



**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 Somalia explained that his Government was unable to submit reports due to the turmoil and instability in the country; all social structures had been destroyed and the capacity of the social partners was almost non-existent. He indicated that once peace and stability were restored and the country was out of the current crisis, reports would be submitted. He requested the technical assistance of the Office for capacity building of the social partners and employment creation.

A Government representative of the United Kingdom expressed apologies on behalf of the non-metropolitan territories which had been unable to fully meet the timetable for responding to requests for reports under article 22 of the ILO Constitution. 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. On a positive note, he indicated that Bermuda and St Helena had now submitted most or all of their remaining outstanding reports while Montserrat had this time submitted all reports requested, as compared to none last year. He further added that British Virgin Islands, Bermuda and Montserrat had undertaken ILO training related to meeting reporting obligations, which he hoped would lead to tangible, long-lasting improvements to the provision of reports from these territories.

A Government representative of Uganda regretted her Government's non compliance with reporting obligations on 25 Conventions in previous years. She explained that, in the past, the Government had faced challenges of a thin labour administration system, limited technical capacity, and staffing problems both at the headquarters and local government levels. The staffing situation had now improved but financial constraints still remained, and therefore the Government needed technical assistance to enable the generation and collection of information and preparation of the appropriate reports.

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

The Committee 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 Djibouti, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Sierra Leone, Solomon Islands, Somalia, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas)), and Vanuatu, which to date had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

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

A Government representative of Thailand stated that during the past few years the Ministry of Labour had been downsized which resulted in personnel shortage. She indicated that 12 reports had been submitted during the past two years and that work was still under way on the first report on the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). Although the first draft was completed, the Government planned to organize a consultative forum in the very near future for gathering the views of all stakeholders, including employers' and workers' organizations and non-governmental organizations.

A Government representative of Seychelles explained that first reports for the Medical Examination (Seafarers) Convention, 1946 (No. 73), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) had not been submitted due to the fact that the relevant legislation, i.e. the Merchant Shipping Act, was still under review. A consultant had been hired by the Ministry of Home Affairs, Environment, Transport and Energy, but due to the unavailability of persons with the technical expertise, the revision exercise had taken longer than anticipated. She further added that the Seychelles Maritime Safety Administration (SMSA) had sought the technical assistance of the International Maritime Organization (IMO) and the ILO in order to review the Merchant Shipping Act but the finalization process had been delayed. She also noted the lack of competent human resources in other technical departments to prepare the reports. She also indicated that the Employment Department had contacted the Office with a view to preparing a legal gap analysis between Seychelles' maritime laws and international labour standards. The gap analysis was expected to start soon to permit the adoption of a new Merchant Shipping Act, and consequently, the ratification of the Maritime Labour Convention, 2006 (MLC, 2006).

A Government representative of Yemen stated that given the current circumstances and the lack of technical specialists in the country, it was impossible to comply with the reporting obligations. He also pointed out that his Government had been receiving the Committee of Experts' comments only in English, and not in Arabic, which significantly complicated the task of preparing reports.

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

The Committee 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:**

- 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;
- since 2009: Conventions Nos 131, 144;
- Sao Tome and Principe
  - since 2007: Convention No. 184;
- Seychelles
  - since 2007: Conventions Nos 73, 147, 161, 180;
- Thailand
  - since 2009: Convention No. 159;
- 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 Luxembourg presented his Government's excuses for its failure to send, by the appropriate deadline, the reports requested, which mainly related to the maritime Conventions. It was difficult to respond to the comments of the Committee of Experts because Luxembourg had begun the process of ratifying the Maritime Labour Convention, 2006 and, as part of that process, was revising much of its legislation. The process had been slightly delayed but new legislation should be adopted in June 2011, and the reports due could be finalized in time for the next session of the Committee of Experts.

