right to strike would now be banned through the amendment of the Turkish Constitution. Workers would be able to join more than one union, which would challenge the power of the largest trade unions. All these amendments had been de-

cided by the Government without consensus by the social partners. According to recent articles in the press, a draft bill to amend Act No. 657 by limiting job security for civil servants had been recently submitted to Parliament, again without any consultation with trade unions, except one. This demonstrated the attitude of the Government towards social dialogue. After one-and-a half years in office, the Minister of Labour and Social Security had still not replied to the requests of the unions for a meeting to discuss the public workers' trade union problems and communication channels from the Ministry were open only towards one confederation. To conclude, the speaker emphasized that the main problems were the lack of social dialogue, discrimination among trade unions, and efforts directed more towards making a good impression vis à vis the ILO and the European Union rather than making substantive progress. The speaker asked the Committee to send another high-level mission to the country.

The Employer member of Turkey stated that the amendment to the Turkish Constitution was going to open the way for general and politically motivated strikes, for the right to join more than one trade union and for collective bargaining for civil servants and other public officials. The Turkish employers were of the opinion that certain of these amendments would reduce the competitiveness of Turkish enterprises and negatively affect social peace. With regard to the new draft bills, he recalled that in April 2008, the Minister of Labour, the social partners and government officials had met and agreed on draft bills concerning trade unions and collective bargaining, strikes and lockouts. This had been an outcome of consensus and the draft bills had been submitted to Parliament in May 2008. However, these draft bills had been dropped later on. As proposed and requested by the Conference Committee, a high-level bipartite mission had visited Turkey both in 2009 and 2010 and had met with Turkish high-level representatives. Following these high-level visits, the Government had prepared a new draft law on trade unions and had submitted it to the ILO for review. The speaker expressed the expectation that consultations with the social partners on the amendments to the legislation would continue until consensus was reached.

An observer representing the International Trade Union Confederation (ITUC) stated that although at first sight, it seemed that some positive developments had taken place regarding freedom of association and the right to organize in Turkey, serious concerns existed about the exercise of these rights in practice. Against the very high level of expectations from the constitutional amendments, it should be reminded that article 90 of the Constitution already provided that international laws superseded domestic laws. However, this provision had never been implemented. It was equally important to remember that it might take a very long time, six to eight years, to integrate the constitutional amendments into laws just like it had happened with regard to the most basic civil servants' rights in the past. Beyond all these shortcomings there were a number of hidden risks in the draft amendments to the Constitution. For example, while the ban on sympathy strikes had been removed, the provisions according to which workers could organize strikes only in case of collective disputes remained in the text.

Regarding the situation in practice, thousands of workers were being dismissed only because they had become members of unions affiliated to the Confederation of Progressive Trade Unions of Turkey (DISK) and were neither reinstated nor benefited from collective rights during the legal proceedings which usually took longer than two to three years. Many unions, like those representing young workers and pensioners as well as the Confederation of Small Farmers were faced with court proceedings aimed

at their closure. Numberless examples existed for the systematic interference, mostly through harassment and threats, with efforts by KESK unions to organize public employees. Activities by KESK aimed at awareness-raising were prohibited in public institutions and posters were removed only because they criticized government social policies. The President of the Office Employees Union of KESK had been dismissed officially for being involved in ideological activities. Throughout 2009 many KESK executives, representatives and members, particularly those who raised issues related to discrimination of the Kurdish minorities, had been arrested and imprisoned without being charged with any specific crime. All peaceful demonstrations organized by KESK and its affiliate unions had been violently attacked by police forces with tear gas. In April 2010, a peaceful press conference organized to support the strike of Tekel workers had been violently prevented by thousands of policemen. Many members and activists including an executive committee member of KESK had been injured in the clashes. Following a one-day strike organized by KESK on 25 November 2009 in support of trade union rights of public employees, hundreds of members had been penalized with sanctions, salary reductions, etc. Sixteen members of the KESK transportation employees union had been dismissed only because they had joined this action.

Unfortunately, missed opportunities were also to be noted, like the consensus reached by the social partners in the Bursa meeting organized by the Labour Ministry in May 2008. Due to internal constraints inside the Government itself, this consensus had not been given concrete expression into a draft proposal. Instead, after a number of serious modifications made by the Labour Ministry, the consensus text had changed altogether. To conclude, the obligation of the Government was not to wait for consensus between the social partners or to make any organization happy; it was to do what was required of it under its international commitments.

The Worker member of Germany stated that the German trade union movement was preoccupied by the persistent violations of trade union rights in Turkey even more so since German enterprises or their suppliers which operated in the country contributed to these violations and profited from them.

The Committee of Experts had consistently observed that the Government was opposed to the creation of trade unions. Act No. 2821 obliged trade unions to certify their creation and dissolution by a notary. The tariff for trade union affiliation was the equivalent of €18. For six million workers whose minimum wage was the equivalent of €300 per month these fees were impossible to pay. The unions were obliged to pay the fees themselves and thus, the number of trade union members depended on the financial capacity of the organization. The draft law provided for the elimination of this condition but it had been presented in May 2008 and had still not entered into force. The Government should stop slowing down the adoption of this law.

The Committee of Experts had also referred to the violation of Article 2 of Convention No. 87 to the extent that according to Act No. 2822 a trade union could be recognized as negotiating agent only if it had more than 50 per cent of employees in an enterprise and represented more than 10 per cent of workers in the sector. This deprived 49.99 per cent of employees of the right to organize. Some trade unions could be deprived of negotiations for many years because the employer had lodged appeals which had a suspensive effect on negotiations. For example the *Birlesik-Metal* trade union which functioned in the automotive sector and had well over 50 per cent of employees, had been deprived of the right to bargain collectively for 820 days. Another enterprise had been split into

two in order to prevent the trade union from attaining the representativeness threshold of 50 per cent. These situations showed the extent to which the legal regime allowed employers to violate trade union rights. Moreover, workers were the object of harassment in order to leave the unions.

The German trade union movement called on the Government to rapidly introduce the necessary legal amendments in order to conform to Convention No. 87 and requested European Union members to take into account the respect of trade union rights in the context of negotiations on the accession of Turkey to the European Union.

The Worker member of Japan stated that swift measures were needed to amend Act No. 4688 and the Constitution in order to address a series of issues concerning the right to organize of public employees. These included the exclusion of a number of public employees from the right to organize; the removal of trade union executive bodies in case of non-respect of requirements set out in the law; the termination of trade union office by reason of the transfer of a trade union leader to another branch of activity or his/her dismissal or simply the fact that a trade union leader left work; prohibition of strikes in many services which could not be considered as essential in the strict sense of the term; and heavy sanctions such as imprisonment of workers participating in unlawful strikes.

Most disconcerting was the growing trend of judicial persecution of public sector trade unionists. Seher Tumer of the Trade Union of Public Employees in Health and Social Services (SES), had been arrested last year and sentenced to more than seven years' imprisonment, only because of her lawful activities in the labour and women's movement. Meryem Ozogut of the SES, as well as Metin Findik, Ferit Epözdemir and Bestas Epözdemir, from the Municipal Employees Union (Tum Bel Sen), had also been recently arrested in a similar manner. In addition, many municipality workers had been forced to resign from their union or had been dismissed. It was very regrettable that no progress had been made in practice and the situation was very serious and critical.

As for the legislative measures, the constitutional amendment did not seem to comply with the Convention in terms of the right to strike and had been adopted by Parliament without prior consultation with the social partners. Although constitutional reform was necessary to fully guarantee the right to organize, including the right to strike, the amendment of Act No. 4688 was urgently needed. The workers had waited enough and no more delay could be tolerated. The speaker requested the Government to take active steps by all means to ensure sufficient and meaningful dialogue aimed at effectively addressing all issues under Convention No. 87 in law and in practice, including by guaranteeing public employees the right to organize and the right to strike for those who were not exercising authority in the name of the State.

The Government representative indicated that he wished to respond to some comments made during the discussion. Regarding the allegations of dismissals on the grounds of anti-union discrimination, he emphasized that provisions guaranteeing protection against anti-union discrimination existed in both the Constitution and labour legislation. Acts of anti-union discrimination by employers were considered as a crime punishable with one to three years' imprisonment under the Penal Code and compensation consisting in no less than one year's wage and possibility of reinstatement. During the economic crisis not only dismissals but also anti-union discrimination might increase and this could happen in any country. In such cases, both unions and workers had judicial means to contest such actions and were advised to have recourse to the means available.

With regard to the excessive use of force by the security forces, the Government had taken the necessary measures to prevent the occurrence of such incidents which largely occurred for two reasons. One was related to the infiltration of illegal organizations into the marches and demonstrations organized by the trade unions, and the other related to the unnecessary insistence of trade unions to organize such meetings in streets and squares which were not allocated for such purposes. In any case, trade unions and workers had all the legal means to contest any acts of the security forces.

The Government representative stated that Turkey was a country faced with secessionist and terrorist activities and attacks. During the last 30 years, terrorist activities had claimed more than 30,000 lives in Turkey. The arrest of trade unionists under suspicion of having links with an illegal organization should not be criticized, as it was entirely legal to do so in any country of the world. Trade union members should not be considered an exception to this rule. The KESK officers mentioned during the discussion had been arrested in May 2009 as part of an operation conducted against terrorist organizations under the Act on the fight against terrorism. The Court had released the detainees while a decision was pending. Ms Ozogut had been charged along with 13 other associates for belonging to a terrorist organization and making propaganda in favour of such organization. This was not related to trade union activities.

With regard to consultations with the public servants' trade unions, he indicated that two workshops had been organized in February and March on trade union rights of public servants with the participation of representatives of trade unions, relevant ministries and public organizations as well as academics. These two workshops provided a forum to discuss possible changes to the public servants' trade union legislation. Furthermore, a Public Personnel Consultation Board under the presidency of the Minister of State had been established with the participation of the three most representative public servants' trade union organizations to develop a participatory management and better communication between decision-makers and trade unions. Thus, consultation with public servants' trade unions largely took place through the state ministry responsible for public personnel issues. In addition, measures agreed during the collective negotiations between the public employers' board and public servants' trade unions were being implemented through the circulars of the Prime Minister's office such as the circulars of July 2009 and January 2010 as well as through laws where necessary.

Regarding Act No. 4688 on public servants' trade unions, the constitutional amendment would provide a new framework for public sector collective bargaining, and legislative amendments would follow the approval of the Constitution. The 10 per cent representativeness requirement would be lifted upon adoption of the draft Act on Trade Unions. In conclusion, the speaker assured the Committee that the criticisms regarding some aspects of the legislation were being addressed in the latest draft law. Consultations would continue and improvements were always possible.

The Employer members were of the view that the Government should be commended for its action in relation to the constitutional amendment, the measures to address the issue of excessive use of police force, and the statutory provisions on trade union rights. However, the constitutional provisions and the proposed legislative reforms were not yet in force. The constitutional provisions would enter into force at the soonest in September 2010 pending the outcome of the referendum. The Employer members were unclear as to when legislative amendments to Acts Nos 2821, 2822 and 4688 would be adopted. The pre-

vious proposals had not been enacted and were giving rise to problems in relation to the Convention. To its credit, the Government had acknowledged this fact and had sought to correct them. The Employer members hoped that the Government would act with the same speed in adopting the legislative amendments as with the constitutional provisions. In the meantime, the Government should provide a report on both the constitutional amendments and the legislative provisions to the Committee of Experts.

The Worker members said that, in their view, the trade union situation in Turkey was more worrying than ever. The Government should take immediate measures to end attacks on trade unionists and interference in union affairs, and to stop the use of anti-terrorism legislation for anti-union purposes. To that end, the Worker members requested the Government to accept ILO assistance in the process of reforming the Trade Union Act in order to bring it fully into line with Convention No. 87. Recalling that such a request had already been made by the Committee the previous year, the Worker members insisted that ILO assistance should be permanent and that the Government should submit a plan of action, accompanied by a precise timeline, for revising trade union legislation in consultation with the social partners. Lastly, the Government should report to the Committee of Experts on progress made before the end of the year.

Conclusions

The Committee took note of the written and oral information provided by the Government representative and the debate that followed. The Committee also noted that an ILO high-level bipartite mission visited the country from 3 to 5 March 2010, pursuant to a request of this Committee in June 2009.

The Committee observed that the Committee of Experts' comments had been referring for a number of years to discrepancies between the legislation and practice, on the one hand, and the Convention, on the other, concerning the rights of workers in the public and private sectors without distinction whatsoever to establish and join organizations of their own choosing, and the right of workers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their activities without interference by the authorities.

The Committee welcomed the Government's statement according to which the draft law amending the Constitution was enacted on 7 May 2010. Subject to a referendum to be held in September 2010, this law would repeal or amend several provisions which restricted the right to organize. In particular, provisions prohibiting trade union membership in more than one trade union and existence of more than one collective agreement at the same workplace for the same period would be repealed; the right of public servants to bargain collectively would be recognized; a provision prohibiting political and sympathy strikes would be repealed; social and economic rights would be included in the scope of collective agreements; the right of public employees to have recourse to the judicial review of all disciplinary measures taken against them would be ensured; and the protection of personal data would be guaranteed. In addition, the Government representative referred to the 2010 May Day celebrations that took place in a fully peaceful environment. The Government had taken measures to prevent the excessive use of force by the police and had begun a training programme in this regard.

While taking due note of the information provided by the Government of the steps taken to avoid police violence and undue interference, the Committee continued to observe with regret the allegations of important restrictions placed on freedom of speech and of assembly of trade unionists, particularly in the health and education sectors.

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

Bolivarian Republic of Venezuela

(ratification: 1982)

It again recalled the importance it attached to respect for basic civil liberties and urged the Government to continue to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. The Committee urged the Government to review, in full consultation with the social partners, any legislation that might have been applied in practice in a manner contrary to this fundamental principle and to consider any necessary amendments or abrogation.

The Committee took note of the Government's statement according to which a new draft law on trade unions had been prepared by the Government and that in light of the constitutional reform, consultations with the social partners would continue, based on a precise schedule. In this regard, the Committee urged the Government, as it did last year, to elaborate a plan of action with clear time lines to be presented to the Committee of Experts for monitoring and to engage in ongoing assistance with ILO in order to ensure the rapid adoption of the necessary amendments to Acts Nos 2821, 2822 and 4688. It requested the Government to provide detailed and complete information on all progress made on these issues and on the outcome of the constitutional reform and to transmit all relevant legislative texts, in its report due to the Committee of Experts at its meeting this year.

BOLIVARIAN REPUBLIC OF VENEZUELA (ratification: 1982)

A Government representative said that his country had been called upon on nine occasions over the past ten years to answer for alleged non-compliance with Convention No. 87, and on each occasion it had provided all the information requested, although it had not been taken into account by the Committee of Experts. On 8 December 2009, his Government had provided to the Standards Department its reply to the comments made by the International Trade Union Confederation (ITUC), although the report of the Committee of Experts did not refer to any reply. In the case of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the report indicated that "As the Government's reply was received on 8 December 2009, the Committee intends to examine in detail the matters raised in the above observations at its next session". However, in the case of Convention No. 87, the Committee of Experts had failed to provide that clarification. The Government representative indicated that this omission raised doubts as to the transparency of the methods of work of the Committee of Experts.

He added that, according to the same report, it "had, for ten years, been requesting legislative amendments to bring the law into conformity with the Convention". This phrase was part of the electoral campaign of the opponents of the Government and, moreover, was not true. He noted that the Basic Labour Act had been quoted as being adopted in 1991, and that since the 82nd Session of the Conference and for five consecutive years from 1993 to 1997 the Committee of Experts had drawn the Government's attention to five provisions that were not in accordance with Convention No. 87. Accordingly, the amendment of the Act had been requested for 17 years, and not for the ten years during which the present Government had been in office.

He emphasized that in 1997 the Committee of Experts had noted that the Government would reform the Act through the Tripartite Commission for Social Dialogue. He recalled that the latter Tripartite Commission had abolished the historical rights of workers, initiated the privatization of social security and made various labour laws more flexible, but had neglected to amend the five provisions in question. It had not given importance to the

restrictions on freedom of association, which had not troubled the Committee of Experts, which had not raised the matter again until the current Government had taken office in 1999.

He indicated that there had been full consensus since 2003 to amend these provisions, but that the reform process had not been completed because consultations were continuing in the National Assembly and an in-depth public debate was being held involving the Government, employers and workers focused on reducing working hours and re-establishing the social benefits system abolished by the Tripartite Commission in 1997. He added that none of the provisions criticized were applied, nor did they involve any restriction on the exercise of freedom of association, and that there had not been a single case of a foreign citizen being prevented from being a member of the executive board of a trade union, nor had the registration of any union been prevented under these provisions.

He said that another comment, never raised before 1999, indicated that the Act was not explicit with regard to the right of trade union leaders to be re-elected. He explained that the only restriction was contained in section 441 on trade union funds, under the terms of which trade union officers who had not complied with the requirement to submit a detailed account of their administration could not be re-elected. In all other cases, they could stand for re-election, which was the standard practice. He did not therefore understand the insistence on this comment.

With reference to the request for information on certain sections of the Regulations of the Basic Labour Act, he noted that such information had already been provided. With regard to compulsory arbitration in essential public services, the Act provided that essential services had to be determined by agreement prior to the exercise of the right to strike. Where such agreement was evaded by employers to avoid strikes, arbitration allowed the Ministry of Labour to determine minimum services in essential services.

On the subject of collective bargaining, he indicated that in cases where two or more trade union organizations claimed the right to represent workers in negotiations, the Ministry of Labour called for a referendum of the workers to decide which of the organizations had greater support to represent them and the benefits of bargaining were extended to all workers.

He observed that the Committee of Experts, despite the replies by his Government, had maintained its comments concerning the alleged interference by the National Electoral Council in trade union elections. He indicated that it had been a claim of the trade union movement that the officers of trade unions should be elected democratically by their members. The Act of 1991 had set forth this aspiration for direct and secret elections, but had not been applied. For this reason, in 1999 the Constituent Assembly had mandated the electoral authority to guarantee the right of members to elect their leaders freely and democratically. A series of rules had been established, which had been amended in accordance with the recommendations of the Committee of Experts. The role of the National Electoral Council had been limited to receiving the electoral schedule from the trade union organization prior to the holding of elections and the rules that applied in accordance with its constitution, as well as to offer those trade union organizations which so requested technical advice for the holding of elections.

With regard to the murdered trade union leaders, he indicated that all the information requested had been provided. The cases were under investigation and where it had been possible to establish responsibilities, those concerned had been referred to the judicial authorities and

detained. He added that most of the workers and rural leaders who had been murdered belonged to the National Union of Workers or the Rural Front Ezequiel Zamora, and were mostly activists in the United Socialist Party of the Bolivarian Republic of Venezuela, and not opposition leaders. He denied that there had been “hundreds of deaths” and demanded greater details concerning this statement.

With reference to situations of violence, he indicated that action was being taken with workers and employers to resolve them. He referred to the oil sector, in which three years had elapsed without incidents of violence. In the construction sector, a working group had been established on violence with the participation of the four existing workers’ federations and the two chambers of employers, one of which was affiliated to FEDECAMARAS. A special commission had been established at the request of the National Union of Workers, which was working with the Ministry of the Interior and Justice to follow up all cases of violence involving trade union leaders.

On the subject of the attack on the headquarters of FEDECAMARAS in February 2008, his Government had indicated that arrest warrants had been duly issued for those responsible, although doubts had been raised on that point. Nevertheless, on 5 May 2010, the persons concerned had been detained. With regard to Mr Fernández, former President of FEDECAMARAS, he said that in December 2007 an amnesty Act had been adopted for those who had committed offences on the occasion of the coup d’état in April 2002, but that Mr Fernández had not availed himself of the Act.

He emphasized that, despite the clarification provided, the request had been maintained that the amendments to the Penal Code should include two sections which restricted the right to engage in protest action. He indicated that these sections had existed prior to the reform and had never restricted that right. He added in this respect that there were no grounds for claiming that over 2,000 workers were being prosecuted and demanded clarifications in that regard.

With reference to Case No. 2763 that was pending before the Committee on Freedom of Association, he recalled that, with regard to one act of violence alleged in the case, the police had used excessive force, in respect of which disciplinary measures had been applied. He added that the enterprise referred to in the case had been in violation of workers’ rights. He indicated that the enterprise was now owned by the State and that its current President was one of those who had suffered aggression during the events in question. He reaffirmed that the expropriation of the enterprise had not been a retaliatory measure, but because those who imposed precarious work, were in violation of freedom of association, committed environmental offences, held back stocks and engaged in speculation were not fit to act as employers.

On the subject of social dialogue, he said that his country was promoting inclusive social dialogue that was not exclusive and that went beyond the elite, in contrast with what had happened with the Tripartite Commission in 1997, which had only taken away rights.

He said that it was not true that the Government promoted parallel trade unions and added that organizations had always existed alongside the two organizations which monopolized representation of employers and workers. The CUTV dated from the 1960s and FEDEINDUSTRIA had existed for 38 years.

He added that the Committee of Experts had referred to the failure to convene the tripartite commission for minimum wages. He observed that all government decisions were subject to consultation. All workers’ and employers’ organizations were consulted and submitted their propos-

als before 1 May each year. If FEDECAMARAS did not follow this practice, it was not for reasons of exclusion, but because it aspired to being exclusive.

He emphasized that the theme of the current crisis had escaped the present Conference. He expressed indignation at the situation in various countries in which tripartite machinery was being used to create pressure for labour reforms that restricted rights.

He added that this was not the route that was being followed by his country. In the midst of the crisis, which was a battle between capital and labour, there could be no doubt on which side it was, as it was on the side of the workers. He emphasized that banks would not be financed through the sweat of the workers. His Government had decided to guarantee stability by retaining the Decree respecting labour security, it had increased the minimum wage by 25 per cent, with pensions being set at the same level as the national minimum wage. Fishers and rural workers had been integrated into the pensions scheme, even though their employers had not registered them with the social security system. The Government would continue to adopt measures in this respect in such areas as access to housing and food.

In conclusion, he denied responsibility for the crisis of capitalism and indicated that his country would not finance the banks by reducing workers’ rights. The Government was prepared to enter into dialogue, but labour rights were not negotiable. Social dialogue needed to be an instrument for making progress, not going backwards in terms of workers’ rights.

The Worker members observed that the selection of this case was once again the choice of the Employer members. There was no common vision within the Workers’ group on the observance or lack of observance of the Convention by the Bolivarian Republic of Venezuela. The reports of the International Trade Union Confederation (ITUC) in 2009 and 2010 contained an entire chapter on the violations of trade union rights in the Bolivarian Republic of Venezuela. Such information was taken up in the Committee of Experts’ observation, which regretted the absence of a reply from the Government to the comments made by workers’ and employers’ organizations. The Committee of Experts had commented once again on the legal points which obstructed the exercise of rights as provided for in the Convention. These consisted of: the need for at least 100 persons to establish a trade union of independent workers and the requirement to provide exhaustive information on the identity of such persons; the lack of freedom in the organization of internal administrative structures; the non-renewable mandates of trade union leaders; the impossibility for foreigners to be part of an executive committee unless they had completed more than ten years of residence in the country; the interference in electoral procedures by a non-judicial body, namely the National Electoral Council (CNE); and the imposition of penal sanctions in the case of exercising the right to peaceful demonstration, and the right to strike. The intention proclaimed by the Government to observe freedom of association was contrary to the legislation, as indicated in the legal analysis made by the Committee of Experts. However, the Government insisted that its laws were in conformity with the Convention. This dialogue of the deaf should stop, and the Government should consider, accept, or even better, request the technical assistance of the ILO in order to examine the situation in light of the points previously raised as well as with respect to the numerous gaps in the functioning of social dialogue referred to by the Committee of Experts.

The Employer members emphasized that the present case, involving serious violations of the fundamental freedom of association rights of employers was, in their

view, the most important one before the Committee. They expressed surprise that the Worker members did not attach equal significance to the case, given that it also involved such serious violations of workers' rights as the murder of trade union leaders. They stated that the Committee of Experts had noted information from FEDECAMARAS referring to threats against its members who, in the context of their sectoral representative activities, had protested against the kidnappings of their members and the decline in national production as a result of government policies. Observing that the Committee of Experts had regretted the Government's failure to reply to these comments, and had in its observation also quoted extensively from last year's conclusions of the Conference Committee with respect to this case, they proposed that at a minimum these conclusions be repeated this year as well.

The Committee of Experts had also referred to several shortcomings in social dialogue, noting that: (1) according to the ITUC, the Government held only formal consultations and was promoting parallel organizations for the purpose of establishing a new trade union confederation as a counterweight to those organizations that disagreed with the Government's policies; and (2) according to FEDECAMARAS, the Government had still not convened the National Tripartite Commission envisaged in the Basic Labour Act for the determination of minimum wages and had appointed non-representative organizations that were close to the Government to the employers' delegation to the International Labour Conference (ILC). The Committee of Experts had further regretted that the National Tripartite Commission had yet to be established, and that the Government had repeatedly disregarded the Committee on Freedom of Association's recommendation that direct dialogue be established with FEDECAMARAS. From the report of the Committee of Experts, and the Government's opening statement, it was clear that the Government was in a state of denial and failed to fully appreciate its obligations under the Convention. Noting that this was the 14th time that the case had come before the Committee, the Employer members emphasized that it constituted a long-standing failure to apply the Convention.

A significant portion of the observation of the Committee of Experts touched upon violations of trade union rights, including interference by the CNE in trade union elections and the need to repeal legislation relating to the functioning of the CNE. Adding that they had supported the Worker members in cases concerning violations of the rights of workers' organizations, the Employer members reiterated their dismay that the Worker members had refused to reciprocate this support in the present case. Noting such violations as the expropriation of land without due compensation, the harassment and closure of several enterprises, and the subjecting of employers in the food and agricultural sectors to discretionary practices by the authorities, they emphasized that the private sector itself was under threat, and without the private sector, tripartism, the most fundamental principle of the ILO, would not exist. Freedom of association was further threatened by the absence of civil liberties, especially freedom of speech, which was constrained by the Government's control of the media.

With regard to the attacks and acts of vandalism on FEDECAMARAS headquarters that had occurred some years ago, they questioned whether those responsible for the acts would be brought to justice. The Government clearly did not understand the meaning of Article 3 of the Convention, which required non-interference in the internal affairs of organizations. The Government's interference in FEDECAMARAS's affairs, moreover, also af-

fected the very work of the Conference Committee: the travel of FEDECAMARAS representatives to the ILC had been restricted, and since 1997 complaints had been made regarding the composition of the Employers' delegation to the ILC. And although since 2004 the Credentials Committee had recognized FEDECAMARAS as the most representative organization of employers, the Government had created parallel organizations to undermine FEDECAMARAS; such actions were contrary to the spirit of tripartism and freedom of association.

The case of Carlos Fernández, who was unable to return to the Bolivarian Republic of Venezuela for fear of reprisal, demonstrated that civil liberties were not recognized in the country. They concluded by urging the Government to take immediate steps to comply with Article 3 of the Convention in all its aspects, to ensure that the necessary conditions for freedom of association were met, including the protection of the exercise of freedom of expression and all other civil liberties, and to promote genuine and free tripartite consultation and dialogue.

The Employer member of Argentina, in his capacity as Executive Vice-President of the International Organisation of Employers (IOE) and as Employer Vice-Chairperson of the Governing Body, said that there was no case more important for the Employer members than the one under discussion, not only in the name of freedom of association for employers, but also in the name of freedom of association for workers. He echoed the comments of the Worker members concerning the need to end the current dialogue of the deaf concerning social dialogue, for which technical cooperation was required. This case dealt with the guarantees set out in the Convention and the Employers would continue to insist on examining this case until their objective of dialogue was achieved. He questioned the expropriations carried out in the country, when often nationalization was not made for the public benefit. He considered it untrue to say that there was a battle between capital and labour. If that were the case, the ILO would have no reason for being. He concluded by suggesting that the Government request technical assistance from the Office.

A Worker member of the Bolivarian Republic of Venezuela said that, concerning union violence, the National Union of Workers (UNETE) was participating along with appropriate government agencies in various regions in building links with the investigating authorities to facilitate procedures in the courts, prosecutors' offices and other bodies. She expressed concern that several acts of violence had been linked to transnational companies. She considered that employers initiated litigation to attack the right to association and the struggle for workers' demands. The UNETE had insisted that employers complied with their labour obligations and considered that it was necessary to adopt a new labour law, but the employers had opposed that initiative. Employers had not been complying with the current Basic Labour Act in respect to employment stability, occupational safety and health, social security and freedom of association, among other issues. Workers had taken over abandoned businesses and strategic sectors of the economy and had been participating actively in their recovery, and were also demanding the Government to nationalize strategic businesses. The process of transformation was supported by most of the workers and that the Committee was discussing this case not because of non-compliance with international labour standards, but because of the establishment of a political model that was different from those in the rest of the world.

Another Worker member of the Bolivarian Republic of Venezuela said that her organization, the General Confederation of Workers (CGT), expressed concern at the viola-

tion of freedom of association and collective bargaining rights, and at the murder of workers and union leaders without the proper punitive judicial action being taken. Workers suffered discrimination from official bodies when they submitted documentation to establish trade unions, on the pretext that they had failed to comply with procedural requirements established by the CNE. If a union did not style itself "Bolivarian", it would encounter difficulties. The same occurred in the context of collective bargaining. Workers' rights were subject to restrictions in all spheres, with moves being made to suppress any autonomous or independent trade union expression of the interests of the working class. An exhaustive review of the facts that had been the subject of complaints should be undertaken, and the Government and private enterprises should be called upon to build a country of reconciliation and hope based on dialogue and consensus.

Another Worker member of the Bolivarian Republic of Venezuela indicated that the treatment of the present case amounted to a media campaign orchestrated by the groups behind the coup d'état in his country. In contrast with what was happening at the present time in the capitalist world, an ever increasing number of collective agreements were being signed in the Bolivarian Republic of Venezuela, the minimum wage was being increased and proper pensions were being provided.

An Employer member of the Bolivarian Republic of Venezuela expressed regret that, in his country, instead of talking about investment or employment, employers were obliged to concentrate on freedom of association, defending free enterprise and private property. He expressed concern at the fact that the representativeness of FEDECAMARAS was being called into question and that the Government was fostering parallel employers' organizations that were not independent. He considered that Venezuelan entrepreneurs were being cornered through the violation of their fundamental civil rights and liberties. The production sector was being persecuted, condemning today's society and future generations to dependence on a rentier economy, subject to the fluctuating prices of raw materials. The Government prided itself on the existence of social dialogue in the country, but it was a mere euphemism, as workers' and employers' organizations were subordinate to the Government. Harassment of employers had been brutal over the previous year. The first socialist plan approved by the Government provided that 70 per cent of GDP would be produced by public enterprises by 2013, which meant that the Government was trying to undermine the private sector even further. The Government had declared war on entrepreneurs and accused FEDECAMARAS of conspiracy. Groups of workers had occupied its regional offices. For some time, the Government had been confiscating many enterprises and lands. He observed that the private sector generated 80 per cent of income and 70 per cent of GDP. In conclusion, he urged the Government to promote social dialogue in order to build a fairer country with less poverty and more social inclusion.

Another Employer member of the Bolivarian Republic of Venezuela said that there had been no progress in this case. The Government gave assurances in its reports that it was applying the Convention, but the reality was entirely the reverse. Ever more action was being taken against the most representative independent employers' organizations, such as FEDECAMARAS and its member federations. With regard to the parallel organizations sponsored by the Government, she said that the Employers' delegation to the ILC accredited by the Government that year was made up of one Employer delegate and an adviser from FEDECAMARAS, with the remaining seven technical advisers imposed by the Ministry of Labour.

She added that in 2010 a new organization, the Bolivarian Council of Industrialists, Entrepreneurs and Micro-entrepreneurs (COBOIEM), claiming representative status, had been created. The Government had recently declared that, if necessary, it would expropriate more enterprises, because those already nationalized had recovered from bankruptcy. She said that demonstrations against FEDECAMARAS were not always peaceful. For some weeks, food enterprises had been occupied, resulting in the seizure of 120 tonnes of produce belonging to those enterprises.

A Government member of Argentina, speaking on behalf of the Governments of the Group of Latin American and Caribbean (GRULAC) countries, emphasized that the Government of the Bolivarian Republic of Venezuela had been submitting its reports concerning ratified Conventions. The report of the Committee of Experts referred to a draft reform of the Basic Labour Act, which took into account its previous requests, and invited FEDECAMARAS to hold meetings with the Government. GRULAC felt that the progress reflected in the report needed to be taken into account and hoped that the conclusions adopted by the Committee concerning this case would reflect the discussions, new information and arguments provided by the Government representative. GRULAC urged the Committee of Experts to confine itself to its mandate as entrusted by the Governing Body.

An observer representing the International Trade Union Confederation (ITUC) referred to the situation of violence and the murder of union leaders and trade unionists in the country and indicated that it might be necessary to establish a special prosecutor within the Office of the Attorney-General to undertake a special investigation into these cases. There had recently been arrests of union leaders and trade unionists for exercising their legitimate trade union activities. There had also been reforms to laws restricting freedom of association. Nevertheless, despite the declarations of the Government, there had been no progress in reforming the Basic Labour Act due to the absence of political will. Nor was there social dialogue, as demonstrated by the unilateral adoption of the minimum wage by the President.

Another Government member of Argentina expressed agreement with the GRULAC statement and emphasized that the comments made in the report of the Committee of Experts showed that the measures taken by the Government had been adopted in a spirit of collaboration and compliance with the recommendations of the ILO supervisory bodies. She emphasized the importance of the measures adopted to strengthen social dialogue between the Government and the social partners. Finally, she reaffirmed the importance of continuing to make progress in the improvement of the working methods of the Conference Committee with a view to reinforcing the transparency and objectivity of its procedures.

A Worker member of Brazil noted that Latin America was experiencing a unique moment, as never before had workers had progressive governments all at the same time. Workers were benefiting from an improvement in respect of their wages, social rights, access to the universal public social security system and there was a participatory democracy. The Bolivarian Republic of Venezuela was a beacon of these social gains. Wages had increased and many companies had been recovered by workers. This contrasted with the situation experienced in other countries, where workers were paying for the crisis created by rampant speculation. The Bolivarian Republic of Venezuela's appearance on the list this year was the result of political manipulation by FEDECAMARAS. This kind of attitude would lead the Bolivarian Republic of Venezuela to denounce the Convention.

The Government member of Cuba supported the declaration of the member States of GRULAC and rejected the use of the supervisory mechanisms to discuss questions involving domestic politics that had come to light following the coup d'état in which the president of an employer's organization had proclaimed himself president of the country. That case had been included in the list of cases to be examined by the Conference Committee as a result of pressure by the Employers' group, and several organizations had little will to cooperate with the Government's efforts to promote inclusive social dialogue with all of the employers and workers. It was a case of artificially presenting an image of a lack of consultation on the part of the Government. There was an attempt to maintain the privileges of a single organization that was not representative of the interests of most Venezuelans. The Bolivarian Republic of Venezuela must not appear again before that Committee. It was unacceptable that the Bolivarian Republic of Venezuela had been included on the list year after year because of pressure and blackmail that undermined the image of the ILO supervisory machinery.

The Government member of Nicaragua endorsed the statement by GRULAC and expressed her delegation's full solidarity with the Bolivarian Republic of Venezuela. She considered that the country had been unjustly called to appear before the Committee in a clear case of the politicization and double standards that continued to undermine its operation by challenging the dialogue and transparency of its work. Significant progress had been made by the Government in ensuring compliance with the Convention. In this regard, emphasis should be placed on the high-level mission's visit to the country and the process of consultations on the reform of the Basic Labour Act. The reform integrated all trade union federations and branch unions. Complaints against the Bolivarian Republic of Venezuela were manipulated and it was unfortunate that calls by many States to improve the working methods of this Commission were ignored.

The Government member of the Plurinational State of Bolivia endorsed the statement by GRULAC and welcomed the measures taken by the Government to resolve the situation, particularly the issuing of the Amnesty Decree of 31 December 2007, by which those who admitted having participated in the coup d'état had been pardoned.

The Committee should not examine the case further unless objective information emerged to indicate that the situation had genuinely deteriorated. The social progress achieved should be welcomed, in particular the fact that the number of trade unions registered had doubled over the previous ten years, which showed that there were no complex or difficult procedures involved in exercising the right to freedom of association. He expressed concern at the exaggerated reactions being made to the statements of some social partners, who were pursuing political aims without objective evidence. He expressed interest in the sustained progress made in terms of wide social dialogue with all partners, without exception, which had been recognized by the Committee of Experts.

The Worker member of the United States said that the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United States labour movement respected the democratic self-determination of the Venezuelan people. However, the Committee should not turn a blind eye to the serious issues of non-compliance with the Convention. The Committee of Experts had concluded that the issues were definitely serious. It had expressed regret that for over nine years the Bill to reform the Basic Labour Act had still not been adopted by the National Assembly and the necessary constitutional measures to stop the CNE from interfering in

internal union elections had not been taken. It had expressed concern over the provisions of the Penal Code and other legislation which were used to criminalize the right to strike and other freedom of association rights. It had expressed deep concern over the high number of assassinations of trade union leaders and members, the apparent impunity of those responsible and the persistence of such deaths in the cement and construction sectors. The constitutional power of the CNE to regulate and interfere in Venezuelan union elections meant that representative status was often suspended, making it legally impossible for the organization to negotiate a new collective agreement. This had occurred in the public education sector, where six teaching federations had been excluded from negotiations with the Education and Labour Ministries on 8 May 2009 because the CNE had rejected the validity of their internal election process and demanded irrelevant financial reporting.

With regard to violence and impunity in the Bolivarian Republic of Venezuela, it had been reported by the respected human rights organization PROVEA that over 46 reported killings of trade union leaders and activists had taken place from October 2008 to September 2009, and that over 88 workers, including 16 union leaders, had been affected by all forms of physical violence during this period. He expressed the hope that the Bolivarian Republic of Venezuela would be able to demonstrate convincing progress to the Conference Committee next year by putting an end to state interference with internal union governance, demonstrating genuine respect for the right to strike and collective bargaining and terminating violence and impunity. Venezuelan workers deserved no less.

The Employer member of Colombia indicated that in the report of the Committee of Experts, the ITUC and the Confederation of Workers of Venezuela (CTV) appeared to raise serious concerns relating to compliance with the Convention in view of the murder of trade union leaders and the failure to respect human rights. He recalled that in March 2010 the Committee on Freedom of Association (CFA) had examined Case No. 2254 and had drawn the attention of the Governing Body to the extreme seriousness and urgent nature of the case. In its latest examination of the case, the CFA had deeply deplored the fact that: the Government had ignored its recommendations concerning the need to establish a high-level joint committee with the assistance of the ILO; a forum for social dialogue had not been established; ILO assistance had not been requested; the tripartite commission on minimum wages had not been convened; and there had been no consultation on the new legislation to be adopted. He emphasized the importance of complying with these requirements in accordance with Convention No. 26 and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), both of which had also been ratified by the Bolivarian Republic of Venezuela. He added that the country had been requested to revoke the warrant for the arrest of former FEDECAMARAS President Carlos Fernández so that he could return to the country without risk of reprisals. The CFA had also requested the Government to return the "La Bureche" farm property to the employers' leader Eduardo Gómez Sigala without delay and to compensate him fully for all losses sustained as a result of the intervention by the authorities in the course of the property seizure. With regard to the indication by the Government that two persons had been apprehended for the bomb attack against the headquarters of FEDECAMARAS, he called, in the same way as the CFA, for an independent investigation and the imposition of severe penalties on the perpetrators. In conclusion, he expressed concern at the references to the names of enterprises during the present discussion, which was a practice

that should be avoided as it was both inappropriate and unjustified.

The Government member of Brazil said that his Government supported dialogue and cooperation. There could be no progress without cooperation. With regard to this case, social dialogue should be strengthened, without overlooking the need to investigate serious cases. In order to build a better future based on the participation of the population and respect for democracy, it was necessary to overcome the political disputes of the past. He encouraged the Government to strengthen dialogue with trade unions and employers' organizations. The Bolivarian Republic of Venezuela had demonstrated its unequivocal commitment to the ILO and its supervisory system, and its efforts to combat poverty, promote education and social inclusion should be recognized.

The Government member of Algeria said that he had listened with attention to the statement of the Government representative who had pointed out the progress made by his country with regard to social dialogue and referred to the readiness of his Government to work with the social partners in order to achieve better implementation of the fundamental principles on which tripartism was based. Note should be taken of the hope expressed by the Employer and Worker members in respect of the speedy completion of the Basic Labour Act reform process and bringing the legislation into conformity with the Convention so as to give to the exercise of trade union rights and their corollaries, the right to strike and social dialogue, real and genuine meaning. The Government's willingness to take into consideration the Committee of Experts' observations and recommendations, the increase in the number of trade unions and of collective agreements represented tangible progress and augured well for the development of the social situation. He expressed the hope that the Committee would spare no effort in encouraging the Government to persevere and would provide the necessary technical assistance to overcome any difficulties encountered in practice.

The Worker member of Argentina indicated that the intentions of the Employer members in the examination of this present case were political in nature. He stressed that nowadays there were countries in the Latin American continent such as the Bolivarian Republic of Venezuela where workers' rights began to be respected, with a greater social protection. In 1998, 80 per cent of the Venezuelan population had suffered from extreme poverty in spite of its inexhaustible oil wealth, and had been denied the most fundamental rights, including the right to freedom of association. Now, there were millions of families who had access to food, health coverage, education, work and could set up their own trade unions. Although there might be cases in which the Convention was not observed, they needed to be assessed within the overall context of the country's deep social transformation.

Another Worker member of Brazil referred to the serious violations of freedom of association and the independence and autonomy of trade unions as well as to the obvious lack of sustainable tripartite social dialogue. He also spoke of the murders of trade union leaders in the Bolivarian Republic of Venezuela. He stated that in 2006 he had been at the World Social Forum held in the Bolivarian Republic of Venezuela and could confirm the climate of intimidation enforced by groups favourable to the Government, which had attempted to hinder participation in that forum of the Secretary-General of the Confederation of Workers of Venezuela (CTV) who had been there to denounce the violations committed in his country to the international trade union leaders. The report of the Committee of Experts revealed that the situation had worsened: there was more repression, criminalization of social

movements and domination by the Government of trade union organizations. The Government needed to accept ILO technical assistance to facilitate the building of sustainable and lasting tripartite social dialogue that included all civil society organizations.

The Government member of Belarus welcomed the steps taken by the Government to formulate social and economic policy to reduce unemployment, improve the standard of living and ensure protection of workers during times of financial and economic crisis. He noted with satisfaction the consultations with the social partners on the Basic Labour Act, which, in his opinion, would be an additional and important instrument to the existing legislation protecting workers' rights and interests enshrined in the Constitution of the country. He considered that it was necessary to take into account the information provided by the Government and to note in a positive way the measures taken to implement the Convention. He also considered that the ILO should examine on a bilateral basis the possibility of providing technical assistance to the Government.

The Government member of Viet Nam noted the statements made by the Government representative and other speakers, as well as the progress achieved, which included an increased number of registered trade unions and collective agreements concluded and the development of new legislation that took into account the recommendations of the social partners and the ILO. The new legislation would support social dialogue and tripartism and would facilitate further improvements in implementing the recommendations of the Committee of Experts. Close cooperation with the ILO would play an important role in this regard.

The Employer member of Brazil expressed his solidarity with his Venezuelan colleagues in view of the violations suffered and also his concern at the consequences that any erroneous conclusions in this case might have for the institutional foundations of the Organization. This case was characterized by serious violations of the fundamental rights of employers and the ILO should apply the supervisory mechanisms rigorously to ensure that the Venezuelan Government respected those rights. If not, he feared for the future of tripartism as one of the pillars of the ILO. In a global context where frontiers no longer separated peoples and countries, it was even more important for the ILO to condemn the violations occurring in the Bolivarian Republic of Venezuela in order to avoid the risk of such practices spreading.

The Government member of the Russian Federation drew attention to the fact that the situation with regard to freedom of association in the country had improved considerably over the years. Thousands of trade union organizations had been registered, the process of collective bargaining was active and the social partners were producing a new labour law with the assistance of the ILO. The Government was improving living standards and the protection of workers in the country. He noted that the Bolivarian Republic of Venezuela, like any other country, had shortcomings in its application of the Convention and called for the enhancement of cooperation between the Government and the ILO in order to resolve all outstanding issues.

The Worker member of Cuba expressed surprise that the Committee of Experts had considered the various measures implemented by the Government to be insufficient in promoting social dialogue and recommended taking these measures into account in the interests of not prolonging that case. He considered that the Government had achieved progress unprecedented in the history of labour of the country compared to what had occurred in the 1990s. He emphasized the increase in the minimum salary

above the inflation rate, the fact that the country had the highest minimum wage in the whole of Latin America and that, in addition, it had a low rate of unemployment. He declared that the country was maintaining continuous social dialogue and that that case was being discussed because of political considerations. He urged that the conclusions be fair and depoliticized in benefit of the workers of the country.

The Government member of Ecuador emphasized the positive measures adopted by the Government through the Amnesty Decree of 31 December 2007, which provided elements to be taken into consideration so that the case did not continue to be discussed by this Committee. He declared that the Government had made significant efforts to implement the ILO's recommendations and that those efforts should be assessed in a fair and objective manner. He urged all parties and social partners to reach a clear and constructive agreement in the interests of labour, peace and harmony so as to allow the development of the labour sector and growth of production and business in the country. He declared that technical assistance should be provided so that the country could continue implementing the ILO's recommendations adequately.