A Government representative of Pakistan reaffirmed that his Government remained fully committed to fulfilling its obligations under the ILO Constitution. Although the Government's approach was based on the improvement of the legal framework, this was not an easy process as issues of capacity, financial resources and awareness had to be resolved. He further indicated that six reports had already been submitted while another three reports would be completed and forwarded as soon as possible.

A Government representative of Burkina Faso regretted to inform the Committee that administrative difficulties had delayed the submission of reports on the application of Conventions. Following institutional changes, the authorities wished to increase the visibility of reports sent and to submit them to the Council of Ministers, which lengthened the procedure. Furthermore, it should be noted that substantial legislative reforms had been undertaken in 2008, entailing a considerable amount of work. Some 30 texts implementing the Labour Code had already been adopted. Lastly, considerable efforts had been made with regard to the training of labour inspectors, the number of whom had doubled. Young labour inspectors had to be trained, particularly in international labour standards, and technical cooperation with the Office in that regard would be essential. He stressed that appropriate steps would be taken to ensure that reports already drafted were approved and submitted as soon as possible.

A Government representative of Zambia recalled that the Committee had noted with interest the information submitted by his Government but had required further information. This detailed information could not currently be provided owing to high staff turnover in the Ministry of Labour. He expressed his Government's strong commitment to ensuring that it fulfilled its constitutional obligations by responding to the Committee's requests by September 2011. He further requested ILO technical assistance in the area of training of government officials and the social partners in preparing reports and understanding Conventions.

A Government representative of Trinidad and Tobago indicated that his Government had sought to honour its reporting obligations but that, unfortunately, it had been unable to do so owing to unavoidable internal administrative matters of temporary nature. He reiterated his Government's commitment to complying with reporting obligations and added that the Government was presently in

the process of finalizing the outstanding reports, which would be supplied shortly.

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

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

The Committee requested the Governments of Bahamas, Burkina Faso, Burundi, Chad, Comoros, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kazakhstan, Kyrgyzstan, Liberia, Luxembourg, Netherlands: Aruba, Nigeria, Rwanda, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Solomon Islands, Togo, Trinidad and Tobago, Uganda, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: St Helena, Yemen, 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 Standards*<sup>1</sup>

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

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

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

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

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

**Congo.** Since the meeting of the Committee of Experts, the Government has sent most of the reports due on the application of ratified Conventions and replies to the majority of the Committee's comments.

**Democratic Republic of the Congo.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

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

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

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

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

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

<sup>1</sup> The list of the reports received is in Appendix I.

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

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

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

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

**Uganda.** Since the meeting of the Committee of Experts, the Government has sent a report due on the application of ratified Conventions.

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

**United Kingdom (St Helena).** Since the meeting of the Committee of Experts, the Government has sent most of the reports due on the application of ratified Conventions.

## B. Observations and information on the application of Conventions

### Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

#### **MALAYSIA (PENINSULAR MALAYSIA)** (ratification: 1957)

A **Government representative** referred to the background of this case, emphasizing Malaysia's situation as a trading nation with an open economy facing volatile external market influences. The steady growth of the Malaysian economy had largely been attributed to the Government's pragmatic leadership and flexible policies and initiatives to diversify and build a more multi-sectored economy. Labour had always been central to the economic transformation of Malaysia over the past five decades. In this framework, the Government had articulated Vision 2020 which envisioned a holistic development status by the year 2020 and had set in motion in 2010 the New Economic Model (NEM) to improve competitiveness in all economic sectors by systematically fostering innovation and promoting higher value-added sources of growth. The NEM was supported by four pillars: Malaysia: People First, Performance Now concept; the Government Transformation Program (GTP); the Economic Transformation Program (ETP); and the Tenth Malaysia Plan (10MP). In line with this policy, the Decent Work Agenda for the country's workforce relied among other principles on a firm and constant policy of ensuring adequate and equitable social security protection for all workers in the country regardless of their background. In the quest to achieve a balance between socio-economic development and social equity, the Prime Minister's Department had since 2010 initiated a series of "Lab studies" to review the country's principal pieces of labour legislation and recommend modern and realistic provisions, in addition to examining new areas of improvement in relation to the management of foreign workers. The findings and outcomes of the studies included, among other areas, the promotion of a sound and quality social security management, and were currently being tabled for consideration and endorsement by the Malaysian stakeholders.

The Government of Malaysia was committed to building consensus for common goals, through regular collaborative engagement with the tripartite social constituents in particular, so as to generate a common perspective on the appropriate system for managing and administering social security for workers in Malaysia. The Government through the National Labour Advisory Council (NLAC) within the purview of the Ministry of Human Resources, and in collaboration with several other consultative forums and stakeholders, undertook to constantly pursue the formulation of the right mechanism and system to administer and remedy this issue.

The **Worker members** said that this case involved clear and unmistakable discrimination against foreign workers in relation to compensation for industrial accidents. The transfer in 1993 from the Employees' Social Security (ESS) Scheme to the Workmen's Compensation Scheme (WCS) resulted in a deterioration of the conditions applicable to foreign workers, as compensation for industrial accidents, which consisted of a flat-rate lump sum, was much less beneficial than the measures envisaged by the 1969 Social Security Act for employed persons, namely the provision of a pension or other periodical payments to victims or their dependants. Moreover, the conditions governing insurance against industrial accidents differed for national and foreign workers. In 1997, this Committee had called on the Government to re-establish equality of treatment and, following a high-level advisory mission, the Government had indicated in 1998 that it envisaged reviewing the situation of foreign workers in relation to

the social security scheme. However, nothing had been done. Indeed, in its latest reply in 2010, the Government no longer considered it necessary to modify its law or practice. It referred to administrative and practical problems in the payment of benefits and the monitoring of workers who had returned to their country, as a justification for discrimination.

Recalling the requirements of the Convention (Article 1(1)) regarding equality of treatment between nationals and foreign workers from Members which had ratified the Convention, and concerning mutual assistance between such member States (Article 4), they emphasized that such arrangements were all the more relevant in that most of the foreign workers in Malaysia came from countries which had also ratified the Convention. In the absence of a comparative and actuarial study by the Government of the two schemes for the different types of compensation (temporary and permanent incapacity, invalidity and survivors' benefits), and as the Government claimed that the lump sum payable to foreign workers was not lower than the pension paid to national workers, the Government should allow foreign and national workers to choose between the two schemes.

The Government clearly had no intention of complying with the Convention and did not envisage granting equal treatment to workers from other member States that had ratified the Convention. Such deliberate violation of the Convention had serious consequences, as there were many foreign workers in Malaysia (1.9 million in 2007), and many industrial accidents occurred among foreign workers (13,000 officially reported in 2006). Moreover, most of the workers were from countries in the region for which practical arrangements would be possible with a minimum of goodwill. The case was illustrative of the discrimination suffered by migrant workers in the region and justified the fact that the Committee of Experts had requested Malaysia to provide explanations to the Conference concerning such a deliberate violation of the Convention.

The **Employer members** emphasized that the basic principle behind the Convention, adopted as early as 1926, was that migrant workers should receive no less favourable treatment regarding accident compensation than national workers in line with the fundamental principle of equality of treatment between national and non-national workers. In ratifying the Convention in 1957, Malaysia had undertaken to guarantee this principle to migrant workers and their dependants without any condition as to residence (Article 1(2) of the Convention) and to enter into special arrangements with other member States so as to make payments outside Malaysia (Article 2). Moreover, the member States which ratified this Convention undertook to afford each other mutual assistance with a view to facilitating its application (Article 4).