Another observer representing the International Trade Union Confederation (ITUC) agreed with and supported the statement made by the Confederation of Workers of Venezuela (CTV). He stated that the Government constantly and crudely harassed workers in the health sector through verbal aggression, and that it did not supply hospitals. He described the Government's refusal to sit down with the Venezuelan Medical Federation (FMV) to negotiate, since collective agreements had been frozen in 2003. He stated that since then the Government had replaced negotiation of wages with unfair decrees fixing austere wages that did not allow the exercise of that profession with dignity. In his opinion, that was in detriment to the health and the right of professionals to decent and responsible work.

The Government member of China recalled that the Government was drafting new labour legislation and that it had considered the suggestions of the social partners and the ILO to provide legal guarantees to secure the right of freedom of association and bargaining rights between workers and employers, and to promote social dialogue and social progress. The Conference Committee should recognize the sincerity of the Government in its cooperation with the social partners and the ILO and the concrete measures it had adopted. The ILO should also continue its commitment and cooperation with the Government to further promote the effective implementation of the Convention.

The Government member of Spain declared his confidence in the responsible and cooperative application of the recommendations of the ILO supervisory bodies with the understanding that economic and social stability in any country was viable only through a serious agreement between the authorities, employers and workers to build an innovative system that contributed to growth, created wealth and redistributed wealth through social cohesion. He noted the draft reform of the Basic Labour Act and expressed confidence that full consensus of all the participants in the social dialogue could be reached. In addition, he expressed his desire to see a climate of social understanding and a legislative framework that guaranteed exercise of freedom of association and that permitted the sanctioning of behaviour that restricted the exercise of that right.

The Worker member of Niger stated that the Committee's stance was biased as it was targeting countries with progressive regimes in the interest of international capitalism. The Bolivarian Republic of Venezuela did not de-

serve to appear in the list of individual cases and the politicization of the work of the Committee was dangerous. It was important to remain independent from lobbies that worked against governments which fought for the social progress of their citizens, as was the case of the Bolivarian Republic of Venezuela.

The Government member of the Syrian Arab Republic appreciated the efforts made by the Government to fulfil its role by doing its utmost to meet its obligations. He fully supported the measures taken by the Government and the views it had expressed, which the Conference Committee should consider when it prepared the final conclusions. The Government should enjoy full support to continue its efforts to give full effect to the requirements of the Convention and technical assistance could be useful in this regard.

The Employer member of Guatemala clarified the reasons why the case was before the Committee, recalling that the Committee of Experts had referred to the situation as "extremely serious", including cases of the seizure of the assets of enterprises affiliated with FEDECAMARAS, the occupation of lands and interference in enterprises. He considered that the fact that the Government had not provided information to the Committee of Experts should be taken as acceptance of the allegations. According to information from employers, the Government, not the private sector, was in control of the food production sector. In May, a food enterprise had been expropriated, and the threat of expropriation for whatever reason was already haunting the biggest group within the country's food industry. He recalled that FEDECAMARAS had ceaselessly called upon the Government to restore social dialogue and tripartite consultation, as yet to no avail. Many acts had been passed without the compulsory consultation with the social partners. With regard to fixing minimum wages, there had been no tripartite consultation for nine years.

The Worker member of Paraguay said that the trade union movement was a point of reference in Latin American countries. He cited several landmarks in the 1990s where he saw the workers as having lost some of their acquired rights, as for example when the IMF decreed a rise in the price of goods and services. The 1999 Constitution had granted the workers new rights, including wages, hours of work, the right to strike and freedom of association. He regretted that the employers' sector had closed down enterprises producing basic foodstuffs that were no longer profitable and left thousands of workers unemployed, and it was the Government that had had to rescue the basic food enterprises, with the participation of the workers in their management.

The Government member of the Islamic Republic of Iran stated that his Government followed with great interest the developments in this case. The Bolivarian Republic of Venezuela had been influential in ILO activities recently. By ensuring the coordination of the GRULAC countries, it had demonstrated an unyielding effort in promoting ILO affairs, including the cause of social dialogue, freedom of association and collective bargaining most efficiently and in good faith. The constant progress made in the registration of trade unions and the increasing number of collective agreements signed between employers and workers was an outstanding token of the determination of the Government to fulfil its obligations arising from the Convention. In view of the ongoing efforts and the Government's timely response to the comments of the ILO supervisory bodies, he hoped that the Committee would consider positively the above developments in its conclusions.

An observer representing the World Federation of Trade Unions (WFTU) recalled the origins of the Convention, the

circumstances that led to its adoption and the WFTU's efforts and commitment to defend the provisions it contained. Year after year, the same old political arguments had been trotted out to drag this case before the Committee. Given the social nature of the Government, which refused to give in to the neo-liberal policies of the IMF, the World Bank and the powers of the North, the workers had made significant advances. The case should be treated calmly and impartially and due credit should be given to the process of change from which the country's workers were benefiting.

The Government member of El Salvador endorsed the statement by GRULAC. He highlighted the progress achieved, as illustrated by the increase in trade union registration and the signing of collective agreements. He said that transparency and equanimity were essential elements in maintaining the technical and moral credibility of the supervisory bodies.

An observer representing the Trades Union International of Workers in the Building, Wood, Building Materials and Allied Industries (UITBB) stressed the considerable advances that the Venezuelan working class had achieved. After three decades of a stagnant trade union bureaucracy under which the workers had no opportunity to hold democratic elections, the rank-and-file workers were now the lynchpin of the union organizations. Trade unions now held regular elections in accordance with their by-laws, for example every two or three years, and referendums were organized so that the trade unions were aware of the needs of their members. The Bolivarian Republic of Venezuela did not suffer from the climate of anti-union violence that was prevalent in Colombia. Moreover, a number of enterprises were being nationalized to guarantee the Venezuelan people's access to health and education.

The Employer member of Spain stated that in his intervention he would discuss neither the shortcomings and restrictions in the Bolivarian Republic of Venezuela in contravention of the Convention, nor the inexistence of a broad, inclusive and participatory social dialogue, nor the acts of violence, threats, duress and kidnappings exercised against trade union members and against the most representative employer's association in the country. He recalled the efforts, both personal and financial, that had been necessary to implement a business project and the risks taken on by businessmen. He declared that it was unacceptable to intimidate or attack the property of those who sought to organize or form an association in independent defence of their interests and rights or that expressed opinions different from those of the Government, which was contrary to the Convention. He stated that false criteria of public interest could not be used to justify expropriations or arbitrary closings, such as those that had occurred with the media, the agrarian sector or in the food sector, which contravened the spirit and letter of the Convention.

The Government representative rejected the claims made by the Worker members regarding information that should have been provided to the Committee of Experts, as all the required information had been sent by 8 December 2009. Furthermore, he stated that the Basic Labour Act could be amended, but only to restore workers' rights, not diminish them. He added that any union leader could be re-elected.

With regard to the comments made by the Worker member of the United States, he said that the deaths that had occurred were appalling and that a commission had been established to follow up those cases. The commission was a valid and transparent mechanism.

He maintained that the Bolivarian Republic of Venezuela enjoyed more social dialogue now than in the previ-

ous 20 years, but that the Employers considered that dialogue did not exist, because FEDECAMARAS was not the exclusive participant in such dialogue. Moreover, FEDECAMARAS was not open to the opinions of others. He suggested that the Office should offer assistance to FEDECAMARAS so that it could learn how to engage in dialogue. He also urged the Employers to stop using the ILO for their own internal political wrangling.

He asserted that the Government was not threatening private property, but rather that it wished to extend ownership to all Venezuelans. He explained that the expropriation of estates had been carried out because the lands had not been used for many years and ownership had been demonstrated. He said that there was indeed a war between capital and labour, and that labour reforms would not be undertaken to save capital, as was occurring in other countries to the detriment of workers' rights.

He emphasized that the Government would hold dialogue with any actor, but not under blackmail or threat, and that it had built real social dialogue involving all parties to defend the rights and interests of all workers.

The Worker members requested the Government to reply in a satisfactory manner to the comments of the Committee of Experts concerning the observations made by the workers' and employers' organizations with respect to human rights violations. Conflicting views had been expressed during the discussion, and it would therefore be necessary for the Government to respond to the questions raised so as to enable the Committee of Experts to examine the situation. The dialogue of the deaf that was taking place between the Committee of Experts and the Government on the legislative matters raised in the observation needed to be brought to an end. The Government should be offered technical assistance so that the Office could proceed to examine the controversial provisions.

The Employer members noted that even though this might appear an interesting socio-economic discussion, it was not really connected with the application of the Convention. Every day, the conditions in respect of freedom of association deteriorated for both workers and employers. The comments of the Committee of Experts and the discussions in the Conference Committee had confirmed their concerns. The Government had not addressed two main fundamental issues: first, the need to ensure respect for civil liberties, freedom of speech and freedom of movement as a prerequisite for freedom of association; and second, non-interference in the internal affairs of employers' and workers' organizations. The systematic destruction of the most representative employers' organization in the country, FEDECAMARAS, was a matter of grave concern. The rights enshrined in the Convention applied in democratic and authoritarian societies alike.

The Committee's conclusions should emphasize that civil liberties, freedom of speech and freedom of movement were essential prerequisites for freedom of association. These conditions did not exist in the country and interference by the Government in the internal affairs of FEDECAMARAS continued. The Employer members recalled the repeated attacks on FEDECAMARAS leaders such as: Vicente Brito in 2001, Rafael Marcial Garmendia in 2003, Genaro Méndez in 2007 and recently Eduardo Gómez Sigala. The Conference Committee should recognize that scant attempts to comply and implement the Convention had been made by the Government in terms of freedom of association, particularly concerning the employer aspects of the case. As a minimum, a high-level tripartite mission should be sent to the country to examine the situation and provide technical assistance. It was regrettable that the Government had ignored the recommendations made by the different ILO supervisory bodies

for more than ten years and the recommendations made by two direct contact missions prior to 2005 and one high-level technical assistance mission. They suggested establishing a national, high-level joint committee in the Bolivarian Republic of Venezuela with the technical assistance of the ILO to examine all the allegations presented to the Committee on Freedom of Association in order to resolve problems through direct dialogue. The Employer members concluded by requesting that the conclusions of previous years be reflected in this year's conclusions as well.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee also noted the cases currently before the Committee on Freedom of Association submitted by workers' and employers' organizations which were categorized as extremely serious and urgent.

The Committee observed that the Committee of Experts had noted allegations to which the Government had not replied concerning serious violations of civil liberties, including acts of violence against numerous employers' leaders and trade unionists, the criminalization of legitimate trade union activities and a worrying situation of impunity. The Committee also noted that the Committee of Experts had referred to serious deficiencies in social dialogue and a delay for many years in the processing of the legislative reforms requested by the Committee of Experts on very important issues, such as the intervention of the National Electoral Council in trade union elections and various restrictions on the rights of workers and employers to establish organizations of their own choosing, the right of organizations to draw up their constitutions and to elect their leaders in full freedom without interference by the authorities and the right to organize their activities.

The Committee noted the statement by the Government representative that the reform of the Basic Labour Act had not been completed as the process of consultation was being continued by the National Assembly and the provisions criticized were not applied and did not imply a restriction on the exercise of trade union rights. He had added that the National Electoral Council provided technical advice on the holding of elections to trade union organizations which requested it voluntarily. With regard to the cases of murdered trade union leaders, he had indicated that information had been provided to the Office in a communication dated 8 December 2009 indicating that the cases were under investigation and that persons had been detained already. Those responsible for the attack on the FEDECAMARAS headquarters had been captured. He had emphasized the Government's commitment to combat any form of impunity. He had added that recourse to expropriation was not a matter of political retaliation and that the Government respected private property. With reference to tripartite dialogue, he considered that it was FEDECAMARAS who had sought to exclude other employers' organizations and had emphasized the negative outcome of the work of the National Tripartite Commission in the past; nevertheless, the Government supported social dialogue that was inclusive, not exclusive. Finally, the Committee noted that the Government had referred to a substantial increase in the number of trade unions and collective agreements.

The Committee reiterated the full text of its conclusions adopted the previous year, including the recommendations of the Credentials Committee.

The Committee noted with deep concern the allegations of acts of violence against employers' leaders and trade unionists, the criminalization of legitimate trade union activities and other restrictions on the civil liberties necessary for the exercise of trade union rights. The Committee deplored the

fact that the attacks on the FEDECAMARAS headquarters had not yet resulted in the conviction of those responsible, as well as the situation of impunity. The Committee emphasized the climate of intimidation suffered by employers' leaders at the personal level – including the expropriation of lands and measures against their property – and against FEDECAMARAS headquarters.

The Committee recalled that the rights of workers' and employers' organizations could only be enjoyed in a climate of absolute respect for human rights, without exception. Recalling that trade union rights and freedom of association could not exist in the absence of full guarantees of civil liberties, in particular of freedom of speech, assembly and movement, the Committee emphasized that respect for these rights implied that both workers' and employers' organizations had to be able to exercise their activities in a climate free of fear, threats and violence and that the ultimate responsibility in that regard lay with the Government. The Committee observed in that respect that the employers in FEDECAMARAS felt intimidated by the actions and verbal aggression of the authorities.

The Committee observed with deep concern that the Committee of Experts had for years been requesting legislative amendments to bring the law into conformity with the Convention and that the Bill submitted to the Legislative Assembly several years previously had not been adopted. The Committee once again urged the Government to take measures to accelerate the procedures in the Legislative Assembly for the draft reform of the Basic Labour Act and to ensure that the National Electoral Council did not interfere in trade union elections. The Committee requested the Government not to interfere in the affairs of workers' and employers' organizations.

With regard to social dialogue on questions relating to the rights of workers and employers and their organizations, the Committee, observing that no formal bodies for tripartite social dialogue yet existed, once again requested the Government to intensify social dialogue with the representative organizations of workers and employers, including FEDECAMARAS, and to ensure that the latter organization was not marginalized in respect of all matters of concern to it.

The Committee regretted to note that, year after year, the Government had not taken steps to implement the recommendations made by the Committee of Experts and the Committee on Freedom of Association, as well as the conclusions of this Committee.

The Committee requested the Government to avail itself of and accept an ILO high-level technical assistance mission from the International Labour Standards Department of the International Labour Office as a follow-up mission to the 2006 high-level mission on the outstanding questions. The Committee requested the Government to provide a full report in 2010 to the Committee of Experts and firmly hoped that tangible progress would be achieved in the application of the Convention in law and practice.

The Government representative regretted that the conclusions of the Conference Committee did not reflect the discussion held the previous day. He indicated that he could not accept the conclusions for three reasons: firstly, because the conclusions erroneously referred to ten years as the period that the law had not been amended; secondly, because measures had in fact been taken against the acts of violence; and thirdly, because the Government did not accept at any level the certitude that FEDECAMARAS was the most representative employers' organization. Finally, he questioned the inclusion of a high-level commission in view of the fact that no Government member nor the Worker members had requested it, and that only the Employer members considered it necessary.

The Employer members recalled that the Employer spokesperson did not represent only one voice, but spoke on behalf of one third of the Committee's membership. They also indicated that the last paragraph of the conclusions afforded the Government a clear opportunity to provide evidence directly to the ILO to address any misconceptions. They noted that the case of the Bolivarian Republic of Venezuela, which represented only 4 per cent of all cases, was the most important case to the Employer members and they therefore expected the support of the Worker members on their proposal for a high-level tripartite mission in full recognition that there were significant worker and human rights considerations, as well as employer rights to freedom of association.

The Worker members stated that they did not want to reopen the debate since the conclusions had now been adopted. They acknowledged that most cases were short-listed on their request, but recalled that the groups had always proceeded on the basis of a compromise that had become year after year increasingly difficult to reach. It was never good to veto the inclusion of cases on the list, yet the United Kingdom and Colombia had not been included on the list nor had a special paragraph been accepted in a very serious case.

The representative of the Secretary-General reminded the Committee members of the need to respect rules of decorum and the principles of free speech and parliamentary process. She indicated that the Office would verify and eventually correct any factual error that might have appeared in the conclusions, as implied by the Government representative.

A Worker member of the Bolivarian Republic of Venezuela rejected the conclusions as they did not objectively reflect the discussion. She questioned the procedures and methods of the Committee and announced that she would vote against the report when it came up for adoption.

Protection of Wages Convention, 1949 (No. 95)

UKRAINE (ratification: 1961)

A Government representative stated that he was aware that the current wage arrears situation was in contradiction with the Convention. The main reasons for this situation were the following: enterprises were in a difficult economic and financial situation due to the global economic crisis, the banking system was experiencing a cash flow problem, unemployment was increasing and enterprises were ineffectively managed in these unstable conditions. He subsequently outlined the main measures the Government was undertaking to remedy the wage arrears situation. The Government sought to work on a tripartite basis towards addressing the effects of the crisis in a co-ordinated way. Measures included the reduction of the size of the shadow economy, reform of the tax system, changing of the national law and of the social protection system. Last year, the President's Office had adopted an anti-crisis plan together with workers' and employers' organizations. On 11 May 2009, a law was adopted increasing the responsibility and liability of enterprises which unjustifiably delayed wage payments and setting higher fines. Labour inspections conducted in 2009 in 8,199 enterprises had resulted in 10,108 persons having been found to be liable for wage arrears. When faced with cases of wage arrears, courts often mandated fines lower than the level set out in the national legislation. This issue had been drawn to the attention of the Supreme Court. Currently an analysis was being carried out to prevent future wage arrears and settle current ones. In consultation with social partners, a tightened timetable was being designed to pay off outstanding wage payments. Most wage arrears had occurred in enterprises which were de-

clared insolvent or had gone bankrupt in 2008–09. Active economic enterprises accounted for 38 per cent of this total debt. Of these, 62.3 per cent of the wage arrears existed in the industrial sector, 10 per cent in the construction sector and 0.3 per cent in the mining sector. With regard to changes in legislation, he pointed out that the new Criminal Code now provided for both criminal and administrative liability for the delay in wage payments. Workers and unions had the right to go to court to have their wages paid in the event of enterprise insolvency. Also, discussions were ongoing with social partners to establish a fund to guarantee the payment of wages in case of insolvency of enterprises. The present Government has taken control over the situation regarding wage arrears. Wage arrears had been reduced by 12.7 per cent in the last three months, there were tendencies of stabilization and even reduction of the wage arrears (a 2.8 per cent reduction with regard to bankrupt enterprises and a 15 per cent reduction with regard to economically active enterprises). This included a 20.7 per cent reduction in the private sector and a 10.8 per cent reduction in the coal industry.

Efforts were being made to reduce red tape and it was planned to adopt a new tax code in the future. In addition, the minimum social standards provided by the legislation in force as well as the collective agreements on tariffs (also in the mining industry) would be implemented this year. As regards the specific cases of the Nikanor–Nova coal mine and the state enterprise “Luganskugol”, measures had already been taken by the Government. The companies in question had not used the 1.3 per cent adjustment rate set by law in September 2009 and currently 16 court cases were pending. The mining industry was subsidized by the State and was undergoing restructuring. He stated that it was outstanding that this sincere discussion took place exactly today, when the Minister of Labour and Social Policy was reporting on the issue of wage arrears at a meeting of the Cabinet of Ministers of the Ukraine with the participation of the representatives of workers' and employers' organizations. The Government of Ukraine had all the legal and economic power, and most importantly the political will and the support of the social partners, in order to realize large-scale economic reforms which would guarantee social progress, growth in employment rates and decent working conditions as well as remuneration standards. The Government would report to the Committee of Experts on the effectiveness of the measures taken and reply to the conclusions taken by the Committee appropriately. The issue was also taken up within the framework of the ILO Decent Work Country Programme.

The Employer members regretted that the information provided by the Government was not submitted beforehand in writing. This was already the fifth time that the Committee discussed the application of the Convention by the Ukraine. At the last occasion in 2003, specific measures had been announced by the Government to deal with the problem of wage arrears. At that time the situation in the coal mining sector was already the worst and this was still today the sector facing the biggest problems. The Government had acknowledged the problem and informed that there were one month wage arrears in the Nikanor–Nova coal mine, that the state enterprise “Luganskugol” was not in a position to pay workers their entitled salaries and that criminal measures had been initiated against the directors of these enterprises. It was also reported that investments in occupational safety and health were being made in the Nikanor–Nova coal mine, however the link with the wage arrears was unclear and he maintained that a violation of the Convention could not be offset by investments in other areas. The Convention in question dealt with the core of the employment relation-

ship. The continuous lack of salary payments had a serious impact on the living conditions of workers. Wage arrears could have a serious impact on the functioning of the economy, lead to social instability, increase the informal economy, worsen living conditions and lead to unfair competition. The Employer members were convinced that the problem of wage arrears in the Ukraine was not a problem of a lack of legislation, but of a lack of application in practice. There was a structural problem in the coal mining industry in the Ukraine and the causes had to be found. The Employer members were surprised that the Government did not provide more information concerning developments in other industries and it was therefore difficult to judge whether there had been improvements or were still economy-wide problems. They urged the Government to provide the Office with the corresponding data.

The Worker members noted the seriousness of this case, which was marked by a steadily deteriorating situation and wage arrears that had been accumulating for years. Moreover, the Government's latest report contained no up to date information on wage arrears, no statistics on the accumulated wage debt and no announcement of new measures. Despite the lack of official data, the Committee of Experts had obtained extensive information on the situation from exchanges between the miners' unions and the public authorities. These communications contained figures on the minimum guaranteed remuneration, delays in payment, the amount of certain entitlements and the deterioration in occupational safety and health conditions in the Nikanor–Nova coal mine and the "Luganskugol" state enterprise. In both these enterprises, a 2009 labour inspection had noted that the remuneration paid did not conform to the relevant minimum wage, that compensation for late payment was not always paid along with the arrears and that there were sums owing to the pension fund. These were not isolated incidents but typical examples of the situation in Ukraine's coal industry, which was characterized by poor returns on investment, a high level of unemployment and too little safety at work. The principal victims continued to be the miners themselves.

The Employer member of Ukraine observed that the question of the payment of wage arrears in his country remained of topical importance despite the steps taken by the Government along with the social partners to improve the situation. The wage arrears had continued to accumulate in the last months and the total amounted to 1.5 billion hryvnias (UAH). The situation of wage arrears had worsened because of the economic crisis which had led to a drop in GDP, shrinkage in consumer spending and the growth of the shadow economy. The lack of VAT rebates by the Government aggravated the lack of resources on the side of the employers and restricted even further their ability to pay wages. The same applied with the absence of payment in case of government procurement. As a result, many employers had gone bankrupt. These difficulties, however, did not relieve employers from the obligation to make wage payments in full. It was important for employers to emphasize their interdependence and their common interest in achieving full payment of wages. For this reason, all the employers' organizations at the national level had set up a common representative body which would help tackle the problem, in collaboration with the Government and the trade unions.

In essence, solving the problem of wage arrears in a sustainable manner, which would be to the benefit of both workers and enterprises in Ukraine, depended to a large extent on the adoption of economic and tax reforms. The enforcement of administrative and criminal sanctions would not solve the root causes of the problem and tackle it in the long run. The role of the State was to strike a balance and make sure that everybody was treated fairly. To

sum up, the speaker suggested taking the following concrete measures to resolve the problem of wage arrears: (i) the Government should undertake its responsibilities relative to the repayment of previous debts and sums due to enterprises, including through state procurement and the VAT rebate. This money would no doubt help the employers to pay the wage arrears; (ii) a State Wage Guarantee Fund needed to be established for enterprises in difficulty; and (iii) the social partners should be invited to take part in the elaboration of the draft State budget for 2011 to ensure more balanced decisions.

A Worker member of Ukraine said that his country's non-compliance with international labour Conventions was an ongoing problem. Even when the economy was booming (7 per cent growth rate) not all salary arrears had been paid. They were now two-and-a-half times higher, and between January and April 2010 they had risen by 15 per cent to over US\$100 million. For the enterprises themselves that was unacceptable, but it was up to the Government to ensure compliance with Convention No. 95. The trade unions had appealed to the labour inspectorate, to the police, to the courts, to every possible domestic institution before resorting to international channels. The problem was not that the authorities had failed to act but that, although they had taken some steps to resolve the issue, they had done so too late and the Government had not adopted systematic measures to make sure that there was a real change in the situation. A lot of people were living below the poverty line. There were 59 enterprises that were particularly in arrears, and some of them had not been paying for years. It was important that salaries be paid on time.

Another Worker member of Ukraine said that unpaid salaries had reached US\$200,000 million and that this had to be measured in terms of an average salary of US\$150 a month. Some enterprises went into fictitious bankruptcy in order not to have to pay the arrears. In some cases people employed in the mining industry, which was dangerous work, were even paid in kind instead of cash. He emphasized that it was the oligarchs, who controlled every sector including the political sector, and benefited from the situation. He could not think of a single instance where sanctions had been applied.

The Worker member of Croatia expressed concern about the situation of workers in the Ukraine which constituted a typical example of non-observance of the Convention. The regular payment of wages for services rendered was a basic right of workers. The violations could not be blamed on the global economic crisis since the problem of wage arrears had persisted for more than a decade. Moreover, this problem was not isolated to one company in the Ukraine since the practice had spread to the majority of regions and to most branches of industry, directly affecting the standard of living and social security, especially health protection, and contributing to the growth of the informal economy and poverty which were alarmingly high at the moment. It also forced the Ukrainian workers to leave and seek jobs abroad. The Ukrainian trade unions had consistently asked the Government over the last decade to find a solution and had proposed ways in which the situation could be resolved. It was for the Government to solve the issue using all resources necessary. Despite certain efforts made by the Government, more should be done especially with regard to the labour inspectorate and the sanctions imposed in cases where the wages were not paid in line with the applicable collective agreements. Furthermore, in order to protect the workers in cases of employers' insolvency, immediate steps should be taken to adopt the necessary legislative amendments.

The Government representative expressed his Government's appreciation for the unbiased discussion at the Committee as well as gratitude for the proposals made.

This discussion was held on the very same day when the Minister of Labour was reporting to the Cabinet on the issue of wage arrears and suggesting to disseminate detailed information through the media about the problem and the measures to address it. The Government had taken all necessary legal measures in order to find a solution to the issue and promote decent work in the country. The Government was grateful for the efforts of the ILO to strengthen countries at this difficult time in the context of the global crisis and would continue to collaborate with the ILO so as to take the necessary steps to tackle the problem of wage arrears.

The Employer members concluded that the major difficulties in implementing Convention No. 95 still persisted in practice. While welcoming the Government's readiness to continue its efforts in this regard, they regretted that the relevant information was only received on the very day of the discussion and thus did not allow the Conference Committee to assess the situation in an appropriate manner. The impression prevailed, however, that there had been no substantial improvement since the last Conference discussion. The Employer members therefore urged the Government to further intensify its efforts to ensure that wages were paid punctually, and to supply the written information necessary for the Committee to gain an overview, in particular as to whether wage arrears accumulated over the years had indeed been settled.

The Worker members drew attention to the reasons behind the discussion of this case, which were the deterioration in the regular payments of wages in the coal industry, the lack of action taken by the Government and its failure to provide information on the extent of the payment arrears. Two detailed reports were scheduled for 2010. The first concerned the irregular payment of wages in all the sectors and enterprises concerned and should explain what steps were going to be taken for payment to be made on a regular basis. Sanctions and compensation for payment in arrears should be increased and stronger action should be taken against the payment of wages "under the counter". In addition, labour inspection should be stepped up and a mechanism introduced to guarantee the payment of wages in enterprises that went bankrupt. The second report concerned conditions of employment and work in the mining sector, both in major enterprises and in the hundred or so illegal mines.

Conclusions

The Committee took note of the statement made by the Government representative and of the ensuing discussion. The Committee observed that this case related to the application of Article 12(1) of the Convention concerning payment of wages at regular intervals and that it had already been examined by the Conference Committee on five separate occasions.

The Committee took note of the explanations presented orally by the Government representative concerning the reasons for the re-emergence of wage arrears problems, including the dire economic situation, cash flow problems in the banking system, high unemployment and inefficient management in some businesses. It also noted the Government's indication that active measures were being taken, in consultation with the social partners, such as the Joint Anti-Crisis Plan, the legislation of May 2009 on the liability of those responsible for delayed payment of wages, the amendment to the Criminal Code and the Draft Law on the protection of workers' wage claims in the event of the employer's insolvency. As reported by the Government, inspection visits and administrative fines had been tightened resulting in a steady reduction of wage arrears in all regions. With reference to the situation in the mining industry, and in particular the problems experienced in the Nikanor-Nova mine in the Lugansk region, the Government acknowledged

the continued failure of the enterprises in question to comply with applicable minimum wage rates despite the imposition of penalties to the managers concerned on several occasions.

The Committee expressed deep concern in light of the information contained in the report of the Committee of Experts, but also echoed by several speakers participating in the discussion of the Conference Committee, according to which the overall amount of wage arrears currently stood at 1.7 billion hryvnias (or approximately US\$220 million) having increased by 15 per cent since the beginning of the year and affecting active, sound businesses and not only bankrupt or inactive businesses. The Committee also noted that several trade union organizations had commented on problems of persistent failure to pay wages on time and in full in several mining companies, and that the Committee of Experts had concluded that these problems were symptomatic of deep systemic difficulties of the country's mining industry as a whole.

While fully conscious of the challenges that the global economic crisis posed to the prospects of settlement of wage arrears in Ukraine, the Committee recalled that the Global Jobs Pact stressed the relevance of ILO wages-related standards, particularly Convention No. 95, for devising appropriate crisis response measures. The Committee fully shared the point of view expressed by the Committee of Experts that the best form of wages protection was the assurance of regular payment, which allowed workers to organize their lives with a reasonable degree of certainty and security, and that any delay in the payment of wages – even more so the accumulation of large wage arrears – clearly went against the letter and spirit of that Convention and rendered the application of most of its remaining provisions meaningless.

The Committee recalled that giving effect to the requirements of Article 12(1) of the Convention called for a set of measures: effective monitoring by labour inspection services and sufficiently effective and dissuasive sanctions to prevent and punish infringements. The Committee accordingly urged the Government to intensify its efforts in pursuing the above-indicated set of measures through social dialogue in order to resolve the serious wage debt crisis that had persisted in Ukraine for more than 20 years.

The Committee requested the Government to provide updated information for the next session of the Committee of Experts concerning: (i) concrete measures that it had taken to improve the application of the Convention in practice and the results achieved, including detailed statistical information on the wage arrears situation; (ii) the activities of the labour inspection services or other monitoring bodies with regard to wage protection; (iii) any developments concerning the adoption of the law on the protection of workers' wage claims in the event of the employer's insolvency; and (iv) the working conditions, including pay conditions, prevailing in the mining sector.

In conclusion, the Committee welcomed the Government's request for a technical assistance mission with a view to better understand the current wage debt situation and requested the Office to ensure that following such a mission all relevant information was transmitted to the Committee of Experts for its next session in November–December 2010.

The Committee hoped that real progress could be recorded by the Committee of Experts in the very near future on a matter that had been long-standing, had affected and continued to affect large numbers of the working people of Ukraine.

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

COSTA RICA (ratification: 1960)

A Government representative stated that the first steps taken by the new Government had included reactivating

the Higher Labour Council and introducing new support measures for tripartite bodies and that it was currently introducing an innovative labour inspection programme. In the first place, with regard to the observations concerning the slowness of legal proceedings in cases concerning anti-union activities, she indicated that the implementation of the draft amendments to the Code of Labour Procedure was one of the Government's priorities. The Government had sent Parliament a proposal that those sections that met with the workers' and employers' agreement should be approved and the Ministry of Labour was taking the necessary steps for those issues to be discussed as soon as possible by the Higher Labour Council. Other similar measures that had been adopted included: the consolidation of the information and training process so as to prepare those responsible for judicial decisions and the social partners to apply this legal instrument; the strengthening of alternative machinery for the settlement of disputes and for conciliation at the administrative level; an increase in the staff of labour courts and the creation of a social security tribunal; and the introduction of a system for monitoring compliance with labour decisions. Secondly, regarding the decisions handed down by the Constitutional Chamber finding that certain clauses in collective agreements in the public sector were null, she believed that collective agreements were not under threat in Costa Rica. What was under discussion was the abuse of certain public sector agreements under the terms of the Constitution. The Constitutional Chamber had declared that collective agreements in the public sector were legal so long as they did not regulate the working conditions of workers engaged in the administration of public affairs. The Second Chamber of the Supreme Court of Justice, had ruled that collective agreements negotiated by employers and public servants whose labour relations were governed by labour law, even though they were part of the public service, were not unconstitutional. The Public Prosecutor had also endorsed the right of public servants to negotiate collective agreements. Thirdly, with regard to the tripartite assessment requested by the Committee of Experts relating to the proportion of agreements concluded directly with non-unionized workers in comparison with collective agreements, the Government representative said that the principal workers' and employers' organizations had been convened so that the Government could inform them once again of its intention to maintain a permanent dialogue with the principal social partners. It was planned to submit the report prepared by the independent expert to the Higher Labour Council, so that the issue of direct agreements with non-unionized workers could be assessed on a tripartite basis. She asked the ILO to send a technical assistance mission on the subject. Finally, she called for the criteria for determining the list of countries called before the Committee to be revised in the light both of the frequency of the shortcomings identified and their seriousness.

The Worker members emphasized that this case had been discussed for about 15 years on many occasions, under Conventions Nos 87 and 98. They noted that a high-level mission had visited the country in 2006 and that following this mission it had been decided to establish a joint committee with the ILO's technical assistance. The Government had also made a formal request for technical assistance to the ILO in July 2007, with a view to resolving issues relating to the implementation of Convention No. 98. In 2009, the Committee of Experts had urged the Government to take measures on an urgent basis for the creation of the bipartisan congressional committee to bring all social partners together. It had also asked the Government to provide a detailed timetable for legislative reform. Although the Government itself set the order of priorities of the agenda of the Legal Affairs

Committee, nothing seemed to have been done to date. Moreover, problems still arose in relation to collective bargaining in the public sector. In this regard, it should be noted that the Bill on collective bargaining in the public sector had been submitted for consideration by the relevant committee and was 14th on the agenda. In addition, the institutionalization of solidarity appeared to be confirmed, as well as the lack of political will to solve the problem of direct agreements. The Worker members emphasized in this regard the importance of avoiding the use of direct agreements for anti-union purposes. Finally, they expressed concern at the delays in the judicial system and the harassment of the union movement, emphasizing the fact that what happened in Costa Rica could undermine union action in Central and South America.

The Employer members considered that much progress had been made in resolving the various issues of the case and that the Government showed great commitment to the work of the Committee and ILO technical assistance. For these reasons they considered that this case should not have been included in the list and emphasized the importance of encouraging situations in which progress had been made in aligning law and practice with the Convention. The Employer members nonetheless considered that some issues were pending. With regard to the possible shortcomings of the procedures relating to sanctions and remedies for anti-union activities, they indicated that there remained unresolved issues, such as draft Law No. 13475 on union protection which had not yet been approved. However, the Government had provided detailed information on new measures taken and the Committee should acknowledge the efforts made in this regard. They observed clear progress with respect to the introduction of proportionality and rationality in collective bargaining procedures in the public sector. They reiterated the position of the Employer members that the State should have the autonomy to adapt collective bargaining in the public sector to its specific characteristics and the socio-economic context. They considered that the interpretation of the principles of proportionality and rationality in the use of collective bargaining in the public sector seemed to have reached an important turning point, given that the constitutionality of the collective agreements in the public sector was now recognized and it had been found that the rule should be to allow collective bargaining. The declaration of certain provisions of collective bargaining agreements were unconstitutional, which was the main point of controversy, seemed to have been resolved. With regard to the so-called "direct agreements" with non-unionized workers, they noted that in Costa Rica the possibility existed for enterprises to conclude direct agreements directly with other representatives of workers, which were used as an alternative to traditional collective bargaining. In the view of the Employer members, the existence of these direct agreements was not contrary to Convention No. 98.

The Worker member of Costa Rica stated that his country had achieved successes in some areas, but that there were still many shortcomings in relation to freedom of association and collective bargaining. Acts of anti-union discrimination persisted and the national legislation continued to suffer from the absence of rapid and effective procedures. He regretted the Government's lack of commitment and the strong opposition from employers with regard to the adoption of trade union legislation. He recalled the commitment of successive governments to adopt legislation on collective bargaining rights, including: the reform of sections 111 and 112 of the General Act on Public Administration; the amendment to article 192 of the Constitution, which regulated the employment relationship between the State and public servants; the adoption of a law guaranteeing the right to collective bar-

gaining in the public sector and the amendment of article 60 of the Constitution to allow foreigners to join the boards of trade unions. To date, none of these laws had been approved. He regretted that the Bill to reform labour procedures had not been examined by the Legislative Committee for four years and recalled that the Government had not provided a detailed time schedule of the steps to be taken for the approval and submission of the draft legislation, as had been requested by the Committee. The criteria of proportionality and rationality were maintained and employers relied on them in the collective bargaining process. The increase in the number of labour cases in the courts demonstrated the frequent violation of workers' rights and the Government did not indicate how many cases had been resolved. The office for conflict resolution hardly functioned, which placed workers at a disadvantage due to the lack of access to legal advice.

The Employer member of Costa Rica indicated that the Labour Code and the Constitution of Costa Rica guaranteed workers their individual and collective labour rights, and that the legal system afforded ratified ILO Conventions a higher status than national legislation. As to the slow pace of labour justice, she indicated that the Bill on the reform of the labour procedures, which was promoted by the Supreme Court, would expedite labour procedures. The delays in the approval of this Bill were largely due to the attitude of the workers, who had systematically walked away from the negotiating table. With regard to the independent study which had been requested by the Committee on the Application of Standards in 2006 on the alleged disproportionality between the number of collective and direct agreements, she indicated that the Labour Code recognized different types of collective bargaining. A direct agreement was an alternative that allowed workers to improve their conditions of employment and granted union protection for their representatives. Such a direct agreement, once approved, benefited all workers. She added that the legislative measures had been combined with important court decisions, for example the recognition since 1993 of the free exercise of the collective rights of workers. Employers favoured the settlement of disputes with workers, either through direct or collective agreements. It was important to achieve stability and conflict resolution in the workplace, particularly at a time when the global crisis had left many people in the country without formal employment. She expressed the need for the ILO to ensure that it followed technical and objective criteria, and distanced itself from any political motives, which only served to make an exhibition of countries that had succeeded in resolving their labour disputes with respect and without violence. Finally, she considered that this case should be seen as a case of progress by the Government and expressed the hope that the workers would resume dialogue with the employers.

The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the Government members of the Committee, Member States of the Group of Latin America and Caribbean States (GRULAC), thanked the Government representative for the information he had provided and drew attention to the steps that had been taken to strengthen social dialogue machinery and the discussion of draft legislation on which there was tripartite agreement. He also emphasized the reference by the Government representative to developments in the country's case law and the fact that in 2008–09 there had been no further annulment of clauses in collective agreements. The GRULAC countries hoped that the Committee on the Application of Standards would continue to improve its working methods so as to ensure full transparency and objectivity in its procedures. He called on the Committee of Experts to confine itself to the mandate it had been entrusted with by the Governing Body.

The Worker member of Germany stated that the Costa Rican trade unions were frustrated with the massive violations of trade union rights and the lack of improvement in the situation. For example, SINTRAJAP, the trade union of a state enterprise, had objected to the privatization of the management of docks, upon which the management had called a staff meeting in which it had removed the elected board of the trade union. When the legitimately elected board had refused to accept the unlawfully appointed board, the enterprise had evicted the union from its offices and taken possession of its property. This was a most serious case of employer interference in trade union activities and organization. The new unlawful board had then negotiated a collective agreement on the privatization of the docks and had reversed the previously won concessions from the enterprise management to workers. Another example was the dismissal of trade unionists without notice three days after they had established a trade union for bus drivers on 21 May 2010. Finally, there was the example of the COSIBAR trade union of workers in the banana industry and members of the agricultural union SITAGAH, who had filed a complaint concerning the violation of national labour law by their employers. Their complaints had been ignored and their rights, including social security, continued to be denied. There had been a series of cases in which the results of investigations had been pending for years, such as the case of the dismissal of workers of the National Social Insurance Institute on grounds of trade union activity, which had been discussed by the Committee the previous year. Costa Rica had a new Government, but the agencies dealing with these cases remained the same. He called on the new Government to put an end to these practices and to ensure that trade union rights were effectively protected.

The Employer member of the Bolivarian Republic of Venezuela expressed the opinion that Costa Rica was altogether respectful of individual and collective workers' rights. Its labour legislation provided for various forms of negotiation. Direct agreements were a form of negotiation with works committees which, under different names, were common practice in other countries' legislation. As to the slow pace of labour procedures, negotiations in the Congress of Costa Rica had made considerable progress; if the Bill had not yet been adopted, it was because it involved the social partners and because the discussion of important issues in the country always took time.

The Worker member of Brazil indicated that there were many aspects of concern regarding the application of the Convention, in particular the slow and inefficient procedures for sanction and redress in cases of anti-union acts. The number of dismissals of union leaders was still very high, both in the public and the private sectors, as identified by the high-level mission which had visited the country in 2006. However, the response of the judiciary to this situation was extremely slow, taking on average four years for a final decision. This fact showed that the national legislation lacked adequate protection for union leaders. The inadequacy of the national legislation in the field of anti-union discrimination had been examined for years by the Conference Committee. On several occasions the Committee of Experts had noted that despite the Government's commitment to improve the situation, there had been no improvement in law and practice. He noted that the Government highlighted the proceedings relating to the Legislative Assembly Bill No. 15990 to reform labour procedures. Unfortunately, it did not appear to be the case that there would be rapid and effective procedures to deal with anti-union dismissals even if the Bill were approved. The Government had undertaken to establish a joint legislative committee composed of workers, employers, the Executive and the Judiciary to examine and approve the Bill. However, the Government had not formed such a

committee or convened public meetings to discuss it, except for a subcommittee where workers had been represented and some agreements reached. These agreements had never been sent to the Legislative Assembly. He was of the view that the Bill was not in conformity with the Convention, as it did not amend the provisions on the possible use of direct anti-union measures. He observed that the information provided by the Government on the treatment of the judicial process had not clarified the time needed for union leaders victims of anti-union discrimination to be reinstated. Four years to obtain a ruling was too long. He recalled an observation of the Committee on Freedom of Association that the situation was not compatible with the requirement of a fair and prompt procedure, and gave rise to very detrimental consequences. The analysis of 2010 could be applied to any other previous years, which showed that the situation remained the same. The option identified by the high-level mission had not been pursued by successive governments. The Conference Committee had to be more rigorous this time.

The Government member of Panama welcomed the statement of the GRULAC countries. He regretted that the final list of countries invited to provide information to the Committee had been adopted so late, as it had caused uncertainty among the countries that were liable to be included on the list. The Committee should give governments more time to amend their legislation before calling on them to submit reports again. He emphasized the efforts made by Costa Rica to comply with the ILO's recommendations, although he believed that the Committee should avoid asking Governments to intervene in the decisions handed down by their judiciary, which would undermine the independence of their state institutions.

The Worker member of the United Kingdom, speaking on behalf of the British Trades Union Congress (TUC), various trade unions of the Member States of the European Union and the AFL-CIO, indicated that there were clear indications of worrying and insidious attempts to undermine free and independent trade unionism in the country. A high-level mission had visited the country and technical visits had been undertaken. Despite the requests made by the Committee of Experts to provide additional information with respect to legislative reform, the Government had made repeated promises and the relevant legislation had not yet been amended. The deliberation of Bill No. 13475 on trade union freedom had not progressed in recent months and the detailed time schedule for legislative action was yet to be adopted. He noted that the Government had indicated in its statement to the Committee that there was not sufficient time to discuss the Bill due to other pending legislation, presidential and ministerial changes, and the lack of the necessary technical and other support, but these appeared to be excuses for the lack of progress. While the Government had indicated that only collective bargaining had "constitutional rank", he observed that in practice it lacked the will to support genuine worker organizations, and recalled that in April 2010 a Regulation had been adopted giving the *solidarismo* structures the same status as trade unions. At present, only around 13 collective agreements had been concluded, while 74 direct agreements had been established. Union density had decreased to less than 3 per cent, while the number of workers covered by the *solidarismo* system was over 300,000. He added that acts of direct intimidation had been observed against trade unions, such as the occupation of union offices in Puerto Limón on 26 May 2010 by the armed police. The TUC had written to the Government on this matter but had received no reply. The information provided by Costa Rican trade unions was worrying. He recalled the hope expressed by the Committee of Experts of seeing significant progress in the near future. He welcomed the commitments made by the Gov-

ernment representative, but indicated that, without considerably more pressure and action by the Committee, it would be a long time before Costa Rican workers obtained the rights to which they were entitled.

The Employer member of Colombia referred to the issue of direct agreements and standing workers' committees comprising non-unionized workers. In his view, Convention No. 98 and the Workers' Representatives Convention, 1971 (No. 135), allowed for the possibility of agreements with non-unionized workers, and no other ILO Convention prohibited negotiations with non-unionized workers. He therefore expressed surprise that the Committee of Experts had called for the promotion of collective bargaining solely with trade unions. He therefore considered that the number of direct agreements in the country did not constitute a valid criterion for evaluating possible non-compliance with the Convention. He recalled the democratic tradition of Costa Rica and the ongoing commitment of that country to comply with ILO Conventions, as had been demonstrated through the acceptance of the designation of an independent foreign expert for the preparation of a report on the practice of direct agreements and their impact on freedom of association.