The Employer members noted the history of this case, emphasizing that Malaysia's adherence to the Convention had been non-contentious until 1996, when the Government asserted that the coverage of certain categories of Malaysian nationals and migrant workers with regard to accident compensation had been transferred already in 1993 from the ESS scheme to the Workmen's Compensation Act (WCA) due to enforcement and administrative constraints, particularly regarding the remittance of payment of accident compensation benefits to the next of kin or dependants of migrant workers in their home country. In 1996, the Employer members had noted that the WCA provided for a level of benefit lower than the previous one and that as long as Malaysian workers continued to be covered by a scheme offering a noticeably higher level of benefits, there was a clear divergence with the provisions

of the Convention. This Committee had expressed the hope that the Government would in the very near future take all necessary measures to reintegrate migrant workers into the same system as nationals. In 1998, the Committee of Experts had noted that the report requested in 1996 had not been received and that in the event of an occupational accident, migrant workers received compensation in the form of a lump sum, whereas nationals had the right to the periodic payment of these benefits. As the Government had not provided a report, the Employer and Worker members considered that this Committee was bound to reiterate its previous conclusions and expressed the hope that the results of the recently conducted ILO advisory mission would help to resolve the problems.

The Committee of Experts then made observations in 1999, 2000, 2001, 2002, 2003 and 2006. In 2008, the Committee of Experts noted that, taking into account the large number of migrant workers concerned and their high accident rate, the situation called for special efforts from the Government to overcome the administrative and practical difficulties that were impeding equal treatment of migrant workers who suffered industrial accidents. In particular, in 2008, the Government was asked to demonstrate the actuarial equivalence of the lump sum paid under the WCS to migrant workers to the amount of the periodical payments granted under the ESS to Malaysian workers. Attention was also drawn to the possibility of overcoming any difficulties in the payment of compensation abroad, through special arrangements between the Members concerned in line with Article 2 of the Convention.

The Employer members emphasized that today was the third examination of this case in this Committee since ratification. They noted with regret that according to the latest report of the Committee of Experts, the Government saw no need to modify its national law and practice to bring it into conformity with the Convention or to resort to the technical assistance which the international community was willing to provide for this purpose. It was therefore not surprising that the Committee of Experts had invited the Government to supply full particulars to the Conference Committee and to report in detail in 2011. The elapse of time between 1996 and 2011 demonstrated that there was a significant barrier preventing the Government from fully complying with the Convention with regard to the amount paid and how it was paid to migrant workers and their dependants.

The Employer members called for a solution to this issue in compliance with the Convention. They asked in particular for information on the following: the reasons for which the actuarial equivalence of the lump sum paid under the WCS to migrant workers to the periodical payments granted under the ESS to Malaysian workers had not been robustly established by the Government since it had been requested three years ago; how compensation was paid and what compensation was paid, in the event of an occupational accident of migrant workers originating from countries which had ratified the Convention, such as, Indonesia, India, Myanmar, Bangladesh, the Philippines (which had ratified in 1994), Thailand, Pakistan and China; the arrangements in place with other member States in order to make payments outside Malaysia, as envisaged in Article 2 of the Convention; the enforcement and administrative constraints regarding in particular the remittance of payment of accident compensation benefits to the next of kin or dependants of migrant workers in their home country. Since the Cartier working group had asserted that Convention No. 19 was likely to receive further ratifications, there was a need to obtain a better understanding of the barriers to implementation.

**The Worker member of Malaysia** stated that approximately five million foreign workers in Malaysia, either

recorded or unrecorded, did not benefit from equal treatment in terms of social security in case of employment-related injuries and/or diseases, as they had been excluded from the ESS scheme and placed under the WCS. The inequalities they suffered related to the fact that under the ESS, a worker benefited from mandatory social security protection regardless of whether the work was registered or unregistered; the coverage was wider, including both accidents and illness or diseases, as well as accidents suffered while commuting to and from work; payments were periodic akin to a pension scheme; there was a lump sum payment; and a higher amount of compensation was awarded. Workers' compensation under the WCS on the other hand, was confined to a lump sum payment that was far lesser compared to the ESS Scheme. Further, under the WCS, only reported cases led to compensation. If an accident was not reported, the worker was not entitled to any benefits. The High Court had recently ruled that a foreign worker, whose permit had expired after one year of residence, had no legal standing to claim benefits because his status was irregular. Even though it was reassuring to hear that the Government was looking into this matter, the speaker called for specific progress to be made since this issue had been reviewed by the Conference Committee three times.

**The Employer member of Malaysia** indicated that the WCS was a suitable and practicable approach for managing employment injury and invalidity benefits for foreign workers in Malaysia. Under the ESS, employees were required to contribute for a minimum of 24 months before they or their family could get any benefit under the scheme in case of industrial accidents or occupational diseases. Foreign workers would be required to contribute 0.75 per cent of their wages towards the invalidity and pension insurance scheme and if they were declared to be an invalid before having contributed for 24 months, they would be deprived of any invalidity pension despite having made contributions. Under the WCS once foreign workers were insured, they were covered by the scheme and there was no requirement for 24 months of contributions before the foreign workers could be entitled to the benefits under the scheme. Foreign workers in Malaysia were generally contracted for up to two years at a time and therefore, the ESS scheme was not suitable for them.

**The Worker member of Australia** shared the concern expressed by the Worker members over the longstanding failure of the Malaysian Government to comply fully with Convention No. 19 and regretted that the Government had not yet addressed the points raised by the Committee of Experts and this Committee, despite numerous examinations over the past years. The speaker noted that Malaysia was a destination for many workers in the region seeking better employment opportunities, and that at present, over two million migrant workers performing a wide range of work, including in industries with a high risk of serious accidents, were registered in the country. In this regard, international labour standards provided ratifying states with guidance as to appropriate laws and policies to be established to ensure respect for the rights of migrant workers. A key principle in these instruments, including in Convention No. 19, was the principle of equality of treatment and non-discrimination of migrant workers. The existence within Malaysia of two distinct laws, regulating compensation in the event of workplace accidents, the application of which depended on the nationality of the worker, and which provided for different levels of payments, failed to comply with the fundamental principle of non-discrimination and equality of treatment. Under the current arrangement, a migrant worker who was injured as a result of an accident at work received a lump sum payment that was significantly lower to the ongoing payments paid to local workers under the ESS scheme. Mi-

grant workers were not entitled to ongoing support and might find themselves not only without a job, but also without adequate income security to support themselves and their family. Furthermore, the speaker noted that the present case embodied a number of key themes being discussed at the 100th International Labour Conference, including the importance of taking a rights-based approach and of ensuring the extension of social security protection to all workers, as well as the right for all workers to be free from discrimination as stated in the Director-General's Global Report under the follow up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The dominance of these themes in this year's Conference reinforced the centrality and importance of ensuring decent work for all workers. While recognizing that the management of workers' compensation for migrant workers might pose administrative and practical challenges, the speaker emphasized that sensible arrangements in line with the Convention were achievable and reminded the Government of its obligations. In this regard, technical assistance was available. She concluded by urging the Government to take immediate steps to ensure equal protection for migrant workers under national laws with respect to workers' compensation, in full compliance with the Convention.

**The Government member of Singapore** welcomed the positive steps taken by the Government of Malaysia in order to review the country's principal pieces of labour legislation and recommend modern and realistic provisions through a series of studies under the auspices of the Prime Minister's department. He also noted that the findings and outcomes of the studies contained proposals for improvement in relation to the management of foreign workers in Malaysia, including their social protection. As the outcome of the studies was being tabled for consensus and endorsement by the stakeholders of Malaysia, the speaker welcomed these consultations and urged the Committee to allow the Malaysian Government more time for the review process to be completed. His Government looked forward to a successful review so as to help the Government of Malaysia identify areas for improvement and the gaps in legislation in its effort to formulate the right solution and tackle the challenges in administering social security protection for all the workers in Malaysia.