An observer representing the International Trade Union Confederation (ITUC) explained that the ratification of international labour Conventions entailed legal obligations for the member State as a whole. In that regard, he considered that the Government could not use the fact that it had only recently taken office as an excuse for evading its responsibilities under the Convention. He recalled that it was not the first time that Costa Rica had been called upon to provide the Committee with explanations on the application of fundamental Conventions, and particularly this Convention. He considered that prompt and effective justice did not exist in the country, as legal actions brought by workers were usually delayed for many years, which called justice into question. The excessive delays in judicial proceedings on labour matters had very serious consequences, as they caused workers to lose faith in the democratic system and the rule of law.

He pointed out that another serious problem affecting the right to freedom of association and collective bargaining arose out of the culture among enterprises of encouraging direct negotiations with permanent committees of non-unionized workers. Both the Committee of Experts and the independent expert had stated that such an approach could be considered as constituting an anti-union practice. The permanent committees of non-unionized workers brought to mind the so-called solidarist associations promoted by certain employers in Latin America, and were a threat not just to freedom of association but to the International Labour Organization itself. He concluded by calling on the new Government authorities to cease violating freedom of association and collective bargaining, which were fundamental pillars of the democratic system. National and transnational economic resources required the capacity of the working class, who deserved full recognition of their fundamental human rights, including freedom of association and collective bargaining.

The Government representative stated that after only one month the new Government had already shown its willingness to comply with the Convention and its availability for dialogue. She felt that improving collective bargaining also depended on the attitude of the employers' and workers' organizations, which took on special importance in a context of possible reactivation of the Higher Labour Council. She added that Bill No. 13475 had neither been rejected nor shelved. It continued to be part of the draft procedural labour reforms being proposed, and the Bill was backed by the parliamentary group that supported the Government. The slow pace of parliamentary discussions

was an aspect of democracy because the search for consensus sometimes required time. The executive branch of Government did not determine the legislative agenda, but that efforts were being made for the adoption of the Bill to reform labour procedure. She recalled that Costa Rica was a social state of law where the various social sectors not only coexisted peacefully but also served together on the boards of directors of several public institutions and banks. That experience not only was not anti-union but also contributed to strengthening the status of the country as a social state of law. She rejected accusations that Costa Rica was an anti-union country. The Government would continue to protect the rights of all workers, including unionized workers. In conclusion, she called on the Committee to consider the present case as a case of progress.

The Worker members stated that the Government had again requested the technical assistance of the ILO, but that such a request could not be accepted. There were serious doubts about the concrete results and tangible progress that a new technical assistance mission could produce. It was impossible to accept the idyllic picture painted by the Employer members. Costa Rica was neither a democratic nor a social paradise. In addition, the declarations of the Government and the Employer members revealed confusion between the roles of the various branches of power, in particular the role of the judiciary. It should be up to the law and not the judiciary to determine the hierarchy of laws and to establish the scope of collective bargaining. The violations of the Convention described by the various workers were based on the direct experience of Costa Rican workers. No attempt was being made to question the intentions of the new Government, but member States were responsible for implementing ratified Conventions. Taking into account the previous serious violations of the Convention and the unconvincing nature of the information provided by the Government, the Worker members proposed that the conclusions of the Committee be included in a special paragraph of the Committee's report.

The Employer members emphasized the improvement in terms of the length of judicial proceedings and welcomed the current trends in the case law on collective bargaining. They noted the difficulties in the adoption of Bill No. 13475 and the Bill to reform labour procedure. Although trying to achieve consensus was important, there came a time when the authorities had to shoulder their responsibilities, as the separation of powers could not become an obstacle to compliance with a State's international obligations. They emphasized the need to continue efforts to enhance social dialogue, finalize the adoption of pending legislation, modernize and strengthen the national judicial system and consolidate the new trends in the case law on collective bargaining. The Employer members considered that the case should not appear in a special paragraph of the Committee's report.

Conclusions

The Committee took note of the statement made by the Government representative and of the discussion which took place thereafter. The Committee of Experts had raised, on numerous occasions, problems with respect to the slowness and inefficiency of the proceedings for sanctions and reparations in cases of anti-union acts, the cancellation of provisions in certain collective bargaining agreements and the important difference between the number of collective agreements and the number of direct agreements concluded with non-unionized workers. The Committee of Experts had also welcomed the developments in the case law and inferred from this that there had been no further cancelling of clauses in collective agreements in 2008–09.

The Committee noted the statement by the Government representative of its willingness to overcome these problems. She referred in this regard to a draft reform which included various improvements with respect to the Convention, in particular as regards the rapidity and efficiency of the judicial process and to a new regulation on collective bargaining in the public service, which had been submitted to the Legislative Assembly to be dealt with as a matter of priority. An agenda would be submitted to the Higher Labour Council (the national tripartite body), including an analysis of the issue of direct agreements with non-unionized workers and the improvement of the negotiating procedures in the public service. The Committee also noted that the Government had requested an ILO technical assistance mission.

The Committee observed that, despite the existence of these problems for many years and the fact that the case had been discussed on several occasions, there had not been sufficient progress in the application of the Convention in either law or practice, although the new Government indicated certain efforts and actions to achieve improvements in the application of the Convention. The Committee therefore expressed the firm hope that, in the very near future, it would be able to note substantial progress in the application of the Convention and trusted that the legislative drafts upon which there has been tripartite consensus would be examined by the legislature and adopted without delay.

GEORGIA (ratification: 1993)

The Government provided the following written information.

Since the signing in December 2008 of the Memorandum of Understanding between the Ministry of Health, Labour and Social Affairs (MoHLSA), the Georgian Trade Union Confederation (GTUC) and the Georgian Employers' Association (GEA) institutionalizing social dialogue in Georgia, the social partners have been holding sessions regularly, at least once a month (in some cases several times a month) to discuss issues concerning the labour administration, labour legislation and other issues of labour relations. The group has started discussing the issues of the compliance of Georgian labour legislation with the ILO Conventions and designed a framework for future cooperation.

In October 2009 a tripartite round table was held in Tbilisi between the ILO delegation, representatives of the Government, the GTUC and the GEA where, inter alia, the following issues were discussed:

- 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);
- the current status of labour legislation;
- how to promote tripartism and building consensus in a tripartite context.

In this context the MoHLSA stated that the Government took a keen interest in the process of strengthening different forms of social dialogue; that it would like further to develop and institutionalize tripartite cooperation; and that it had resolved to engage more actively in social dialogue with all the interested parties and cooperate with them on relevant issues. The MoHLSA underlined the need to develop a conciliation and mediation mechanism that would help to reduce the incidence of disputes and also noted that, during this social dialogue process, the social partners should analyse labour legislation as a whole (including Georgian Law on Trade Unions) and not only the Labour Code.

The parties of the round table agreed on the following issues:

- to continue to enhance the cooperation between the ILO and the Government;

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

Georgia (ratification: 1993)

- to strengthen social dialogue in Georgia by continuing social dialogue on labour legislation issues to exchange viewpoints between the Government, employers and employees;
- to establish a secretariat for the support of effective and productive cooperation between the social partners. This issue was also addressed during a meeting held between the Prime Minister of Georgia and the Executive Director of the ILO where the Prime Minister underlined commitment of the Government to social dialogue, and the further development and institutionalization of tripartite cooperation.

At the end of the round table, the constituents agreed to continue social dialogue on the labour legislation taking into account the issues raised at the round table. The following practical follow-up measures have been taken by the Government:

- the Prime Minister of Georgia issued a decree that formalized the establishment of the Tripartite Social Partnership Commission by Decree No. 335, 12 November 2009 (the Commission);
- a working group consisting of two representatives from each social partner was created to work on the statute of the Commission and review and analyse the Georgian labour legislation;
- the ILO provided technical and advisory services in relation to the implementation of the Commission including in the development of the statute of the Commission;
- during the period 8–16 December 2009, five working group meetings were held for drafting the statutes of the Commission and its mandate, relationship to media, working priorities and areas. The statutes were adopted in March 2010. In May 2010, a secretariat of the Commission was established. This structure for social dialogue is now prepared to address all the concerns raised by the social partners in order to find commonly acceptable solutions.

With reference to the GTUC claims submitted in 2008 regarding anti-union dismissals, the Ministry of Economic Development of Georgia in 2009 requested and examined various documents related thereto which formed the basis of the Government's response to the ILO. From 29 April to 7 May 2010, the working group, together with ILO consultants held meetings to study cases related to the abovementioned dismissals and reported thereon to the Commission. Investigations and discussions on labour disputes related to anti-union dismissals will be pursued.

In order to ensure a rapid response to possible labour disputes and for their prevention, the parties agreed to create a mediator service. The ILO has expressed an interest in providing the necessary funding for this mediator service, but until this institution has been established the mediation functions will be carried out by the Commission.

It should be noted that most of the Georgian state organizations have collective agreements with trade unions, paid by a 1 per cent membership fee from employees' salaries.

Body	Number of trade union members in organization	Total number of employees in organization
Ministry of Labour, Health and Social Security	402	4 492
Ministry of Culture, Monument Protection and Sport	80	137
Ministry of Justice	40	325

It should also be noted that the biggest companies have collective agreements with trade unions including the following: LTD Tbilisi Metro (1,975 out of 2,705 employees unionized); JSC Bank of Georgia (all 80 employees unionized); LTD Georgian Railway (all 15,000 employees unionized); JSC Madneuli (1,375 out of 1,429 employees unionized); LTD Georgian State Electrosystem (898 employees or 85.5 per cent of the employees unionized). It should be added that LTD Tbilisi Metro; LTD Georgian Railway and the LTD Georgian State Electrosystem are state owned. This evidences that the Government of Georgia promotes collective agreements in practice.

In addition, it should be mentioned, that a collective agreement was signed between the LTD "Silknet" (Silknet) and the Communication Workers' Trade Union of Georgia. Silknet is a newly established organization, where 1,000 employees are unionized based on an agreement resulting from a fruitful collective bargaining process where Silknet, assumed social responsibility, fully sharing the principles of solidarity and social partnership. Silknet has undertaken to maintain labour legislation and ILO Conventions in relation to the following important issues:

- ensuring timely remuneration and establishing a flexible system of bonuses;
- implementing a practice of annual paid leave and additional paid leave for employees working in hazardous conditions;
- granting dismissed trade union members compensation equal to two months' salary;
- providing full medical insurance to the workers. The administration together with trade unions will select the terms and conditions of the insurance package, as well as insurance company in order to guarantee full consideration of workers interests;
- women workers with minors, including three or more under-aged children, will enjoy special protection. Their working hours will be reduced by an hour with the full salary maintained;
- social support commission will be created in the company. The commission shall be formed by the members of the trade union committee and representatives of the company.

It follows that Georgia has a collective bargaining tradition and there are cases of collective agreements concluded in practice both in public and private sectors. The Government of Georgia will actively continue the work to further promote constructive social dialogue and discuss all labour and social related issues with social partners.

In addition, before the Committee, a **Government representative** thanked the Committee for giving him the opportunity to discuss this case today. When the Committee had first discussed the case in 2008, there had been no understanding of the issues to report on, no social dia-

logue and no understanding of the basic principles enshrined in the Convention. His country had come a long way and he thanked the ILO for its support and guidance. This shift toward better understanding and tripartite discussion demonstrated the progress made. In 2008, an informal memorandum of understanding had been concluded between the three parties which had led to the organization of monthly meetings. A round-table discussion had taken place in October 2009 during which it had been agreed to review the current labour relations and have the principle of tripartism established in legislation. A tripartite committee had been established which was now fully functioning with statutes and by-laws. Its inaugural meeting took place on 14 May 2010 and was attended by ILO representatives. He believed that the country was now heading in the right direction. Legislation was being developed but due consideration should be given to his country's difficult past, which it was not easy to overcome. One of the greatest achievements today was therefore the trust that had been given by the various parties involved. The first Labour Code had only been adopted in 2006 and was not possible to judge the quality of the legislation based on a few complaints, given the presence of 36,000 businesses active in the country. It was his Government's intention to comply with all ratified Conventions and if there were misinterpretations or problems, it stood ready to clarify the issues. Trade unions, employers and the Government were undertaking reforms but some patience was required. Tripartism would help the country to move forward and it was hoped that at its forthcoming session, the Committee of Experts would not have to address the issues being raising today. In conclusion, he congratulated the Georgian unions for two major achievements in the context of collective bargaining and hoped that more successes could be reported in the future. The Committee's conclusions would help his country to move ahead and would be addressed by the tripartite committee.

The Worker members considered that it was important for the Committee to re-examine this case, which it had discussed in 2008. The difficulties indicated in 2008 had not been resolved and serious violations of Convention No. 98 persisted in Georgia. The Committee on Freedom of Association was examining the problems raised by the Georgian Trade Union Confederation (GTUC), which had denounced the adoption of the Labour Code without prior consultation, the inadequacy of protection against acts of anti-union discrimination and interference and the ineffective manner in which issues relating to collective bargaining were addressed.

Recalling the fundamental provisions of the Convention, the Worker members emphasized that 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), together formed the architecture for effective social dialogue organized with a view to social progress and going beyond a purely economic approach based on deregulation. In 2008, this Committee had concluded that a tripartite round table should examine the difficulties facing the country in relation to social dialogue and could, with ILO technical assistance, facilitate progress in the promotion of collective bargaining and the protection of the right to organize in both law and practice. The ILO had provided technical assistance to employers' and workers' organizations and the Government with a view to facilitating tripartite dialogue on the revision of national legislation in light of the conclusions adopted in 2008 by the Committee. A tripartite round table had also been organized on the application of Conventions Nos 87 and 98 in Georgia. However, no legislative changes had yet been adopted.

The Committee of Experts had considered that certain provisions of the Act on Trade Unions and the new Labour Code, although formally prohibiting anti-union discrimination, did not provide the necessary protection for workers during recruitment or in the event of dismissal. Employers were not required to give reasons for their decisions not to hire a jobseeker, which placed such persons in an impossible situation if they had to prove that the decision had been taken on the grounds of their trade union activities. Moreover, there was no legal provision explicitly prohibiting the dismissal of a worker for trade union activities. The protection envisaged in the Convention was not therefore afforded in practice. Furthermore, it was not clear whether there were sufficiently dissuasive penalties in cases of anti-union discrimination and whether remedies were available for workers who were victims of such acts. If such provisions existed, information was lacking on the situation in practice. Evidently, where the procedures for the implementation of sanctions were complex, they were of no value in practice and meant that the rights guaranteed were without substance, as confirmed by the events that had occurred in the port of Poti. Five trade union representatives had been dismissed there in October 2007 for having called a protest action. In accordance with the Labour Code, the employer had not given any justification for the dismissals and had not been found guilty by the courts. Nine other workers in a textile factory had also been dismissed without any justification after being elected as trade union representatives. In order to bring an end to these grave violations of Convention No. 98, the Government needed to take urgent measures to amend sections 5, 37 and 38 of the Labour Code. The Committee of Experts had also emphasized that workers who were victims of anti-union discrimination, and particularly dismissal, transfers and demotions, should be provided with compensation.

The Worker members then referred to the application of Article 4 of the Convention. The Committee of Experts had indicated that, under the terms of the legislation that was in force, employers unilaterally determined conditions of work. Moreover, several provisions of the legislation were in total contradiction with the definition provided in the Convention of the term "collective agreements". The Government placed at the same level agreements concluded with trade union organizations representing a large number of workers and accords concluded between an employer and non-unionized workers, even where they were as few as two in number. The Worker members were in disagreement with this position. If employers could offer benefits to non-unionized workers while collective bargaining was going on, this would jeopardize the system of social dialogue as a whole, as well as freedom of association. The Government therefore needed to adopt effective measures to guarantee free collective bargaining with workers' organizations.

The Employer members recalled that this was the second time that the Committee had examined this case. In the conclusions adopted in 2008, it had referred to a tripartite round table meeting to address the issues under discussion in a context of full social dialogue, together with ILO technical assistance, in order to facilitate progress both in law and in practice. Referring to the Committee of Experts' latest observation regarding various measures taken by the Government to strengthen social dialogue, they stated that the latter's willingness was beyond question and that they did not see any indication in the case of a lack of compliance with the Convention. The observation of the Committee of Experts concerned a supposed lack of protection against acts of anti-union discrimination and interference in union affairs and the inadequate regulation of collective bargaining.

With regard to protection against discrimination, the fact that an employer was not obliged to substantiate a decision not to recruit a jobseeker was not an insurmountable obstacle. Non-discrimination in recruitment could be guaranteed in various ways. It would be excessive on the part of the legislature and too demanding for employers to expect that at every stage of the selection process they would be required to justify their decision not to recruit someone in writing. There could be multiple reasons for such a decision. This did not mean that there were sinister motives at work stemming from some unjustifiable discrimination. The requirement of a formal motivation for not recruiting a person could not guarantee that no discrimination actually existed. The important thing was that there should be no discrimination in practice, and there was no evidence that there had ever been any. The Committee of Experts had suggested that legislation could provide other ways of remedying the difficulties, for instance by stipulating that the grounds for the decision of non-recruitment should be made available upon request. That, however, would be altogether inadequate. Requiring employers to substantiate their decisions, even if only upon the request of a worker, would unduly increase the burden on employers; besides, most labour regulations contained no such requirement.

With regard to the issue of dismissal without justification but with compensation, the Committee of Experts continued to see this as a source of discrimination. The Employer members agreed that not requiring that the reasons or causes of a person's dismissal be communicated could not be used to cover up unjustifiable discrimination against a unionized worker. However, the fact that the Labour Code did not contain an explicit provision prohibiting dismissal for reasons of trade union activity did not necessarily mean that no such protection existed. It could be that some other legal provision was sufficient to guarantee the same right. In any case, the tripartite Committee was planning to review the legislation should it be necessary to remedy that particular point. The Committee of Experts already considered that the penalties imposed for supposed acts of interference were sufficient and additional information had confirmed the country's compliance with the Convention in that respect.

With regard to collective bargaining, the Committee of Experts continued to have doubts about certain articles of the Labour Code. However, the Convention did not impose any specific model of collective bargaining other than that it should be adaptable to the demands of developments in labour relations, and that it should respect the principles and requirements of the Convention. The Employer members considered that it was irrelevant whether a worker belonged to a union or not; what was relevant was that the validity of voluntary negotiations and of agreements entered into collectively should be duly recognized and protected. They disagreed with the Committee of Experts that it was difficult to reconcile the equal status given to agreements with unionized workers and agreements with non-unionized workers with the ILO principles on collective bargaining. Many collective bargaining systems distinguished between unionized and non-unionized workers in order to determine the general scope or limited effectiveness of collective agreements, without their validity having so far been called into question. The essential thing was to ensure that the will of the workers as expressed through their representatives was not distorted by any direct or indirect pressure brought to bear by the employer, that agreements were not used to exclude, or discriminate without justification against, lawful union representation and that the collective agreements in force were respected.

Finally, the Employer members stressed that, according to the Government, most enterprises and institutions had

signed collective agreements with the unions, which showed that union representation continued to play an important role in collective bargaining in Georgia. There had been considerable progress, especially in the search for forms of institutionalized social dialogue that were conducive to resolving possible discrepancies between the country's legislation and its practice in terms of the Convention. They encouraged the Government to continue demonstrating its understanding and willingness and asked for additional information to enrich their own view of the case under discussion.

The Worker member of Georgia indicated that the Government ignored the obligations stemming from ratified Conventions including Conventions Nos 87 and 98, ignored collective bargaining and freedom of association, and ignored tripartism. As a result, the trade unions witnessed many conflicts and disputes at the enterprise level as well as the destruction of social stability in the context of the liberal experimentation that the country was going through. Workers and trade union members therefore considered that they lived in an authoritarian society. While collective bargaining was going on, the Poti Sea Port management had sealed the trade union offices at the enterprise and had restricted the access of trade union officers. Moreover, the Labour Code provided the employer with the right to dismiss any worker without notice. In the BTM enterprise in the textile sector, the trade union executive committee had been dismissed the day after the company was informed of the founding of the union. Collective agreements were frequently not respected. The teachers' trade union was not allowed to receive trade union dues through the previously negotiated check-off system. A number of employers had recourse to verbal contracts, which were allowed under the Labour Code. Recourse to protest action, such as strikes, was impossible in practice. Certainly the violation of trade union rights had recently been on the decline, as indicated by the Government representative, but the reason was simply that there were hardly any unions left. Particular problems existed in the education and iron and steel sectors. The only exception was the Tripartite Commission that collaborated with the ILO, the International Trade Union Confederation (ITUC), etc. The trade unions would see the Commission as a success only when it produced concrete improvements for their members. For the time being, no such results had been produced. The "medieval" Labour Code was still in force and only promises of amendments had been made. Trade union leaders and members were at risk of discrimination, collective agreements were not respected and the Government had no political will to amend the Labour Code.

The Worker member of France observed that the idyllic scene depicted by the Government representative differed from the reality described in the report of the Committee of Experts, on which the Conference Committee based its examination of the case and which showed that collective bargaining was not recognized *de facto* in Georgian legislation, which confused collective agreements with contracts signed by an unspecified number of parties, or even by two persons. Such an inherently anti-union situation did not conform to the principles and objectives set out in Convention No. 98. Furthermore, employers were able to impose terms and conditions of employment unilaterally and to dismiss workers without justification, on the sole condition that one month's salary was paid, which encouraged the dismissal of independent trade unionists at a modest cost without risk of sanction. The creation of a tripartite working group that lacked a clearly defined role and had not resulted in any legislative or practical concrete measures masked the absence of genuine collective bargaining and worker protection in the country. The Memorandum of Understanding submitted by the Gov-

ernment as the primary tool for social dialogue would mainly demonstrate that dialogue was not very widespread. The provisions of the Criminal Code and the Code of Administrative Offences were not being applied, and the Government should provide missing statistical information in its next report, particularly on the number of convictions under the Code of Administrative Offences for interference in trade union affairs (pressure, threats, creation of company unions, etc.). Certain figures provided on the rate of worker unionization in a State enterprise could prompt questions as to whether workers were really free to join a union, while the authoritarian collective bargaining system, in its current form, was more reminiscent of times past rather than of a genuine step towards independent trade unionism that allowed the partners to negotiate freely as equals. One might ask oneself about the reality presented by the Government, given that the Committee of Experts and independent trade unionists maintained that Convention No. 98 was respected neither in law nor in practice.

The Worker member of the United States expressed the solidarity of his organization, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), with the Georgian labour movement and GTUC General Secretary Irakli Petriashvili in particular. He observed that democracy and the rule of law depended not only on free and fair elections but also on respect for, and compliance with, fundamental international labour standards, and the Government fell disappointingly short when it came to the implementation of Convention No. 98, ratified by Georgia in 1993. The Committee of Experts had listed in its 2010 report the indisputable de jure violations of Convention No. 98 accruing from the Labour Code. As a result of all these violations of Convention No. 98, the GTUC had estimated that, in 2009, it had lost about 20,000 members. Based on what had been presented to the Committee, the Government had done absolutely nothing to change these provisions and was simply demonstrating its participation in ILO-sponsored tripartite round tables while, during the same session of the International Labour Conference, the Ministry of Education was directing its school principals not to bargain collectively with the GTUC teachers' union and to freeze the previously negotiated dues payment system. If the Government was trying to justify its delay in implementing authentic labour law reform by saying that it needed a full tripartite mandate, it should also recognize that the tripartite "train" had already "left the station", so to speak: the Committee on Freedom of Association, an obviously tripartite body, had already concluded in Case No. 2663 that Labour Code sections 37(d) and 38(3) should be effectively overhauled. Gladstone's famous maxim that "justice delayed is justice denied" struck an ironic chord in relation to this particular case. At least one thing was certain – justice demanded that this Committee, this Conference and the ILO supervisory system not wait any longer before demanding that the Georgian Government took its ratification of Convention No. 98 seriously.

The Worker member of Hungary emphasized that, in the light of the comments of the Committee of Experts, the Government's reliance on the Constitution of Georgia and the Act on Trade Unions, which contained general prohibitions of trade union discrimination, was not acceptable. These general rules were not sufficient to provide effective protection for trade union members and officials against anti-union discrimination in the context of recruitment and dismissal, as shown by current court cases in Georgia. The court judgements quoted in the report of the Committee on Freedom of Association on Case No. 2663, had upheld the decisions of employers to dismiss workers and had rejected the workers' arguments and requests for reinstatement because the Labour Code did

not require employers to substantiate their decision to terminate labour contracts. Having placed the burden of proof on dismissed workers, the courts had found that the workers had not provided any factual evidence of anti-union discrimination. The General Survey of the Committee of Experts of 1994 on freedom of association emphasized, however, that anti-union discrimination could not be treated in the same way as any other kind of discrimination because freedom of association was a fundamental right calling for specific provisions with regard to the burden of proof, sanctions and remedies. Labour legislation had therefore to provide for special protection against anti-union discrimination. The speaker urged the Government to show genuine political will and amend the Labour Code so as to bring it into full conformity with Convention No. 98 after consultation with the social partners. The lack of specific guarantees and effective enforcement in this field could be seen as a serious violation of the right to freedom of association. This situation must change without delay.

The Government representative recalled that, despite the fact that collective agreements had been concluded in his country in the banking, railroad, mining and electricity sectors, covering thousands of workers, the discussion constantly focused on two cases concerning two companies in the port and textile sectors. Of course, not everything was perfect, but success stories existed and the picture was not entirely bleak, as alleged by certain members. The Government had made every effort to implement the recommendations of the Committee on Freedom of Association in the case of the Poti Sea Port, but the trade unions had refused to participate in the tripartite commission which would discuss the matter. The Government had therefore moved on to the second part of the recommendations of the Committee on Freedom of Association, i.e. to carry out an investigation into dismissals of trade union leaders.

The speaker emphasized that the law should not be judged by the two cases repeatedly discussed by the supervisory bodies. The Labour Code was not the only piece of legislation covering labour relations. The Government was more than willing to review the Civil Code, the Act on Trade Unions, the Labour Code, etc., so as to bring its legislation closer to the Convention and avoid misrepresentations.

In conclusion, the Government representative thanked those Committee members who showed genuine concern for the situation in his country and assured the Committee that his Government would take into account the discussion and the recommendations so that, in due course, the results produced could serve the interests and future of his country.

The Employer members stated that their interpretation differed in several respects from that of the Committee of Experts. First of all, there was a difference concerning the need for an employer to justify the hiring or non-hiring of a person. Secondly, they stated that if the Labour Code did not refer to anti-union discrimination, that could be settled in other standards. Finally, they felt that a reduction in membership was not always caused by anti-union discrimination.

On the positive side, they pointed out that there was a new institutional framework and a new framework for social dialogue. They insisted that dialogue should continue with the Committee of Experts, that it might be profitable for the Government to continue to receive technical assistance from the ILO in order to harmonize its legislation, and that the Working Group on social dialogue should provide more detailed information on union organizations and collective bargaining, including statistical information. They concluded by stressing the need for all parties to maintain a constructive attitude.

The **Worker members**, while noting the information provided by the Government, said that it was insufficient because violations of union and labour rights were so flagrant. The conclusions of the Committee should be particularly severe so that the suffering of workers in Georgia could be brought to an end. The Government had agreed two years earlier to revise the Labour Code and to harmonize its legislation with Convention No. 98. So far, no progress had been reported. The Government must enter into true tripartite dialogue in order to amend the Labour Code in a way that would guarantee specific protection against anti-union discrimination, including anti-union dismissals, and provide for sufficiently dissuasive sanctions against such acts. Likewise, the Government must take all necessary measures to guarantee workers the possibility of requesting the reasons for any dismissal. Finally, the Government must re-read the comments made by the Committee of Experts concerning the fact that direct negotiation between an enterprise and an employee went against the principles of collective bargaining enshrined in Convention No. 98 and submit a report on measures taken in that regard.

Conclusions

The Committee noted the oral and written information provided by the Government representative and the discussion that followed.

The Committee observed that the Committee of Experts raised issues relating to an insufficiency in the legislative framework for the effective protection against anti-union discrimination and promotion of collective bargaining, which needed to be clarified in further detail in the Committee of Experts' next observation.

The Committee took due note of the Government representative's statement and, in particular, the information regarding the tripartite roundtable held in October 2009 and the recently established Tripartite Social Partnership Commission set up to review the labour legislation and to examine some complaints of anti-union discrimination. The Government representative indicated that technical advisory services had been provided by the ILO with respect to this process. Finally, the Government representative made reference to companies that had concluded collective agreements with unions.

The Committee welcomed the steps taken by the Government to institutionalize social dialogue in the country and urged the Government to intensify this dialogue. It hoped that this new social partnership, accompanied by ILO technical assistance, would give rise to concrete action ensuring that the legislation was fully in conformity with the Convention. It requested the Government to intensify its dialogue with the Committee of Experts with respect to any outstanding issues in its comments and to continue to provide detailed information on the application of the Convention in practice, including statistics on the number of confirmed cases of anti-union discrimination, the remedies provided and the sanctions imposed.

Equal Remuneration Convention, 1951 (No. 100)

INDIA (ratification: 1958)

A Government representative stated that the empowerment of women and assisting them to secure equal status in all sectors of the economy were matters of the highest priority that were being pursued through the implementation of various policies. India's policy of positive discrimination in favour of working women comprised such elements as reserving a part of such welfare programmes as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) exclusively for women, ensuring their participation in village councils (pancha-

yats) and municipalities, and establishing vocational training institutes exclusively for women. The appointment of women members to the advisory committees of welfare funds for workers was compulsory, and women's cells in establishments and offices had been established to safeguard against sexual harassment.

Legislative measures had also been taken: a law to reserve one third of Parliamentary seats for women was being developed; and the Ministry of Women and Child Development, in consultation with the National Commission for Women, and after holding wide-ranging consultations with various stakeholders, was working on a draft law entitled the "Protection of Women and Sexual Harassment at the Workplace" Bill. The Protection of Women from Domestic Violence Act provided legal recourse for women who were victims of domestic violence. The recent enactment of the Unorganised Sector Workers' Social Security Act was a significant legislative achievement that would facilitate the formulation of policies and welfare programmes for the vast majority of women working in the informal sector. Additionally, the Rashtriya Mahila Kosh, a national credit fund for women, was providing micro-finance on generous terms to poor women in the unorganized sector.

He indicated that the Sarva Shiksha Abhiyaan (Education for All) programme offered several incentives to enhance the retention of school girls, and that a plan seeking to create a judicial and legal system more sensitive to women's issues and to mainstream a gender perspective into the entire development process was being formulated. The Government had also resorted to "gender budgeting" to maintain a gender perspective at all stages of planning and resource allocation. Other programmes to further the empowerment of women (Swashakti, Swayamsidha, Support to Training and Employment Programme (STEP), Swavlamban and Swadhar) addressed a broad spectrum of issues, including shelter, security, legal aid, maternal health, skills development and access to credit. The MGNREGA, which required one third of its participants to be women, was an important means of assuring fair livelihood opportunities for rural women. The participation of women in this scheme had been steadily rising and now stood at 51 per cent. A study on the scheme's functioning revealed that women were taking their wages directly, contributing to household expenses, spending on children's education and repaying debts; the scheme had reduced wage disparities between men and women rural workers considerably and had increased the participation of rural women in the workforce. He added that 11 training institutes had been set up exclusively for women, and 12 more had been proposed. The Government had introduced a scheme to upgrade these institutes into "Centres of Excellence" and had launched a new project on skill development initiatives.

With regard to the comments of the Committee of Experts on the gender pay gap, he stated that strict enforcement of the Equal Remuneration Act was undertaken at the central level, while state governments had appointed competent authorities and also established advisory committees under the Act. He indicated that implementation of the labour laws fell to provincial governments and that, in order to improve the enforcement machinery, a meeting with all provincial labour ministers had been convened in January 2010 in which implementation issues had been discussed exhaustively. Data were being compiled on trends in the daily earnings of men and women in the manufacturing, mining, plantation and service sectors. In this regard, he noted that gender-based wage disparities persisted. Although the disparities were partially due to non-discriminatory factors, such as length of service, they remained a concern of the Government and were being addressed.

A new Centre for Gender and Labour had been established in the V.V. Giri National Labour Institute (NLI) to strengthen the understanding of gender issues in order to counter sex-based discrimination and marginalization in the workplace. The Centre's priority research areas included: gender and the labour market; trends in women's employment in the urban informal sector; and gender sensitivity in existing labour laws. The Government was also considering the possibility of undertaking research on the functioning of the Equal Remuneration Act in order to strengthen that law. The Government shared the concern of the Committee of Experts regarding the need to create awareness of the Equal Remuneration Act, and had therefore implemented a scheme to aid NGOs to undertake awareness-raising campaigns on the Act. Also, the Central Board for Workers' Education (CBWE) under the Ministry of Labour and Employment had organized training programmes, targeting women workers in the rural and informal sectors, to raise awareness of the protection provided by labour law. He indicated that copies of court judgements relating to the Equal Remuneration Act, which the Committee of Experts had requested, would be submitted to the Office, and concluded by reiterating his Government's commitment to promoting equality and decent work opportunities for women and men.

The Employer members noted that the measures announced by the Government representative, including measures to ensure the access of women to education, could create the necessary preconditions for the advent of equal pay between men and women. The Committee had already examined this case three times, most recently in 1991. Articles 1 and 2 of the Convention established the principle of equal pay for work of equal value without discrimination based on sex and the modalities of implementation of this principle. The Indian legislation of 1976 on equal remuneration required employers to pay equal remuneration to men and women for the same work, or work of a similar nature, which in the opinion of the Committee of Experts was too restrictive and did not give full effect to the provisions of the Convention. However, it could be considered that the concept of "similar work" went beyond "work of equal value". The most important thing was that this principle was being applied in practice and that the Government was solving problems related to the implementation of the Convention. The existence of these problems had been confirmed by the Government representative. The many measures taken by the Government in this regard, including the communication to the Committee of Experts of statistical data, deserved to be commended. The Government should continue analysing the problems arising out of any further studies in this area. As requested by the Committee of Experts, the Government should also take measures with a view to promoting the use of objective job evaluation methods, possibly with the involvement of the social partners and, in general, intensify measures to give effect to the Convention. The positive signal sent out today should continue through the collection of statistical data, the strengthening of labour inspection at the regional level, and the provision of additional information regarding the measures mentioned by the Government.

The Worker members indicated that there were considerable differences between the remuneration of men and women in India. They admittedly had their origins in economic and social factors that were common to many countries, but also in the national legislation and its application in practice. With regard to the legislation, the concept of "work of a similar nature", as set out in the legislation, was more restrictive than the concept of "work of equal value" contained in the Convention, which also encompassed work of a completely different nature, but which was nevertheless of equal value. Based on the case

law of the Supreme Court, the Government considered that it was not necessary to amend the law, especially as, according to the Government, the concept of work of equal value could not be quantified. In practice, it was the content of work that had to be compared. By ratifying the Convention, India had undertaken to promote the objective appraisal of jobs on the basis of the work to be performed. However, it could be observed that the classifications used in sectors that were mainly or exclusively female systematically underestimated the nature and the real value of the work performed by women. The Government was circumventing this essential issue by claiming that the legislation did not refer to job classification. With regard to monitoring the application of the law, although supervision had been reinforced at the central level (an increase in the number of inspections, violations reported and prosecutions set in motion), the same was not true at the state level (fewer inspections and an insignificant number of violations reported). The gap was enormous and the central Government did not appear to wish to strengthen supervision at the state level or to allow unions to lodge complaints. The Worker members concluded by recalling that the wage gap between men and women was substantial and that violations were very widespread, but were not penalized at the state level. Even so, the Government did not appear to be ready to amend the law or to strengthen its enforcement.

A Worker member of India indicated that the labour force participation of women remained much lower than that of men, principally due to wage rates for women being lower than those applicable to men for comparable occupations, and women being denied access to certain occupations. She added that considerable differentials in the earnings of men and women continued to exist even when they were engaged in the same occupation. In agriculture, for instance, there was a gender-based division of labour with men doing the ploughing and women doing the transplanting and weeding. These were jobs of similar value and in fact the jobs that women did were even more physically taxing, yet women earned only 70 per cent of what men earned. Even in the organized sectors, such as the cashew or fishing sectors, women did the labour intensive work of cleaning and sorting while men did the transporting of the products, and women earned 20–30 per cent less than men.

She emphasized that in the labour intensive industries of the organized sector, such as the cashew and coir industries, women who had been working for 20 to 30 years still earned only the minimum wage. In many health and mother and child care programmes, where the majority of the employees were women, there was no minimum wage and women were even expected to work as volunteers. For instance, the Integrated Child Development Scheme, which had been in existence for over 35 years and employed around 2.4 million women, involved highly responsible work for the local government for which women did not receive the minimum wage or other worker benefits.

Recently, under the pretext of creating employment opportunities for women, some local governments had deployed women as garbage collectors, but without any minimum wage or social security coverage, even though they were engaged in hazardous work. In the textile industry, there were programmes employing young women presumably helping them to pay their dowries at the time of marriage, a discriminatory practice which was banned by law. Workers were only paid after three years. During this period they only received food and housing. Under the circumstances, it was important for the Government to take responsibility for the implementation of the Convention in practice and to that end it should engage more

trained and gender-sensitized officers within the Labour Department.

Another Worker member of India questioned the veracity of the statistical data provided by the Government and denounced the neo-liberal policies that the Government had launched, including: the new scheme of self-certification by which each individual employer certified that relevant labour laws were being followed in his establishment and was consequently exempt from bothersome inspections; the increasing use of “volunteers” by the Central and State governments; Special Economic Zones, where labour laws were even more difficult to implement; and the failure to amend the Equal Remuneration Act, contrary to the advice of the Committee of Experts. He therefore called upon the Government to change its policy in favour of women, carry out an objective job evaluation, amend the Equal Remuneration Act and ensure its implementation with the involvement of all the central trade unions. Finally, he requested the Committee of Experts to continue monitoring the application of the Convention in a time-bound manner.

The Government member of Egypt stated that the Government of India had provided important clarifications concerning the application of the Convention. Measures had been taken with a view to improving the working conditions of women, guaranteeing their maternity benefits and ensuring legislative conformity with the requirements of the Convention. The Government’s concrete commitment to the elimination of all forms of discrimination, in both the formal and informal sectors, had given rise to other measures, especially the implementation of social security legislation for working women. The Committee should take into account the Government’s efforts and provide adequate assistance in this matter.

The Worker member of the Netherlands referred to the principle of equal remuneration for men and women workers for work of equal value and indicated that the Convention did not just require measures to prevent pay discrimination between men and women doing the same work, but also required equal pay for work of equal value. The Convention therefore required the promotion of an objective system of appraisal of work on the basis of the work to be performed. Low wages for women workers reflected the intolerable prejudice that work performed by women was of less value precisely because it was performed by women. In the light of the clear examples of differences in job evaluations within sectors, such as the agricultural sector, she called for measures to ensure that job classification systems were transparent and free of gender bias. Job comparisons could be made both within a particular pay or grading structure and between different structures or departments. Where women workers were paid less than men and the criteria applied were unclear, legal measures should guarantee that the employer would carry the burden of proof that the system was not discriminatory.

By ratifying the Convention, the Government had accepted the responsibility for the development of fair and transparent pay systems based on objective methods of appraisal, irrespective of the worker’s sex. It was not enough for the Government to just state that there was no job classification explicitly referring to the worker being male or female in the Minimum Wage Act. In consultation with the social partners, the Government was requested to start taking measures to develop an objective method based on criteria that were related to job performance. This would apply to jobs in different sectors, such as health and caring sectors, where the pay gap was higher and women were over-represented. It was unfortunate that statistics on the exact situation were not available, but the examples provided by the Worker members suggested that in India care workers were also paid less

than workers with equal responsibilities in other sectors. Considering India’s large informal economy, it was relevant to take specific measures to ensure that work performed in the informal economy that was of equal value to that performed in the formal economy was paid equally. As a large part of the wage gap was explained by the lower value given to women workers, the development of a job evaluation system based on objective criteria valuing the job done was the only way to end discrimination in the labour market.

The Government member of Belarus referred to the enormity of the task facing a Government that had to effectively manage the labour resources in a country of 1 billion people and considered that in fairness the Government’s efforts should only be described as commendable. Many specific issues, such as the gender remuneration gap and the enforcement of appropriate legislation were being properly addressed by the Government, which should be recognized by the Conference Committee. He was confident that the outstanding issues, which appeared largely technical in nature, and could be subject to differing interpretation of certain legal norms and would continue to be addressed by the Government in the same spirit of responsibility and respect for ILO standards that it had demonstrated thus far. The information just provided by the Government on a number of very specific schemes aiming to further empower women was particularly convincing. He noted the earlier proposal regarding possible technical assistance to the Government, and stated that he would support such a proposal provided that it was approved by the Government as meeting the specific needs of the country.

The Worker member of Brazil expressed concern at the Government’s attitude towards the trade union movement on the issue under discussion. Although Article 4 of the Convention explicitly stated that governments should cooperate with interested organizations in giving effect to the provisions of the Convention, the Government had ignored the suggestions made to that end by the Centre of Indian Trade Unions (CITU), which was unacceptable as the trade union movement could contribute to reducing the wage gap between men and women and should therefore be considered a partner. It was essential for the Government to take specific measures to begin the process of reducing wage gaps with a view to eradicating them altogether, a request that came not only from the ILO but also from the United Nations Committee on the Elimination of All Forms of Discrimination against Women. Lastly, he emphasized that, even if equality was guaranteed in law, it did not exist in practice. It was vital for the Government to acknowledge the situation in order to be able to solve it. In taking steps to reduce wage gaps, the Government would require assistance.

The Government representative stated that his Government respected the basic principles for which ILO stood, but felt dismayed of being short-listed. He recalled that India was an evolving society and had labour-friendly legislation and a vibrant judicial system. Some of the Government’s flagship schemes on labour matters were emulated as international best practices.

Turning to specific issues, he stated that the Government’s basic approach with regard to women’s issues, including remuneration, was to empower women because deprivations, inequalities and discrimination arose from the socio-economic status of women. In this respect, he highlighted the following: (1) the principle of 33 per cent reservation for women in local self-government; (2) education for all was now a fundamental right enshrined in the Constitution; (3) the implementation of a national scheme guaranteed employment for 100 days a year. The scheme, which was financed to the amount of

US\$8.7 billion, provided employment for 88 million people, 51 per cent of whom were women.

He added that the Government appreciated that there had to be tripartite consultations and involvement of the trade unions and civil society in the implementation of measures. Regarding the observation that there was a lack of studies, he reiterated that the National Labour Institute would receive further terms of reference for future studies. Regarding the concepts of similar jobs and equal value, he reiterated that legal definitions should be read in conjunction with judicial interpretations and it was in this sense that reference had been made to the five judgements of the Supreme Court. Regarding certain other categories of workers, he noted that court decisions stated that those categories of workers could not be categorized as equal workers. However, equal remuneration should not be confounded with minimum wage entitlement. He concluded by stating that the Government would consider all observations and would attempt to implement those observations nationally, taking into account the country's size and diversity.

The Employer members welcomed the Government's willingness to improve the application of the Convention in practice. They noted that few countries had implemented the principle of equal pay by using the term "work of equal value", and that India's understanding was similar to that of most States parties to the Convention. They observed that the General Survey on Equal Remuneration had already highlighted this problem of implementation of the Convention in 1985. They also noted the Government's indication that measures had been taken to make possible equal access to equal occupations, and equal remuneration irrespective of gender. They cautioned, however, that this should mean equal access to education and encouraged the Government to continue along this way and to provide the Committee of Experts with further information so that it could assess whether genuine progress had been made.

The Worker members recalled the remarks they had made in their first intervention, and while welcoming the measures already taken by the Government, they considered that the Government should have been able to make more efforts to respect the obligations deriving from the Convention. First of all, the Government had to revise the Equal Remuneration Act 1976 and replace the notion of "work of a similar nature" by that of "work of equal value". Secondly, the Government should adopt, with the technical assistance of the ILO, an action plan which should include: carrying out a detailed study on the causes of the wage differences observed; promoting the objective evaluation measures of occupations and employment; promoting awareness among men and women workers about their right to equal pay; granting trade union organizations the right to submit complaints; increase participation of women in the review of complaints; and reinforcing monitoring of the application of priority legislation at the state level. Thirdly, the Government should as soon as possible generalize and increase the minimum salary in order to remedy the wage difference of the poorest female workers. All measures that the Government might take in this respect should be the subject of a detailed report.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. It noted that the Committee of Experts had referred to the wide gender remuneration gap and to section 4 of the Equal Remuneration Act 1976. It had also noted that very few violations concerning equal remuneration had been detected at the state and union territories levels, and the need to strengthen enforcement of the relevant legislation and

awareness raising regarding the principle of the Convention, as well as to promote the use of objective job evaluation methods.

The Committee noted the information provided by the Government regarding a range of measures being taken aimed at women's empowerment, including the following: the National Policy for the Empowerment of Women; training, skills development and micro-finance initiatives; the establishment of a new Centre for Gender and Labour in the National Labour Institute, and the National Rural Employment Guarantee Scheme; the meeting with all the provincial labour ministers in January 2010 to discuss the implementation of the Equal Remuneration Act; and the compilation of data under preparation on trends in earnings of men and women in selected sectors.