**The Worker member of Indonesia** recalled that most foreign workers in Malaysia were Indonesian nationals, currently estimated at approximately 2.5 million, both documented and undocumented. Many of them were working in construction, the manufacturing industry and plantations, thus facing high risks of work accidents. It was indeed important that they should be respected and treated equally as they were making a significant contribution to the country's development. The speaker supported the recommendation of the Committee of Experts which called for equal treatment of both local and foreign workers. The latter should be covered by the ESS scheme while the WCS should be discontinued. It was common practice in the Asian context, including in Indonesia, to treat foreign workers equally. Under the Indonesian social security law, all workers had access to social security benefits including foreign workers, in case of injury, even though the economic development of Indonesia was lower than that of Malaysia. For many years after the introduction of WCS, hundreds of thousands of Indonesian workers had been doubly penalized in case of accident by not only losing their jobs and being sent back home, but also by not having any social security protection and facing difficulties in finding a new job in their own country. Extending protection to foreign workers through equal treatment would not involve additional expenditures for the public budget because the social security contributions

would be paid by the workers and employers concerned. The speaker concluded by indicating that in July 2009, his trade union Konfederasi Serikat Buruh Sejahtera Indonesia (KSBSI) had signed a Memorandum of Understanding with the Malaysia Trade Union Congress (MTUC) under which these two International Trade Union Confederation (ITUC) affiliates agreed to work together to strengthen the protection of Indonesian migrant workers in Malaysia including through industrial accident protection. Their action included producing a so-called migrant workers' passport with information on the rights of foreign workers. The speaker expressed the hope that both unions would be involved in the future in discussions on the improvement of industrial accident compensation legislation in Malaysia.

**The Government representative** expressed his Government's respect and appreciation for the views and comments submitted by various member States and the social partners in relation to the application of the Convention in Malaysia. He reinstated Malaysia's commitment to heighten its collaboration and engagement with the social partners to address and tackle priority labour issues of common concern, pursuant to the country's Decent Work Agenda. Malaysia treasured and valued genuine and constructive tripartism and addressed matters through social dialogue. In the past months, the Government, under the auspices of the Prime Minister and with the engagement of several ministries and departments had discussed new ways of dealing with labour issues arising out of challenging labour market. The Government's journey towards making a difference required indulgence, understanding and support. In today's economic scenario, the Government's priorities were directed towards securing the welfare and well-being of workers, without distinction as to their background.

**The Worker members** emphasized that the case involved flagrant discrimination against foreign workers in relation to compensation for industrial accidents, which was in direct contradiction with the principle of equality of treatment set out in the Convention. Moreover, the Government showed no will to remedy situations of discrimination, by continuing to refer to practical problems related to making payments and monitoring, while failing to establish specific arrangements with the countries of origin of the workers concerned, as envisaged by Article 4 of the Convention. The Government therefore needed to reconsider as rapidly as possible the discrimination that had existed since 1993, reintegrate foreign workers into the Employees' Social Security Scheme and keep the Committee of Experts informed of the measures envisaged in that respect. In conclusion, they called on the Government to request a high-level mission with a view to addressing the administrative issues at the regional level.

**The Employer members**, referring to the statements of the Government representative, pointed out that the Government had not mentioned Convention No. 19 in its concluding remarks. While taking note of the measures adopted by the Government of Malaysia, no information had been given on the implementation of such measures and how this could affect compliance with the Convention. Recalling that many countries, such as Indonesia, Nepal, Bangladesh, India, Pakistan, Viet Nam, Cambodia, Thailand, and the Philippines had migrant workers in Malaysia, he questioned how compensation for industrial accidents was paid to migrant workers and what enforcement mechanisms were in force. They urged the Government to take action, in consultation with the social partners, to ensure compliance with the Convention and to engage with the Conference Committee and the ILO.

## Conclusions

The Committee noted the statement of the Government representative and the discussion that followed. The Committee recalled that, since 1 April 1993, when foreign workers employed in Malaysia for up to five years were transferred from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which guaranteed only a lump sum payment of a significantly lower amount, the Malaysian social security system had contained inequalities of treatment which ran counter to the provisions of the Convention.

The Committee noted the information provided by the Government highlighting Malaysia's situation as a trading nation with an open economy facing volatile external market influences, as well as the Government's pragmatic leadership, which ensured the steady growth of the Malaysian economy in the past decades. In this framework, the Government had set in motion in 2010 the New Economic Model (NEM) to improve competitiveness in all economic sectors. The Committee also noted that the Prime Minister's Department had since 2010 initiated a series of Lab studies to review the country's principal pieces of labour legislation and recommend modern and realistic provisions, in addition to examining new areas of improvement in relation to the management of foreign workers. The findings and outcomes of the Lab studies included, among other areas, the promotion of a sound and quality social security management, and were currently being tabled for consideration and endorsement by the Malaysian stakeholders. The Government through the National Labour Advisory Council (NLAC) within the range of authority of the Ministry of Human Resources, and in collaboration with several other consultative forums and stakeholders, undertook to constantly pursue the formulation of the right mechanism and system to administer and remedy this issue.

The Committee hoped that the Lab studies and the broad tripartite consultations conducted by the Government through the NLAC would provide the right framework for the re-examination of the social security coverage of foreign workers in respect of industrial accidents, and that the Government would be able to report their findings in this area in its next detailed report on the Convention due in 2011. Regretting however that the Government representative had given no full replies to the concrete questions raised by the Committee of Experts, the Committee urged the Government to reconsider its position in its 30 July 2010 report that there was no need to modify national law and practice, and to take immediate steps in order to bring national law and practice into conformity with Article 1 of the Convention. It also urged the Government to include in the next report a full comparative analysis of the benefits provided by the ESS and WCS schemes and to demonstrate the actuarial equivalence of the lump sum paid under the WCS to foreign workers in cases of temporary or permanent incapacity, invalidity or survivors' rights to the amount of the periodical payments granted under the ESS to Malaysian workers in similar cases.

Furthermore, the Committee observed that by not complying with the principle of equality of treatment between nationals of any other member State which has ratified the Convention and its own nationals, the Government of Malaysia undermined the system of automatic reciprocity in granting equality of treatment to nationals of ratifying States that the Convention established between them. This concerned, in particular, countries which were supplying workforce to Malaysia and were also parties to the Convention: Indonesia, India, Bangladesh, Philippines, Thailand, Pakistan and China. The Committee recalled in this respect that the administrative difficulties of monitoring the payment of compensation abroad could be overcome by way of special arrangements between the Members concerned in

line with Article 1(2) of the Convention, and that Article 4 required ratifying Members to afford each other mutual assistance with a view to facilitating the application of the Convention. In this context, the Committee considered that, in order to make full use of Articles 1(2) and 4 of the Convention, the Government should consider inviting a high-level advisory mission of the ILO and avail itself of the technical assistance of the Office.

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

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### DEMOCRATIC REPUBLIC OF THE CONGO (ratification: 1960)

The Employer members regretted that the Government had not appeared before the Committee. This was the first time the Committee discussed this case. The fact that since 1991 the Committee of Experts had addressed this issue on 14 occasions and that this year the case was given a double footnote, demonstrated the severity of the case. The Government did seem to have submitted a report on the application of the Convention, which was not the case in past years.

With regard to Articles 1 and 2, the Committee of Experts pointed out serious violations. The United Nations High Commissioner for Human Rights reported that state security forces and armed groups were at the origin of forced labour and sexual exploitation. In the Kivu Province armed groups and military units were engaged in mining and forced civilians to work. These civilians were subjected to blackmail, illegal taxation and sexual exploitation. Women and girls were kept by both armed groups and the state military as sexual slaves and suffered further violence. The situation caused great concern and the Employer members urged the Government to stop immediately the violations of the Convention.