Recalling the importance of ensuring equal remuneration not only for work that was the same or similar for men and women, but also for work of equal value in compliance with the provisions of the Convention, the Committee welcomed the Government's indication that the Centre for Gender and Labour would be addressing as priority areas of research gender issues in the labour market and gender sensitivity in the laws. The Committee asked that it be ensured that such research encompass an in-depth study into the reasons for the wide gender remuneration gap and the effectiveness and implementation of the Equal Remuneration Act with respect to promoting the principle of the Convention, as well as the impact of the minimum wage system on equal remuneration. The Committee urged the Government to follow up actively on such research, with the cooperation of employers' and workers' organizations, to ensure equal remuneration for men and women for work of equal value in compliance with the provisions of the Convention in law and in practice.

Sharing the concern of the Committee of Experts regarding the low number of violations of the Equal Remuneration Act detected at the state and union territories levels, the Committee asked the Government to reinforce awareness raising among workers, employers, their organizations and enforcement authorities throughout the country of the principle of equal remuneration for work of equal value in compliance with the provisions of the Convention, the relevant legal provisions and the avenues of dispute resolution. The Committee also urged the Government, in cooperation with workers' and employers' organizations, to take the necessary measures to promote, develop and implement practical approaches and methods for the objective evaluation of jobs with a view to effectively applying the principle of equal remuneration for men and women for work of equal value in compliance with the provisions of the Convention in the public and private sectors.

The Committee asked the Government to provide full information on the matters raised by this Committee and the Committee of Experts in its report when it was next due, including relevant statistical information disaggregated by sex, and to avail itself of ILO technical assistance in order to enable it to bring its law and practice into full conformity with the Convention.

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

CZECH REPUBLIC (ratification: 1993)

A Government representative indicated that his Government welcomed the opportunity to discuss the application of the Convention in this Committee, in particular with respect to issues related to the situation of the Roma in the labour market, the anti-discrimination legislation and Act No. 451 of 1991 (the Screening Act). With regard to the situation of the Roma in the labour market, he assured the Committee that the 2008 conclusions of this Committee had been taken seriously by his Government,

which had taken a series of measures at the European and national levels. At the European level, inclusion of the Roma had been a priority during the Czech Republic's presidency of the Council of the European Union (EU) in 2009. Under its leadership the "European Platform for Roma Integration" (the Platform) had been adopted with the aim of facilitating coordination of national and EU policies on Roma social inclusion and exchanging good practices between Member States, Roma civil society and international organizations dealing with Roma issues. In February 2009, in the context of the Platform, 12 Common Basic Principles on Roma Inclusion were adopted and the European Commission and Member States had been invited to take these into account when designing and implementing policies to promote inclusion of the Roma, as well as policies to defend fundamental rights, uphold gender equality, combat discrimination, poverty and social exclusion, and to ensure access to education, housing, health, employment, social services, justice, sports and culture. The action that had been taken demonstrated the serious effort of the Czech Government to improve the situation of the Roma – not only in the Czech Republic but also elsewhere in Europe. He indicated that further details would be provided to the Committee of Experts.

With regard to measures taken at the national level, the speaker particularly highlighted the mid-term "national strategy on Roma integration for the period 2010–13" (the Strategy) adopted in December 2009. The Strategy provided for specific action regarding the effectiveness of the employment services and social systems, support to socially responsive businesses and persons from socially excluded communities, the adoption of strategies of local labour markets in socially excluded areas and the fight against illegal employment. It had resulted particularly from a joint study carried out by the Government and the World Bank in October 2008, confirming that the unfavourable position of part of the Roma population in the labour market was a consequence of several interrelated factors. There was therefore a need to focus on employment of disadvantaged persons, children and youth and to develop and verify tools and methods that could be used by public employment services through pilot projects. In addition, a special agency for social inclusion in Roma localities had been established in January 2008 and a national reform programme adopted in October 2008. The agency currently operated on a pilot basis and had been active in 2009 in 12 towns and regions in 2009; broadening its coverage to another 20 towns in the course of 2010 and 2011 was being envisaged. In the period from 2010 to 2012, the agency would be implementing a project focusing on the support of social integration in selected Roma localities, during which various types of activities and policies on social integration would be evaluated prior to and after the intervention of the agency. This would become the basis for the national policy of social integration in Roma localities. As unemployment of the socially excluded persons, including the Roma, continued to be a problem particularly during the present economic recession, specific steps had also been taken aimed at increasing employability and employment of target groups of disadvantaged workers. In 2009, a special programme on social economy was set up with the aim of assisting socially excluded persons and persons threatened by social exclusion – including national and ethnic minorities – to enter the labour market and reintegrate into the society. He further emphasized the need for long-term measures, which were being taken in order to improve the situation of Roma in the labour market, including with respect to access to education of children from socially excluded environments, including the Roma. In this context, a national action plan of inclusive education would be adopted

with a view to ensuring the creation of a school system providing education responsive to the individual needs of all children, curbing artificial social barriers and creating an optimal educational environment regardless of the economic, social or ethnic background of its pupils. Finally, the project on ethnically friendly enterprises would be expanded to the whole country and the project on "Roma Employment" would be the subject of a peer review seminar in autumn 2010 within the Mutual Learning Programme under the European Employment Strategy. He concluded by stating that the information provided to the Committee clearly indicated the ongoing and comprehensive attention of the Government to the inclusion of the Roma population.

Turning to the Anti-Discrimination Act, his Government was pleased to inform the Committee that it had been adopted in June 2009 and had come into effect in September of that year. The new Act prohibits direct and indirect discrimination not only in the areas of employment and labour relations, including freedom of association, but also in the areas of health, education, housing, social and other services. It prohibits discrimination on the grounds of race, ethnic origin, sex, nationality, sexual orientation, age, disability, religion, belief or world view, and his Government considered that it addressed, as such, all the grounds listed in Article 1(1)(a) of the Convention. The Act further provides for judicial protection of people discriminated against and entrusts the monitoring of non-discrimination to the Office of the Public Defender of Rights. While the latest statistics of the Ministry of Justice indicated there had not been any jurisprudence based on the application of the Act, the Office of the Public Defender of Rights had already dealt with several cases of alleged discrimination based on nationality concerning access to services, to employment and to health services. The perceived gap in protection against discrimination after the adoption of the new Labour Code in 2006 had thus been closed and his Government believed that a high level of protection against discrimination in employment and occupation covering all the grounds listed in the Convention was now ensured.

Finally, concerning the Screening Act, he recalled the position presented by his Government to this Committee in 2008 and indicated that revising or repealing the Screening Act was a politically sensitive matter. The caretaker Government was not in a position to address this issue and revisions of this Act could be considered in the context of the new regulation on public service administration. The new Government established after the recent elections in May 2010 would certainly take a decision in this respect and the conclusions of this Committee would be brought to its attention.

The Worker members recalled the conclusions adopted by the Committee in 2008. The Committee had taken note of the efforts made to adopt a new law against discrimination that offered protection against employment discrimination. The Committee had urged the Government to ensure that the new legislation covered all aspects mentioned in Article 1(1)(a) of the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin and to guarantee the implementation of effective application and monitoring mechanisms. The Committee had also requested the Government to ensure that other grounds of discrimination, provided for in Article 1(1)(b) of the Convention, which had not been included in the 2006 Labour Code, be included in the new legislation. The Committee had also insisted on the involvement of the social partners in drafting the new law and had requested the Government to adopt the revised law as soon as possible. While the Government's efforts to promote social and economic integration of the Roma were greatly appreciated, the Committee had stressed that

it was vital that the measures taken lead to objectively verifiable improvements of their situation in practice. The Committee had requested the adoption of concrete measures for evaluating and monitoring the situation of the Roma concerning their employment, occupation and unemployment, namely through the gathering and analysis of appropriate data. Furthermore, the Committee had requested the Government to amend or repeal certain provisions of the Screening Act, which constituted discrimination based on political opinion which were in contradiction with the Convention.

The Government had been asked to submit a report in 2008 containing information on these points. However, no report had been received from the Government since the June 2008 Conference session, despite the promises made by a Government representative before this Committee. From the communication by the Czech-Moravian Confederation of Trade Unions it appeared that their efforts to request the Prime Minister to include on the agenda of the national tripartite body, the issues raised in the conclusions of this Committee, had not produced concrete results.

The Czech Republic is a member of the EU and the concepts and definitions in Convention No. 111 were quite similar to those enshrined in the Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC). The Government had agreed to incorporate these into national law when the Czech Republic acceded to the EU. In addition, the European Commission had condemned several times all forms of violence against the Roma and requested the governments of all Member States to guarantee the safety of all persons within their territory. A recent document of the Commission recalled once again the special responsibility of the EU and its Member States towards the Roma, who constitute the most important ethnic minority in Europe.

In conclusion, the Worker members considered that it was too easy for the Government to promise once again to submit a report to the next session of the Committee of Experts. In his declaration, the Government representative had made several references to documents of the EU and to the web site of the European Commission concerning the situation of the Roma, but had said almost nothing about what the Government really intended to do.

The Employer members recalled that this case had previously been examined by this Committee eight times since 1990. During the last discussion in 2008, the Government had indicated that it would provide the information requested in its next report. This information, requested by the Committee in its conclusions of 2008, related to the anti-discrimination legislation, the measures taken in relation to the discrimination of the Roma and the amendment or repeal of the Screening Act. The Employer members expressed serious concern regarding the Government's failure to submit the requested reports.

Referring to the Government's information concerning the adoption of the Anti-Discrimination Act, the Employer members noted with regret that this information had not been provided in advance of the Conference. Without the full information regarding the substance and application of the Anti-Discrimination Act and the Labour Code, it was not possible to have a full discussion. The Government was urged to provide this information in time for the next session of the Committee of Experts. Turning to the issue of the Roma people and employment, the Employer members recalled that in 2008 the Committee had urged the Government to take measures to develop improved means to assess and monitor this situation. The Government's information on measures taken to address the situation of the Roma was encouraging. However, the

Employer members expressed concern that this information had not been provided in advance and at the resistance to data collection on this subject.

On the subject of the Screening Act, the Employer members recalled that the Government had previously indicated a willingness to take measures to repeal or amend this legislation. Acknowledging the Government's indication that the previous Government had no political mandate to change the Screening Act, the Employer members reminded the Government that it was necessary to repeal or amend this legislation, to bring it in conformity with the Convention. Emphasizing the seriousness of this case, the Employer members urged the Government to address its failure to comply with its reporting obligations and to bring its law and practice into conformity with the requirements of Convention No. 111.

The Worker member of the Czech Republic expressed regret that, for the past two years, reports on the application of the Convention had not been sent by the Government, despite the specific request made by the Committee following its discussion of the case in 2008. He expressed support for the comments of the Committee of Experts concerning the case and stated that little had changed since 2008. While certain programmes and measures had been adopted and implemented to promote equal access of the Roma population to education, training and employment and to promote social inclusion, it was difficult to assess any real improvement, especially given the context of the economic crisis, where high unemployment rates persisted and the relevant statistical data was lacking. Turning to the new Anti-Discrimination Act, he noted that this legislation did not provide explicit protection against discrimination based on the grounds of family responsibilities, marital and family status, political or other convictions, membership of, or activity in, political parties or movements and membership in trade unions or employers' organizations. Moreover, the new Anti-Discrimination Act did not provide for the strong involvement of the State in the protection of victims of discrimination through the Office of the Public Defender of Rights. This Office could only provide advice and could not assist individual victims of discrimination in bringing complaints and obtaining redress. Therefore, there was a need to improve the new anti-discrimination legislation, in addition to repealing the Screening Act.

The Worker member of Hungary underlined the seriousness of the case. The case concerned a fundamental Convention and was marked by the Government's failure to fulfil its reporting obligations and to take action on the conclusions adopted by this Committee in 2008. These conclusions urged the Government to take measures with regard to three specific issues: to remedy the withdrawal of previously available protection against discrimination on a number of additional grounds; to develop improved means to assess and monitor the situation of the Roma population in employment and occupation; and to repeal the Screening Act. Discrimination against the Roma population was a region-wide problem without an easy solution. However, the Government's failure to comply with its reporting obligations could not be excused. Recalling that Article 2 of the Convention required ratifying member States to undertake a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, she urged the Government to respect the conclusions of this Committee and the Committee of Experts. Following meaningful consultation with the social partners and members of the Roma population and with ILO technical assistance, national legislation and practice should be brought into conformity with the Convention.

The Government representative apologized for not having submitted the report. The report was currently being

finalized and would be submitted in time. With regard to the other issues raised in the debate, he stated that the conclusions of the Committee would immediately be brought to the attention of the new Cabinet, once it assumed governmental responsibility.

The **Worker members** indicated that the findings had not changed with respect to the points raised by the Committee of Experts in its observation: the Government was failing to give effect to the Convention and continued to do so. The Government's persistent silence was both a matter of concern and was incomprehensible. This situation challenged the work and credibility of the ILO supervisory bodies. The conclusions that the Committee adopted on the case would need to take into account the Government's repeated negligence and the need to protect the rights of workers. Pragmatism was needed in this respect. As the inclusion of the Committee's conclusions in a special paragraph was a very serious matter, the Worker members had decided not to request this measure on the present occasion and to leave the Government one last chance. However, the Government would have to agree to receive a technical assistance mission with a view to providing replies to the specific questions raised by the Committee in its conclusions in 2008 and to establish a plan of action with a time frame. Three issues needed to be addressed and required a three-stage response. In the first place, in the month of September 2010, so that it could be examined by the Committee of Experts at its next session, the legislation needed to be amended to give effect to Article 1(1)(a) of the Convention. Secondly, the legislation would have to be amended so as to reintegrate protection against the additional grounds of discrimination envisaged in Article 1(1)(b) of the Convention. The Government could find inspiration in this respect in European legislation, which it had to transpose into its national legislation in any case as a Member State of the EU. In parallel, a working group on the improvement of the situation of the Roma would need to be established, possibly under the aegis of the ILO and the European Commission. The Roma were in practice the largest ethnic minority in the region and the same problems arose in other Central and Eastern European countries. Cooperation between the ILO and European institutions in this field would therefore be very positive. The working group should gather statistics and establish a time frame for action, and the information should be made available for the 2011 session of the Committee of Experts. Finally, the Screening Act would have to be amended or repealed as rapidly as possible, and in any case before the next session of the Conference.

The **Employer members** reaffirmed the importance of this fundamental Convention and noted that there was little tangible proof of progress in this case. The Employer members therefore urged the Government to ensure adequate non-discrimination protection in national legislation and to provide a full report to the Committee of Experts in this respect. It was difficult to assess the progress with regard to the situation of the Roma. The Employer members requested that information be provided to the Committee of Experts on the situation of the Roma with regard to non-discrimination in employment and occupation, on the number of victims of discrimination, and on the number of discrimination cases that had been addressed by the Government. The continued existence of the Screening Act was disappointing and the Government was urged to bring the Act into full conformity with the Convention, possibly with ILO technical assistance.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. It noted that it had addressed this case on a number of occa-

sions, most recently in June 2008. It also noted that there were still outstanding issues with regard to the follow-up to representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding Act No. 451 of 1991 (the Screening Act). It noted further that the Committee of Experts and this Committee had raised issues relating to the situation of the Roma in employment and occupation, and the development of new anti-discrimination legislation, including the need to hold consultations with the representative employers' and workers' organizations and other appropriate bodies with a view to maintaining the previous level of legislative protection against discrimination pursuant to Article 1(1)(b) of the Convention. The Committee observed that the Committee of Experts had noted with regret that since the case had been discussed in the Conference Committee in 2008, no report had been received from the Government. The Committee of Experts had expressed concern that its previous comments and the Conference conclusions might not yet have been discussed in an appropriate manner at the national level.

The Committee noted the Government's indication that the **Anti-Discrimination Act**, adopted in June 2009, and which had entered into force on 1 September 2009, covered direct and indirect discrimination on the basis of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief and world view. The Committee also noted the information provided by the Government on the range of measures taken to promote social and economic inclusion of the Roma, including those taken in the context of the European Platform for Roma Integration; the adoption of a new mid-term National Strategy on Roma Integration for 2010–13; the establishment of a special agency for social inclusion of Roma localities; and a special programme on social economy. The Committee also noted the Government's indication that repealing the Screening Act was a politically sensitive matter which the caretaker Government was not in a position to address, and that any revision of the Act might be considered in the context of the new regulation under consideration on the public service administration.

The Committee expressed serious concern that since the Conference discussion in 2008, the Government had failed to supply reports on this Convention, despite previous assurances given.

The Committee, noting the information on the adoption of the new **Anti-Discrimination Act** and the commitment made by the Government to provide full information to the Committee of Experts, urged it to do so in time for its examination by the Committee of Experts at its forthcoming session. This would enable the Committee of Experts to assess whether the new legislation provided adequate protection against discrimination on all the grounds enumerated in Article 1(1)(a) of the Convention, as well as effective enforcement and monitoring mechanisms, and to ensure that the level of protection previously provided would not be decreased, in particular with respect to discrimination on the basis of family responsibilities, marital or family status or membership or activity in political parties, trade unions or employers' organizations.

While noting that steps had been taken aimed at the social inclusion of the Roma, the Committee remained concerned that measures had not yet led to verifiable improvements for the Roma in employment and occupation. It, therefore, again urged the Government to take measures to develop improved means to monitor the situation of the Roma, including through the collection and analysis of appropriate data, with a view to demonstrating the achievement of real progress with respect to equal access of the Roma to education, training, employment and occupation.

With regard to the Screening Act, the Committee recalled its position and that of the Committee of Experts that the provisions of the Act violated the principle of non-discrimination on the basis of political opinion, contrary to

the Convention, and strongly urged the Government to amend or repeal the Act without further delay. The Committee urged the Government to accept an ILO technical assistance mission in order to enable it to bring its law and practice into conformity with the Convention without further delay.

The Committee requested the Government to provide full information on all the issues raised by this Committee and the Committee of Experts in a report to be submitted for examination at the forthcoming session of the Committee of Experts, so that real progress could be recorded by the Committee of Experts in the very near future.

ISLAMIC REPUBLIC OF IRAN (ratification: 1964)

A Government representative noted at the outset that his statement consisted of a brief summary of a full and extensive report submitted to the Office and he apologized for not submitting the report in time. The Government was striving to ensure the implementation of the fundamental principles and rights at work through positive interaction with the social partners and the International Labour Office. In order to bring existing laws and regulations into conformity with the provisions of the Convention, the Government had reviewed some of the controversial national legislation. With regard to the amendments to existing laws so as to promote freedom of association, the Ministry of Labour, together with the social partners, had reviewed the long disputed provisions in Chapter 6 of the Labour Law concerning workers' and employers' organizations, and a bill amending the Labour Law had been submitted for adoption to the Cabinet. The Bill focused on the promotion of free trade union rights and recognized the freedom of workers and employers to form their associations at the workplace or by profession, thereby removing some of the obstacles. With regard to amendments to the laws and regulations in contradiction with the provisions of Convention No. 111, the Ministry of Labour had introduced a bill to the Cabinet aiming to ensure close monitoring of the implementation of the respective ILO provisions by the three branches of Government. The Cabinet had issued a directive by virtue of which the Ministries of Justice and Labour were mandated with presenting to the Cabinet the national laws and regulations that were in contradiction with Convention No. 111. The directive also provided for the establishment of a committee to supervise the proper application of ILO standards.

With regard to the National Equality Policy, the Iranian Judiciary had embarked on a series of actions to counter discrimination and administrative malpractices in the workplace, which included: (1) a joint project with the United Nations Development Programme (UNDP) for the promotion of human rights and social justice among religious, racial and ethnic minorities through training workshops for provincial judicial authorities with considerable participation by minorities; (2) the establishment of Special Minority Courts and Dispute Settlement Councils to address the complaints and concerns of minorities in the context of their own religious laws and social values; and (3) the establishment of a Committee on "Women's Legal Studies and Non-Discrimination", which would assist in upgrading the skills of women judges, women in judicial positions and in the police force. As a result of holding regular training and empowerment courses for women judges, the contribution of women to the judiciary and its subsidiary organs had increased considerably and he provided a series of statistics on the distribution of women in the judiciary. Women's participation in political life had also increased considerably. Women were Members of Parliament, occupied the post of Vice-President and Minister of Health and other high posts in numerous ministries, provincial and county administrations, and municipi-

pal authorities. The ratio of women involved in political positions in Government during the period ending in the first quarter of 2010 had increased by 3.25 per cent compared with the same period in 2008.

With specific reference to section 1117 of the Civil Code, the Parliament and the Judiciary had officially indicated that it was in effect null and void. On the issue of equal family benefit payments for men and women, he indicated that according to the Iranian Social Security Organization, section 86 of the Social Security Act had now been amended to ensure that both men and women enjoyed equal family benefits, even if a couple worked in the same workplace. In order to improve women's employment, he noted that of the 1,180,000 small and medium-sized enterprises (SMEs) projects which had been awarded bank loans and grants, 230,000 projects were SMEs initiated by women entrepreneurs. Based on an agreement between the Government and industry in 2009, over 48,000 women university graduates had been recruited upon completion of their vocational training programmes. The Government had also recently adopted a bill on home-based jobs providing for the access of women to credit and equipment to start home-based businesses. With regard to the protection of civil and citizenry rights, in recent years the Judiciary had attentively identified rules and regulations that expressly or implicitly contradicted such rights and had annulled them. In the years 2008 and 2009, 6,500 complaints concerning the infringement of citizenry rights had been addressed on their merits, in 412 cases of which the judges were found to be at fault.

With reference to the alleged discrimination against racial and native minorities, the Government wished to emphasize that no laws or regulations discriminated against or hindered the access of minorities to high government posts and the Government was ready to receive and examine any substantiated complaints in this regard. He provided the latest statistics demonstrating that high government positions in provinces with the highest number of minorities were always occupied by people from the same minority. Moreover, he informed the Committee that, with regard to the dispute among the Iranian employers' associations, it had been agreed on 14 April 2010, with the good offices of the Government, to continue negotiations for the establishment of a Confederation of Employers' Union encompassing all the various employers' organizations existing in the country. The Government respected fundamental principles and continued to strive to meet the ILO's recommendations and observations. However, to be successful, the Government's efforts needed to be supported by ILO technical cooperation.

The Employer members recalled that this case had been discussed 14 times in the past 20 years. On a positive note, they indicated that they had just been advised by the Iranian Confederation of Employers' Associations that the judiciary and the Government had recognized this organization as the representative employers' organization, in conformity with the principles of freedom of association.

They recalled that, while the Committee had noted in 2009 certain improvements in the areas of education, vocational training and employment of women, it had remained concerned about the lack of evidence of real progress regarding the situation of women in the labour market. The Employer members noted with regret that the Government had not submitted its reports in time for the Committee of Experts' consideration. However, the Government provided a report for the Committee of Experts' consideration in May 2010, which apparently provided a range of information regarding measures to implement the Convention. From the information provided today by the Government, it should be noted that a bill on the prohibition of discrimination in employment and education has

been submitted to the Cabinet of Ministers for further consideration, a copy of which had been submitted to the ILO. Also, the Charter of Women's Rights had been replaced by the Family Support Act, which was approved in 2009. Furthermore, a committee had been established in April 2010 which was in charge of identifying all legal regulations that could be in conflict with the Convention. Clearly a great deal of information had been provided by the Government representative before the Committee, which needed to be carefully considered by the Committee of Experts; it was not yet possible to determine whether the Government was making real progress in compliance with Convention No. 111. The Employer members were hopeful that the Government had repealed or amended all legislation restricting women's employment, including regarding the role of female judges, the obligatory dress code, the right of a husband to object to his wife's profession, the discriminatory application of social security legislation and the restrictions in law and practice on women being hired after the age of 40. Finally, they welcomed the fact that the Government was willing to accept ILO technical assistance.

The Worker members recalled the Government's commitment in 2006 to review all relevant legislation that was discriminatory for women within a four year period and stated that it was now time to assess the results of the Government's action. They also recalled the Committee's midterm review in 2008 of the Government's actions, which had noted with disappointment the absence of progress and had urged the Government to take urgent action on all outstanding issues. Against this background, the Worker members considered that having received some written information, though at a very late stage, was an improvement compared to previous years; however, they still regretted that, due to such late reporting, the Committee was not in a position to examine and evaluate the information provided.

While acknowledging that the Government had finally transmitted a copy of the Bill on the comprehensive prohibition of discrimination in employment and education, they observed, first, that they had not had an opportunity to examine the Bill in any detail, and second, that the Bill was said to have been submitted to the Cabinet of Ministers, which was exactly where it had been two years ago. In addition, it was difficult to know whether the Charter of Citizenry and other documents requested by the Committee had in fact been communicated to the Office. Similarly, no conclusion could be reached as to whether the replacement of the Charter of Women's Rights by the Family Support Act meant an improvement in terms of the implementation of Convention No. 111.

With regard to section 1117 of the Civil Code, which permitted a husband to bring a case to court if he objected to his wife taking a job contrary to the interest of the family or to the wife's prestige, the Government contended that by virtue of section 18 of the Family Protection Law, section 1117 had been automatically abolished and courts were no longer authorized to receive claims under this provision. The Worker members believed, however, that the situation had remained practically unchanged compared to the discussion in 2006 on the same point. The existence of this section continued to have a negative impact on the employment of women. With regard to the dress code, the existence of which the Government continued to deny, the Worker members considered that there had been no new developments.

Referring to the Government's indication that in April 2010, a Committee was set up to identify all legal regulations potentially in conflict with the Convention, the Worker members had in principle no objection to a Committee studying legal provisions which were inconsistent with the requirements of the Convention. They

considered, however, that the announced establishment of the new Committee could not replace actual efforts to amend existing laws and regulations that had already been identified as being in violation of Convention No. 111 for a long time.

Concerning women's access to the labour market, and whilst it was not known whether the statistical information that the Government had provided showed any improvement regarding the access to the labour market, the Worker members maintained that the overall participation rate of women was still not more than 20 per cent, with women holding the most vulnerable and low paid positions. The legal barrier for women to be employed above the age of 35 – even if it had been increased to 40 – still existed, thus preventing women from working about half of their productive life. With respect to the overrepresentation of women in precarious and temporary jobs, gender discrimination in social security entitlements and access of working women to childcare facilities, they had hoped that the Government would present new information including measures taken to address these inequalities, and they were deeply disappointed not to have received such information.

Turning to the issue of discrimination of religious minorities, the Worker members expressed the view that the situation for the Baha'i was in fact deteriorating. Apart from the very specific instances previously presented, the Worker members now had a list of more than 30 cases of people being dismissed or being forced to close their shops. In a recent and particularly illustrative instance, in November 2009, officers from the Office of Health in Khomein told the owner of an optical store that he had two weeks to close his shop, following a nationwide order to eventually close all optical shops owned by Baha'i.

As for ethnic minorities, the Worker members shared the concern of the Committee of Experts regarding the employment situation of the Azeris, the Kurds and the Turks. It was noted that those members of ethnic minority groups who criticized the discrimination against them risked losing their jobs, freedom and even their lives. This happened to 35-year-old Farzad Kamangar, a Kurdish teacher and trade unionist who was executed one month ago.

Regarding the social dialogue situation in the country, the Worker members deplored that, instead of creating a safe environment for workers in which they could establish trade unions to defend their fundamental rights, the Government was creating an atmosphere of crisis that prevented a dialogue regarding issues related to Convention No. 111. Although they welcomed the recent release of four leaders of the Haft Tappeh Sugar workers' union, the Worker members remained very concerned about the safety, health and well-being of other trade union leaders who were still imprisoned, including Mansour Osanloo.

In conclusion, the Worker members regretted that the Government's late written submission could make no contribution to the Committee's discussion and stated that, based on the little information that was made available, no real progress had been made.

The Employer member of the Islamic Republic of Iran updated the Committee concerning social dialogue in the country, which was referred to in the last paragraph of the observation of the Committee of Experts and on which the Conference Committee had expressed its deep concern in 2009. The Government had ordered the dissolution of the Iranian Confederation of Employers' Associations (ICEA) in an effort to create a parallel organization of employers, despite the fact that such dissolution would be possible only through a judicial order. The ICEA therefore had taken the case to court for the annulment of the Government's order. While the Government and the parallel organization had filed their petition, the court ruled

that the dissolution order was annulled. She indicated that, despite this positive development, the ICEA was willing to create one inclusive employers' organization through a nationwide election to be held in July 2010, as agreed during meetings with the Government, which were also attended by the parallel organization. She asked the ILO and the International Organization of Employers (IOE) to provide assistance to ensure a free and fair election. She looked forward to the establishment of an umbrella employers' organization to defend legitimate rights and interests of all Iranian employers.

The Worker member of the Islamic Republic of Iran expressed the need for ILO cooperation and technical assistance for Iranian workers' associations who were comprised of different ethnic, religious and tribal groups working in various sectors of the economy, in order to remove all forms of discriminatory practices. Due to the economic and financial crises, many enterprises had gone insolvent. As a result, workers were suffering from low wages, unemployment and underemployment. The country's financial sector was also experiencing difficulties due to international pressure and sanctions causing the rise in transaction costs and the worsening of the living standards of workers. This resulted in capital shortage affecting the operation of SMEs. He urged the ILO and the International Trade Union Confederation (ITUC) to examine closely the situation and for the ILO to provide technical cooperation and assistance. In doing so, he hoped that workers would not face discrimination for their cooperation with the ILO and relevant institutions. He appreciated the recent steps taken by the Government to amend the Labour Law concerning freedom of association. He wished to see further steps taken to amend legal provisions on temporary contracts and to extend the social safety net. He stressed that the workers' organizations in the Islamic Republic of Iran pursued, by and large, similar objectives and they all deserved to be given legitimacy and opportunities to benefit from the ILO's technical cooperation.

The Worker member of Zimbabwe expressed his deep concern over the continuing and extensive discrimination against women in the Islamic Republic of Iran. Women continued to face significant barriers in achieving equal access to the labour market and decent work. Although the Government had made some progress in recent years to reduce the gender gap in education, and women now outnumbered men in entering university, these achievements had not been translated into higher rates of female participation in the labour market. When women graduated from university, they were one third less likely to find work compared to men. Only 3.5 million Iranian women were salaried workers, compared to 23.5 million men. Increasing numbers of women were employed on temporary contracts, which meant irregular incomes, little or no job security or income security, and a lack of social protection. Women employed in small enterprises or in export processing zones were exempted from all protections afforded by national labour law. Women were also disproportionately represented in occupations perceived as "women's work", such as carpet weaving, teaching and educational assistance, agriculture, clerical work and health care. The UNDP's Gender Empowerment Measure, which measured the extent to which women take an active part in economic and political life, ranked the Islamic Republic of Iran 103rd out of 109 countries. Despite the repeated requests by the Committee of Experts to provide detailed labour market statistics of women and men in different economic sectors and by level of employment, the Government had failed to provide this information. He urged the Government to provide these statistics, as well as the results of policies to achieve equality at work. The objectives of Convention No. 111 could not be realized

without an environment in which workers were free to organize. He called on the Government to respect its obligations under the Convention and as an ILO member State, to guarantee the right of all workers to be free from discrimination and to end the marginalization of women at work.

The Government member of Canada regretted that the Government had not submitted a report on the application of the Convention in 2009. Her Government continued to be concerned with regard to discrimination in employment and occupation against women, and religious and ethnic minorities. National law continued to discriminate against women, and women's participation in decision making was apparently decreasing. Women's rights movement activists were harassed and often detained, including organizers of the "million signature campaign" and members of the "Green movement". Despite international efforts, discrimination against religious and ethnic minorities persisted. Members of the Baha'i faith continued to be denied employment, government benefits and access to higher education. Seven members of the Baha'i leadership remained in detention and eight members of their community were detained in February 2010. For years, the Baha'i community had been subjected to persecution, discrimination and detention. The discussion of this case was marked by the recurrent lack of information requested from the Government. She urged the Government to bring its national legislation and practice into conformity with the Convention and to cooperate fully and respond substantively and in a timely manner to the numerous requests for information made by the supervisory bodies.

The Worker member of Pakistan indicated that upon ratification of the Convention, the Islamic Republic of Iran had taken on the obligation to bring its legislation into conformity with the Convention. The Government had acknowledged in its report that there remained a long way to go to empower women in practice. He noted the constructive dialogue between the Government and the Committee of Experts concerning legislative, administrative and other measures taken. In particular, he shared the view of the Committee of Experts that the principle of equality of opportunity for women in employment, wages and education had to be realized, especially in rural areas. He urged the Government to take measures to implement the recommendations made by the Committee of Experts, as women had a role to play in their families and with their partners, and their economic and social wellbeing was important for society as a whole.

The Government member of Belarus recognized the concrete measures reported by the Government of the Islamic Republic of Iran with respect to, for example, empowerment of women in their access to education and vocational training and the rights of ethnic and religious minorities. He invited the Committee to build on these positive developments and to support the country for its effort made in cooperation with the ILO.

The Worker member of France indicated that the Committee of Experts had recalled the commitments that the Government had made during the 2008 session of the Conference which had not been met to date. In 2006, the Government had committed itself to changing the laws that hindered women's access to employment, despite their qualifications and academic training, in the fields where the access of women was not prohibited. Only 16 per cent of Iranian women were employed. Section 1117 of the Civil Code still allowed a husband to oppose his wife's employment. The Government claimed that the section was repealed by section 18 of the Family Protection Law, but did not explain how this alleged abrogation was achieved in practice and failed to provide the requested documents. Women remained in a permanent

situation of legal inferiority, and the numerous administrative rules (restrictive criteria of age) limited their right to access to employment or to perform certain functions in the judiciary. In the judiciary they were mostly called upon to be social assistants, or to be a judge on matrimonial cases or cases involving juveniles. He also noted that the Committee of Experts had referred to discrimination against women in the social security legislation. Finally, laws, rules and practices that discriminated against women in employment and occupation had to be effectively abrogated and abolished, and law and practice had to be brought into line with Convention No. 111.

The Worker member of Malaysia noted that regional ethnic groups in the Islamic Republic of Iran were poorer, less educated, less employed and less represented in decision-making positions than Persian citizens. The Government had to address this issue seriously. Many reports had shown that the Government had failed to provide equal economic, cultural and linguistic rights to ethnic and religious groups such as the Balochs, Southern Azerbaijanis, Ahwaz, Turkmen and Kurds. These populations were not minorities within their respective region and represented over 30 per cent of the total population. Failure to provide access to quality education to all ethnic groups resulted in discrimination in accessing decent jobs. Although provided by the Constitution, teaching in "tribal languages" was not carried out in practice. As a result, dropout rates were very high. The provinces of Balochistan and Khuzestan experienced low school enrolment, poverty, illiteracy and unemployment. Every Government should provide equal rights to education for all children and adults regardless of their ethnic or religious background. After the 2005 elections, thousands of ethnic minority civil servants were dismissed. Members of ethnic groups had been arrested and their rights to freedom of expression and assembly had therefore been violated. She regretted that organizations and individuals that aimed to promote the rights and interests of regional ethnic groups were often treated as criminal groups. Iranian teacher unionists had been intimidated and detained, mistreated and even executed after having protested against discrimination of teachers. Recently, the Iranian Kurdish teacher and unionist Farzad Kamangar, who advocated for the rights of Iranian Kurds, had been executed although his case had still not been reviewed by the Supreme Court. Mr Kamangar was a member of the Iranian Teachers' Trade Association affiliated to Education International. His case had been decided in secrecy in two minutes and without his lawyer or himself being able to challenge the allegations. Teachers and all workers advocating for social justice, equal rights to education and employment, and rights for women should be heard, fairly treated and given the opportunity to address problems through proper negotiation channels.

The Government representative wished to clarify that certain statements with regard, in particular, to the geographical location of cited regions were not entirely correct. The national equality policy, which included the prohibition of discrimination based on ethnic origin or religious background, was of paramount importance for the Government, which was abiding by the requirements of ILO Conventions. The Iranian Constitution enshrined equal treatment, and no ethnic, religious or otherwise minority was discriminated against in law or in practice. The Baha'i presently enjoyed the best living conditions since their founding, and the Government assured that no segregation based on religion, ethnic origin or social background was taking place. The non-recognition of the alleged status of the Baha'i as a religious minority did not imply the denial of rights and freedoms. The Baha'i enjoyed full citizenry rights, were free to practice their religion and to conduct high-level educational courses, as con-

firmed by the UN Special Rapporteur on freedom of religion or belief.

The equal treatment of women was reflected by the fact that their participation rate in education had increased by 2,200 per cent since 1976 and that today 65 per cent of university students were women. In recognition of certain shortcomings, the Government had put into place empowerment and enabling programmes which had been described before. Social security coverage had been extended to women in rural areas. Forty per cent of the country's highly specialized physicians were female, and women had established more than 7,000 non-governmental organizations (NGOs).

Recalling the statement made by the Worker member of the Islamic Republic of Iran, who had indicated that the Minister of Labour had intervened in a dispute, which otherwise could have resulted in its consideration by the Conference Committee, he highlighted the importance that the Minister attributed to the principles of freedom of association and social dialogue. With regard to the imprisonment of union activists, the Government would do its utmost, for example, through the mechanism of pardon or amnesty, to enable their release. As to Farzad Kamangar, he contested the allegations that his case had been considered by the court for two minutes, and assured the Committee that the case had been heard for four years and all legal remedies had been exhausted.

The Employer members emphasized that they remained cautiously hopeful in this serious case, which had been considered for many years by the Committee of Experts and the Conference Committee had repeatedly expressed concerns about non-compliance with the Convention, urging the Government to take immediate action to ensure full application in law and in practice, and expressed regret regarding the lack of progress in this respect. The Employer members expected that the aforementioned issues in relation to the employment of women had already been or would be addressed in the near future, including the repeal of section 1117 of the Civil Code and the abrogation or amendment of legislation restricting the role of female judges, imposing a dress code, instituting discriminatory application of social security provisions and establishing barriers to the employment of women above the age of 40. The equal access of women to the labour market, including senior-level positions, should also be improved. The Employer members noted that the Government had provided detailed information in its report on all the issues raised by the Conference Committee and the Committee of Experts in its recent observation. Being aware of the longstanding difficulties of member States in respect of compliance with this Convention, the Employer members remained cautiously hopeful and would be deeply disappointed if the measures taken or envisaged by the Government did not remove the restrictions on women's employment. The progress achieved in connection with freedom of association with regard to the recognition of workers' and employers' organizations was duly noted and the continuous engagement of the social partners encouraged. In conclusion, the Employer members welcomed the Government's acceptance of an ILO tripartite technical assistance mission to the Islamic Republic of Iran.

The Worker members concluded that nothing had changed, four years after the Government's commitment to bring national law and practice into conformity with the Convention. The information supplied by the Government was not convincing and could have been provided in writing at an earlier stage. The Worker members had little confidence that the Government would indeed revise the labour law so as to guarantee freedom of trade unions fully. They expressed their disappointment with regard to the lack of progress. Access of women and reli-

gious and ethnic minorities to the labour market had not improved, and their situation remained deplorable as they faced discrimination. Independent trade unions were unable to function, and their leaders were imprisoned. Despite the lengthy report supplied by the Government after the deadline for submission of reports, the Worker members were still of the view that the Government had not fulfilled its reporting obligations for the past four years and regretted that such demeanour rather illustrated its disrespect for the ILO supervisory mechanism. As regards the Government's willingness to accept technical assistance in amending legislation and regarding other issues related to the implementation of the Convention, the Worker members believed that, under the current circumstances of restrictions in the functioning of trade unions and the absence of social dialogue, such assistance was not possible and could not be effective. Noting that the Government was prepared to accept a tripartite ILO mission to the country, they requested that its terms of reference should refer to the implementation issues relating to this Convention and that the mission take place in a time frame allowing for the mission report to be discussed at the next Conference. Finally, the Worker members requested that the conclusions of the Committee be included in a special paragraph of the Committee's report.

Conclusions

The Committee noted the statement provided by the Government representative and the discussion that followed. The Committee noted that it had examined this case on numerous occasions, most recently in 2008 and 2009, and recalled the detailed conclusions it had adopted in this regard. It noted that the Committee of Experts, referring to the Conference conclusions, continued to raise a wide range of concerns, in particular regarding the situation of women in the labour market, discriminatory laws, regulations and practices, the situation of unrecognized religious minorities, in particular the Baha'i, and ethnic minorities, dispute resolution, and the social dialogue situation in the country.

The Committee noted the information provided by the Government on the bills regarding the following: the revision of Chapter 6 of the Labour Law; monitoring of the implementation of ILO provisions; prohibition of discrimination in employment and occupation; and home-based jobs. Information was also provided on the establishment of a Committee mandated to identify national laws and regulations in conflict with the Convention, training of judicial authorities, establishment of special minority courts and dispute settlement councils and the establishment of a Committee on Women and Legal Studies and Non-discrimination. Information, including some statistics, was also provided on women in the judiciary, Parliament and government positions, and women entrepreneurs.

While noting that the Government had recently submitted a report for examination by the Committee of Experts at its 2010 session, it expressed disappointment that this report had not been submitted in time to be examined by the Committee of Experts during its session in 2009. The late submission of this report made it difficult for the Committee to assess whether any real progress had been made. The Committee hoped that the Committee of Experts would be able to find evidence of progress regarding the range of outstanding issues, including evidence based on detailed statistical information.

The Committee, while acknowledging that certain advances appeared to have been made, remained concerned that, despite the commitment made by the Government in 2006 to bring all the relevant legislation and practice into line with the Convention by 2010, many outstanding issues raised by the Committee of Experts remained unanswered. The Committee urged the Government to amend the discriminatory laws and regulations, and to bring the practice

into line with the Convention, including regarding the role of female judges, the obligatory dress code, the application of social security regulations, hiring of women over 40, and women's access to the labour market, in particular to senior-level positions. Noting that article 1117 of the Civil Code had not been expressly repealed, and that there were indications that the provision continued to have a negative effect on women's employment opportunities, the Committee requested the Government to take steps to repeal the article, and to promote public awareness of the right of women to pursue freely any job or profession. Further, the Committee urged the Government to implement policies aimed at promoting the inclusion of women in the labour market and decent work for women. The Committee also urged the Government to take decisive action to combat discrimination against ethnic and unrecognized religious minorities, in particular the Baha'i.

The Committee noted concerns regarding the imprisonment of trade union officials. The Committee and the Committee of Experts previously raised concerns that in the context of the lack of freedom of workers' organizations, meaningful social dialogue regarding issues related to the implementation of Convention No. 111 would not be possible.

The Committee urged the Government to accept an ILO high-level mission. It hoped that in the context of that mission, the implementation of Convention No. 111 would be addressed as well as freedom of association principles. The Committee requested the Government to ensure that the Committee of Experts would have full and verifiable information before it to examine at its forthcoming session, and hoped that real progress in the implementation of Convention No. 111 could be recorded in the very near future.

RUSSIAN FEDERATION (ratification: 1961)

The Government provided the following written information.

Articles 2 and 5. Equality between women and men and special protection measures

In accordance with article 37 of the Constitution of the Russian Federation, labour is free and everyone has the right freely to make use of his or her different aptitudes for work and choose a form of activity and occupation. Every person has the right to work in conditions that meet safety and health requirements. In addition, under section 3 of the Labour Code, everyone must have equal opportunities to exercise their rights at work. No one may be restricted in those rights and freedoms or obtain any advantage, irrespective of sex, race, colour, nationality, language, origins, property, family, social or occupational status, age, place of residence, religious beliefs, political convictions, membership or non-membership of public associations, or any other circumstance not connected with the worker's personal qualities. Moreover, section 212 of the Labour Code requires employers to ensure safe and healthy working conditions for workers, both for men and for women. However, section 3 of the Labour Code provides that distinctions, exclusions, preferences or restrictions on workers' rights that arise from federal law requirements in connection with the nature of the work, or reflect the concern of the State to assist those in need of greater social and legal protection, are not deemed to be discrimination.

The above provisions are implemented through the Labour Code with various special allowances and guarantees for women and other social groups in need of additional social protection. For example, section 253 of the Labour Code restricts the employment of women in heavy work and work in harmful or hazardous working conditions, and in underground work, except for light (non-physical) duties or work in connection with sanitary and domestic

services. Employment of women to perform work involving the manual lifting and moving of heavy loads above a maximum limit is also prohibited. To this end, Government Order (*postanovlenie*) No. 162 of 25 February 2000 “approving the official List of tasks involving heavy work and work in harmful working conditions in which the employment of women is prohibited [hereinafter “the List”] was adopted.

Work by women is governed both by generally applicable provisions of labour legislation and by special provisions adopted to reflect their particular psychological and physiological characteristics and other socially significant factors. The Constitution of the Russian Federation, in accordance with the objectives of a State committed to social welfare, ensures protection of workers and of their health, support for mothers (article 7), the right to work in conditions that meet safety and health requirements (article 37(3)), and the right to health protection (article 41(1)). Maternity enjoys state protection (article 38(1)). The Labour Code (section 11(6)) contains special provisions relating to the employment of women.

Thus the employment of women in areas covered by the aforementioned List is conditional on the creation of safe working conditions. The List restricts the right of employers to employ women if safe working conditions have not been ensured, but not the right of women to carry out work in difficult, harmful or dangerous conditions. According to point 1 of the notes to the List, employers may decide to employ women in occupations or tasks included in the List provided that they ensure safe working conditions and that this is confirmed and certified through workplace inspections by the state labour inspection authorities and the public health authorities of the administrative territories of the Russian Federation. The restrictions apply as a rule not to particular occupations as a whole but only to specific types of work associated with a given occupation. The 456 specialized types of work in the 38 branches contained in the List represent only 4 per cent of all occupations and only about 2 per cent of all forms of economic activity. As applied to actual employment, these restrictions concern an even smaller proportion of workers and represent a fraction of one per cent of overall employment. Thus, where there are objective data to indicate that a woman working in an occupation on the List is exposed more than men to the potential effect of specific harmful factors, then prohibiting her employment in such work does not constitute discrimination inasmuch as it follows from the necessity of extra care with regard to her health, protection of which is guaranteed under the Constitution of the Russian Federation and international standards.

In order to allow a review of existing systems of protection and measures to ensure equal opportunity for women and men and equal protection of safety and health, work is being done to introduce an occupational risk management system at every work place and to involve the main social partners (State, employers and workers) in that system. The creation of an occupational risk management system should become the basis of an occupational safety and health management system for protecting workers at work. The aim of this should be to eliminate risks, or at least reduce them as far as possible, and raise the level of protection of all workers, irrespective of their gender. With that purpose in mind, a working group which includes representatives of all the social partners has drawn up a draft federal law to amend the Labour Code, in particular the definition of “occupational risk”, the establishment of the rights and obligations of parties to employment relationships linked to occupational risk management, and the establishment of a procedure for organizing work on the prevention of occupational illnesses and occupational rehabilitation of workers.

Public monitoring and examination of the components of the system for evaluating and managing occupational risks involves all the parties and representative bodies concerned in the development and planning of measures aimed at modernizing the current system of worker protection and social insurance, and in the examination of draft laws and regulations and their implementation of decisions that have been adopted. In all this, the Coordination Committee for the Development and Implementation of a Programme of Action to improve Occupational Safety and Health, set up under the auspices of the Ministry of Health and Social Development, plays an important part, as does the Coordination Council for Small and Medium-Sized Enterprises, and self-regulated bodies.

Application of anti-discrimination provisions of the Labour Code

The rights of citizens in the Russian Federation who have suffered discrimination at work are protected exclusively by the courts. The Labour Code does not provide for the possibility of representations to the federal labour inspection authority, since that authority is not required, and has no authority, to exercise a jurisdictional function which is reserved for the courts. In addition, any moral harm caused by discrimination is a matter for compensation, and decisions concerning compensation can be taken only by courts.

On the other hand, in all cases in which workers make representations on discrimination at work to the Federal Labour and Employment Service and its regional departments, the state labour inspection authorities in the regions provide consultation sessions with workers and give clear guidance as to procedures for applying to the courts in connection with discrimination. Consultations are also arranged by the state labour inspection authorities for workers and employers on issues of observance of labour legislation and other laws and regulations containing labour law provisions, including those concerning discrimination.

Articles 2 and 3. Equality of opportunity and treatment of men and women

According to data from the Federal State Statistics Service (Rosstat), the number of working women in 2009 was 34,226,000 (49.4 per cent of the total working population in the Russian Federation, counted by main job), broken down into the different branches of the economy as follows:

- agriculture and forestry, hunting, fishing and fish breeding: 2,192,000;
- mining and quarrying: 279,000;
- manufacturing: 4,346,000;
- construction: 852,000;
- wholesale and retail trade, repair of vehicles and personal and household goods, hotels and restaurants: 7,691,000;
- transport and communications: 1,828,000;
- financial activities: 2,729,000;
- public administration and defence, compulsory social security: 2,171,000;
- education: 5,284,000;
- health care: 4,376,000;
- other economic activities: 1,827,000.

The number of working men was 35,059,000 in 2009, broken down into the different branches of the economy as follows:

- agriculture and forestry, hunting, fishing and fish breeding: 3,648,000;
- mining and quarrying: 1,098,000;

- manufacturing: 6,160,000;
- construction: 4,054,000;
- wholesale and retail trade, repair of vehicles and personal and household goods, hotels and restaurants: 4,293,000;
- transport and communications: 4,698,000;
- financial activities: 2,981,000;
- public administration and defence, compulsory social security: 3,387,000;
- education: 1,222,000;
- health care: 1,103,000;
- other economic activities: 832,000.

As at the end of March 2010, the employment rate (the share of the total population aged 15 to 72 that is employed) was 61.2 per cent. Men accounted for 66.4 per cent and women 56.7 per cent of the total. Women's share of employment was 49.2 per cent.

Compliance with labour legislation with regard to women's employment in the Russian Federation in 2009

In 2009, measures to identify and redress violations of women's labour rights were carried out under the Action Plan of the Federal Service for Labour and Employment on inspection and supervision of compliance with labour legislation and other laws and regulations containing labour law provisions. A total of 3,818 inspections were thus carried out in order to inspect and supervise compliance with labour legislation related to women, during which 13,578 violations of labour legislation were identified and eliminated.

Where violations of labour legislation were found, employers were issued instructions (over 2,100 issued), administrative penalties were imposed on officials guilty of violations (over 1,600 fines were issued, totalling over 3,892,500 roubles). Over 2,000 employment contracts were concluded with women on the orders of state labour inspectors, and over 500 orders of dismissal of such workers were revoked.

In order to prevent violations of the labour rights of pregnant women and those on child care leave until the child reaches the age of three, the state labour inspectorates in the constituent units of the Russian Federation provide information and consultations to the parties to the employment relationship, including through telephone hotlines, web sites and the media. In addition, they have been instructed to give priority to handling complaints from pregnant women and those with children under the age of 3.

In addition, before the Committee, a **Government representative** recalled the provisions of the Constitution as well as those of the Labour Code that guaranteed the principle of non-discrimination in employment and the right to work in conditions that met safety and health requirements. He specified, however, that restrictions arising from federal law requirements in connection with the nature of the work, or reflecting the concern of the State to assist those in need of greater protection, were not deemed to be discrimination. As for Government Resolution No. 162 of 25 February 2000 approving the official list of tasks involving heavy work and work in harmful working conditions in which the employment of women is prohibited, it had been adopted in order to give effect to section 253 of the Labour Code which restricted the employment of women in heavy work, work in harmful or hazardous working conditions and in underground work. He noted that 456 specialized types of work in the 38 branches contained in the list represented only 4 per cent of all occupations and only about 2 per cent of all forms of economic activity. He added that, according to the Annex of Resolution No. 162, employers were allowed to

employ women in occupations or tasks included in the list, provided that they ensured safe working conditions and that this was confirmed and certified through workplace inspections by the state labour inspection authorities and the public health authorities of the administrative territories of the Russian Federation.

Referring to the ongoing work for the review of existing systems of protection and measures to ensure equal opportunity for women and men, the speaker indicated that the intention was to introduce an occupational risk-management system at every workplace and to involve the social partners in that system. The objective was to eliminate or reduce risks and to raise the level of protection of all workers, irrespective of gender. To this end, a tripartite working group had prepared draft legislation amending the Labour Code, especially in matters related to occupational risk management, prevention of occupational illnesses and occupational rehabilitation of workers.

Turning to the question of the extra-judicial settlement of anti-discrimination claims, the speaker explained that the labour legislation did not provide for the possibility of anti-discrimination complaints to be filed with the labour inspection authorities as these authorities could not exercise judicial functions. In addition, compensation for moral damages for those who had suffered discrimination in employment could only be awarded by court decision. However, the labour inspection authorities and the Federal Labour and Employment Service and its regional departments provided guidance to workers concerning the procedure for filing court cases on discrimination.

Concerning women's representation in the labour market, the speaker referred to the detailed statistical information provided by the Government in its written submission. He drew attention to the fact that statistics differed according to the sectors: whereas in the construction and mining sectors there were four times fewer women than men, in the health and education sectors, the situation was the opposite. Finally, he referred to labour inspection results for 2009 according to which 3,818 inspections were carried out, 13,578 violations of women's labour rights were identified, and fines totalling over 3 million roubles had been imposed.

The Worker members enumerated the various points mentioned in the observation of the Committee of Experts and the relevant Articles of the Convention. With regard to equality between men and women and positive action measures, the Labour Code prohibited discrimination and established the principle that reasonable adaptation of working conditions or regulations in order to accommodate workers' specific circumstances or needs did not constitute discrimination. That approach was understandable, but when "specific circumstances" applied to women workers as a whole, it became an abuse. Such was the case of Resolution No. 162, about which the Committee of Experts had expressed concern and which effectively prohibited women from entering 456 occupations in 38 sectors of the economy. The Committee of Experts did not agree with the arguments presented by the Government to justify the intended objective of the Resolution and had expressed doubt as to whether adequate measures were being taken within the framework of the Resolution to ensure application of the policy of equal working conditions for men and women. In that regard, the Worker members underlined that, legally, the approach embodied in Resolution No. 162 did not coincide with the concept of positive action, and that the Resolution went beyond the meaning of Article 5 of the Convention. Furthermore, it seemed that, under the guise of protecting women, no overall consideration was given to the improvement of occupational safety and health conditions for all workers.

The Worker members also noted the lack of genuine information provided by the Government, not only on pro-

ceedings before the civil courts and the outcome thereof, given that plaintiffs could no longer petition the labour inspectorate, but also on statistics and measures to ensure that men and women could access employment on an equal footing, in view of the highly segregated nature of the Russian labour market.

Lastly, with regard to equal opportunities for and treatment of ethnic minorities and indigenous peoples, the Worker members emphasized that, while Russians made up 80 per cent of the population, the Federation contained many other ethnic groups. The Government's recognition that problems existed in that sphere, particularly in terms of the preferential treatment accorded by certain republics within the Federation to individuals belonging to the dominant ethnic group, was welcomed. Although the Constitution forbade discrimination, genuine and reliable measures should be taken to monitor implementation of the Labour Code and solve the issue of equal opportunity for and treatment of ethnic minorities and indigenous populations in the field of employment swiftly and unequivocally.

The Government should take into account universally recognized and accepted legal concepts concerning equality and non-discrimination and compare them in good faith to domestic legislation in order to find a satisfactory solution that respected the principles of non-discrimination set out in Convention No. 111. In respect of any cases of discrimination identified, the Government should adopt simple and effective protection measures in the event of unfavourable treatment, ensure compensation for victims, and introduce rules concerning the burden of proof in order to add to the promotional measures already planned. One possible solution would be to create bodies responsible for promoting and monitoring application of the principle of equality of treatment in employment and occupation and assisting victims. In addition, such bodies could monitor statistics on discrimination observed in the labour market.

The Employer members thanked the Government for the information it provided to the Committee. They recalled that the Committee of Experts had made six observations with respect to this case which was being examined for the first time by the Conference Committee. They urged the Government, if it had not already done so, to provide all the necessary information addressing the issues raised by the Committee of Experts.

The Employer members further recalled that Resolution No. 162 excluded women from being employed in 456 occupations in 38 sectors of the economy. While noting the Government's explanations, the Employer members stated that the Resolution raised many issues regarding equality of opportunity in employment and occupation of men and women, and that special measures for women that were based on stereotyped perceptions regarding their capacity and role in society violated the principle of equality of opportunity and treatment. Thus, the exclusion of women from work or employment on the basis that it involved hazardous or dangerous working conditions creating equal risks for men and women likely went beyond the permissible bounds of Convention No. 111. They were concerned that the impact of such regulations could hinder both women's equality in the labour market and progress in ensuring that men and women had safe work environments.

Recalling the Committee of Experts' observation that employment of women appeared to be concentrated in clerical occupations while women were underrepresented in senior positions, the Employer members urged the Government to take the necessary measures to ensure equal employment opportunities, strengthen the legal framework and amend Resolution No. 162. They also called for information on measures taken in this respect,

including statistical information on the distribution of men and women in different sectors and industries and level of responsibility. Finally, they requested that the Government continue to provide information on the measures taken to promote and ensure equality of opportunity and treatment of ethnic minorities and indigenous peoples through promotional measures and an appropriate legal framework in this respect.

The Employer member of the Russian Federation aligned herself with the statement of the Government representative and expressed the view that women needed special protection in cases of work in harmful or hazardous working conditions and that such protection could not be deemed discriminatory. With reference to Resolution No. 162 of 2000, she indicated that the text permitted employers to employ women in tasks included in the list of prohibited occupations on condition that they ensured safe working conditions and that this was certified by the state labour inspection authorities. Risk assessments were carried out at every workplace to ensure equal protection of safety and health standards for both women and men. She concluded by reiterating that, in the view of the employers of her country, Resolution No. 162 could not be considered discriminatory in nature.

The Worker member of the Russian Federation confirmed that there was a prohibition against women's employment in certain occupations, but that this related to the protection of women's reproductive health. As regards the possibility of filing anti-discrimination complaints only with the courts, he noted that it was very difficult to prove any such claim. The legislation should therefore be amended in this respect so that labour inspectors were given the opportunity to investigate cases of discrimination in employment and occupation.

The Government member of Uzbekistan stated that the issue of gender equality was one that was very important and topical to the Government of the Russian Federation. It was necessary to highlight that, as regards the application of Convention No. 111, the Russian Federation had provided the appropriate legal basis and framework for compliance, and ensured equality of opportunity for all, including the opportunity of employment in appropriate conditions. The Government sought to provide safe working conditions for both men and women and laws on gender equality had been adopted and implemented. Restricting access to certain types of work was not discriminatory. He expressed support for measures aimed at ensuring special protection for women workers. Government had provided a strong system of penalties to prevent and punish violations, including fines and administrative sanctions, thus ensuring that existing laws and administrative procedures were complied with in practice. He concluded by stating that the Government had given a clear picture with respect to the application of the Convention and that gender equality was fully applied both in law and in practice.

The Government representative thanked those speakers who participated in the discussion and indicated that his Government would take all the views expressed into account. The various legislative acts, including Resolution No. 162, were seeking to improve the economic and social situation in the country. He added that the Resolution had not been recently drafted, but rather was a legal text that had existed for a long time, and therefore expressed surprise at the timing of the discussion.

The Employer members stated that the prohibition of women working in certain occupations should be repealed, as this prohibition violated the principle of equality of opportunity in employment and occupation of men and women. They expressed the view that, despite the Government's intention of protecting women from hazardous work, Resolution No. 162 hindered women's

equality in the labour market; women should be entitled to exercise free choice with respect to a decision to seek employment in those industries or not. They further observed that it would be unfortunate if the Resolution's impact was to limit progress in ensuring that both women and men were provided a safe work environment, regardless of the industry or occupation, and they held that the conclusions should reflect these concerns.

The Worker members noted the written information provided by the Government and emphasized that certain positive elements in the case could have served to show the Government's goodwill. However, in his response, by refusing to amend Resolution No. 162, the Government representative had shown the obstinacy of the approach adopted. It needed to be emphasized that there was no possible excuse for refusing to give effect to universally recognized and accepted legal concepts in the field of equality and non-discrimination, although there might still exist problems of a technical nature or related to human resources issues which were preventing a solution being found to the complex issue of non-discrimination and Convention No. 111. The question needed to be addressed with the social partners and, if necessary, with ILO assistance.

For that purpose, the Worker members proposed the establishment of a tripartite committee to revise and supplement the national legislation, with the following mandate: to introduce into the Labour Code complete and simple provisions to give effect to the concepts and procedures envisaged in the Convention for the benefit of workers from ethnic minorities; to provide for the effective compensation of victims and rules to facilitate the burden of proof; to take measures and undertake awareness-raising campaigns on the issue of discrimination and its prohibition; to establish bodies with the role of promoting and monitoring the implementation of the principle of equality of treatment in employment and occupation; and to entrust these bodies with the implementation of procedures to assist victims, in collaboration with the social partners. The Worker members called on the Government to provide information for the Committee of Experts' session in 2011 on the establishment of this tripartite committee and the results achieved.

Conclusions

The Committee noted the oral and written information provided by the Government representative and the discussion that followed. It noted that the Committee of Experts had raised concerns regarding Resolution No. 162 of 25 February 2000, excluding women from being employed in 456 occupations and 38 branches of industry, and section 253 of the Labour Code which provides that the employment of women in arduous work and work in harmful or dangerous conditions shall be limited. The Committee of Experts had also raised issues with respect to the enforcement of the non-discrimination provisions in the Labour Code, occupational gender segregation in the labour market, and the need to promote and ensure gender equality and equality of opportunity and treatment of ethnic minorities.

The Committee noted the statistical information provided by the Government on the representation of women and men in the different branches of the economy in 2009. It also noted the information regarding the legislation on non-discrimination and safe and healthy working conditions, and the reasons it was considered that the employment of women in certain areas should be made conditional upon the creation of safe working conditions, certified by the inspection authorities and the public health authorities. The Government also provided information on the steps being taken to review the existing system of safety and health protection, including the introduction of a workplace occupational risk management system involving the social partners. The

Committee also noted the measures taken under the Action Plan of the Federal Service for Labour and Employment, and the role of the labour inspection authorities in providing guidance and consultation on legislation and procedures regarding non-discrimination.

The Committee noted that Resolution No. 162 and section 253 of the Labour Code went beyond protecting women's reproductive health and broadly restricted their access to occupations and sectors that involved equal health and safety risks to men and women. The Committee urged the Government to take steps to revise section 253 of the Labour Code and Resolution No. 162 to ensure that any limitations on the work that could be undertaken by women was not based on stereotyped perceptions regarding their capacity and role in society and was strictly limited to measures to protect maternity. The Committee asked the Government to ensure that the planned review of the existing system of health and safety protection addressed the need to provide a safe and healthy working environment for both men and women, and one that would not lead to measures hindering women's participation in the labour market. Noting the highly gender segregated labour market, the Committee asked the Government to take measures to address the legal and practical barriers to women's access to the broadest possible range of sectors and industries, as well as at all levels of responsibility.

The Committee urged the Government to take measures, through tripartite consultation, to ensure non-discrimination and promote equality of opportunity and treatment in employment and occupation for all groups protected under the Convention, including ethnic minorities. Such measures should include strengthening the legal framework. The legal framework should address direct and indirect discrimination and the burden of proof, and provide for effective remedies in discrimination cases. The strengthening and establishment of appropriate mechanisms to promote, analyse and monitor equality of opportunity and treatment in employment and occupation should also be part of these measures.

The Committee requested the Government to include in its report to the Committee of Experts at its next session complete information replying to all the matters raised by this Committee and the Committee of Experts, including relevant statistical information disaggregated by sex.

Employment Policy Convention, 1964 (No. 122)

THAILAND (ratification: 1969).

The Government provided the following written information.

In accordance with the present policy to mitigate the impact of the economic crisis on workers and employment, the Government has adopted the Economic Stimulus and Recovery Package, which is in line with the Global Jobs Pact, with the aim of reviving the Thai economy and protecting the least fortunate and the poorest in the country by building a better social safety net for the most vulnerable groups. On 6 May 2009, the Cabinet approved several cross-cutting projects under the Strengthening Thai or Thaikhemkhaeng Action Plan, which are being mainstreamed into the national policies and programmes of all relevant ministries. With regard to employment promotion, the Ministry of Labour (MoL) has carried out many different projects, including: the projects on hiring volunteer graduates and the expansion of vocational guidance for youth in the border provinces in the south; the project on labour market promotion in the Middle East countries, Africa and Malaysia for employment promotion in the bordering Southern Provinces; the project on skills development to increase employability; and

the project on the development and promotion of self-employment.

Articles 1 and 2. Employment and social policy: reaching out to workers in the informal economy and the coordination of employment policy measures with unemployment benefits

The Government has provided protection to all workers in the country. Workers in the informal economy and the self-employed can gain access to the social insurance system in accordance with the law on a voluntary basis. The MoL plans to publicize and seeks to convince workers in the informal economy to apply to become insured persons. With regard to benefits, measures are being improved to respond to the needs of informal workers and the law is being revised to expand the coverage of benefits and to increase the categories of workers able to gain access to the social security system. The MoL also provides services to unemployed insured persons with a view to employment promotion, for example, through employment services, vocational guidance and skills training.

Employment promotion measures

Pursuant to the Tenth National Economic and Social Development Plan 2007–11 “human beings are the center of development” which, through capacity and skill development, in line with labour demand they should be able to enter the world of work and competitiveness; life-long learning is promoted in Thai society; labour productivity is enhanced; and the opportunity to access social services for the elderly, disabled and vulnerable is accelerated. Everyone benefits from free compulsory education for 15 years and student loans have provided greater opportunities at the vocational and undergraduate levels. More people can gain access to informal education and life-long learning. Workers at all levels are being equipped with knowledge and standard skills in line with the ever-changing technology and labour market.

The human potential development scheme. Human resource development schemes provide access to life-long learning and enhance the educational quality of everyone, as well as improving labour productivity through skills training and skills standard testing. The Department of Skill Development (DSD) has provided: pre-employment training for inexperienced young and adult jobseekers, with 16,183 people attending training in 2009; skills upgrading training for workers currently in the labour market, with 164,704 people attending courses in 2009; skills standard testing with the aim of categorizing the skills levels of workers, with 51,746 successful applicants for skills testing in 2009; and entrepreneurship training for those interested and workers in various enterprises, with 22,733 enterprises and 4,271,594 workers participating in such training in 2009, in addition to another 90,715 interested persons from the general public.

Social protection measures. During fiscal year 2010, the MoL, through the Department of Labour Protection and Welfare (DLPW), has taken measures to mitigate the suffering and assist employees and their families so as to help them maintain their jobs and to aid those laid off during the crisis. Two projects have been carried out: the project on the fund to prevent, resolve and assist those in the labour sector affected by the world economic crisis which has provided welfare funds to 364 employees; and the project on the prevention and resolution of dismissals, which has just begun to operate.

Upgrading national competitiveness. The DSD has joined the World Skills Contest with the aim of promoting the skills of Thai youth and publicizing the skills capacity of Thai workers to the world community. Thai Labour Standard (TLS 8001-2003) has been adopted in support of

all types of establishments, especially those that are export oriented, for implementation on a voluntary basis, with the aim of improving labour administration and making it more systematic in accordance with international labour standards with a view to improving the living standards of workers and enhancing the sustainable development of business. As of 2009, there are 175 establishments with TLS 8001-2003 certification.

Restructuring sustainable development in rural and urban areas. Strategies have been developed to provide guidance to regions, groups of provinces and provinces for the sustainable development of rural and urban areas. In particular, a project has been implemented to strengthen the potential of the unemployed to add economic and social value to the community (the Tonkla-Archeap Project), under which 419,658 unemployed and interested persons have been trained, with 163,538 trainees being recycled to enter self-employment. The results include a fall in migration from rural to urban areas, the promotion of employment and an increase in income generation for rural people.

Matching labour supply and demand

The Department of Employment (DOE) has developed an online labour market information system to help those seeking and offering labour through the provision of labour market information, including news on the Thai economy and investment. The online system includes: domestic employment (e-service) and the online labour market information system through the DOE's web site, comprising a regional journal and basic information for the provinces. During fiscal year 2009, there were 382,752 vacancies and 3,037,305 jobseekers, of whom 275,573 were placed in jobs.

Linking skills development measures and the labour market

The Labour Market Information Centres located throughout the country have provided assistance through labour market schemes, including: the enhancement of the labour market information database; the establishment of a workforce registry system; and the enlargement of labour market information networks to villages. The DSD has conducted pre-employment training to prepare newcomers to the labour market.

Cooperation between the MoL and the Ministry of Education to reinforce educational and skills training measures. The National Committee on Skill Development Coordination and Labour Development, led by the Prime Minister and comprising representatives from the relevant ministries, including the Ministry of Education and the MoL, is responsible for formulating human resource development policies to consolidate skills development and educational schemes, as well as monitoring implementation. In 2009, in this context, training was provided for 6,905 unemployed persons and skills upgrading courses for 339,176 part-time and full-time workers in enterprises.

Measures to increase the ratio of women in the labour market. In the context of the DSD project on “women's empowerment”, training courses were provided for chefs, child and elderly carers, office clerks, waitresses, housekeepers and fashion designers. During the course of 2009, there were a total of 323,339 trainees in DSD courses, of whom 150,543 were women.

Training for persons with disabilities. In 2009, the DSD conducted skills training for 321 persons with disabilities, of which 93 are employed. The Office of Social Security (OSS) has provided rehabilitation and vocational training for 197 persons with disabilities and 191 are employed.

Preventing abuse in the recruitment of migrant workers

Since 2004, under the supervision of the Illegal Migrant Worker Administrative Committee, seven strategies have been defined with the objective of the legal employment of foreign workers. The first phase involved the registration of illegal workers from Cambodia, the Lao People's Democratic Republic and Myanmar, who will be allowed to stay temporarily and work in the country for no longer than one year while awaiting repatriation. The total number of foreign workers' work permits renewed was 932,255, of whom 812,984 are from Myanmar, 62,792 from the Lao People's Democratic Republic and 56,476 from Cambodia. Such permits will expire on 28 February 2011. The second phase consisted of the modification of the status of registered foreign workers to that of legal migrant workers. The countries of origin are required to verify the nationalities of these foreign workers, after which they issue a certificate of verification of nationality or a passport. The workers then have to apply for a visa from the Thai authorities so that they can then apply for a work permit. As of 27 April 2010, the total number of foreign workers whose nationalities have been verified is 200,610, including 71,390 from Myanmar, 58,430 from the Lao People's Democratic Republic and 70,790 from Cambodia. The third phase consisted of the recruitment of foreign workers in accordance with the Memorandum of Understanding signed between the Thai Government and the Governments of Myanmar, the Lao People's Democratic Republic and Cambodia. As of 27 April 2010, there are 110,776 foreign workers from these countries allowed to work in Thailand, including 20,092 from Myanmar, 49,036 from the Lao People's Democratic Republic and 41,711 from Cambodia.

Workers in the rural sector and the informal economy

The Basic Economy Fund has allocated support for development projects for 80,000 villages nationwide. At the same time, the MoL, in cooperation with the Ministry of Agriculture and Cooperatives, has signed an agreement to assist workers who wish to return to agricultural occupations. Unemployed persons who so wish and are selected will be allocated land for agricultural work. The DOE has implemented projects to promote employment for groups of workers in the informal economy in the areas of: the promotion and development of home-based work, under which 4,248 persons were trained in 2009; job creation for the unemployed through the creation of self-employed activities, covering 3,488 persons in 2009; and the provision of loans at low interest rates of not more than 200,000 baht (THB) or US\$6,200 to organized groups of homeworkers of five or more persons.

With a view to improving the protection of workers in the informal economy, a working group has been established covering all the relevant agencies of the MoL. There are currently laws protecting homeworkers and workers in agriculture. The working group is establishing the framework and drafting the ministerial regulation on the protection of domestic workers, including provisions on holidays, the right to maternity leave, the minimum wage and occupational safety and health. On 3 March 2010, the House of Representatives approved the Labour Protection for Homeworkers Bill, which is now before the Senate.

In addition, before the Committee, a **Government representative** underlined the firm intention of her Government to comply with the Convention, the provisions of which had always been used in formulating policies and measures to promote employment in the country. To mitigate the impact of the economic crisis on workers and employment, her Government had adopted the Economic Stimulus and Recovery Package – which was in line with

the Global Jobs Pact – with the aim of reviving the Thai economy and protecting the least fortunate and poorest in the country by building a better social safety net for the most vulnerable groups. On 6 March 2010, a Resolution had been adopted by the Cabinet of Ministers to approve several cross-cutting projects under the Strengthening Thai or Thaikhemkhaeng Action Plan, which were being mainstreamed in national policies and programmes of all relevant ministries. Several projects were also being carried out by the Ministry of Labour regarding expansion of vocational guidance for youth, labour market and employment promotion, skills development, and development and promotion of the self-employed.

Turning to the points raised by the Committee of Experts regarding measures to reach out to workers in the informal economy and the coordination of employment policy measures with unemployment benefits, she stated that informal economy workers and the self-employed could gain access to the social insurance system on a voluntary basis. The law was being revised to expand coverage of benefits and to increase the categories of workers who could gain access to the social security system. Services were also provided to unemployed insured persons with a view to employment promotion. Regarding employment promotion measures, she highlighted the importance given to skills development and life-long learning under the Tenth National Economic and Social Development Plan for 2007–11, and the fact that under the present Government policy everyone had an opportunity to attend free compulsory education up to the age of 15 years. The student loan provided for enhancing opportunity of access to education at vocational and undergraduate levels. More people could access informal education and life-long learning. Through the Human Potential Development Scheme, human resource development schemes provided adequate access to life-long learning, enhanced educational quality, and improved labour productivity through skills training and skills standard testing. The Department of Skills Development had also undertaken activities in the areas of pre-employment training, skills-upgrading training, skills standard testing and entrepreneurship training. With respect to social protection, the Government had been taking measures to mitigate the suffering and had assisted workers and families so as to help them maintain their jobs and to aid those that had been laid off during the crisis. Measures had also been taken to upgrade national competitiveness, such as the Thai Labour Standard (TLS 8001-2003) which had been adopted in support of all types of establishments, especially those that were export oriented, and was to be implemented on a voluntary basis. As of 2009, there were 175 establishments with TLS 8001-2003 certification. Strategies were also being developed to provide guidance to regions and provinces for sustainable development in rural and urban areas. Of particular interest was the project to strengthen the potential of the unemployed to add economic and social value in the community (Tonkla-Archeap Project), under which 419,658 unemployed and interested people had been trained. This had resulted in the decrease of rural–urban migration and an increase in income generation of rural people.

With respect to linking skills development measures and the labour market, labour market information centres located throughout the country had provided assistance through labour market schemes. The National Committee on Skill Development Coordination and Labour Development was responsible for formulating human resource development policies to consolidate skills development and educational schemes. Measures had also been taken to increase the ratio of women in the labour market through the project on “women's empowerment”. On the issue of migrant workers, she explained how the Govern-

ment's active employment policy was preventing abuse in the recruitment of migrant workers in Thailand, through the registration of foreign illegal workers, especially those coming from Cambodia, the Lao People's Democratic Republic and Myanmar. Registered foreign workers could, after their nationalities had been verified, modify their status of registered foreign worker into that of legal migrant worker.

Lastly, with respect to workers in the rural sector and the informal economy, the Basic Economy Fund had allocated support for development projects nationwide and the Ministry of Labour had signed an agreement to assist workers who wished to return to agricultural occupations. Projects were being implemented to promote employment of workers in the informal economy, including home-based workers, through the provision of loans at low interest rates. The Government was also looking into establishing a framework and drafting a regulation on the protection of domestic workers, and on 3 March 2010, the House of Representatives had approved the Labour Protection of Homeworkers Bill, which was now before the Senate.

The Worker members thanked the Government representative for the information provided, which was particularly valuable as the Government had not provided a report on the application of the Convention since 2007. Unfortunately, the information provided in writing had only been communicated to the members of the Committee that day. The Worker members were very attentive to Convention No. 122, which was a priority Convention and envisaged the means of guaranteeing workers the possibility to benefit from their right to work. The discussion that had been held in the Conference Committee on the General Survey on the employment instruments, which was continuing in the Committee for the Recurrent Discussion on Employment, had confirmed the importance of employment policy in promoting and facilitating full, productive and freely chosen employment, as well as decent work.

The first point raised in the observation of the Committee of Experts concerned employment policy and social protection. The Committee of Experts had emphasized that 15,500,000 workers in the informal economy were not covered by unemployment benefits. That number had further risen with the economic and financial crisis. In this respect, the Worker members referred to paragraph 22 of the Global Jobs Pact which emphasized, among other matters, that it was necessary to address informality to achieve the transition to formal employment. It was only in this way that workers would be able to enjoy all their rights in the field of social protection.

The Committee of Experts had also raised the question of coordinating employment policy with poverty reduction. The Worker members took due note of the efforts made by the Government in relation to the training of jobseekers and access to credit through cooperative funds. However, the question that arose concerned the extent to which these efforts formed part of a broader employment policy intended to achieve a significant reduction in poverty in the country. The Government needed to intensify its efforts in this field. The Worker members added that they did not have precise information on the measures that the Government indicated it had taken to give effect to the conclusions adopted by the Conference Committee in 2006 on migrant workers, and they endorsed the request made by the Committee of Experts to the Government to report in detail on the impact of the action taken within the framework of an active employment policy to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand. They also urged the Government to ensure the systematic inclusion of a social clause in the bilateral agreements concluded with

neighbouring countries with a view to guaranteeing full respect of the rights of migrant workers.

The Worker members also observed that the participation rate of women in the labour market was very low, particularly in the formal economy. They welcomed the measures taken by the Government to raise this rate. However, much still remained to be done and the Government would need to intensify its efforts in this field and provide information on the real impact of the measures adopted. In addition, the Worker members called on the Government to provide data on the impact of the measures taken to promote the participation of persons with disabilities in the labour market, including statistics on the number of persons with disabilities who had completed a training programme and had found employment, so that the Committee of Experts could follow developments in the situation.

Finally, the Worker members emphasized the great importance of Article 3 of the Convention respecting the consultation of representatives of the persons affected by the measures to be taken, and in particular, representatives of employers and workers, in relation to employment policies with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for these policies. They noted the Government's indication that all the parties concerned would be involved in the employment policy, but requested the Government to provide further information on this subject.

The Employer members observed that the Convention was a priority Convention of particular importance for governance and that the Government had not provided the information that had been requested by the Committee of Experts ever since 2007. The Government had submitted written information to the Conference Committee only very recently. Consequently, it was not possible to examine the case properly, as the Committee of Experts had not been in a position to make its valuable contribution to the discussion between the workers and the employers.

The information provided by the Government basically covered three points. First, the Economic Stimulus and Recovery Package would, in accordance with the Global Jobs Pact, revive the economy and protect the poor by means of a social network. The Government had thus given its approval to cross-cutting projects. Second, under the country's social and employment policy, workers in the informal economy would be covered by a social security system that would afford them social protection that had previously not existed. Third, the promotion of employment under the Tenth National Economic and Social Development Plan for 2007–11 placed people at the centre of development and established a link between training for workers and the demand for labour.

Human development was important, especially in terms of life-long training, improvements in the quality of education, and the productivity of labour. Social protection measures were also essential in times of crisis so as to avoid dismissals. Workers had to adapt their skills to the supply of, and demand for, labour in order to help those who were looking for work or had jobs to offer. In this respect, the information provided by the Government mentioned the National Committee on Skills Development Coordination and Labour Development, which was preparing training and education programmes, a project for working women, training for workers with disabilities and development measures for the rural sector.

The Employer members noted that one of the principal objectives of the Convention was that each member should declare and pursue an active policy designed to promote full, productive and freely chosen employment. That policy was to be pursued by methods that were appropriate to national conditions and practices, and in con-

sultation with the social partners. In its General Survey, the Committee of Experts expressed the view that there were three fundamental steps to achieving full employment: (1) making a political commitment in this regard; (2) building the institutions necessary to ensure the realization of full employment; and (3) supporting and promoting training of workers and promoting the development of small and medium-sized enterprises (SMEs). An entrepreneurial culture needed to be developed as part of the country's employment policies in order to promote the development of enterprises and the creation of jobs. What was called for was not an analysis of the legislation in terms of the Convention but a more general analysis to determine whether the employment and market policies were in accordance with its provisions. The value of the information requested from the Government, which needed to be provided sufficiently in advance, would depend on the extent to which it related to the effectiveness of the country's active employment policies.

The Employer member of Thailand underlined that the Thai Government had provided several consultation forums for social partners during the current crisis. Employers' organizations in the country were cooperating with the Government to find solutions to these problems. Enterprises affected by the financial crisis had been participating in the Tonkla-Archeap Project, which allowed employers to send their surplus labour for skills training, with the financial support of the Government. This had allowed employees to maintain an income. Participating enterprises had signed a Memorandum of Understanding with the Government not to lay off their employees for a minimum period of one year with governmental assistance. The Government had also provided low-interest loans to enterprises with a lack of liquid assets who had agreed not to lay off their employees for a minimum period of one year. The speaker expressed support for the Government's efforts to overcome the crisis and achieve decent work in the country.

The Worker member of Argentina stated that, in this case, the strategies implemented in order to apply the Convention, not only had not produced results until then, but had also produced serious inconveniences. The Ministry of Labour, with the cooperation of the University of Chulalongkorn, had carried out studies related to the impact of free trade treaties in seven industrial sectors. According to these studies, highly competitive practices associated with free trade treaties led to precariousness as a result of favouring economic criteria aimed at reasons for competitiveness over parameters that dealt with worker protection and decent employment. There was a lack of information on the studies carried out by the Government of Thailand to avoid those negative effects, and on the corrective measures adopted. The consequences had become worse owing to the crisis. In that sense, it was necessary to evaluate strategies in light of the Global Jobs Pact. Those strategies should not necessarily result in adjustment, decreased wages or recessive policies, as there were other alternative models that were being applied and that had produced success in other countries with different histories and productive models. Those experiences showed that there was a different way to achieve the adjustment required for dealing with the crisis, namely through the harmonious development of national economic processes so as to protect decent employment, create new jobs and increase social protection; all of that under a tripartite framework for dialogue. The countries that implemented policies that took into account human beings as the centre of economic activity, as proposed in the strategies of the Global Jobs Pact, had obtained highly positive results. The steps taken in Argentina took into consideration a basic axiom: that of the virtuous growth cycle of an economy, which taught us that higher salaries

produced greater domestic consumption, which in turn produced greater production with a resulting increase in employment. These were worthy alternatives to adjustment and loss of decent jobs that respected ILO goals and protected the human condition. Those measures were a demonstration of the viability of the Global Jobs Pact and, therefore, of possible application in the case of Thailand.

The Worker member of Germany said that as well as making a valuable contribution in the international arena, for example through the Global Jobs Pact, the ILO could also exert an influence at national level. To that end, it should, however, always have detailed information available concerning the current labour market situation in its member States. Yet, the Government of Thailand had not provided the required information on its employment policy in recent years. Cooperation was necessary, particularly in the current context of economic and financial crisis. The crisis had allowed certain employers in Thailand to dismiss trade unionists and to recruit workers on temporary contracts in their place. Fear of dismissal and the weaknesses of labour legislation prevented unionization in many places. Unfortunately, Thailand had still not ratified Conventions Nos 87 and 98.

During the first three months of 2010, Thailand's gross domestic product had grown by 12 per cent. According to the Government, that increase had resulted from exports, banking sector stability, and its monetary and fiscal policies. It was difficult to be certain, however, given the lack of available data. What was certain, though, was that a large number of poor people, principally in the informal economy, were not benefiting from the Government's aid programme, and that social inequalities, to which migrants were particularly vulnerable, remained prominent in the country. Furthermore, despite attempts to shape a social policy, an in-depth reform of labour legislation had yet to be undertaken. The speaker strongly urged the Government of Thailand to cooperate with the ILO and all its member States during the current crisis. Joint work was needed to ensure that, throughout the world, positive measures were taken to promote widespread job creation. Lastly, the speaker urged the Government to show transparency in its policies and to communicate information to the ILO, under Convention No. 122, on recent trends in its labour market.

The Worker member of Indonesia was disappointed that the Government of Thailand had not provided detailed information on efforts made to meet its obligations under the Convention with respect to migrant workers. In 2006, the Committee, when discussing the case, had already emphasized the importance of an active employment policy to promote the effective integration of migrant workers in the labour market and to prevent their abuse and exploitation. There were more than two million migrant workers in Thailand, representing 5 to 10 per cent of the labour force and contributing approximately 1.25 per cent to the GDP in 2005. They worked primarily in the agriculture, fishing, construction, manufacturing and services sector. Most migrants were undocumented and had fled the repressive regime in Burma. They were vulnerable to exploitation and violation of their rights, in particular with respect to wages, working time and occupational safety and health. In addition, they faced obstacles to forming trade unions and accessing social protection. Undocumented workers were even at a higher risk of being victims of trafficking and slavery. Migration policies and programmes should be put in place, in consultation with social partners, to acknowledge the existence of large numbers of workers, both in a regular and irregular situation, and to respond to their rights and needs. The registration schemes already in place could help formalize irregular migration flows. However, the existing schemes were too restrictive, costly and difficult to use. The na-

tional verification process for migrant workers had created confusion and insecurity, in particular for stateless persons from Burma. Migration policies had to be carefully formulated and implemented in compliance with Convention No. 122, thereby taking into account the interaction between migration and labour laws. The Government was urged to report in detail next year on the efforts made to improve the status of migrant workers in the labour market.

The Worker member of Brazil recalled that the Government of Thailand had not complied with its obligation to provide reports on the application of the Convention since 2007. That constituted an obstacle to the proper functioning of the ILO supervisory system. The information provided by the Government in writing in was not sufficient to demonstrate its commitment. Convention No. 122 had been of the greatest importance since the beginning of the economic and financial crisis. The Thai economy was closely linked to that of the United States, Europe and Japan, which were still suffering from the effects of the crisis. The Thai GDP had fallen by 2.49 per cent in 2009 and, according to the available information, it appeared that unemployment would rise over the next two quarters. The number of workers in the informal economy, which already accounted for 70 per cent of the active population, was liable to rise as a result, as it acted as a shock absorber for workers who lost their jobs. As workers in the informal economy were not covered by social security, the phenomenon would result in a rise in social exclusion. He considered that the social protection system needed to be universal. The primary objective of the Convention, which was the promotion of full, productive and freely chosen employment, therefore remained very difficult to attain, at least for workers in the informal economy.

Referring to the objectives established in the Decent Work Country Programme for the period 2010–11, he emphasized that the information provided by the Government hardly covered the measures adopted in that context, with the exception of the efforts made to include workers in the informal economy in the social security system, which was totally unsatisfactory. He also referred to the conclusions concerning decent work and the informal economy adopted by the Conference in 2002, which placed emphasis on the priority that needed to be given, among others, to the following aspects: “removing obstacles to, including those in the legal and institutional framework, the realization of all the fundamental principles and rights at work” and identifying “the obstacles to application of the most relevant labour standards for workers in the informal economy and assist the tripartite constituents in developing laws, policies, and institutions that would implement these standards”. Unfortunately, none of these issues appeared in the Decent Work Country Programme for Thailand.

In conclusion, he hoped that the Committee would request that the Government of Thailand provide detailed and up to date information on the employment situation in the country and on the application of the Convention, as well as on the implementation of the Decent Work Country Programme. It would then be possible to envisage the possibility of the ILO offering technical cooperation for the improvement of working conditions in the informal economy.

The Government representative welcomed the recommendations from the Worker and Employer members. These would be taken into consideration to improve the situation. More specific information and more documentation would be submitted in the Government’s next report to the Committee of Experts.

The Worker members noted with satisfaction the efforts made by the Government in the area of employment policy. Referring to the conclusions adopted by the Commit-

tee on the Recurrent Discussion on Employment, they invited the Government to pursue its efforts so as to formulate an employment policy which would create decent, productive and freely chosen jobs. Such an employment policy should focus on the most vulnerable groups, especially women, migrant workers, and persons with disabilities. Bilateral agreements should include a social clause which would guarantee the rights of migrant workers. They called upon the Government to formulate additional training and skills development programmes, especially in the rural sector and informal economy, and encouraged it to base itself on the principles and recommendations contained in the Global Jobs Pact so as to resolve the problems confronting the country with respect to the labour market. The Worker members requested the Government to provide more detailed information on all the measures taken in this regard, and on the results achieved. Finally, they recommended the Government to associate fully the representatives of workers including migrant workers and workers in the informal economy, in its employment policy.

The Employer members thanked the Government for the information provided but, nevertheless, expressed regret that the report requested by the Committee of Experts had not been supplied at the right time or in the right format, which would have made it possible to examine the case in greater depth. The Government had demonstrated its political will to apply the Convention. Active employment policies had to respond to supply and demand in the labour market. As such, it should be borne in mind that recent years had seen employment being generated by SMEs. The Government should therefore continue supporting sustainable enterprises, particularly SMEs. Promoting a business culture and taking measures that made it easier to start an enterprise, as set out in the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), were valuable means of integrating more workers into the formal economy. To that end, consideration should be given to including them in active employment policies. It was also necessary for the Government to continue including occupational training initiatives and educational policies that responded to the needs of the labour market in its active employment policies. It should also continue holding consultations with the social partners on every policy formulated to promote full, productive and freely chosen employment, which would facilitate evaluation as to whether those policies were effective and appropriate.

Conclusions

The Committee took note of the oral and written information provided by the Government representative, as well as the discussion that followed. The Committee noted that the Committee of Experts’ observations in 2008 and 2009 raised issues related to the coordination of employment policy measures with unemployment benefits, in particular for workers in the informal economy; the prioritization of employment in the framework of a coordinated economic and social policy and the labour market measures adopted for vulnerable categories of workers.

The Committee noted the Government’s indication that it had adopted an economic stimulus and recovery package in line with the Global Jobs Pact, with the aim of reviving the Thai economy and protecting the poorest in the country by building a better safety net for the most vulnerable groups. It also noted the information by the Government that it had implemented human resources development schemes which provided adequate access to lifelong learning, sought to enhance the overall quality of education and improve the national competitiveness. In 2010, the Department of Labour Protection and Welfare had taken measures to mitigate the

impact of layoffs on workers and their families affected by the crisis.

Noting the information provided by the Government concerning the Tenth National Economic and Social Development Plan for the period 2007–11, the Committee requested the Government to provide further information on the results achieved in terms of generation of decent, productive and freely chosen employment, as well as on the measures taken to include the most vulnerable categories of workers in the labour market, such as workers with disabilities, rural women, as well as workers in the informal economy. The Committee also stressed the importance of promoting an enterprise culture, entrepreneurial initiatives and small and medium-sized enterprises, in line with the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

The Committee further noted the information regarding the measures taken for registering alien workers with the goal of ensuring their legal employment. It recalled that the protection of migrant workers had already been a matter of concern in the tripartite discussion held in June 2006. The Committee requested the Government to take particular action within the framework of an active employment policy to implement appropriate measures which would prevent abuse in the recruitment and the exploitation of migrant workers in Thailand.

The Committee recalled, as required by Article 3 of the Convention, that consultation with the social partners was essential both at the earliest stages of policy formulation and during the implementation process as this enabled governments to take fully into account their experience and views. The Committee invited the Government to report in detail on how tripartite mechanisms had contributed to the formulation of a specific employment policy and to the implementation of an active labour market measure in order to overcome the crisis and ensure a sustainable recovery.

The Committee requested the Government to provide the information on the elements above to the Committee of Experts for its forthcoming session.

Minimum Age Convention, 1973 (No. 138)

CENTRAL AFRICAN REPUBLIC (ratification: 2000)

The Worker members recalled that the Central African Republic, in the same way as other African countries, was confronted with a serious problem of child soldiers and of forced recruitment for armed conflict. According to the United Nations Children's Fund (UNICEF), in 2007 over one half of children between the ages of 5 and 14 were engaged in work for employers or as apprentices (especially boys), as family helps or in the informal economy (particularly girls), or on their own account, particularly in the diamond sector. In view of this scourge, a new Labour Code had been adopted in January 2009, but the implementing texts had still not been prepared. Moreover, the Committee of Experts had noted certain discrepancies between the new Labour Code and the provisions of the Convention. For example, the new Labour Code only applied to domestic workers, but not to own account workers, whereas in practice most children worked in the informal economy. The new Labour Code also provided that children could not work in an enterprise before the age of 14 years, unless an exception was granted by the Minister after seeking the opinion of the National Labour Council. But what were these exceptions? Moreover, no list of the hazardous jobs or types of work prohibited for children under 18 years of age had yet been published. Finally, employers were now required to keep up to date a register of all the persons and all the contracts in their enterprise, although certain could obtain an exemption by ministerial order, contrary to the provisions of the Con-

vention. The Worker members recalled that, although school was compulsory in the Central African Republic from 5 to 15 years of age and that an action plan had been adopted in 2005 with a view to increasing school attendance, UNICEF figures showed little change in the school attendance rate. In this respect, they recalled that a low rate of school attendance and a high rate of child labour would ensure that the country remained under-developed. The promotion of school attendance and the prohibition of child labour therefore needed to go hand in hand and would be mutually reinforcing.

The Employer members wished to record their disappointment that the Government was not in attendance at the discussion, highlighting that Convention No. 138 was a fundamental Convention ratified by the Government of the Central African Republic in 2000. This was the first examination of the case, and the Conference Committee was considering the first observation of the Committee of Experts, which had been double-footnoted as being extremely serious. Given the time that had elapsed since ratification, the Employer members would have been keen to learn the steps undertaken to give effect to the Convention, and in particular to Article 1, namely to pursue a national policy aimed at the abolition of child labour and to raise progressively the minimum age for admission to employment.

They recalled that the Committee of Experts had indicated in 2004 that, according to UNICEF, 64 per cent of children in the Central African Republic between the ages of 5 and 14 were working in 2000. For several years, the Government's report had either not been received or did not reply to the comments, and in 2008 the Committee of Experts had expressed the hope that the Labour Code to be adopted would take into account its requests. In 2008, it had noted that the 2003 government study undertaken in conjunction with UNICEF on the situation of working children was still being approved. In 2009, the Committee had noted with interest that the new Labour Code establishing a minimum age of 14 years now also covered domestic workers, regulated apprenticeships and imposed penalties. However, the Labour Code exempted, contrary to Article 9(3) of the Convention, certain categories of establishments from the requirement for the keeping of registers of employees of less than 18 years by employers.

The Employer members, with reference to the explicit request by the Committee of Experts for the Government to supply full details, including statistical information, to the Conference Committee, once again expressed deep regret at the Government's absence.

The Worker member of the Central African Republic recalled that section 259 of Act No. 09.004 of January 2009 issuing the Labour Code set the minimum age for admission to employment at 14 years. However, despite the existence of this provision, many children under 14 years of age continued to be employed in diamond and gold worksites, in catering, agriculture (particularly in cotton and coffee plantations), car washing and street hawking. The Government had not yet adopted the implementing texts of the new Labour Code and no measures had therefore been taken in practice to require those employing children under 14 years of age to comply with its provisions.

She also commented on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), by the Central African Republic and drew the Government's attention to the forced recruitment of young persons and the sexual exploitation of young girls by the armed uprisings that were rife in the country and, in more general terms, the phenomenon of child soldiers enrolled in these armed groups.

The Worker member of Senegal recalled that the Labour Code prohibited the employment of children under the

age of 14. However, since no implementing texts had been adopted to give effect to the Labour Code, child labour was still very widespread in several economic sectors, such as fishing, diamond mining and domestic work. In rural areas especially, children as young as seven regularly performed agricultural work, usually alongside their parents, or worked for their teachers, who made them work on farms on the pretext of teaching them to work the land and raise cattle. The Labour Code did not define the worst forms of child labour and, although it prohibited persons under the age of 18 from engaging in dangerous or night work, a large number of children continued to perform work of that type. Children were also the victims of trafficking, both inside the country and to and from Cameroon and Nigeria, where they were usually victims of domestic servitude, sexual exploitation or forced labour in shops. The Government did not have the resources to ensure effective compliance with the laws on child labour, as there were too few labour inspectors and their resources were limited. The resources of the labour inspectorate would need to be increased so that it could take action to combat child labour.

The Worker members stressed that the Central African Republic had made efforts to restrict child labour by adopting a new Labour Code, which set the minimum age for admission to employment at 14 years. However, there were significant shortcomings in the Labour Code, which did not cover children in the informal economy or in the diamond mining sector. Nor did it specify the hazardous types of work prohibited for persons under 18 years of age. In practice, the results were still too limited, particularly in view of the absence of measures to apply the Labour Code. In addition, the action plan for education for all was far from achieving its goal of providing every child with basic education. For that reason, the Government should be urged to create action programmes as soon as possible and to adopt the measures required to improve, expand and make the education system more effective. ILO technical assistance could be useful for that purpose.

The Employer members emphasized that the Central African Republic was registered with the Conference and that this serious double-footnoted case involved a fundamental Convention. Regretting the Government's absence from the discussion and considering that an appropriate explanation was due in this regard, the Employer members called for the conclusions of the Committee to be included in a special paragraph of the Committee's report.

The Worker members agreed with the inclusion of this case in a special paragraph, as the Government had not appeared before the Committee.

Conclusions

The Chairperson invited the Government representative to participate in the discussion. However, in the absence of the delegation of the Central African Republic, which was duly accredited and registered before the Conference, he referred to the working methods of the Committee, which it had adopted in document D.1. He stated that the Committee could discuss the substance of those cases regarding governments registered and present at the Conference who decided not to appear before it.

The Committee noted the information contained in the report of the Committee of Experts relating to discrepancies between national legislation and practice and Convention No. 138, in respect of the absence of a determination of hazardous types of work to be prohibited to persons under 18 years and the keeping of registers by employers, the absence of a national policy designed to ensure the effective abolition of child labour, the large number of children under the minimum age who were self-employed or who worked in the informal economy, the low school enrolment rates and high

school drop-out rates and the weak enforcement of the Convention.

The Committee expressed deep regret at the absence of the Government before the Committee.

The Committee took note with serious concern of the information presented to it concerning the high number of children between the ages of 5 and 14 who worked in various sectors of the economy including in gold and diamond work-sites, agriculture, cotton and coffee plantations, fishing, as street vendors, restaurants and washing cars. It further noted with grave concern the information regarding the trafficking of children and their forced recruitment in armed conflict, as well as the deplorable conditions experienced by child soldiers, both boys and girls.

Noting the legislative discrepancies between the Labour Code of 2009 and Convention No. 138, the Committee firmly hoped that the necessary provisions would soon be adopted to determine the types of hazardous work to be prohibited for children under 18 years of age and to ensure the keeping of registers by employers indicating the names and ages or dates of birth of persons employed by them or working for them under 18 years of age.

The Committee also noted with serious concern that in practice, a high number of children under the age of 14 increasingly worked in the informal economy, often in hazardous work. It urged the Government to intensify its efforts to improve the situation, notably by developing a national policy to ensure the effective abolition of child labour and an action programme to combat child labour. It further requested the Government to ensure the effective implementation of the new Labour Code. In this regard, it called on the Government to strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including unannounced visits, were carried out so that penalties were imposed on persons found to be in breach of the Convention.

The Committee noted with concern that low school enrolment and high drop-out rates continued to prevail for a large number of children. Underlining the importance of free, universal and compulsory formal education to preventing and combating child labour, the Committee strongly urged the Government to develop and enhance the education system, including by taking the necessary measures, within the framework of the Plan of Action on Education for All, to ensure access to free basic education for all children under the minimum age, with special attention to the situation of girls.

The Committee requested the Government to provide comprehensive information in its report, when it was next due, on the manner in which the Convention was applied in practice, including, in particular, statistical data on the number of children working in the informal economy, their ages, gender, sectors of activity, extracts from the reports of inspection services and information on the number and nature of contraventions reported and penalties applied.

Finally, the Committee asked the Government to avail itself of ILO technical assistance with a view to giving effect to the Convention in law and in practice as a matter of urgency.

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

A Government representative regretted that the Government delegation of the Central African Republic had been absent during the discussion of the application of the Convention by his country. This absence has been due to a lack of communication and did not in any event constitute a desire not to take part in the discussion. He presented his Government's excuses for the inconvenience and indicated that every effort would be made to provide the documents and responses to the concerns of the Conference Committee.

Recalling that the Central African Republic had ratified the eight fundamental Conventions, had joined the support project for the implementation of the 1998 Declaration (PAMODEC) and had participated in an ILO subregional workshop on the preparation of reports for Convention No. 138, he reiterated his Government's willingness to work for the implementation of this Convention in the interests of the children of the Central African Republic.

Occupational Safety and Health Convention, 1981 (No. 155)

MEXICO (ratification: 1984)

A Government representative informed the Committee of the series of programmes that were being implemented by the Mexican Government with a view to ensuring good occupational safety and health conditions for all workers, which was one of its priorities. Referring to the information contained in the report submitted to the Committee of Experts in 2009, he wanted to clarify certain aspects of the statements made by the Committee of Experts in its observation. It was necessary to carry out a comprehensive tripartite diagnosis on safety and health conditions in the coal sector in order to be able to develop a new framework of regulations to protect workers in so dangerous a sector.

He recalled that Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines had entered into force on March 2009, following a long process of discussion within tripartite committees. Some months before the standard in question had entered into force, the public authorities had publicized its content at all coalmines and a tripartite subcommittee had been established to assess and review its implementation. In addition, workers, employers and labour inspectors had been offered training courses both in Coahuila and in other departments with a view to ensuring its appropriate implementation. A guide on how to evaluate compliance with the Official Standard in practice had also been developed.

With regard to labour inspection measures to ensure appropriate observance of the standard in question, an operation had been launched to inspect all underground coalmines. He emphasized that every inspection visit lasted five days, inspectors followed a specific inspection protocol and the inspections were followed up. The objective of the inspections was to bring about concrete changes and ensure that employers rectified any deficiencies that had been identified, rather than just being punitive in character. In the course of 2009, the inspections had covered 4,627 workers in the coal sector. They had resulted in orders to carry out 1,711 technical measures, of which 313 had been implemented immediately and voluntarily by the employers. A number of worksites had been shut down for refusing to implement the measures required by the inspectors.

With regard to the possible discrepancy in the amount of compensation payable following the Pasta de Conchos mine accident, he indicated that the sum of 750,000 pesos (MXN) per family had been paid in compensation by the company, in addition to the payment of a further MXN80,000, and triple wage rates for each worker's family over a period of 14 months. Of the 65 families eligible for compensation, only 63 had accepted it. The Government considered that the total sums paid were higher than the compensation required by law. Further compensation could also be paid when current legal procedures had been completed.

Although the national labour policy had been planned as far as this year, it allowed for flexible strategies to al-

low action in response to situations as they developed. It would, if necessary, be reviewed in due course.

The Employer members said that it was not the first time that the application of Convention No. 155 by Mexico had been discussed. However, it was the first time it was discussed in the context of preventing occupational risks in the mining sector. The case in question concerned a tragic accident at the Pasta de Conchos mine four years ago in which 65 miners had died. The Employer members expressed their sincere and profound sorrow at what had happened and expressed their solidarity with the families of the miners who had lost their lives. This case had already been examined by the Governing Body following a representation submitted by a number of trade union organizations in Mexico. The Governing Body had adopted in March 2009 the conclusions of the tripartite committee set up for that purpose. They emphasized the need for the ILO supervisory mechanisms to be complementary. The discussion by the Governing Body's tripartite committee had led to a number of important recommendations with regard to many questions relating to the situation in coalmines. The Governing Body entrusted the Committee of Experts with following up on the questions raised in the report and closed the representation procedure.

As a result of the accident, the Government had embarked on a programme of reform with a view to monitoring the application in practice of laws and regulations in a number of mining industry enterprises in the state of Coahuila. One of the most important recommendations made by the Governing Body had been the finalization and adoption of a new regulatory framework for the prevention of occupational risks in the sector, which had led to the Official Standard referred to earlier, and another concerned the need to provide an appropriate and adequate system for labour inspection. The dialogue with the Committee of Experts had been important. One of the most important points was the adoption of the Official Standard in question which was very detailed and had enjoyed a high level of consensus. In relation to this question, the Committee of Experts had shown its satisfaction, and there was clear evidence of progress being made, which should be emphasized. Nevertheless, it was important to ensure full compliance with the Convention by continuing with the regular review of the safety and health situation with particular focus on hazardous activities. The Government had implemented an ambitious programme of action which included measures of value in that area. The Employer members supported the request for additional information made by the Committee of Experts and would allow constant monitoring of the situation.

With regard to the effective application of the new regulatory framework, the Employer members considered the request of the Committee of Experts for additional information to be pertinent. The regulatory framework needed to reinforce the effectiveness of prevention systems, and it was important to know how it was applied in practice. With regard to inspection activities, the Committee of Experts had asked the Government to continue providing information on the follow-up to the deficiencies reported in existing prevention systems, statistical data, as well as information on the new legal framework for improved monitoring following the adoption of the new Official Standard and the real impact of the measures referred to. It was important to enhance dialogue in order to ensure adequate follow-up to the recommendations of the Governing Body.

Lastly, with regard to compensation to the victims, advance payments had been made without prejudice to any ongoing judicial proceedings. While it was important to ensure that compensation was adequate, the changes made in the criteria for assessing compensation levels were a

matter that did not come under the terms of the Convention, and there was insufficient information to allow an adequate assessment to be made. The follow-up to the recommendations of the Governing Body should not include a detailed examination of compensation criteria. In any case it was therefore important for the Government to continue providing information on the matters still pending. The Employer Members concluded by emphasizing that significant progress had been made, and that it was essential to maintain and enhance dialogue by supplying detailed information on the questions still pending.

The Worker members recalled that this case concerned the consequences of a serious accident at the Pasta de Conchos mine in 2006 which had cost the lives of 65 miners. In March 2009, the Governing Body had approved a report pursuant to a representation alleging violations of a number of occupational safety and health Conventions. Even before the accident, the federal labour inspectorate had noted deficiencies in that area, but had not ensured that steps were taken to rectify them. The Governing Body had made recommendations and entrusted the follow-up to the Committee of Experts. It had recommended in particular the adoption of a number of measures in consultation with the social partners. The first of those measures was the drawing up and adoption of a new regulatory framework for occupational safety and health in the coal mining industry, in conformity with ILO standards. On that point, a new Official Standard had been adopted at the end of 2008, but workers had not been informed of it and it was not observed by employers. Furthermore, the sanctions which it provided in the event of non-compliance were inadequate. The second measure concerned the periodic review of the situation with regard to the safety and health of workers, with particular attention given to hazardous work activities such as coal mining. In that area, consultative commissions had been at work for some time.

The third series of measures concerned the effective monitoring of the application in practice of laws and regulations through an adequate and appropriate system of labour inspection. The Government had referred to the efforts it had been making in that area, and indicated that following these efforts, the rate of compliance with laws and regulations was 86 per cent. That rate should, however, be 100 per cent in a sector as hazardous as coal mining, but fatal accidents continued to happen in Mexican mines. Since the accident at the Pasta de Conchos mine in 2006, some 41 miners had lost their lives in the same region as a result of safety deficiencies. Official data were not reliable. Sixty per cent of miners were informal workers who enjoyed no social protection. They were not covered by official statistics and the authorities did not keep official records of their deaths. The Mexican Social Security Institute did not carry out inspections in mining areas to verify the status of miners, and the labour inspectorate did not conduct any investigations to identify illegal workplaces. In addition, there was no coordination between the mining, labour and regional government authorities. The problem of inadequate data was one encountered in many countries, as the General Survey on occupational safety health had shown, and the Worker members had recalled in that regard the measures advocated under the ILO plan of action to achieve widespread ratification and effective implementation of the occupational safety and health instruments.

Lastly, the Governing Body had invited the Government to ensure payment of adequate and effective compensation to the 65 families affected by the accident and to ensure that adequate sanctions would be imposed on those responsible. It appeared, however, that the compensation agreed was considerably lower than that initially proposed by the enterprise, and the method of calculation

of the damages was not clear. Furthermore, since the families of informal workers enjoyed no social protection, they had no entitlement to social security benefits, including survivors' benefits, and the families of workers in the formal economy received only low pensions because the official wages of the miners who died were lower than the wages they actually received. In conclusion, the Worker members considered that many clarifications were needed and many measures needed to be taken to follow up the Governing Body's recommendations.

The Worker member of Mexico referred to the events that gave rise to the case and emphasized that occupational safety and health were fundamental rights. It was inadmissible that workers lost their lives in the place where they went to make a living. The Government needed to take all possible measures to prevent and protect against occupational accidents and illnesses, especially compliance with the obligation to inspect and monitor workplaces. As did other speakers, he recalled that the Committee of Experts had noted with satisfaction the adoption of Mexican Official Standard NOM-032-STPS-2008 on underground coalmine safety and that many meetings had been held within the National Advisory Committee on Occupational Safety and Hygiene (COCONASHT) in order to prevent risks in the coal mining industry. He supported the call made by the Committee of Experts to the Government to guarantee full compliance with the Convention and to continue the regular review and monitoring of the situation concerning occupational safety and health, paying special attention to dangerous labour activities, such as those in the coal mining industry. He also endorsed the request made by the Committee of Experts for the Government to continue providing information on the measures adopted, in consultation with the social partners, on the strategy to be followed to ensure that the labour inspection improved the monitoring of compliance with the recommendations it made when shortcomings were reported, especially in the coal mining industry, as well as providing statistical information showing the degree of compliance with the recommendations of the labour inspection service and the impact of the new Official Standard in improving the situation in the coal mining industry.

As for compensation, it was unclear how compensation would be set for affected families. He supported the request of the Committee of Experts for the Government to provide more information in that regard and to guarantee that all families received adequate and effective compensation in accordance with national legislation. Finally, he emphasized the great importance of the ILO's adoption of the plan of action to achieve widespread ratification and effective implementation of the occupational safety and health instruments. He expressed the conviction that the promotion of a culture of prevention in the field of occupational safety and health was a basic aspect of improving the protection of those rights.

The Employer member of Mexico referred to a procedural matter. The ILO's mandate, first and foremost, was to adopt standards and supervise their implementation, for which purpose it had various supervisory mechanisms at its disposal, governed by their own rules. A distinct supervisory mechanism existed for examining representations submitted under articles 24 and 25 of the Constitution. For its part, the Conference Committee was entrusted with examining individual cases concerning the application of Conventions, in accordance with article 23 of the Constitution and article 7 of the Standing Orders of the Conference. Both were tripartite bodies which adopted conclusions. In the cases of Mexico, a representation against the Government for alleged failure to comply with several Conventions, including Convention No. 155, had been presented and examined. As the Committee of Ex-

perts had indicated in its observation, the situation related to an accident at the Pasta de Conchos coalmine. The tripartite committee had considered, analysed and reached decisions on the representation, and its conclusions and recommendations had been submitted to, and adopted by, the Governing Body. It was therefore necessary to question the need to further review a case that had already been resolved by one of the ILO supervisory mechanisms which pursued the same goals as the Conference Committee with a similar structure. This was a matter of procedure and legal certainty.

The case of Mexico was one of those on which the Committee of Experts had expressed satisfaction at some of the measures that had been taken by the Government, fundamentally the adoption of Official Standard NOM-032-STPS-2008. Following the tragic events, existing acts and regulations on occupational safety and health, particularly in the coal-mining sector, were being reviewed through social dialogue. The new Standard contained exhaustive and numerous provisions on safety conditions and requirements for facilities and operations at underground coalmines in order to prevent risk to those who worked there. It applied throughout the country and in all locations where such work was carried out. The Committee of Experts had confined itself to requesting information, without making any observation on any failure on the part of the Government to implement the Convention, and considered this case as a case of progress. In conclusion, he urged the Government to continue providing information on legislative developments and compliance with the Convention.

An observer representing the International Trade Union Confederation (ITUC) indicated that one of the main problems encountered by workers was informality. Approximately 60 per cent of mine workers had a “verbal” contract, and thus lacked social security and did not appear in statistics. There were discrepancies in the information transmitted by different bodies. As a result, not many occupational accidents were officially reported, and the country was considered to be one of the best in terms of safety at the international level, even ahead of countries such as France. This was the result of hiding real information. In reality, each year 300,000 occupational accidents occurred in the country. The situation of mine workers when seeking compensation in the case of occupational accidents was difficult because the burden of proof rested on the victim of the accident or, where appropriate, on the widow of the mineworker. Workplaces which were not declared were not liable to inspection. The lack of labour inspection and its shortcomings resulted in impunity. Furthermore, he emphasized that Official Standard NOM-032-STPS-2008 was unknown at workplaces. It was therefore necessary to disseminate the Standard as widely as possible, to enable workers to rely thereon. Access to the reports of the labour inspectorate should not be confined to employers’ and workers’ organizations, but should be extended to any worker who so wished. In conclusion, he emphasized that this could help in achieving compliance with standards in that sector.

The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the Government members of the Committee, Member States of the Group of Latin American and Caribbean States (GRULAC), emphasized that the Committee of Experts had noted with satisfaction the adoption of the Official Standard NOM-032-STPS-2008, which demonstrated the Government’s commitment to bringing its national legislation into line with the Convention. He also drew attention to the meetings of the national advisory committees on occupation safety and health (COCONASHT), which strengthened understanding between governments and the social partners through social dialogue on issues such as the safety

and health of workers. The observations of the Committee of Experts highlighted the role of the Government in applying the Convention and he expressed the hope that the conclusions adopted by the Conference Committee would reflect the discussions held, without ignoring the new information, figures and arguments presented by the Government. Lastly, he expressed the firm hope that the Committee of Experts would confine itself to the explicit mandate it had received from the Governing Body.

The Worker member of Brazil observed that the Committee of Experts had noted the adoption of Official Standard NOM-032-STPS-2008, while requesting the Government to provide information on the effect given in practice to the Standard in consultation with the social partners, in accordance with Articles 4 and 7 of the Convention. It had also requested information on the Government’s strategy for the implementation of an adequate and appropriate system of labour inspection and on the criteria applied for the payment of compensation as a result of the accident in the Pasta de Conchos mine. The accident, which had cost the lives of 65 workers, had been caused by the negligence of the employer, which was the largest mining enterprise in the country, as well as that of the Government. In its report on the representation alleging non-observance by Mexico of several occupational safety and health Conventions, the Governing Body had concluded that the Government had not been capable of ensuring the application of the legislation or of occupational safety, health and working environment requirements through an adequate and appropriate inspection system in accordance with Convention No. 155. Social dialogue and tripartism were necessary for the implementation of the instrument. She referred by way of example to her own country, where mines were subject to joint inspections by the Government authorities, as well as representatives of employers and workers. It was also important to adopt legislative provisions on the liability of the employer in the event of wilful negligence or fault resulting in an occupational accident. In addition, it was necessary to adopt measures to encourage employers to adopt preventive measures. As well as establishing machinery to ensure the application of Convention No. 155, following the adoption of the Official Standard referred to above, the Government should ratify the Safety and Health in Mines Convention, 1995 (No. 176).

The Worker member of South Africa emphasized that occupational health and safety was at the essence of decent work. The safety at work of Mexican workers was worrying, and he reaffirmed his solidarity with them. While the Government of Mexico had undertaken some review of the occupational health and safety regulations, workers continued to be subject to hazardous circumstances. Referring to the report of the Governing Body adopted at its session in March 2009 on a representation alleging non-compliance with several Conventions, including Convention No. 155, he said that the conditions which had resulted in the accident in the Pasta de Conchos mine in 2006 had not substantially changed. The Government had also disbursed some of the compensation without full and proper consultation with trade unions. He called upon the Government to undertake a fundamental overhaul of the collective bargaining system to include health and safety at work as a central feature. This required several steps, including bringing an end to employer appointed trade union leaders in mines and the creation of an effective bargaining system that recognized workers and their representative organizations as primary stakeholders with a view to overcoming attempts by the Government to unilaterally impose solutions. It was also necessary to build capacity with regard to the effective monitoring of health and safety standards in mines, with the possible introduction of health and safety stewards in

all workplaces, and to improve the inspection of mines and other workplaces, with full transparency of inspection reports to all workers. Lastly, it was critical to develop legislation that criminalized the failure to observe all health and safety standards, imposed liability on companies for the loss of life, injury or harm following an occupational accident and imposed sufficient penalties to address the situation of impunity.

The Worker member of Norway expressed concern at the hazardous working conditions experienced by members of the National Union of Mine and Metal Workers of the Mexican Republic (SNTMMS). Although the main responsibility for regulating the working environment remained with the state authorities, private sector enterprises had an independent responsibility for working conditions in each of their workplaces. Employers had to respect and promote human rights including the creation of decent working conditions and the provision of a living wage to employees. Companies were expected to be familiar with national legislation and international labour standards relating to working conditions. The previous year, the President of the Norwegian Metal Workers had visited Mexico to assess the situation of workers in mining. The President of the union had concluded that investment in the mining company in question constituted a contribution to unethical acts or omissions, and had urged divestment. It was important that the Government of Mexico did all in its power to contribute to a solution of the hazardous working conditions in mines and to compensate the families of dead and injured workers.

The Worker member of Argentina said that the case originated in the tragic deaths of 65 workers at the Pasta de Conchos mine in February 2006. An explosion had occurred during the third shift and it had not been possible thus far to recover the workers' bodies. The explosion had occurred as a result of failure by the employers to comply with any of the prevention and safety measures in place in the mine and of inadequate inspection by the labour authorities, a fact noted by the tripartite committee that had examined the representation on the case, of which he had been a member. He emphasized the need for a specific plan for hazardous activities in which the lives of workers were at risk. With regard to the Official Standard which the Government had announced was in force, he noted that, however perfect laws might be, they remained a dead letter if the obligations they imposed were disregarded.

The case showed that no personal or collective protective measures were used in the coalmine, and that no preventive measures were taken at the outset or at the various stages of the work. The Government of Mexico needed to provide information on what had been done by the supervisory authority or on a tripartite basis to safeguard the health and the lives of workers in coalmines, and whether there had been real progress. He considered it important that mechanisms be established to supervise the implementation of prevention and safety standards, ensure inspections in coalmines and their follow-up and streamlining administrative procedures with a view to the effective implementation of appropriate safety measures in coal mining, as well as sanctions where appropriate.

With regard to the matter of compensation, he said that payment had to be made swiftly to ensure fairness and prevent the families of the victims from falling into poverty and exclusion.

He added that he had information concerning smaller pits ("*pocitos*") that were unregistered, had no mining licence and operated under totally informal conditions. He called for the existence of undeclared mines to be recognized, as they violated the fundamental rights of workers and exposed them to potentially mortal risks. He emphasized that the employers alone were responsible for ensuring appropriate safety conditions in the workplace, and

governments were responsible for inspection, monitoring and follow-up to any violations reported. He recalled that in March 2010 the Governing Body approved a plan of action to achieve widespread ratification of Convention No. 155 and its 2002 Protocol, and of Convention No. 187, and that the plan would be extended from 2010 to 2016 and serve as a basic tool at the national and international levels.

He added that between February 2006, when the explosion had occurred at the Pasta de Conchos mine, and the present time, over 40 coalminers had lost their lives as a result of cave-ins or other events that could have been prevented in undeclared mines, which indicated that there were deficiencies in the inspection system. He noted that the workers were in solidarity with the victims' families, and emphasized that occupational safety and health at work was a pillar of decent work and essential for any enterprise. He concluded that workers needed a strong State to monitor and punish unscrupulous employers who placed workers' lives at risk in order to make money.

The Worker member of the United States noted that the facts of this case warranted the most serious and careful review by the Conference Committee. Two aspects of the report of the Committee of Experts merited special attention. First, the safety follow-up measures and policies mentioned in the Governing Body's decision of March 2009, pursuant to articles 24 and 25 of the ILO Constitution; and second, the reference made by the Committee of Experts to consultation with the social partners for the effective implementation of such measures and policies.

With regard to the first issue, the Government's own statistics revealed that even with the application of the highly advertised standard NOM-032-STPS-2008, the mortality rate for miners from occupational accidents and diseases in the entire Coahuila area had risen by 200 per cent in 2009. The Mexican Miners and Metalworkers' Union (SNTMMSRM) (*Mineros Union*) had petitioned the Federal Labour Department of the State of Sonora to conduct an emergency inspection of the safety and health conditions at the Cananea mine in 2007. In response, the Federal Labour Department of Sonora had inspected the site in April of that year and had ordered 72 measures be taken to reverse the lethal worksite situation, which had many resemblances to the conditions which had contributed to the tragedy at the Pasta de Conchos site one year earlier. In October 2007, independent organizations of occupational safety and health experts, including the Occupational Safety and Health Support Network and the Occupational Health Service, had found dangerous levels of toxins in the Cananea mine. But over the past three years, both the Secretariat of Labour and Social Welfare (STPS) and the company had effectively disregarded nearly all of these findings.

With regard to the second issue, the Government had attempted to repress one of the most important social partners in this endeavour, the *Mineros Union*. It had done so by withholding legal recognition of the union's leadership, and by conducting a thorough campaign consisting of prosecution, arrest, harassment, defamation and the freezing of union assets, even though many of the criminal charges against the leaders had been continually overturned in the courts. When the *Mineros Union* had gone on strike in the company mines in Cananea, Taxco and Sombrerete in 2007 due to the failure of the Company and the STPS to reverse violations found by both the Federal Labour Department of Sonora and by independent experts, the company had asked the Labour Board to dismiss all of the strikers at Cananea based on the argument that the Company could no longer operate the mine profitably, even though it had publicly offered to rehire the workers if they renounced the union. A Court Order issued on 11 February 2007 had allowed the company to

dismiss the strikers and effectively eliminate the right to strike over the safety and health violations. Tragically, the Government had made good on its earlier threat to dispatch the federal police to the Cananea mine to forcibly remove the strikers on Sunday night on 6 June. It was also noteworthy that since November 2008 the Government had failed to meet with the *Organización Familia Pasta de Conchos*, the most representative organization of the families of the victims. In conclusion, he considered that this evidence certainly did not reveal a Government living up to the Governing Body's recommendation to engage authentically with the relevant social partners to implement the necessary safety and health measures and policies to further compliance with Convention No. 155.

The Employer member of Colombia recalled that he had been a member of the tripartite committee that had examined the representation regarding the case under discussion. He noted certain discrepancies between the report prepared by the tripartite committee and the comments of the Committee of Experts. He indicated that the wording of paragraph 99(f) of the report on the representation indicated "make this report publicly available and close the procedure". He considered that the case had been closed and that there were no new facts, and that the Committee's request for information on "other measures" was therefore irrelevant, as the Governing Body report did not explicitly request the Committee of Experts to follow-up the question of compensation since the Governing Body in its report did not specifically ask the Committee of Experts to follow-up regarding the issue of compensation.

The Government representative said that his Government had appeared before the Conference Committee in good faith, but could not let pass certain statements that were inadmissible. For example, it was unacceptable to claim that new Official Standard No. 032 on safety in underground coalmines had not been disseminated and was not applied. The Standard had been published, activities had been organized and brochures published for its dissemination and for compliance. He had in his possession documents demonstrating the dissemination of the Standard and offered to show them as proof of what he was saying. With regard to application and follow-up, he reaffirmed that many activities had been undertaken for the implementation of the Standard. A tripartite advisory commission was following the matter and organizing numerous activities, studies and thematic groups in relation to those activities. Informal worksites were also being identified, although he had not referred to them previously with a view to keeping to the subject of the Convention. With reference to inspection reports, he gave assurances that they were provided to trade unions and to the joint commission. He also referred to the many activities carried out by the labour inspectorate, which he had already described in his first intervention, and which had led to the identification of defects which had been followed up and remedied. He indicated that accidents also had cultural origins. A diploma on prevention in mines was being prepared and a special telephone number had been established through which workers could contact the labour inspectorate so that it could take immediate action in certain circumstances. Commissions had been established on a broad range of issues related to mining, such as ventilation, electricity, audits and risks.

Returning to the subject of informality, he indicated that this related to the informal nature of the worksite and the informal status of workers. In relation to worksites, the labour inspectorate was undertaking campaigns and, in relation to workers, the social insurance system was also taking action. However, these matters were beyond the scope of the present case and the Government had intended to refer solely to occupational safety and health.

The Employer members thanked the Government of Mexico for the information provided. It was clear that progress had been made, and the Government should continue to provide the Committee of Experts with information on the application of Standard NOM-032-STPS-2008 and on labour inspection activities. They also added that it was important to avoid overlap between two supervisory mechanisms.

The Worker members recalled that the Governing Body had called on the Conference Committee to follow-up on its recommendations so as to reduce the risks of accidents such as the one that had occurred at Pasta de Conchos. The Government should therefore continue to provide detailed and updated information on: (i) any new developments in the periodical review of occupational safety and health in coalmines; (ii) the number and nature of the accidents that occurred in the mining sector; (iii) the implementation of the new Official Standard on safety in coalmines; (iv) the activities of the labour inspectorate; (v) the situation of the labour administration in relation to the Labour Administration Convention, 1978 (No. 150); (vi) the damages paid by the enterprise *Industrial Minera Mexico* and the State benefits for the families concerned; and (vii) the social benefits provided to the families of miners who were without protection. Moreover, to be completely satisfactory, the activities, programmes and plans of action should be developed with the participation of the social partners, who should also be involved in their follow-up. The Worker members hoped that the Committee of Experts would examine closely the Government's next report and that the case would be followed by the Conference Committee.

The representative of the Secretary-General indicated in reply to the comments made by the Employer member of Colombia that the examination by the Committee of Experts of the follow-up to the recommendations of the tripartite committee concerning the issue of compensation to the families of the victims was based on the recommendations made in paragraph 93 of the Governing Body report in which the tripartite committee requested further information to be provided by the Government to the Committee of Experts on the modalities for determining the compensation provided to the 65 families of the deceased miners, expressing the hope that all the 65 families would receive adequate and effective compensation in accordance with national law. Moreover, in the overall conclusions to this representation which were found in paragraph 99 of the report, the tripartite committee entrusted the Committee of Experts with following up all the questions raised in the report.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee noted that the observation by the Committee of Experts essentially related to the application of the recommendations adopted by the Governing Body in March 2009 in the framework of the representation submitted under article 24 of the ILO Constitution concerning the accident that had occurred in the Pasta de Conchos mine in 2006. The Committee of Experts had noted with satisfaction the adoption on 23 December 2008 of Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines (NOM 032) and requested the Government to provide information on its implementation, as well as on inspections carried out and on compensation paid to the survivors and the families of the victims.

The Committee took note of the information provided by the Government regarding the extensive tripartite consultations that had preceded the development of NOM 032 and the comprehensive efforts that had been made to promote the awareness and knowledge of NOM 032 since its adop-

tion, including targeted training of workers and the development of a practical guide on its implementation in practice. It also noted the information on the current inspection methods to ensure compliance with NOM 032, including prescribed inspection protocols, the number of inspections undertaken in 2009, the measures prescribed, as well as the formal notifications of failures to comply. On the question of compensation offered and actually extended to the survivors and the families of the victims, the Government indicated that the package had several components as it included not only compensation paid by the mining company, but also those that would result from ongoing court proceedings. The Government also indicated that the total compensation provided would exceed what was required by law.

While noting this information and welcoming the adoption of the new NOM 032, which placed a strong emphasis on prevention, *inter alia*, by prescribing a systematic use of risk assessments, the Committee emphasized that it was crucially important that the Government pursue its efforts, in a consistent and comprehensive manner, to prevent accidents such as the one which occurred in the Pasta de Conchos mine in 2006. The Committee requested the Government to provide to the Committee of Experts, for its forthcoming session, detailed and updated information on follow-up measures taken by it to implement the recommendations adopted by the Governing Body concerning the article 24 representation, including on the number and nature of accidents in both the formal and informal mining sector; risk assessment methods used in the mining industry; the compensation actually paid and those still due to the survivors and the families of the victims including damages by the enterprise concerned in this case and the relevant State benefits; and any social benefits provided to the families of miners who were without social protection.

The Committee urged the Government to ensure that all relevant actions and measures taken in relation to this matter was done in close consultation with the social partners and requested the Committee of Experts to continue to monitor the developments and the progress made.

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

PERU (ratification: 1994)

A Government representative stated that the Government of Peru had always demonstrated its willingness to engage in dialogue to find a solution to the justified claims of indigenous peoples, through dialogue mechanisms such as the National Coordination Group for the Development of the Amazonian Peoples, which included representatives of the Executive, the regional government authorities and Amazonian indigenous organizations. The National Coordination Group was responsible for, among other things, investigating and analysing the events at Bagua, revising and updating legislation on issues relating to the forest and its fauna, establishing a mechanism for prior consultations for the application of Convention No. 169, and drawing up the National Plan for the Development of the Amazonian Peoples. The Government affirmed its willingness to advance with investigations to establish political and criminal responsibility for the events in Bagua which had caused the deaths of 23 police officials and ten civilians, and the disappearance of a police officer. A number of investigative proceedings had been initiated under the auspices of the National Coordination Group, within the Executive, the Congress of the Republic and the Office of the Attorney-General, with the guarantees of due process normally expected in a State governed by the rule of law. The Congress of the Republic had also set up a Multi-Party Commission to investigate the incidents in Bagua which has already reported to Congress. Within the Office of the Attorney-General and the judiciary, proceed-

ings were under way against senior officials of the national police and against indigenous persons in connection with various alleged offences. The State had provided legal aid for all persons being prosecuted in connection with the events in Bagua in order to safeguard their rights as citizens. The State guaranteed that the investigations and proceedings involving political, police and indigenous authorities would be objective and impartial, in accordance with the principles of due process and in order to ensure that the deplorable events of Bagua did not go unpunished.

The Government had undertaken action to bring its definition of indigenous peoples into line with that of the Convention. To that end, on 19 May 2010, the Congress of the Republic had approved the Bill on “the right to prior consultation of indigenous and original peoples, as recognized in ILO Convention No. 169” (“the Act on Prior Consultation”). The Act, as approved, had been submitted to the President for approval. It reflected the proposals of the People’s Ombudsperson and the agreements reached through consultations with representatives of indigenous peoples. The Act included a definition of indigenous peoples that was consonant with that of Convention No. 169, and included the following elements: the characteristics of the indigenous peoples in terms of their social institutions, cultural patterns and customs which distinguished them from other sectors of the national community; their identity by virtue of their direct descent from the original populations that inhabited the national territory; and their awareness of being a group possessing an indigenous or original identity.

The Act provided that the National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) was a technical body specializing in indigenous affairs under the auspices of the Executive. It was a multisectoral and cross-cutting body operating at all three levels of the Government, and headed by an indigenous leader in consultation with indigenous peoples.

With regard to the design of a dialogue and consultation mechanism, the Act provided that prior consultations should be held on any national and regional development plans, programmes and projects that affected the rights of indigenous peoples. It also established that the purpose of consultation was to reach agreement between the State and indigenous peoples or obtain the consent of those peoples with regard to the legislation or administrative measures that concerned them, through intercultural dialogue that guaranteed their inclusion in the decision-making process of the State and the adoption of measures that respected their collective rights. The Act had elicited a positive response from the most representative organizations of Peru’s Amazonian peoples. In addition, a number of sectors had specific dialogue and participation mechanisms, as for example in the environmental sector, the mining sector and the hydrocarbon sector. The process for citizens’ participation in those activities was implemented through consultation mechanisms that came into play during the development and evaluation of environmental impact studies and, once they had been approved, in the form of citizens’ monitoring and/or supervisory programmes.

Peru had made significant progress in social development and in combating poverty. Such progress had been possible as a result of the social policies implemented by the Government to promote productive employment and decent work, in accordance with the Global Jobs Pact and the ILO Declaration on Social Justice for a Fair Globalization, 2008. It was therefore particularly difficult to accept the fact that the Committee of Experts had recommended the suspension of activities to explore and exploit natural resources that affected the peoples covered by the Convention, thereby exceeding its mandate. Extraction

activities had played a fundamental role in the social progress achieved, in the context of an international crisis. Their contribution had been particularly important in developing local economies and improving the living conditions of those living in the areas where the industries in question operated. Suspending exploration and exploitation activities would affect over 120,000 jobs, as well as the incomes that regional and local governments received as their share in the benefits of extraction activities.

The National Coordination Group had established a round table which had developed and approved by consensus a National Plan for the Development of the Amazonian Peoples, which envisaged positive measures for the development of these peoples in relation to such essential matters for their development as: property rights, bilingual intercultural education, the extension of coverage by the public health system, the participation of indigenous peoples in the management and benefits of natural protected areas and the sharing in the benefits from natural resources, the environment, and respect for the culture and collective knowledge of indigenous peoples among others. The plan was in the process of being implemented.

The property rights of indigenous peoples were inalienable in accordance with article 89 of the Political Constitution of Peru. Communities could assert their right of ownership or occupation before any administrative or judicial authority in the event of such rights being affected. There were a series of provisions to give effect to this right which were intended to determine the lands that were traditionally occupied by native and rural communities and to promote the formalization and grant title to the properties of indigenous peoples with their participation, so that they could assert their right of ownership or occupation before any administrative or judicial authority in the event of such rights being affected.

With regard to the adoption of educational measures to eliminate prejudices by the State in relation to indigenous peoples, action had been taken to ensure that the educational materials that were to be distributed and delivered for educational purposes contained information based on criteria of equity and inclusion relating to the societies and cultures of those peoples. The Ministry of Education published educational materials for initial and primary education in ten indigenous languages and in Spanish as a second language.

The Government and Peruvian society had made great efforts to achieve the participation of indigenous peoples in their representative institutions, making use of effective and systematic mechanisms for participation, consultation and dialogue and reaffirming their own identity as a multi-ethnic and multicultural nation.

The Employer members stated that the present case was one that exemplified how the ILO's supervisory machinery should ideally function, and also demonstrated the importance of having a diversity of cases before the Committee. They noted that in the information it provided, the Government had directly addressed virtually all of the points raised in the Committee of Experts' report, and the Committee's conclusions of last year. With regard to the Act on Prior Consultation, they noted the following: (1) the Act's definition of indigenous and tribal peoples was consistent with that contained in the Convention; (2) the Act laid down the right of prior consultations of indigenous and tribal peoples with respect to any legislative or administrative measure affecting them; (3) the consultations envisaged by the Act were to be held with a view to achieving consent on the measures proposed and, if agreement in this respect could not be reached, the Government was required to make a decision taking into consideration the rights of indigenous peoples; (4) the Act had to be interpreted in accordance with the provisions of

Convention No. 169; (5) representative organizations of indigenous and tribal peoples had been consulted prior to the adoption of the Act on prior consultation; and (6) the drafting of the Act took into consideration several documents, including: the drafts presented by the Office of the Ombudsperson and parliamentary groups (Bloque Popular, Nacionalista and Union por el Peru), the results of the Working Group No. 3 of the National Coordination Group for the Development of the Amazonian Peoples which was integrated by representatives of the Executive and indigenous Amazonian organizations, and the report on prior consultations prepared by the special commission established to study and recommend solutions for indigenous people's issues. Although it was for the Committee of Experts to evaluate the conformity of the provisions of the Act with the Convention, they underscored that it was nevertheless important to recognize the actions taken by the Government and commended it for them. The Government had amply demonstrated its commitment to respond to the conclusions of the ILO supervisory bodies.

They noted that a number of actors and organizations had commented favourably on the Act. Several organizations, including the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSESP), the Peasant Farmers' Confederation of Peru (CCP), National Agrarian Confederation (CCNA), the National Coordinating Committee for Communities Affected by Mining (CONACAMI) and the Confederation of Amazonian Nationalities of Peru (CONAP), all considered the Act on Prior Consultation an important achievement. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples commended the law's adoption and considered that it could establish an important precedent as a best practice for other countries of the region and the world. With regard to the Committee of Experts' request that the exploration and exploitation of natural resources be suspended until the peoples affected and covered by the Convention were consulted, the Employer members maintained that the Convention did not provide for or envisage such injunctive authority. Stating that injunctions of this nature held potentially serious consequences for a nation's economic activity, in particular its ability to attract foreign direct investment, they stressed that this request of the Committee of Experts needed to be re-examined. The Experts needed to understand that the real issue was that economic activity resulted in taxes and revenues that supported the local communities. The conclusion of the Experts that economic activity should stop was not supported by the legislative history of the Convention and jeopardized foreign direct investment.

They recalled that Article 6 of the Convention was the principal clause concerning the right of consultation, and that the definition of the latter term had been extensively discussed in the deliberations preceding the Convention's adoption. From the records of these discussions, it was clear that consultation did not equate to, or require, the consent of the parties being consulted. The record of the second round of discussions preceding the Convention's adoption showed that the Employers' group believed the term "consultations" to signify "dialogue, at least", and the Office itself had stated that it did not consider the consultations referred to, to require the agreement or consent of those being consulted. In its observation, however, the Committee of Experts appeared to have interpreted the term so as to impose a more exacting requirement upon the Government beyond that envisaged by the Convention; the potential consequences of this interpretation would be discussed and examined by several of the Employer members in the course of the discussion.

The Worker members indicated that the discussion of this case formed part of the follow-up to the discussion

held in 2009 and the serious incidents that had occurred in Bagua, leaving 33 dead. These incidents had been related to the adoption by the Government of decrees affecting the rights of indigenous and tribal peoples to lands and to natural resources. The decrees were not in conformity with the provisions of Convention No. 169, which called for consultation with the peoples concerned, through appropriate procedures, and in particular through their representative institutions, whenever consideration was being given to legislative or administrative measures which might affect them directly. Following his visit to the country, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples had also confirmed the seriousness of the situation. Following the incidents of 2009, a commission had been established to investigate the violence that had occurred in Bagua. Nevertheless, there remained the greatest confusion as to the functioning of the commission, and particularly with regard to its impartiality. Although a report had been published, it had not shed light on those directly responsible, nor had it been signed by the representatives of indigenous peoples.

In this context, the indigenous peoples had called for the adoption of legislation requiring the State to consult them. On 19 May 2010, the Parliament had approved a Bill on prior consultations, which appeared to contain an exhaustive list of the principles to be followed to achieve consultation within the meaning of the Convention and could therefore serve as a first step in the improvement of relations. However, neither the Committee of Experts nor the Conference Committee had yet examined the legislative text in question, despite the commitment given by the Government to provide information on the measures taken to bring the national legislation into conformity with the Convention. The Conference Committee was therefore not able to express an opinion on whether or not the Act on Prior Consultation of May 2010 was in conformity with the Convention, both in terms of its scope of application and in relation to the protection provided, consultation procedures and the concept of “land” covered by Article 13 et seq. of the Convention. The Act needed to be in conformity with the definition of indigenous peoples, but also with the fact that these peoples “owned” the lands with which they had a special relationship. The Government had also undertaken to prepare and adopt a plan of action, in consultation with indigenous organizations, as indicated in the conclusions of the Committee the previous year, which referred to the establishment of mechanisms for permanent dialogue between the Government and Amazonian indigenous peoples and a multisectoral commission which would constitute another dialogue mechanism. Nevertheless, one year later, no plan had been adopted and the ad hoc dialogue body had not had any tangible effects.

The action taken by the INDEPA also raised problems in view of its lack of knowledge of the problems and the lack of representation of indigenous peoples within it. In July 2009, the INDEPA, despite the fact that it had an essential role to play in the application of the law and the promotion of indigenous peoples, had engaged in acts of political interference in the operation of the Amazonian organization AIDESEP with a view to obstructing its action. These allegations of partiality were damaging to the Institute and could only jeopardize the application of the law once it had been adopted. It also appeared that the AIDESEP had not been consulted concerning the project to relocate Amazonian peoples, even though this project endangered the social, political and economic integrity of Amazonian peoples and communities. Moreover, issues of relocation were covered by Article 16 of the Convention. These flawed consultations concealed major economic interests. The Ministry of Energy and Mining was

continuing to grant permits for the exploitation of hydrocarbons without any consultation and contrary to the Act on Prior Consultation. Over recent weeks, 25 new oil and gas exploitation zones had been granted, mainly in Amazonia.

In conclusion, the Worker members indicated that, even if the Act on Prior Consultation constituted progress, it was necessary to remain cautious and the Committee should not reduce the pressure exerted on the Government. In practice, the Act still has to be approved by the President. In addition, the Act did not take into account the recommendations of the Committee of Experts relating to the suspension of concessions in indigenous lands, did not deal with the repeal of the previous legislation, nor of compensation for acts that were contrary to the Convention. It was therefore important for the Act to be examined by the ILO before its signature by the President. Doubts remained concerning the Government’s real political will to comply with prior consultation procedures, particularly since several agreements concluded between the executive authorities and the organizations of Amazonian indigenous peoples had, in practice, not been supported by the executive authorities in Congress. An effective framework for collaboration with the INDEPA was essential to give effect in practice to the obligations deriving from the Convention. For that purpose, the composition of the INDEPA would need to be reviewed to ensure that it effectively represented the interests of the peoples covered by the Convention. In that respect, the Government could benefit from ILO technical assistance.

A Worker member of Peru observed that the tragic events that had occurred at Bagua had been the result of the failure to give effect to the Convention, as reflected in the eight points emphasized by the Committee of Experts. A true and impartial investigation into everything that had occurred in Bagua had not been carried out. The body entrusted with the investigation had not been able to issue an objective report in view of the refusal by the Government’s representatives to accept any responsibility on the part of the legislative and executive authorities. She added that the Government had not prepared any plan of action beforehand in consultation with the representative organizations of indigenous peoples. The discussions referred to by the Government in the context of the dialogue round tables did not amount to an adequate response. They consisted of incomplete dialogue which included the Amazonian people, but not the Andean peoples.

With regard to the INDEPA, she noted that the necessary steps had still not been taken for its reform so as to allow dialogue concerning long-term policies and plans of action with the participation of indigenous peoples. It was not composed of real representatives of indigenous peoples. Its bodies were bureaucratic and did not include consultative mechanisms, and its officials lacked knowledge of indigenous peoples. The INDEPA supported the establishment of a parallel board of directors organized to hinder the functioning of AIDESEP; the lack of impartiality by the body would have serious consequences for the application of the law.

The Act on Prior Consultation adopted by Congress on 19 May 2010 was a positive step obtained as a result of internal and international pressure, but it still had not been officially approved. It was regrettable that so many years had elapsed without the adoption of the consultation machinery envisaged in the Convention. There were serious doubts concerning the real commitment to give effect to the provisions of the Convention respecting consultation. There also remained many serious situations of conflict relating to the significant increase in the exploitation of the natural resources in the lands occupied by Andean and native communities, in relation to which they had not been consulted. Some 72 per cent of the Amazonian terri-

tory had been granted under concession for the exploration and exploitation of hydrocarbons, but the current participation mechanisms did not amount to real consultation. Progress needed to be made in the implementation of the recent Act on Prior Consultation and in the application of all the stages of consultation. Nor had legislative measures been adopted to guarantee the participation of indigenous peoples in the benefits from mining, oil and gas and compensation for the damage caused by such activities. Nor had the question of the lack of formal land title been resolved. The Government had not adopted educational measures to eliminate prejudice against indigenous people and the lack of indigenous teachers was a matter of concern.

Another Worker member of Peru stressed the importance of freedom of expression and the guarantees that were afforded by the rule of law. He confirmed that the Government had continued to hold dialogues with *apus* (tribal chiefs), non-governmental organizations and peasant farmers. He highlighted the importance of the judiciary carrying out its work to investigate the deaths of indigenous peoples and police staff, and to investigate the disappearances. It was important that the legislative authority carry out its work regarding the official approval of the Act on Prior Consultation. He said it would be advisable to broaden training for peasant farmers and indigenous peoples on their rights and obligations in order for them to be able to decide on their future democratically and in a sovereign manner.

The Employer member of Peru provided detailed information on the national legislation relating to the right to consultation. He explained that, although it was the State that granted the concession for exploiting natural resources, the title to the concession did not confer ownership of the land on the enterprise or holder of the concession, nor did it authorize them to begin operating. Before any exploration or exploitation could start, the holder of the concession should reach an agreement with the owner of the land. In the case of a concession located on community land, the Constitution guaranteed that peasant and indigenous communities had the autonomous right to use the land as they saw fit, within the framework of the law. There were a number of national laws and regulations that protected the rights and customs of indigenous peoples as well as an official standard for the protection of the environment. He described the integrated system for assessing environmental impact, which had standardized and transparent criteria, and procedures to ensure that the proper participatory channels were used. Moreover, with the new Act on Prior Consultation, the country could definitely be said to have the highest standards for consulting indigenous peoples in accordance with the terms of the Convention. In the case of the mining and energy sector, the existing standards required that, before any such activities could be started, it be ascertained whether the interests of the indigenous peoples inhabiting the area directly concerned by a project might be affected, so that any concerns regarding any possible social, economic, environmental or cultural impact could be examined and taken into account. The speaker felt that the Committee of Experts' observations were inappropriate, given that the country's standards complied amply with the objectives of the Convention.

He concluded by stating that indigenous communities enjoyed the economic benefits accruing from the exploitation of natural resources by virtue of a levy, i.e. the share of State income deriving from the economic exploitation of those resources that local and regional governments were entitled to, irrespective of any compensation that enterprises might pay the owners for the use of their land.

The Government member of the Bolivarian Republic of Venezuela, spoke on behalf of the Government members

of the Committee, Member States of the Group of Latin America and the Caribbean States (GRULAC). He cited the progress that had been made in ensuring that the Convention was applied, which had led to the drafting of a Development Plan for the Amazonian Peoples in which they participated fully, and the approval by Congress of the Act on Prior Consultation establishing the requirement that the indigenous peoples be consulted in advance so as to obtain their agreement or consent to any national or regional development plans, programmes or projects affecting their rights. He hoped that the conclusions to be adopted would take into account the discussion that had been held, without overlooking the new information, data and arguments put forward by the Government. In conclusion, he reiterated his firm hope that the Committee of Experts would confine itself to the explicit mandate it had received from the Governing Body.

The Worker member of Paraguay expressed his solidarity and committed support for the indigenous peoples and peasants of Peru, and expressed serious concern about the problems in applying the Convention. He said that the General Confederation of Workers of Peru (CGTP) and federations of peasants and indigenous peoples had repeatedly denounced the increase in conflicts in indigenous and campesino areas, and that such conflicts were closely related to access to, and control of, natural resources. In addition, the Government persisted in applying systematically a vertical administrative framework to Amazonian and Andean territories, which did not provide any guarantees of environmental protection. He pointed out that 72 per cent of the Amazonian area was dedicated to exploiting hydrocarbons, which meant that it was strategically and politically important to have a mechanism for the active participation of indigenous peoples and peasants relating to such activities. He regretted the fact that current legislation only provided for administrative and information measures, which did not in any way fulfil the obligation of consultation set out in the Convention. Given the risk of a resurgence in social conflicts related to the exploitation of natural resources because of lack of prior consultation, he requested that such obligation of consultation be implemented in practice as soon as possible.

The Employer member of Mexico argued that the Committee of Experts had exceeded its mandate. He explained that he had been the Employer spokesperson during the discussions that led to the adoption of Convention No. 169 and that he knew well the spirit of the provisions. It was inaccurate that consultations had to achieve agreement and it was incorrect to interpret that it was possible to require a hold on or suspension of economic activities. Article 6 of the Convention did not have, and never had, a binding nature. The Committee of Experts should not be able to change the meaning of the provisions of Conventions. He concluded by declaring that he felt that the Government was adopting a legislative package appropriate for implementation of the Convention.

The Worker member of the Bolivarian Republic of Venezuela highlighted the importance of ancestral rights of indigenous peoples as native peoples. She recalled that 70 per cent of the country's population had its ancestral roots in indigenous communities. She requested that the Government acknowledge the right of Peruvian indigenous peoples to maintain their culture and traditions. She urged the Government to enact the Bill on the right to prior consultations, end indiscriminate over-exploitation of natural resources, put an end to the persecution of Andean and union leaders and guarantee the right of indigenous peoples to mandatory consultation on decisions in which they had a say.

The Employer member of Colombia stated that only five of the provisions of the Convention related to labour is-

sues and that the other topics included were outside the ILO's competence. There were many regional and international instruments, as well as specialized organizations, to guarantee the protection of indigenous peoples. The ILO should limit itself to the field of labour. He expressed his concern that the Committee of Experts wished to introduce an injunctive measure to suspend economic activity that did not exist in the Convention. He also pointed out that there was no justification in the Convention for a need to reach agreement through consultations.

The Worker member of France responded to certain statements of the Employer members by recalling that Convention No. 169 was not the only Convention in which the ILO had addressed questions of civilization in close synergy with the United Nations. The Convention had been adopted by the Conference, and it was an international treaty that, once ratified by a member State, had to be implemented in its entirety. As regards the calling into question of the Committee of Experts' mandate and impartiality, it should be recalled that the interpretation of the text of a Convention was indispensable in order to clarify how its objective might be effectively attained. It should therefore be stressed that the Committee of Experts had not exceeded its prerogatives. The speaker emphasized that the word "consultation", as reflected in the text of the Convention, implied that consultations had to be undertaken in good faith, that is to say taking into account the views expressed. In the case under discussion, however, the Committee of Experts considered that the Government had not conformed to the objective of the Convention. He expressed the hope that the Act on Prior Consultation, referred to by the Government, would resolve the problem. However, the fact that three-quarters of the country had already been handed over for exploitation was a source of concern. The value of the territories went far beyond their market value. The discussion of this case revealed two conflicting ideologies: on the one hand, a capitalist approach, and on the other, a philosophy of sustainable development.

The Employer member of Ecuador expressed his concern at the interpretation of Article 6 of the Convention. The Convention did not authorize indigenous or tribal groups to set up parallel legislative bodies with the power to establish national standards or the right to veto legitimate measures taken by the national authorities when acting within their sphere of competence. He recalled the debate that had taken place when the Convention was being drafted, when the Workers' group presented an amendment to replace the term "consult" by "obtain the consent of" which was not accepted; that meant that the outcome of consultations was not binding. The spirit of the Convention was that the opinion of indigenous peoples should be sought when a government measure, or any matter stemming from the public authorities, might endanger the traditions and culture of their peoples. There was no way that this could be understood as opening up the possibility of their preventing or opposing categorically, irrespective of the will of the rest of society, a particular development model or projects going beyond the specific interests of those communities. The consultations should also serve to determine whether the groups wished to participate in, or stay out of, projects being undertaken in the proximity of their areas of interest and, should they decide to participate, what form that participation should take. That, however, did not imply that they were empowered to take decisions in the place of the duly authorized national bodies. He regretted that the Committee of Experts had gone beyond its mandate by requiring the suspension of projects relating to the exploration and exploitation of natural resources.

The Employer member of Spain pointed out the progress made by the Government, including the Act on Prior Con-

sultation. As for the discussion on the concept of consultations, he stressed the importance of respecting the rights of indigenous and tribal peoples to land, respect for the environment, the search for sustainable and harmonious development and the importance of corporate social responsibility, but he indicated that the concept of consultations could not engender the notion of a veto. He felt that it was inappropriate to consider that the consultations provided for in the Convention had a binding nature.

The Government representative welcomed the opinions and comments given on the progress that had been made. She said that the role of the INDEPA had changed because, at the request of leaders of indigenous peoples, it had been placed under the purview of the Presidency of the Council of Ministers as of February 2010. It was now a specialized technical body that carried out its functions in a multi-sectoral and cross-cutting manner at all levels of Government. She said that an *apu* (tribal chief) would be appointed to head the INDEPA; consultations were under way with indigenous groups to that end. She also said that the National Coordinating Group had prepared a National Plan for Amazonian Development, comprising ministries, regional governments and two representative organizations of Amazonian peoples: AIDSEP and CONAP. She described the measures being taken to fight discrimination and racism and the new resources being allocated to education in rural areas.

She said that a source of constant concern was the fact that some of the benefits derived from extracting natural resources were granted to the peoples and communities where such activities were undertaken. Six types of concessionary payments had therefore been created for the various types of extraction activity. She said that, during 2009, US\$1.2 billion had been paid in concessionary payments. She concluded by reaffirming her commitment to continue ensuring a different future for members of Peru's indigenous communities.

The Employer members thanked the Government for the information it had provided during the discussion, noting that the Committee of Experts would need to assess the actions mentioned by the Government with respect to the Act on Prior Consultation and would indicate in its next report any possible flaws or shortfalls. While it typically took governments years or decades to act in response to observations, the Government of Peru had taken prompt action within a year and should be commended. They noted that no person or institution was infallible and that, based on the testimony and evidence presented, it would be prudent for the Committee of Experts to reconsider its conclusions with respect to the interpretation of certain provisions of the Convention that had been addressed by Employer members.

The Worker members considered that the Employer members had unjustly challenged Convention No. 169 and that their discourse on treaty interpretation could not hide the lack of any real arguments on the substance of the case. Yet this was a very serious case from which lessons could be drawn for the entire region. The recently adopted Act on Prior Consultation might be the first step towards the amelioration of relations which were currently characterized by violence. However, certain questions remained unanswered: the exact circumstances of the serious incidents in Bagua; the conformity of the Act with the Convention; the composition and impartial operation of the INDEPA; the repeal of previous laws; and the right to compensation for victims who had suffered from the application of earlier legislation. The Government had taken a first encouraging step and, in order to prove its good will, should accept a technical assistance mission of the Office at the earliest opportunity so that the Committee of Experts had all the necessary information it needed to be able to answer the questions raised.

The representative of the Secretary-General stated that she wished to provide some clarifications. The word “consultation” was probably found in every ILO instrument; it was the very backbone of international labour standards, since all Conventions and Recommendations included a provision on consulting with workers’ and employers’ organizations, or required consulting with “workers and employers” concerned or groups of persons concerned, such as persons with disabilities. However, this common, very important concept had to be construed within the overall context of the instrument in which it was placed. Consultation was an obligation irrespective of the language used, such as the expression “shall consult”. Article 6 of Convention No. 169 highlighted this term more than most provisions, and to interpret it correctly, one needed to look at the Article in its entirety, and not just part of it. Paragraph 2 of Article 6 set out that consultations carried out in application of the Convention had to be taken in good faith, and in a form appropriate to the circumstances, with the objective of achieving agreement or consent. This provision did not require that consultations had to reach agreement, but meant more than merely consulting and moving on. One had to consult in good faith and with the objective of achieving consent. Both the English and the French versions of the text were clear. They did not compel agreement or consensus. The same understanding was reflected in the Committee of Experts’ observation which was being discussed in this case.

She further stated that, as an ILO Convention, Convention No. 169 could not be disowned; it was a revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107). The ILO was the first organization with a Convention on indigenous peoples and it was the only organization with a binding instrument on indigenous peoples. These elements of clarification were provided while recognizing that this remained a sensitive and controversial issue.

The Employer members thanked the Office for the clarifications but indicated that the word “consult” had a different meaning in English than in French, where it had a stronger connotation. Leaving this distinction aside, it was clear that failure to consult should not be taken to mean that one might stop economic development. To this end, when they questioned the Committee of Experts as to the true meaning of the Convention, they were referring to its injunctive aspects.

Conclusions

The Committee noted the statement by the Government representative and the discussion that followed. It noted that it had examined this case in 2009, and that the Committee of Experts, referring to the conclusions of this Committee, had called on the Government to take a range of measures of a legislative, institutional, awareness-raising and educational nature.

The Committee noted the Government’s indication that the Congress of the Republic of Peru had adopted on 19 May 2010, an Act on the Right to Prior Consultation of Indigenous or Original Peoples as recognized in ILO Convention No. 169, containing, *inter alia*, provisions to identify the peoples concerned. The Government also provided information regarding Presidential Decree No. 022-2010 endowing the INDEPA with the status of a specialized technical body. The Government further provided information on the work of the four dialogue round tables established in June 2009 with the participation of Amazonian peoples, which, *inter alia*, covered investigations into the Bagua incidents, and the formulation of a development plan for the Amazon area. It also referred to access of indigenous peoples to education, measures to eliminate prejudices in respect of indigenous peoples as well as initiatives aimed at improving their conditions.

The Committee welcomed the Government’s acknowledgment of the importance of consultation and the consequent adoption by the Congress of the Republic of the Act on Prior Consultation, and trusted that it would be promulgated rapidly by the President of the Republic. The Committee urged the Government to provide full information to the Committee of Experts on the promulgation and implementation of the Act to enable it to assess compliance with the provisions of the Convention. It urged the Government to ensure that the new Act on Prior Consultation was signed and implemented and to ensure, if needed, that transitional measures were adopted, in accordance with Articles 6, 7 and 15 of the Convention, as discussed in the Committee. The Committee also recalled the need for coordinated and systematic action to protect the rights of indigenous peoples, as provided for in Articles 2 and 33 of the Convention, which required state institutions that enjoyed the trust of indigenous peoples and in which their full participation was ensured. The Committee noted the information provided that the Act on Prior Consultation attributed a central role to the INDEPA as the technical body specialized in indigenous affairs and accordingly considered that the reform of this body, with the full participation of the representative organizations of indigenous peoples, was necessary to ensure its legitimacy and a genuine capacity for action and to secure the application of this important Act.

The Committee noted the formulation of a development plan for the Amazon area which, however, would not cover indigenous peoples of the Andean region. It also noted that progress needed to be made in relation to the formulation and implementation of plans of action to address in a systematic manner the pending problems relating to the protection of the rights of the peoples covered by the Convention, as requested by the Conference Committee and the Committee of Experts. It emphasized the need to ensure that these plans of action were developed and implemented with the participation of the representative organizations of indigenous peoples, in accordance with Articles 2 and 6 of the Convention.

The Committee requested the Government to provide full information in a report to be submitted for examination at the forthcoming session of the Committee of Experts in reply to the matters raised by this Committee and the Committee of Experts, including detailed information on the promulgation and implementation of the new Act on Prior Consultation and related transitional measures, the implementation of the development plan for the Amazon region, as well as information on the effect of Ministerial Resolution No. 0017-2007-ED setting admission criteria on bilingual teacher training. The Committee encouraged the Government to avail itself of the technical assistance of the Office to ensure that adequate progress on the implementation of the Convention was made.

The Worker members stated that in adopting these conclusions they had demonstrated great flexibility. They hoped that the Government would accept the technical assistance offered by the Office.

Worst Forms of Child Labour Convention, 1999 (No. 182)

BURUNDI (ratification: 2002)

A Government representative stated that the problem of forced recruitment of children for use in armed conflicts no longer existed because of the transformation of the last remaining rebel movement into a political party, the National Liberation Front (FNL). All child soldiers had been demobilized and returned to their families, but they still suffered the same fate as the other children in terms of satisfaction of their needs. As for the use, procuring or offering of children for prostitution, the juvenile police had taken steps to discourage this phenomenon. He re-

called that prostitution was not permitted by the legislation, not even for adults. As for the use, procuring and offering of children for illegal activities involving street children, beggars or sexual exploitation, in September 2009 the Government had adopted a national action plan for the period 2010–2015, to eliminate the worst forms of child labour. That plan consisted of six activities: strengthening legislation in order to prevent and protect children from the worst forms of child labour; promoting awareness about child labour and its worst forms; building the capacity of institutions and stakeholders; promoting education for all by 2015; supporting underprivileged families through the rehabilitation and social-economic integration of youth; and coordination and management of the said plan. He further recalled that the country had a policy of universal education guaranteeing free access to primary education. However, the challenge remained of overcrowded schools with classes of more than 100 pupils. Despite the Government's strong political will to solve these problems, the country suffered from extreme poverty, from which children were not spared. Only the combined and continuous effort of the Government and the international community to combat poverty would make it possible to achieve the Millennium Development Goals and prevent and protect children against the worst forms of child labour.

The Employer members indicated that, in the context of the forthcoming 20th anniversary of the IPEC programme, according to the Report of the Director-General, progress in sub-Saharan Africa on the elimination of child labour had slowed down, which was a disappointment. Convention No. 182 required the commitment of all ratifying countries to adopt effective and time-bound measures to bring an end to the most extreme and abhorrent forms of work involving the most vulnerable and defenceless persons. These abuses must not be tolerated by the international community, even though they occurred in complex situations that were difficult to eradicate: States party to the Convention had undertaken to address them on a priority basis.

Burundi was a country that had suffered armed conflict, which had weakened its economy and institutions and had resulted in the use of children in armed conflict, including for prostitution and spying. Burundi would not be able to resolve the situation on its own, despite the Peace and Reconciliation Agreement. Assistance was therefore required from international organizations, such as the United Nations (UN), the ILO and the United Nations Children's Fund (UNICEF), and through international cooperation.

The reports referred to by the Committee of Experts described the use of thousands of children in armed conflict in recent years, of whom a significant number had been demobilized as a result of the United Nations programme (3,015 children), the IPEC Programme (1,442 children) and the national structure established by the Government of Burundi (1,932 children).

The low rate of school attendance facilitated the exposure of children to exploitation. Despite the progress made, serious problems remained, including the persistence of impunity in cases of serious violations, such as murder, mutilation, sexual violence and the use of children by armed movements, as well as child prostitution and the exposure of children to the risks outlined above as a result of their engagement in begging. They deplored the fact that the Government had failed to provide the last report and encouraged it to send further information to demonstrate the level of its commitment to the eradication of the problem and to continued dialogue with the Committee of Experts.

The Worker members stated that, in spite of the Government's ratification of Convention No. 182 in 2002, the

Committee of Experts received the first report only in 2008. Since then no new information had been sent on the issues repeatedly raised by the Committee of Experts. These questions referred to three situations concerning the worst forms of child labour prohibited by the Convention. The first was the forced recruitment of children for use in armed conflict: the data received by the Committee of Experts through the Committee on the Rights of the Child, the International Trade Union Confederation (ITUC) and the Confederation of Burundi Trade Unions (COSYBU) confirmed that a large number of children were used by the armed forces, either as soldiers or as helpers, in camps or as intelligence officers. In addition, there was evidence that many children were used by the opposition armed forces for sexual purposes. According to the Government, the recruitment of children for armed conflict was a phenomenon that had not existed since the Arusha Peace and Reconciliation Agreement of 2000 and the Comprehensive Ceasefire Agreement signed with the *Conseil national pour la défense de la démocratie – Forces pour la défense de démocratie* (CNDD–FDD) of Pierre Nkurunziza. However, in a 2006 report on the situation of children in armed conflict in Burundi, the United Nations Secretary-General indicated that, despite some cases of progress in this area, serious violations of children's rights persisted and were still not subject to criminal investigations or sanctions from the competent authorities. Authorities had not yet adopted national legislation to criminalize the recruitment and use of child soldiers. Furthermore, Burundi's Penal Code did not comply with the Convention as concerned the age for enrolment in armed conflict: the Criminal Code provided that the recruitment of children under 16 years was a war crime, whereas this prohibition should apply to persons under 18 years of age. The reintegration of child soldiers into society constituted another important problem. In 2008, the Ministry of National Solidarity, Human Rights and Gender signed a Memorandum of Understanding with the National Commission for Demobilization, Reinsertion and Reintegration for the establishment of outreach programmes on this issue; it was crucial to have more information on the impact of these programmes for the prevention and reintegration of child soldiers. In this respect they underscored the importance of free basic education and vocational training for the successful reintegration of these children.

The second situation of the worst forms of child labour concerned children working in prostitution. The Government stated in its 2008 report that, although it did not deny the existence of child prostitution in certain areas, this phenomenon had been eradicated and those responsible punished. The UN report, however, attested to the contrary and indicated that more and more children were victims of sexual violence. As the Penal Code of Burundi clearly punished the use, procuring or offering of children for prostitution, however, the problem rested not with the legislation but rather its implementation in practice.

The last situation relating to the worst forms of child labour concerned the use, procuring and offering of children for illicit activities. The COSYBU and the United Nations Secretary-General had reported on the situation of children aged 3–10 years living in the street and engaged in begging; these children were very vulnerable and may be used or engaged in armed conflict or any other illegal activity. They concluded by expressing their concern over this growing phenomenon and asked the Government to adopt legislation banning the use, procuring or offering of children for illicit activities and to provide sanctions to that end, without neglecting the rehabilitation and social integration of these children.

The Worker member of Burundi stated that the COSYBU endorsed the comments of the Committee of

Experts and the concern of the international community regarding the issue of the worst forms of child labour. Other worst forms of child labour, such as begging, street trade and child prostitution, continued to increase. They were linked in large part to the phenomenon of poverty, which affected most of the population. The Government needed to seriously combat this phenomenon by providing better management of public resources and guaranteeing stable employment for parents who, lacking any means of subsistence, had stopped sending their children to school, married off their daughters at a young age and left their children to begging. The various forms of violence suffered by children were also linked to both administrative and cultural obstacles. As for administrative obstacles, most criminals escaped punishment due not only to a lack of means but above all because of the phenomenon of corruption that marred the judicial system. Because of their culture, the victims of those crimes often did not dare denounce the perpetrators due to severe social pressure and because they were often trivialized and rejected. The COSYBU recognized that the Penal Code had been revised, but it deplored the serious failure to apply its provisions. She also noted that the National Plan of Action for 2010–15 had been adopted, but feared that, as with previous plans, it would not be effectively implemented. It was, therefore, important to assist the Government in implementing that plan and monitoring its implementation at the national level. She stressed that the COSYBU would continue to submit all the information required to the Committee of Experts in order to keep the Committee informed of the labour situation involving children in Burundi.

The Worker member of Senegal observed that, while nothing could justify the perpetuation of violations of the Convention, the worst forms of child labour and their attendant tragedies persisted. The Government's declared intentions were meaningless, even if the recruitment of children in armed conflicts appeared to have declined, and it was for the Government to address the problems of the recruitment and procurement of children for prostitution, as highlighted in a UN report of 2006, to which more and more children were victim. He stated that the phenomenon of street children demonstrated the inadequacy of government action to protect the young, as well as the absence of legislation on begging and accurate statistical data on child labour. According to the information available, about 20 per cent of children aged 5–14 years were engaged in paid employment, while half were involved in non-paid labour outside of the family. Child domestic labour was also a poorly documented phenomenon that was, nevertheless, extensive and mainly concerned children from rural areas. These children were among the most vulnerable, as they were entirely and at all hours subject to the whims of their employers. He concluded by stating that the Government must therefore guarantee its commitment to ending the scourge of the worst forms of child labour and the attendant human tragedies.

The Government representative indicated that the phenomenon of child soldiers no longer existed and that, as concerned children who were or had been employed in the worst forms of child labour, the crucial challenge to their reintegration was, in essence, the fight against poverty. In this regard, he stated that in so far as the Government possessed international obligations, it must not be forgotten that the first objective of development was the struggle against poverty, a long-term battle that would eventually resolve the problems associated with the worst forms of child labour. The implementation of the legislation and national action plan recently adopted required resources and a tripartite partnership at the national level. He added that additional efforts would be made by the Government to regulate the various forms of informal

work, including domestic work, and concluded by reiterating his Government's commitment to providing the additional information requested by the Committee of Experts.

The Employer members welcomed the information provided by the Government representative and supported the National Plan of Action. They also agreed that there was a link between child labour and poverty and that there was a need for steady progress. The focus should be on three points: (1) the importance of giving priority to the worst forms of child labour; (2) the pursuit of dialogue with the Committee of Experts, involving detailed information along with cooperation and technical assistance; and (3) the stepping up of activities aimed at demobilizing and reintegrating child soldiers, tackling the problem of child prostitution, prosecuting and punishing those guilty of breaking the law, and resolving the problem of child beggars, who were engaged in one of the worst forms of child labour. In conclusion, they stressed the responsibility of the international community in this area.

The Worker members pointed out that with regard to legal matters, it was necessary for the Government to take action to modify the Penal Code to expressly prohibit the recruitment of children under 18 for use in armed conflict and to inform the Committee of Experts accordingly. In terms of application in practice, the use of children in the worst forms of labour still occurred. The situation of child soldiers was very worrying, and it was fortunate that there was currently no such recruitment for armed conflict, thanks in particular to collaboration with the United Nations and IPEC, which had enabled the children concerned to be reintegrated. Efforts in that regard should continue, and the Government should renew its contact with IPEC with a view to putting the necessary reception structures in place. In addition, the Government should take the necessary steps to eliminate the phenomena of children being used for prostitution and of street children, who were particularly vulnerable to illicit activities. In that regard, it was vital for such children to receive proper schooling and to be reintegrated into society. They concluded by observing that the recently adopted national action plan to eliminate the worst forms of child labour needed to be implemented, and that the Government should provide information in that regard to the Committee of Experts in its next report on the application of the Convention.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the ITUC and the Confederation of Burundi Trade Unions relating to the forced recruitment of children for use in armed conflict, the commercial sexual exploitation of children and street children.

The Committee took note of the information provided by the Government outlining the action programmes established with the assistance of ILO-IPEC to provide for the removal, rehabilitation and social integration of former child soldiers. The Committee also noted the information provided by the Government concerning the Action Plan to Combat the Worst Forms of Child Labour 2010–15, which had been adopted in September 2009 with the assistance of ILO-IPEC. The Committee further noted the information provided by the Government representative highlighting that the worst forms of child labour were the result of poverty, exclusion and underdevelopment. Finally, the Government representative expressed his country's willingness to continue its efforts to eradicate violations of Convention No. 182 with ILO technical assistance and cooperation.

The Committee noted that there was no longer in practice the forced recruitment of children under 18 years by armed groups and the rebel forces and that all child soldiers had been demobilized. It nevertheless urged the Government to ensure that the perpetrators of these egregious crimes were prosecuted and that sufficiently effective and dissuasive penalties were imposed in practice. The Committee called on the Government to continue to take effective and time-bound measures for the reintegration of children formerly involved in armed conflict.

The Committee noted that although the law prohibited the commercial sexual exploitation of children, it remained an issue of serious concern in practice. The Committee accordingly called on the Government to redouble its efforts and take, without delay, immediate and effective measures to eliminate the commercial sexual exploitation of children under 18 years in practice and to ensure that persons who infringed the Convention were prosecuted and that sufficiently effective and dissuasive sanctions were imposed. The Committee also requested the Government to supply detailed information in its report when it was next due on effective and time-bound measures taken to provide for the rehabilitation and social integration of former child victims of commercial sexual exploitation, in conformity with Article 7(2) of the Convention.

The Committee noted with serious concern that the number of children working on the streets remained high and that these children were exposed to various forms of exploitation. The Committee stressed that the engagement of children in hazardous work and begging on the streets constituted the worst forms of child labour and that, by virtue of Article 1 of the Convention, the Government was required to take immediate measures to prohibit and eliminate the worst forms of child labour, as a matter of urgency. It therefore urged the Government to take the necessary measures in national legislation to prohibit the engagement of children in hazardous work and begging on the streets. It also strongly urged the Government to take effective and time-bound measures to remove children undertaking work on the streets, and to provide for their rehabilitation and social integration.

Underlining that education contributed to combating the worst forms of child labour, the Committee strongly encouraged the Government to provide access to free basic education for all children, particularly children removed from armed conflict, former child victims of commercial sexual exploitation and street children.

Moreover, the Committee called on ILO member States to provide assistance to the Government of Burundi in line with Article 8 of the Convention, with special priority on facilitating free basic and quality education and vocational training.

Finally, the Committee requested the Government to provide detailed information, in its report to the Committee of Experts for its forthcoming session, on the implementation of the Action Plan to Combat the Worst Forms of Child Labour 2010–15 and the results achieved. It also requested the Government to provide detailed and accurate information on the nature, extent and trends of the worst forms of child labour in Burundi. Furthermore, the Committee requested the Government to supply detailed information on the measures to ensure the effective implementation and enforcement of the provisions giving effect to Convention No. 182. That information should include data on infringements reported, investigations, prosecutions, convictions and penal sanctions applied. The Committee requested the Office to provide technical assistance to the Government as requested by it to enable it to implement its obligations under the Convention.

MOROCCO (ratification: 2001)

A Government representative welcomed the fact that the discussion of the application of the Convention offered the opportunity to present the key aspects of the strategy developed by the Government to combat the worst forms of child labour. In the first place, reference should be made to the adoption in March 2006 of the National Action Plan for Children (PANE) 2006–15, of which a significant part was devoted to combating child labour. Considerable efforts were being made by the Government to implement this national strategy, focusing on five major components: a coherent legislative framework that was in conformity in its major aspects with international labour standards and Morocco's international commitments; the establishment and implementation of an institutional framework; tangible and local action focusing on the areas of origin of child labour; the provision to families of subsidies for the school attendance of children; and the reinforcement of expertise and competence through the technical cooperation undertaken with the ILO–IPEC programme in the context of projects financed by the United States, France and Belgium. In this respect, the Government had included a specific item in its budgets for 2008 and 2009 and intended to maintain it in future with a view to maintaining and generalizing the programmes of action already commenced in this context. In particular, this meant providing support for the activities of non-governmental organizations (NGOs) that were active in combating child labour, documenting the working conditions of children, training those concerned and strengthening competence at the national and local levels. Partnership agreements had been signed in November 2009 with seven NGOs, and it was planned to develop new partnerships in 2010.

He added that all of the efforts made by the Government to combat child labour had been compiled in a document that would be submitted to the Committee of Experts. He nevertheless wished to provide responses now to the specific points raised by the Committee of Experts. It should be noted that domestic work was among the principal objectives of the PANE. At the legislative level, the 2004 Labour Code covered domestic work and a bill was being prepared respecting the conditions of employment and work of domestic workers and establishing penalties for those employing children under 15 years of age. In addition, a specific list of hazardous types of work liable to be performed by domestic workers would be formulated and adopted under the future Act on domestic work. It would be in addition to the new list of hazardous types of work that had been drawn up and had raised from ten to 30 the number of hazardous types of work. Emphasis was also being placed on awareness-raising against child labour. A national campaign to raise the awareness of families, employers and children to the dangers and risks to which child domestic workers were exposed had been undertaken in 2008 in the framework of the national programme to combat the use of young girls as housemaids (INQAD) “Together against Domestic Work by Young Girls” using television, radio and the press, and a second campaign would be launched in 2010 with the support of the ILO–IPEC programme. Finally, reference should be made to a survey, the results of which would be provided to the Committee of Experts, on girl domestic workers under 18 years of age undertaken in 2001 in the Wilaya of Casablanca, and a new survey that would be carried out in 2010 to update the data, measure the impact of the action taken and help the local authorities develop appropriate responses.

With reference to the sexual exploitation of children, this scourge remained invisible and little known in Morocco, but the Government was sparing no effort to prevent and eliminate this worst form of child labour. The

Penal Code established severe penalties for abuses, acts of violence and aggression against children in the context of work or outside any labour relationship. Moreover, with the support of UNICEF, a preliminary study had been carried out on the sexual exploitation of children, and the process of dialogue for the development of a national strategy was currently under way. During the course of 2008, a total of 9,279 persons had been taken to court for violations of the rights of children in 8,748 cases, and 6,384 penalties, including sentences of imprisonment, had been handed down in cases of violence against children. Further information on the violations and the penalties imposed would be attached to the next report on the application of the Convention.

In the context of the implementation of programmes of action, a significant assessment on the prevention and removal of children from the workplace had been carried out by the Government. Over the period 2002–08, with the support of the ILO–IPEC programme, 12,068 children had been removed and offered viable alternatives, and 20,492 children had been withdrawn as a preventive measure. Between 2007 and 2010, with the support of the Adros project, 4,215 children had been removed and 4,068 children had been withdrawn as a preventive measure. Furthermore, an assessment of the activities carried out by the focal points responsible for action to combat child labour, who had recently been appointed by the Ministry of Employment, showed that 874 observations had been made and 451 violations reported in 2009.

In conclusion, he reaffirmed that his country had made enormous progress in combating child labour as a result of the political will shown and the real awareness of the phenomenon. However, much remained to be done to ensure that the progress achieved was sustained. Finally, he reaffirmed the will of the Government to cooperate with the Committee of Experts for the implementation of international labour standards, including the future standard on domestic work.

The Employer members considered the case under discussion to be a serious matter, as it corresponded to a double footnote concerning one of the fundamental Conventions. The Committee of Experts had made observations on the application of this Convention by Morocco in 2004, 2005, 2007 and 2009, but this was the first time that the Conference Committee had had an opportunity to discuss the case. The Committee of Experts' observation drew attention to a series of infringements of the Convention. With regard to Article 3 of the Convention, the observation referred to allegations regarding the existence of large numbers of young children, especially girls, being employed as domestic workers under conditions of servitude, after having been sold by their parents. It was estimated that 50,000 boys and girls – the majority of them under the age of 12 – were employed in domestic work. In the context of domestic work, one of the most serious problems affecting young girls was thought to be ill-treatment and sexual abuse. Moreover, although the 2003 Penal Code had declared sex tourism to be a criminal offence, there was evidence that both young Moroccans and young immigrants continued to be victims of child prostitution and sex tourism.

The Employer members also emphasized the need, as indicated in the latest direct request of the Committee of Experts, for the Government to provide information on the use of children for illicit activities, notably drug trafficking. Although a 1974 Royal Decree prohibited facilitating the access of persons under the age of 21 to drugs, there did not appear to be any ban on offering children for the production and trafficking of drugs, as required under Article 3 of the Convention. Regarding the mechanisms for monitoring the application of the Convention in practice called for in Article 5, ILO–IPEC reports published in

2007 indicated that the programmes of direct action against child labour in rural areas were undermined by the fact that so few labour inspectors operated in that area. Furthermore, with regard to Article 7(2)(a) of the Convention, the latest report by the United Nations Special Rapporteur on the right to education stated that, despite the progress that had been made, 8 per cent of Moroccan children were still outside the school system and there were some 60,000 street children in the country.

The Employer members noted the information supplied by the Government regarding the legislative ban on forced labour of minors, the proposed bill on domestic labour, the updating of the Dahir establishing the list of dangerous jobs, the planned survey on domestic work by girls in the Greater Casablanca area and the PANE 2006–15, which provided for a preliminary study to be carried out of the sexual exploitation of children. The preamble to the 2004 Labour Code reaffirmed the country's commitment to the four categories of fundamental principles and rights at work. Although that was an indication of Morocco's readiness to adopt relevant laws, it did not guarantee their effective implementation in practice. For that it was important to have an effective labour inspectorate. Morocco had indeed ratified the Labour Inspection Convention, 1947 (No. 81), in 1958, but the Government itself recognized that there were only 30 labour inspectors for rural areas, which was far too few for enforcement purposes. The country's labour inspectorate therefore needed to be strengthened both quantitatively and qualitatively, which would then make it possible to include the informal economy in its sphere of action. Recalling the large size of the informal economy in Africa, Asia and Latin America, the Employer members emphasized the important role played by the labour inspectorate in this area, inasmuch as the promotion of decent work meant first and foremost eliminating the most negative features of informal employment, and especially the worst forms of child labour.

The Worker members observed that Morocco was still affected by the existence of the worst forms of child labour, and primarily domestic work by children under slave-like conditions after they had been sold by their parents. There were around 50,000 such children, most of them girls under 12 years of age from rural areas. The Labour Code nevertheless prohibited forced labour, and the Penal Code specifically sanctioned recourse to the forced labour of children under 15 years of age.

The Worker members then referred to the various indications provided by the Government, such as the existence of a bill on domestic work setting the minimum age for admission to employment at 15 years, the planned updating of the list of hazardous types of work to bring it into conformity with the Convention and the plans of the Ministry to carry out an investigation into domestic work by young girls in Casablanca. The Government had been referring to these various initiatives for some time now without seeming to give effect to them, even though the Convention, which had been ratified by Morocco in 2001, required States to take immediate measures for the elimination of the worst forms of child labour as a matter of urgency.

The Worker members then referred to cases of child prostitution, particularly among immigrant and Moroccan boys, despite the fact that the Penal Code had classified sexual tourism as a crime since 2003. Although the Government had reported that a preliminary study had been carried out in 2007 on the sexual exploitation of children, the Worker members noted that no specific information had been provided on the subject since then.

In general terms, the Worker members observed that the Government was once again proclaiming numerous initiatives, such as a second awareness-raising campaign on domestic work by young girls, but that once again it had

not provided information on the results and on any progress achieved. This situation appeared to reflect the low level of commitment by the Government to take action as a matter of urgency against the various worst forms of child labour that were common in the country.

The Worker member of Morocco indicated that national unions were well aware of the serious nature of the scourge of child labour and were providing assistance, for instance through participation in the elaboration of relevant laws. His country had already made major steps forward by ratifying the Minimum Age Convention, 1973 (No. 138), Convention No. 182, the United Nations Convention on the Rights of the Child and its two Protocols. Moreover, a Decree had been issued in 2004 establishing a list of hazardous types of work. A new Penal Code had been adopted in 2003 imposing appropriate sanctions. It was necessary to bear in mind that, in an agricultural country with a long tradition of craftwork, parents made their children work in the fields, or try to pass on traditions and craft skills. However, this was not being used as an excuse. The Government was taking effective action to combat child labour through measures and programmes such as access to loans in rural areas to generate employment and combat poverty, financial aid for families to encourage them to keep their children in school, the PANE 2006–15, special police units to combat child prostitution, technical cooperation programmes with ILO–IPEC, efforts to draw up the bill on domestic work and subsidies for civil society organizations engaged in combating child labour. His country had accomplished giant strides towards the elimination of child labour, and the national unions would continue to support its efforts.

The Employer member of Morocco recalled that his country was currently developing in terms of governance, as well as in the economic and social fields and could not therefore allow child labour, as also demonstrated by the political will to involve the judiciary in the prosecution of offenders. The formal economy was currently growing by 4.5 per cent a year and that the informal economy only represented 12–13 per cent of the national economy, as indicated by international reports. Significant success had been achieved in the school enrolment of children aged 12 to 14 years, for whom the school attendance rate was 80 per cent. Some 500,000 young persons were engaged in vocational development schemes. He concurred with the Worker member from his country that the elimination of illiteracy, especially in rural areas, was the main focus of government policies. He added that there were over 30 inspectors in the country responsible for supervising the implementation of the 2004 Labour Code. He was convinced that Moroccan newspapers, which benefited from the freedom of the press, would publish any case of the mistreatment of domestic workers, which would lead to legal action and the imprisonment of offenders. Morocco was continuing to take action to combat the phenomenon of child labour. This would not only require administrative, but also depended on the progress made in the field of governance, as well as economic and social development.

The Worker member of India observed that Morocco had one of the highest child labour rates in the Middle East and North Africa. There were about 60,000 child domestic workers, and the practice of adoptive servitude, whereby parents sold their children to families for adoption for the purpose of domestic work, was common and socially accepted. For these children, decent childhood was a distant dream. He recalled that a society was measured by how it treated its vulnerable members. Child domestic workers, especially the live-ins, were virtual slaves working around the clock at the mercy and command of their employers. These hapless children, isolated and uprooted from their family and familiar environment, were

planted in totally alien surroundings having no one with whom they could share their feelings, complain, talk to or socialize. Being without parental affection, many of them suffered from developmental and psychological disorders. Illiteracy made it impossible for them to communicate with distant friends and family, and they experienced a tremendous amount of loneliness and faced an increased risk of verbal, psychological, physical and sexual abuse and economic exploitation. They faced deprivation, a heavy workload, a lack of proper pay or holidays and excessively long working hours of up to 14–18 hours per day. Furthermore, these domestic workers depended on their employers for all their needs. Hazards, such as burns when preparing meals, were common and were also posed by chemical cleaning fluids and the carrying of heavy items. In cases of breakage, accusations of laziness or poor performance, the child worker was punished severely, for example, through dowsing with boiling water or being confined to a room for days. He cited by way of illustration the case of Zineb, which had been published in the media, who had subsequently been admitted to hospital, had suffered bruises resulting from beating and had been burned with boiling oil on her chest and private parts. The fact that 80 per cent of child maids were illiterate and from rural areas made it impossible to escape, as they lacked money and knowledge of how to return home, and their employers threatened them with violence or handed them over to the police.

The nefarious activities of intermediaries, recruiting agencies and organized child traffickers also aggravated the problem and, in addition to the sexual abuse of young housemaids, prostitution and sex tourism were rampant, involving young Moroccans and immigrants, including boys. Forced prostitution was prevalent, particularly in cities with large numbers of tourists and near towns with large military installations. He added that child workers in other industries were, in addition to the abovementioned risks, also exposed to hazardous risks caused by work in elevated places, physical and psychological exhaustion and exposure to insecticides, harmful rays, chemical and toxic substances. While appreciating that the Government had made good efforts at the legislative level, namely with the prohibition of forced labour in the Labour and Penal Codes and the bill on domestic labour that was awaiting adoption, implementation remained disappointing and abuses mostly went unpunished. He therefore urged the Government of Morocco to take the following steps: (1) curb child labour and eradicate its worst forms; (2) establish effective complaints mechanisms to protect, shelter and rehabilitate exploited children; (3) ensure that no girls under the age of 15 could be employed as domestic servants; (4) increase the rate of children's access to quality education, both formal and informal; (5) enforce laws effectively; (6) adopt, as a matter of urgency, the bill on domestic work; (7) update the list of hazardous types of work to include domestic work; (8) improve the effectiveness of the detection, prosecution and punishment of crimes; (9) provide statistics on the number and nature of the infringements reported, investigations conducted, prosecutions, convictions and penal sanctions imposed; (10) provide information on the incidence of the sexual exploitation of children and the remedial measures taken; (11) organize nationwide awareness-raising campaigns, especially for parents; (12) improve the efficiency of the labour inspectorate through training; and (13) combat and eradicate poverty and illiteracy in Morocco.

The Worker member of Senegal stated that Morocco's presence before the Committee was owed to the lack of attention accorded by the Government to the observations of the Committee of Experts on the application of this Convention. Child prostitution and sex tourism, involving young Moroccans and immigrants, persisted in the coun-

try. In this respect, the Government indicated that a set of measures, such as the implementation of the PANE, which covered the issue of sexual exploitation, should lead to the adoption of a national strategy on the issue. Although the Government had indicated that a bill on domestic work was being prepared, and that the list of hazardous types of work had been updated, child labour continued to constitute an extremely serious problem in Morocco. Persons found in violation of the law should not remain unpunished. It was time for the Government to take appropriate measures to eradicate the worst forms of child labour and to implement the measures it had announced, so as to give a signal to the present Committee of its will to combat violations of the provisions of the Convention.

The Government representative said that the terms used by certain speakers to describe the situation did not reflect the real situation. It was appropriate to recall briefly the progress that the Government had made, such as broadening the scope of the Labour Code to include domestic work and the informal economy, expanding the list of hazardous types of work, acceding to the Optional Protocols to the United Nations Convention on the Rights of the Child, raising the school attendance rate, particularly through the human development initiative, and labour inspection activities. In that regard, a network of 400 labour inspectors was responsible for enforcing the application of labour legislation. Labour inspection was currently undergoing modernization in terms of recruitment, training and methodology. In addition, within the Ministry, there was a unit in charge of the 43 focal points responsible for coordinating activities to combat child labour at the regional level. Those who committed violations were severely punished, for example in the case of the young girl employed as a domestic worker which had been reported in the press. Justice was being applied. In conclusion, even if reducing the risk to zero was impossible, the Government was firmly committed to cooperating with all United Nations bodies, and the action it had undertaken on the causes and effects were beginning to bear fruit.

The Employer members welcomed the information provided by the Government concerning the measures taken to give effect to this Convention. They nevertheless expressed their concern at the continued presence of the worst forms of child labour, which were a persistent scourge in the country. They recalled that the principal obligation of States that had ratified the Convention was to take urgent action to eliminate the worst forms of child labour immediately. Such action had to be founded on free basic education for all, rehabilitation and social reinsertion of children freed from the activities in question, and attending to the needs of their families.

The Employer members emphasized the importance of adopting an act on domestic work that set a minimum age for such work, established decent working conditions and provided for appropriate controls and sanctions. Prior to its adoption, a draft of the act should be submitted to the Office for its opinion on whether the text was in conformity with the Convention. Tripartite consultations should be organized to create a constructive environment for the effective elimination of the worst forms of child labour. They again emphasized the need to strengthen labour inspection, both through the allocation of more financial resources and through measures to build capacity, which would allow for more effective action in both the formal and informal economies. It was important to have available reliable data on child labour in general and domestic work by children in particular. They emphasized the need to undertake the survey planned for the second half of 2010, as mentioned by the Government in its statement. Lastly, they encouraged the Government to continue requesting technical assistance from the ILO, particularly

ILO-IPEC, in order to widen the coverage and impact of its policy on eliminating the worst forms of child labour.

The Worker members said that the Government should not complain of being misunderstood, as it had failed for years to provide information to the Committee. Three points should be emphasized. First, the draft legislation that had been announced long ago, especially the bill on domestic work and the list of hazardous types of work, needed to be adopted as soon as possible. The Government should also prepare an ambitious programme of school attendance for girls, backed by measures such as subsidies for poor families. Finally, a detailed report containing information about efforts made and the results achieved should be submitted by the Government to the Committee of Experts.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted the information contained in the report of the Committee of Experts relating to the forced labour of children in domestic work, the use of children in hazardous domestic work and the use of children in prostitution and sex tourism.

The Committee noted the detailed information provided by the Government outlining laws and policies put in place to combat domestic work by little girls as well as the comprehensive action programmes that were being undertaken with the participation of the social partners and in collaboration with ILO-IPEC to remove children from such situations. The Committee also noted that the Government had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance of the ILO. The Committee further noted the information provided by the Government that it was fully committed to ensuring the enactment of the bill on domestic work which set the minimum age for admission to domestic work at 15 years, and to updating a list of hazardous types of work to include hazardous domestic work.

While noting the policies and programmes of the Government to combat domestic work by children, the Committee noted with grave concern the economic and sexual exploitation which continued to be experienced by a large number of young girls engaged in domestic work in conditions approximating slavery or which were hazardous.

The Committee emphasized the seriousness of such violations of Convention No. 182 and urged the Government to take measures, as a matter of urgency, to eliminate the forced labour of child domestic workers. It also requested the Government to take the necessary legislative measures to ensure that work performed in the domestic sector was prohibited for children under 18 years where it was hazardous. In this regard, it strongly expressed the hope that the bill on domestic work would at last be adopted and the list of hazardous types of work would be updated without delay to include hazardous domestic work in the very near future.

While noting the information provided by the Government representative on prosecutions and convictions of perpetrators of child abuse in general, the Committee reminded the Government that forced labour and hazardous work constituted one of the worst forms of child labour, and that member States were obliged to eliminate these worst forms as a matter of urgency. The Committee accordingly urged the Government to intensify its efforts to ensure that persons who engaged children in forced domestic labour or in hazardous domestic work were prosecuted and faced sufficiently effective and dissuasive sanctions.

The Committee further noted with concern the persistence of the commercial sexual exploitation of children and sex tourism involving young children, particularly boys, and accordingly called on the Government to intensify its efforts to tackle the problem of child prostitution, including in the

context of sex tourism. The Committee noted the Government's indication that it had increased both human and financial resources to the labour inspectorate. It accordingly requested the Government to further strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including visits to sectors of the informal economy, were carried out so that penalties were imposed on persons found to be in breach of the Convention. The Committee further requested the Government to provide detailed information and statistical data in its report when it was next due to the Committee of Experts on the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

Underlining the importance of free universal and compulsory education to combating child labour, the Committee strongly urged the Government to ensure access to free basic education for all children, with special attention to the situation of girls.

Finally, the Committee requested the Government to supply detailed information in its report when it was next due on the effective and time-bound measures taken to provide for the rehabilitation and social integration of child victims of commercial sexual exploitation and child domestic workers, in conformity with Article 7(2) of the Convention.

UZBEKISTAN (ratification: 2008)

A Government representative informed the Committee that his Government had submitted the report on the application of Convention No. 182 for the 2008–10 period. This report had been compiled with the participation and cooperation of government institutions, the Council of the Trade Unions Confederation of Uzbekistan and the Chamber of Commerce and Industry. He indicated that Uzbekistan implemented international standards on the prevention and prohibition of child labour and had reliable and effective mechanisms for the protection of the rights of children in the field of labour. More specifically, he indicated that forced labour was prohibited by the Constitution; the Act on Guarantees of the Rights of the Child defined children as persons under 18 years of age; the labour legislation set the minimum age for admission to employment at 16 years, strictly defined cases in which children of 15 years of age could work, and provided for the working conditions and preferential conditions of persons under 18 years of age; the Act on the Prevention of Trafficking in Persons provided for mechanisms to counter all forms of exploitation of persons, including forced child labour and the involvement of children in criminal activities; criminal legislation established higher penalties for involving children in illegal activities; and a list of occupations with unfavourable working conditions in which it was forbidden to employ persons under 18 years of age had been adopted.

The Government of Uzbekistan had adopted the National Action Plan (NAP) for the application of the ILO Minimum Age Convention, 1973 (No. 138), and Convention No. 182. Four priorities had been identified under this Plan. Firstly, with regard to the improvement of legislation, the Administrative Responsibility Code had been amended in 2009 so as to increase the liability of officials and individuals for violations of labour legislation and for coercing persons under 18 years of age to perform work. In addition to the "list of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age", the texts approved specific authorized limits for the lifting and carrying of loads by persons under 18 years of age and the Order on the Admission to Employment of Children under 16 years of age, regulating labour relations between an employer and an employee under 15 years of age and providing for compulsory general secondary education and special secondary professional education.

Secondly, a system of monitoring the application of Convention No. 182 had been prepared and the capacity of the responsible bodies strengthened. The following bodies were involved in the monitoring of the application of the Convention: both chambers of the Parliament; the Office of the General Prosecutor; the Ministry of Internal Affairs; the Ministry of Labour and Social Protection; the Ministry of Education; the Ministry of Secondary and Higher Education; the Council of the Trade Unions Confederation of Uzbekistan; the non-governmental youth organization "Kamolot"; the Council of Ministries of the Republic of Karakalpakstan; regional and local authorities; and civil society institutions. A joint resolution on activities to implement Conventions Nos 138 and 182 in educational institutions, providing for the monitoring of school attendance and the personal liability of heads of educational institutions, as well as monitoring compliance with the prohibition of the use of forced labour by students of secondary schools, professional colleges and academic lyceums had been adopted by the Ministry of Education, the Ministry of Secondary and Higher Education and the youth organization "Kamolot". The Council of the Trade Unions Confederation of Uzbekistan, the Ministry of Labour and Social Protection and the Chamber of Commerce and Industry had drawn up and approved the recommendation on the need to take into consideration the specific characteristics of the employment of persons under 18 years of age when concluding collective agreements.

Thirdly, all state bodies, civil society institutions, mass media and educational establishments had been involved in the dissemination of information on the rights of the child and the implementation of Convention No. 182. Recently, in collaboration with ILO-IPEC, a number of ILO documents, including Conventions and Recommendations, had been published in Uzbek. He added that, in May 2010, the delegation of Uzbekistan had taken part in the Global Conference on Child Labour organized by the Ministry of Social Affairs and Employment of the Netherlands and the ILO with the support of the United Nations Children's Fund (UNICEF), and the World Bank. Uzbekistan supported the Global Report "Accelerating action against child labour" prepared by the ILO, the World Bank and UNICEF, as well as the "Road Map", a plan of action on the elimination of the worst forms of child labour by 2016. Together with UNICEF, the Ministry of Labour and Social Protection had been implementing the project to support the implementation of the National Action Plan on child labour, which provided for the creation of a joint working group, research on the social protection of vulnerable children, awareness raising on child labour issues, the preparation of information materials and educational handbooks, the holding of seminars and the provision of training, the development of minimum standards for children with special needs, etc. In the framework of the Annual Work Plan of the Programme "Protection of the Child", a number of regional training activities had been carried out with the participation of *khokims* (governors), prosecutors, representatives of departments of internal affairs, commissions on minors and labour bodies.

The Government of Uzbekistan paid particular attention to families in need of assistance, mothers and children. Despite the financial crisis, in 2010 total spending on social services amounted to 59 per cent of the state budget. In conclusion, he reaffirmed that Uzbekistan was ready to engage in dialogue and cooperation with all the parties concerned and the relevant international organizations in relation to the protection of the rights and interests of children.

The Employer members noted that this was a double-footnote case and that, although Convention No. 182 had entered into force only in June 2009, there was a long

history in Uzbekistan of the issue of children working in the cotton harvest, to which the International Organisation of Employers (IOE) had been drawing attention for a number of years. They noted that, according to the 2010 Global Report on child labour, 115 million children were engaged in the worst forms of child labour, and of this total 67 million were found in the agricultural sector. The problem of child labour in agriculture was thus a prominent one, and it was therefore appropriate that the present case should come before the Committee.

Recalling that hazardous work comprised one of the worst forms of child labour under Article 3(d) of the Convention, and furthermore that Article 5 required the States parties to establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention, they regretted the Government's failure to provide indications on the extent to which child labour existed in the country. The Government had referred to plans, statutes and regulations respecting child labour, but had not provided any data in this respect; moreover, although the Government had referred to a national plan of action to eliminate the worst forms of child labour, in accordance with Article 6 of the Convention, it remained difficult to assess how it actually implemented the specific measures called for under Article 7.

They noted that, according to the Environmental Justice Foundation (EJF), tens of thousands of children were forced to work in the cotton harvest for periods of up to three months, or 25 per cent of the year. Research undertaken by another non-governmental organization (NGO), the International Labour Rights Forum, further substantiated the EJF's claims. Indeed, the widely held estimate of the number of Uzbek children engaged in the cotton harvest ranged from 0.5 to 1.5 million, and the sheer size of the figures involved gave rise to serious concern; if so many children were prevented from attending school for up to a quarter of the calendar year, this would eventually bear grave consequences for Uzbek society as a whole. The Employer members noted that, although programmes to combat this problem existed, they appeared to have no teeth. Furthermore, it was not clear whether any of the various statutes and regulations referred to in the Committee of Experts' observation were in fact being implemented.

Noting that in its direct request the Committee of Experts had identified other deficiencies in the implementation of the Convention, with respect to the other worst forms of child labour, they emphasized that the problem at hand was greater than the issue of children engaged in cotton harvesting. They concluded that, although laws concerning the elimination of child labour appeared to be in place, there was no information respecting their effectiveness or implementation. They emphasized the necessity of programmes that, *inter alia*, measured the number of children being removed from work in the cotton harvest each year; this was a serious problem that needed to be remedied immediately.

The Worker members recalled that the present case concerned forced or compulsory work by children in cotton production and in work liable to harm their health, safety or morals. The systematic and persistent use of child labour in the production of cotton had been denounced by an important movement composed of the Trade Unions Confederation of Uzbekistan, as well as NGOs and certain media. In 2008, the Committee of Experts had noted, in the context of the Abolition of Forced Labour Convention, 1957 (No. 105), allegations by the Council of the Trade Unions Confederation of Uzbekistan reporting the mobilization and requisitioning of labour consisting, among others, of schoolchildren and students for the production of cotton, which could sometimes cover a period of three months. The number of schoolchildren compelled

to participate in the cotton harvest had been estimated at between 0.5 and 1.5 million, which had jeopardized their education and health, especially in rural areas, as confirmed by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

According to the Government, employers could not use compulsory labour in agriculture and the public administration could not impose work on private employers. A Decree prohibiting child labour in cotton plantations had recently been adopted at the same time as the launching of a National Action Plan for the application of Conventions Nos 138 and 182. The Government had added that the Constitution and the national legislation explicitly prohibited all forms of forced labour and established guarantees for the protection of the rights and interests of children. It considered that the alleged facts were mistaken and were part of a denigration programme by NGOs intended to undermine the reputation of Uzbek cotton on the global market. Nevertheless, the introduction of legislative changes offered no guarantee at all that they would be given effect, supervised and enforced through penalties, nor that they would be the subject of consultation with the social partners, with the possible participation of duly recognized and identified NGOs.

Finally, the Worker members indicated that they were prepared to place their trust in the Government, on condition that it demonstrated without further ado its firm political will, particularly by designating an authority responsible for the implementation of Convention No. 182, accepting or proposing the provision of technical assistance and entering into partnership with IPEC.

The Government member of Spain, speaking on behalf of the Government members of Member States of the European Union of the Committee, expressed deep concern at the child labour situation in Uzbekistan. He noted with regret that, in its latest report, the Committee of Experts had expressed serious concern at the systematic and persistent use of forced labour, including forced child labour in the cotton fields in Uzbekistan. This concern, furthermore, was supported by well-documented evidence furnished by various organizations, including the Council of the Trade Unions Confederation of Uzbekistan, the IOE and the Committee on the Rights of the Child (CRC).

The large-scale use of children had continued in the 2008 and 2009 cotton harvests, and estimates of the number of children engaged ranged from 0.5 to 1.5 million. Uzbekistan had not achieved any significant progress on this serious issue that had been under examination for a long time, and was thus clearly failing to comply with its obligations under Convention No. 182. He urged the adoption of rapid and effective action to resolve this problem as a matter of extreme urgency, and in this regard drew the Government's attention to the "Road map to 2016", the main outcome of the Hague Global Child Labour Conference of 2010. This document had been developed after several consultations, and had been adopted by acclamation on 11 May by over 450 delegates from 80 countries, representing governments, employers' and workers' organizations, international and regional organizations, and members of academia and civil society. He also noted that the "Road map to 2016" was aimed at substantially increasing efforts to eliminate the worst forms of child labour by 2016, and listed guiding principles and priority actions for governments, workers' and employers' organizations, NGOs and civil society, as well as regional and international organizations. The priority action points in the document provided practical guidance for the Government of Uzbekistan and all other relevant stakeholders, and could serve as a stepping stone to the elimination of the worst forms of child labour.

The Government member of the United States stated that her Government noted with concern that, notwithstanding the existence of constitutional and legislative prohibitions against forced labour and child labour in Uzbekistan, there had been persistent and credible reports that many thousands of rural school children were mobilized forcibly each autumn to harvest cotton under hazardous conditions. These reports called attention to the negative consequences for the education of rural children in Uzbekistan and for their health. Considering that forced labour and hazardous work were among the worst forms of child labour, it was understandable that the Committee of Experts had expressed serious concern at this situation so soon after the Government's ratification of the Convention. While noting the commitment expressed by the Government of Uzbekistan to open and candid dialogue regarding its implementation of Convention No. 182, as well as the measures undertaken or envisaged by the Government to eliminate forced child labour, she stressed that much more could and must be done. Recalling that ILO technical assistance could be instrumental in helping the governments to find and implement solutions for the effective and sustained application of ratified Conventions, in both law and practice, she urged the Government of Uzbekistan to avail itself of that assistance. In particular, she joined the broad call for the Government to invite an ILO observer mission that would have full freedom of movement and timely access to all situations and relevant parties in order to assess the implementation of Convention No. 182, and all other relevant ratified Conventions, during the upcoming 2010 cotton harvest.

The Worker member of Norway indicated that reports of the 2009 cotton harvest from human rights defenders, independent journalists and photographers clearly demonstrated the still widespread use of forced child labour in Uzbekistan. According to those reports, cotton quotas for each region were prescribed directly from the central government in Tashkent to provincial governors, and then relayed down to district governors and education departments. Head teachers were also given quotas for their respective schools, and each child was ascribed a daily cotton quota.

According to the Ferghana.ru news agency, students at high schools and colleges in the Yangiyl district of the Tashkent region were forcibly sent to work in the cotton fields, as were children in the Syrdarya region. Furthermore, although officials claimed to have restricted labour in the fields to students aged 14 and older, reporters had found children between the ages of 12 and 13. She added that, according to the Central Asia News Agency, all students in the Andijan region had been recruited to participate in the cotton harvest from 17 September 2009 onwards, and that the Ezgulik human rights group had reported the mobilization of school children to pick cotton in the Surkhandarya region of southern Uzbekistan. Moreover, in the Ferghana region a 13-year old girl, interviewed by journalists in November 2009, had stated that she and her classmates had been picking cotton since 20 September and that, at the end of the harvest and in the cold weather, she was finding it difficult to meet her daily quota. Finally, a teacher interviewed in the Tashkent region last year had stated that during the harvest his school was obliged to pick 1.5 tonnes of cotton every day, and that the work was continuing throughout November, despite an administrator's promise that it would end by October.

She maintained that forced labour and child labour occurred not only in Uzbekistan, but was present throughout the whole of the cotton industry worldwide. Cotton was processed in sweatshops in export processing zones around the world, and then sold to textile manufacturers, who were also notorious for their mistreatment of work-

ers. It was time, she concluded, for child labour in Uzbekistan to end by implementing the measures set out in the Committee of Experts' recommendations.

The Government member of the Russian Federation noted that the report on the application of Convention No. 182 submitted by the Government had been prepared in consultation with the social partners. With regard to the measures taken by the Government to implement the Convention, he indicated that Articles 37 and 45 of the Uzbek Constitution prohibited any compulsory labour and contained state guarantees of protection of the rights and interests of children; that a list of occupations with unfavourable working conditions in which it was forbidden to employ persons under 18 years of age had been adopted; that the Labour Code had been amended with regard to the minimum age for admission to employment and that the Nation Action Plan for the application of ILO Conventions Nos 138 and 182 had been adopted. The latter provided for the improvement of the legislation on supervising compliance with the prohibition of the use of child labour; the monitoring of the application of both Conventions; awareness raising; and the implementation of international projects on the elimination of the worst forms of child labour. The Government of Uzbekistan had been taking and would continue to take all the necessary measures in cooperation with the ILO to comply with its international obligations under the Convention.

The Government member of Kuwait stated that by custom and tradition many agricultural countries, especially developing ones, used a form of mutual help and family solidarity that could include the participation of children in some activities, namely in cotton or rice harvests. This form of mutual help could not be considered to be a form of forced labour or child labour in the strict legal sense for the following reasons. First, this form of work took place among family members. It was a mere expression of solidarity and a form of the transmission of knowledge among generations. Secondly, this form of work took place without a contract and without remuneration. It could not be considered a normal working relationship, even less a form of forced labour, because it was not imposed. Thirdly, this form of mutual help within the family did not involve the absence of the children from school, because it took place during school vacations and did not affect the schooling of children. It was important to recognize the efforts of the Government of Uzbekistan to adopt legislation and its request for technical assistance from the ILO.

The Government member of Belarus added that his Government supported the efforts of the Government of Uzbekistan to ensure compliance with Convention No. 182 in law and in practice. He considered that Uzbekistan, as a young and internationally active State, deserved encouragement and support and the ILO should not be taking decisions on the basis of media reports.

The Government member of Cuba noted that the Uzbek Constitution prohibited forced labour and child labour and that the legislation and National Action Plan, adopted in consultation with national organizations, demonstrated that the Government of Uzbekistan was taking positive steps for the implementation of the Convention. The ILO should encourage these steps.

The Government member of Switzerland concurred with the statement made by the Government member of Spain on behalf of the European Union.

The Government representative emphasized that his Government had complied with the principles of tripartism when preparing its report on the application of Convention No. 182. He added that young people under 18 years of age represented 40 per cent of the population of Uzbekistan. Children were not only his country's future, but also its present. Ensuring protection against the worst

forms of child labour was the priority for the Government. To that end, the necessary measures had been taken in law and in practice to monitor the application of the legislation prohibiting child labour. Particular attention was paid to the dissemination of information on the rights of the child. In his Government's opinion, ensuring good education was the best way to eradicate child labour. Finally, he considered that the reports by NGOs on the alleged use of forced child labour were nothing more than a politically motivated campaign by developed nations competing on the cotton market. His Government wanted an honest partnership and would be grateful for any support and assistance by the ILO and international partners.

The Employer members regretted that, in its comments, the Government had failed to specify the workers engaged in the picking of cotton. Given that cotton exports totalled US\$1 billion annually, and that half the country's population comprised young persons, this was a serious question to which the Government needed to respond. Noting that there remained a substantial gap between law and practice with respect to forced and child labour, they emphasized once again the importance of statistical data on the number and ages of persons engaged in the cotton industry and suggested the establishment of independent monitoring programmes as a means of obtaining this information. They concluded that the Government needed to invest substantial resources to remove children from the cotton industry and ensure their attendance at school.

The Worker members observed that the Government's argument rested on two main points. First, it considered that it had been the victim of a smear campaign by NGOs seeking to damage the reputation of its cotton products. Second, it had highlighted the adoption of new provisions intended to ensure the development of an effective education system and the creation of a legislative framework guaranteeing protection for children's rights, through an Act amending the Code on Administrative Responsibility to increase the liability of those prosecuted for violating the legislation prohibiting child labour. However significant those steps might be, it was vital for the legislation on administrative liability to be applied and to be subject to consultation with the social partners, without excluding the participation of NGOs. The Government should consequently take steps to nominate a competent authority responsible for the implementation of the provisions of Convention No. 182; accept a technical assistance mission; develop a partnership with ILO-IPEC; and submit a progress report before the next session of the Committee of Experts in November 2010.

The Government representative indicated that 100 per cent of Uzbek cotton was produced by private farms. It was possible for children over 15 years of age to assist some 400,000 private farmers in the harvesting of cotton, as long as it was not detrimental to their health and education, and parental agreement had been obtained. Furthermore, national legislation prohibiting forced child labour was effectively implemented. Between 2008 and 2010, the Supreme Court had examined 128 criminal cases involving allegations of forced labour and forced child labour. Of 180 accused persons, 137 had been sentenced to imprisonment and others had been remanded. Finally, he indicated that compliance with Convention No. 182 would be discussed by the Parliament later this year and that relevant ministries and civil society institutions would be participating in these discussions.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the International Organisation of Employers (IOE) relating to the sys-

tematic and persistent use of forced child labour in the cotton fields of Uzbekistan for up to three months every year, as well as the substantial negative impact of this practice on the health and education of school aged children obliged to participate in the cotton harvest.

The Committee noted the detailed information provided by the Government outlining the laws, policies and action programmes put in place prohibiting the forced labour of, and hazardous work by, children in cotton production and harvesting. The Committee also noted the Government's information on the measures taken within the framework of the National Action Plan for the application of Conventions Nos 138 and 182 to ensure the protection of children's rights. The Committee further noted the Government's statement denying the coercion of large numbers of children to participate in agricultural work, and that the use of compulsory labour was punishable with penal and administrative sanctions.

The Committee noted that, although various legal provisions prohibited forced labour and the engagement of children in hazardous work, it remained an issue of grave concern in practice. The Committee also noted the concern expressed by several speakers about the systematic and persistent recourse to forced child labour in cotton production. The Committee emphasized the seriousness of such violations of Convention No. 182. It reminded the Government that the forced labour of, or hazardous work by, children, constituted the worst forms of child labour and that member States were required to take immediate and effective measures to secure the prohibition and elimination of these worst forms of child labour as a matter of urgency. It accordingly urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children. In this regard, the Committee requested the Government to clearly identify the competent authority responsible for monitoring the legal provisions giving effect to Convention No. 182.

It also called on the Government to expand the capacity and reach of the labour inspectorate in enforcing the law to ensure that persons who infringed the Convention were prosecuted and that sufficiently effective and dissuasive sanctions were imposed.

Moreover, noting with serious concern the significant number of children removed from school and made to work in the cotton fields in hazardous conditions and underlining the importance of free, universal and compulsory education in preventing and combating the worst forms of child labour, the Committee called on the Government to take immediate and effective measures to ensure that school age children in rural and disadvantaged areas were not removed from school for the purpose of cotton production and harvesting. The Committee further requested the Government to supply detailed information in its report to the forthcoming meeting of the Committee of Experts on the effective and time-bound measures taken to remove children from forced labour and hazardous work and to provide for their rehabilitation and social integration, in conformity with Article 7(2) of the Convention.

The Committee urged the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182. It expressed the preference that the mission would take place in time to report back to the forthcoming session of the Committee of Experts. It expressed the firm hope that, following this mission and the additional steps promised by the Government, it would be in a position to note tangible progress in the application of the Convention in the very near future.

Worst Forms of Child Labour Convention, 1999 (No. 182)
Uzbekistan (ratification: 2008)

Finally, concerning the issue of insufficient data on children working in the cotton sector, the Committee suggested

that the Government carry out a national household survey on child labour or an area or sector specific survey.

Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 18 June 2010

The table published in the Report of the Committee of Experts, page 805, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses.

Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Afghanistan 3 reports requested (Paragraph 42)

· All reports received: Conventions Nos. 100, 105, 111

Algeria 21 reports requested

· All reports received: Conventions Nos. 56, 63, 68, 69, 71, 73, 74, 81, 87, 91, 92, 98, 100, 105, 108, 111, 122, 135, 144, 147, 150

Armenia 22 reports requested

· 12 reports received: Conventions Nos. (14), (26), 29, 81, (87), 105, (132), (138), (150), (160), (173), (182)
· 10 reports not received: Conventions Nos. (97), 98, 100, 111, 122, 135, (143), 144, 151, 154

Belgium 24 reports requested

· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 87, 92, 98, 100, 111, 122, 129, 144, 147, 151, 154, 180

Bulgaria 25 reports requested (Paragraph 42)

· All reports received: Conventions Nos. 8, 16, 22, 23, 53, 55, 56, 68, 69, 71, 73, 87, 98, 100, 108, 111, 144, 146, 147, 163, 164, 166, 178, 179, 180

Burkina Faso 7 reports requested (Paragraph 42)

· 6 reports received: Conventions Nos. 87, 98, 100, 111, 144, 150
· 1 report not received: Convention No. 135

Cambodia 7 reports requested (Paragraph 42)

· All reports received: Conventions Nos. 87, 98, 100, 105, 111, 122, 150

Cape Verde 11 reports requested (Paragraphs 33 and 42)

· All reports received: Conventions Nos. 17, 19, 29, 81, 87, 98, 100, 105, 111, 118, 182

Croatia 20 reports requested (Paragraph 42)

· 19 reports received: Conventions Nos. 8, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 98, 100, 103, 111, 122, 147, 179
· 1 report not received: Convention No. 135

Czech Republic 22 reports requested (Paragraph 33)

· 13 reports received: Conventions Nos. 1, 14, 29, 87, 98, 105, 108, 132, 135, 142, 163, 164, 171
· 9 reports not received: Conventions Nos. 100, 111, 122, (138), 140, 144, 150, 160, 182

Democratic Republic of the Congo

19 reports requested

- 5 reports received: Conventions Nos. 29, 87, 117, 144, 158
- 14 reports not received: Conventions Nos. 12, 19, 62, 89, 94, 98, 100, 105, 111, 119, 120, 121, 135, 150

Denmark

27 reports requested

- 26 reports received: Conventions Nos. 8, 9, 16, 27, 53, 73, 87, 92, 98, 100, 108, 111, 122, 133, 134, 135, 144, 147, 149, 150, 151, 160, (162), 163, 180, 182
- 1 report not received: Convention No. 169

Eritrea

7 reports requested

(Paragraphs 33 and 42)

- All reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138

Ethiopia

9 reports requested

- 4 reports received: Conventions Nos. 29, 138, 156, 182
- 5 reports not received: Conventions Nos. 87, 98, 100, 111, 158

Hungary

29 reports requested

- All reports received: Conventions Nos. 3, 14, 16, 24, 29, 81, 87, 98, 100, 105, 111, 122, 129, 132, 135, 138, 140, 142, 144, 145, 147, 151, 154, 163, 164, 165, 166, 182, 183

Iceland

10 reports requested

- All reports received: Conventions Nos. 87, 98, 100, 108, 111, 122, 138, 144, 147, 182

Islamic Republic of Iran

12 reports requested

(Paragraph 42)

- 7 reports received: Conventions Nos. 14, 19, 29, 95, 106, 111, 122
- 5 reports not received: Conventions Nos. 100, 105, 108, (142), 182

Italy

32 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 55, 68, 69, 71, 73, 74, 87, 92, 98, 100, 108, 111, 117, 122, 133, 134, 135, 143, 144, 145, 146, 147, 150, 151, 160, 164

Kenya

17 reports requested

- 13 reports received: Conventions Nos. 2, 14, 29, 45, 81, 88, 105, 111, 129, 135, 138, 142, 182
- 4 reports not received: Conventions Nos. 27, 94, 137, 149

Kiribati

2 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 29, 105

Lesotho

10 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 26, 29, 45, 81, 105, 135, 138, 155, 167, 182

Liberia

19 reports requested

(Paragraphs 38 and 42)

- 15 reports received: Conventions Nos. 22, 23, 53, 55, 58, (81), 92, 105, 111, 112, (133), (144), 147, (150), (182)
- 4 reports not received: Conventions Nos. 29, 108, 113, 114

Malawi 15 reports requested

· All reports received: Conventions Nos. 26, 29, 45, 81, 89, 98, 99, 105, 107, 129, 138, 149, 158, 159, 182

Malta 28 reports requested

· All reports received: Conventions Nos. 1, 2, 13, 14, 29, 32, 62, 81, 87, 88, 96, 98, 100, 105, 106, 111, 117, 119, 127, 129, 132, 135, 136, 138, 148, 149, 159, 182

Norway 33 reports requested

(Paragraph 42)

· All reports received: Conventions Nos. 13, 14, 29, 30, 47, 81, 88, 94, 100, 105, 111, 115, 119, 120, 129, 132, 135, 138, 139, 142, 144, 148, 149, 151, 154, 155, 159, 162, 167, 169, 170, 176, 182

Pakistan 13 reports requested

(Paragraph 42)

· 11 reports received: Conventions Nos. 11, 29, 45, 81, 87, 98, 105, 107, 138, 144, 182
· 2 reports not received: Conventions Nos. 96, 159

Panama 26 reports requested

· All reports received: Conventions Nos. 3, 13, 17, 29, 30, 45, 52, 81, 87, 88, 89, 98, 100, 105, 107, 110, 111, 117, 119, 120, 122, 127, 138, 159, 181, 182

Papua New Guinea 13 reports requested

(Paragraph 42)

· All reports received: Conventions Nos. 2, 29, 45, 87, 98, 100, 103, 105, 111, 122, 138, 158, 182

San Marino 15 reports requested

(Paragraph 42)

· 5 reports received: Conventions Nos. 88, 103, 143, 144, 182
· 10 reports not received: Conventions Nos. 29, 105, 119, 138, 140, 148, 151, 154, 159, 161

Sao Tome and Principe 18 reports requested

(Paragraph 33)

· 6 reports received: Conventions Nos. (135), (138), (151), (154), (155), (182)
· 12 reports not received: Conventions Nos. 29, 81, 87, 88, 98, 100, 105, 106, 111, 144, 159, (184)

Senegal 12 reports requested

(Paragraph 42)

· All reports received: Conventions Nos. 13, 29, 81, 96, 102, 105, 117, 120, 122, 135, 138, 182

Slovakia 17 reports requested

(Paragraph 42)

· 10 reports received: Conventions Nos. 13, 29, 88, 105, 115, 136, 138, 155, 182, 184
· 7 reports not received: Conventions Nos. 120, 139, 148, 159, 161, 167, 176

Thailand 10 reports requested

(Paragraph 42)

· 5 reports received: Conventions Nos. 14, 88, 105, 127, 138
· 5 reports not received: Conventions Nos. 29, 100, 122, (159), 182

Togo 17 reports requested

(Paragraph 42)

· 5 reports received: Conventions Nos. 87, 98, 138, 144, 182
· 12 reports not received: Conventions Nos. 6, 11, 13, 14, 26, 29, 85, 95, 100, 105, 111, 143

Tunisia

15 reports requested

- 14 reports received: Conventions Nos. 13, 29, 45, 62, 81, 88, 105, 118, 119, 120, (135), 138, 159, 182
- 1 report not received: Convention No. 127

Turkey

18 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 29, 45, 81, 87, 88, 96, 105, 115, 119, 127, 135, 138, 151, 155, 158, 159, 161, 182

Turkmenistan

6 reports requested

(Paragraphs 33 and 38)

- All reports received: Conventions Nos. (29), (87), (98), (100), (105), (111)

United Kingdom - Gibraltar

12 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 2, 29, 45, 59, 81, 82, 98, 100, 105, 135, 142, 151

Zimbabwe

15 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 29, 81, 99, 105, 129, 135, 138, 155, 159, 161, 162, 170, 174, 176, 182

Grand Total

A total of 2,732 reports (article 22) were requested,
of which 2,120 reports (77.60 per cent) were received.

A total of 388 reports (article 35) were requested,
of which 212 reports (54.64 per cent) were received.

**Appendix II. Statistical table of reports received on ratified Conventions
as of 18 June 2010
(article 22 of the Constitution)**

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

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%

**II. SUBMISSION TO THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND RECOMMENDATIONS
ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE
(ARTICLE 19 OF THE CONSTITUTION)**

Observations and information

(a) Failure to submit instruments to the competent authorities

A **Government member of Uganda** acknowledged the importance of the constitutional obligation to submit international labour standards to the competent authorities. A Committee had been set up at the national level to identify the instruments that had not yet been submitted, and was currently compiling the instruments for onward transmission to the Parliament of Uganda.

A **Government representative of Zambia** acknowledged the comments of the Committee of Experts concerning the failure to submit to the competent authorities 27 instruments adopted between 1996 and 2007. The instruments had been submitted to the Government through the Cabinet. She pledged that her country would endeavour to adhere to this constitutional obligation and inform the National Assembly on the instruments adopted by the Conference in due course.

A **Government representative of Mozambique** reaffirmed his Government's commitment to the principles enshrined in the ILO Constitution and its willingness to fulfil all its constitutional obligations. He requested technical assistance from the ILO in order to fully achieve those aims. He reported that, as of 2009, the country had restarted the process of submitting the standards adopted by the ILO to the competent authorities, a process that would be completed shortly.

A **Government representative of Kenya** expressed regret about his Government's inability to submit the relevant instruments to the competent authorities due to lack of capacity, restructuring changes in the Ministry and logistical and administrative issues. All efforts were being made to initiate the submission procedure at the earliest. The instruments would be submitted to the competent authorities as soon as the deliberations of the National Labour Board on the subject had been concluded. He finally requested ILO technical assistance as regards reporting obligations.

A **Government representative of Chile** reported that his country's new Government had undertaken to examine the situation highlighted by the Committee of Experts with regard to submission obligations and that it would provide the ILO with information on steps taken in that regard.

A **Government representative of the Central African Republic** stated that there had been a problem of interpretation for some time concerning the concept of "competent authorities". However, thanks to explanations provided by the Office, that term was understood, and measures would be taken to ensure that instruments would be submitted to Parliament within two years following their adoption. In addition, the National Assembly had been discussing since October 2008 instruments adopted during the past 20 sessions of the International Labour Conference, but the Office had not been informed. The speaker stressed the importance of the technical assistance provided by the Office in training government officials responsible for international labour standards concerning requirements for submission.

A **Government representative of Cambodia** informed the Conference Committee that progress had been achieved in complying with the submission obligation. All instruments to be submitted to the competent authorities had been translated into Khmer with ILO technical assistance.

Technical assistance remained crucial to ensure rapid transmission to the legislative body.

A **Government representative of Sudan** indicated his country's previous commitment to submit the instruments adopted by the Conference to the National Assembly. The work of the National Assembly had been delayed for some time, and the Assembly had even been dissolved, due to which the respective instruments had not been submitted, as the situation had changed and a new Assembly had been elected in the previous April. Subsequently, the instruments adopted by the Conference would likely be submitted to the National Assembly in July 2010. The ILO would be informed thereof. The speaker indicated hope that the Conference Committee would understand this exceptional situation.

A **Government representative of the Libyan Arab Jamahiriya** said that all instruments adopted between 1990 and 2001 had been submitted to the competent authorities for consideration, to verify that they were in conformity with national legislation. The instruments would be examined by popular conferences and the ILO would be informed when the process had been completed.

A **Government representative of Bahrain** stated that the Ministry of Labour had been informed of the comments of the Committee of Experts concerning the obligation to submit and that the Ministry had confirmed to submit the instruments adopted between 2000 and 2007 to Parliament.

A **Government representative of Ghana** apologized for his country's failure to comply with the submission obligation, which was owed to a high turnover at the Ministry of Labour in recent years. The submission procedure would be completed within the next few weeks. Technical assistance would be required for capacity building of officials responsible for ILO-related issues.

The **Worker members** underlined that the translation of newly adopted instruments into national language constituted a good practice, as it facilitated their submission to the competent authorities. They also drew the Committee's attention to relevant paragraphs of the report of the Committee of Experts.

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

The **Committee took note of the specific difficulties mentioned by different speakers in complying with this constitutional obligation, as well as the promises to submit shortly to parliaments the instruments adopted by the Conference.**

As had been done by the Committee of Experts, the **Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national competent authorities. Compliance with the obligation to submit means the submission of the instruments adopted by the Conference to national parliaments is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities. The Committee recalled in this regard that the Office could provide technical assistance to contribute to compliance with this obligation.**

The **Committee expressed the firm hope that the 42 countries mentioned, namely Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Ghana, Guinea, Haiti, Ireland, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab**

Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Bolivarian Republic of Venezuela and Zambia would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention all these cases in the corresponding paragraph of the General Report.

(b) Information received

Bosnia and Herzegovina. Since the meeting of the Committee of Experts, the ratification of Conventions Nos 174, 175, 177, 181, 184, 185 and of the Maritime Labour Convention, 2006, was registered on 18 January 2010. The ratification of Conventions Nos 176 and 188 was registered on 4 February 2010. The ratification of Convention No. 187 was registered on 9 March 2010. Recommendations Nos 189, 193, 194, 195 and 198 were also submitted to the competent authorities in December 2009.

Croatia. Since the meeting of the Committee of Experts, the Government has ratified the Maritime Labour Convention, 2006, on 12 February 2010.

Gambia. Since the meeting of the Committee of Experts, the Government has submitted to the National Assembly on 22 March 2010 the instruments adopted by the International Labour Conference between the 82nd Session (June 1995) and the 96th Session (June 2007).

Kazakhstan. Since the meeting of the Committee of Experts, the Government has ratified the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) on 17 May 2010.

Nepal. Since the meeting of the Committee of Experts, the Government has informed that the instruments adopted by the International Labour Conference between the 82nd Session (June 1995) and the 95th Session (June 2006) had been submitted to the Parliament on 16 November 2008.

Paraguay. Since the meeting of the Committee of Experts, the Government has submitted to the National Congress on 9 March 2010 the instruments adopted by the International Labour Conference between the 85th Session (June 1997) and the 96th Session (June 2007).

Russian Federation. Since the meeting of the Committee of Experts, the Government has ratified the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) on 26 February 2010.

III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

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

The Committee took note of the information provided.

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

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Cape Verde, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Kyrgyzstan, Russian Federation, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uzbekistan and Vanuatu would comply with their future obligations under article 19 of the ILO Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

The Worker members remarked that governments were aware of their obligations arising from articles 19 and 22 of the ILO Constitution and the Office should increase its technical assistance to enable them to quickly deliver delayed reports.

The Employer members expressed appreciation for the pertinent information supplied by Government members, as it led to a better understanding of the difficulties that certain countries encountered in fulfilling their constitutional obligations. They underlined the need for the ILO to carry out further integrated technical cooperation activities. They also welcomed the efforts made by the Office to simplify and reorganize the reports requested from governments and suggested that such an approach be continued. Concluding, they expressed the necessity to reinforce the capacities of the Conference Committee to achieve those countries' adherence to these fundamental constitutional obligations, which had shown little interest in their implementation.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from **Gambia**, the **Lao People's Democratic Republic**, **Liberia**, **Swaziland** and **Uganda**.

(c) Reports received on employment instruments

In addition to the reports listed in Annex B on page 195 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: **Denmark**, **Ethiopia**, **Liberia** and **Slovakia**.

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