With regard to Article 25 of the Convention, the current legislation, including the Penal Code (as amended up to 2004), did not contain sufficient deterrent penalties. The Government maintained that the laws of 1971 and 1976, which allowed for the exaction of forced labour for national development purposes, were no longer applied and that the Constitution of 2006 and the Labour Code of 2002 prohibited the use of forced labour. There was however no legal certainty, as long as conflicting laws were in force. The Employer members insisted that the Government reply as soon as possible to the questions raised by the Committee of Experts in the direct request relating to forced labour in cases of vagrancy, "pygmies" as victims of forced labour and the possibility for judges to resign. They urged the Government to repeal the laws which were not in compliance with the Convention and recommended the Government to request the technical assistance of the Office and to provide, as soon as possible, information as regards the measures taken.

The Worker members began by strongly deploring the attitude of the Government, which had not deigned to come to the Committee to provide explanations. They recalled that this case related, among other aspects, to situations of sexual slavery and collective rape carried out systematically in a part of the world that was awash with raw materials. The reports from the Office of the United Nations High Commissioner for Human Rights emphasized that in all the regions of the country, both those in which hostilities had recommenced and those spared by conflict, the State security forces and other armed groups had recourse to forced labour and sexual slavery. In the Kivu mines, civilians were subject to forced labour, while the sexual exploitation of young girls and women was very frequent there.

According to trade union sources of the country, as well as non-governmental organizations, women and young

girls, and to a lesser extent men and boys, continued to be the victims of rape and sexual attacks by the members of armed groups in North Kivu. Furthermore, in the territories of Walikali, Rusthuru and Masisi, women had been abducted and kept for use as sexual slaves. Indeed, over a dozen abductions a year had been recorded in 2010 and 2011. Older women who were abducted appeared to be used for domestic work, while girls were used as sexual slaves and young boys for the extraction of minerals. In that regard, the Worker members referred to several specific cases of the practices perpetrated systematically by the armed forces of the Democratic Republic of the Congo.

On 17 October 2010, over 20,000 women had marched in the streets of Bukavu to denounce the atrocities suffered by Congolese women and the attendant impunity. Reports by United Nations bodies described a highly worrying situation in view of the high level of insecurity and violence which particularly affected the Eastern part of the country. Moreover, although the Labour Code envisaged certain measures, the Committee of Experts considered that they did not penalize the crimes committed sufficiently. The Government was hiding behind legislative texts criticized by the Committee of Experts, which it claimed were no longer applicable. However, the Government's position was contradicted by the facts. In conclusion, the Worker members urged the Government to adopt a precise timeframe for the action that it needed to take, with emphasis on the need to amend the penal legislation. The Government also needed to reinforce judicial action against persons who had recourse to forced labour and adopt a concerted approach to the elimination of sexual slavery.

**The Government member of Canada** first regretted the absence of the Government of the Democratic Republic of the Congo before the Committee. She stressed that the ongoing imposition of forced labour on civilians, including children, by both state security forces and armed groups, in the illegal extraction of natural resources should be halted. The many reports of rampant, and at times systematic, sexual and gender-based violence, including sexual slavery, as well as child labour, the trafficking of children and the recruitment and use of children in armed conflicts in the country was deeply disturbing. Her Government urged the authorities and all parties to respect international humanitarian law and human rights law and to protect civilians. She recognized the efforts of the Government to integrate armed groups and to professionalize its security forces and welcomed the steps taken by the Government, in cooperation with the International Criminal Court, to hold members of the security forces and armed groups accountable for serious crimes. These judicial proceedings to hold senior officers accountable for sexual violence sent a powerful signal that those crimes would not be tolerated. The Government's commitment to finding domestic and regional solutions to the problem of the illegal exploitation of natural resources should be noted. Similarly, its commitment to the International Conference on the Great Lakes Region's efforts to establish a regional certification mechanism should be seen as a positive step towards cutting off financial support to the armed groups. In this regard, the speaker recalled that her Government was providing financial assistance to this International Conference. Finally, she urged the Government to take immediate and effective measures to end forced labour and sexual and gender-based violence.

**The Worker member of Kenya** regretted that the situation described in the 2011 report of the Committee of Experts, which had referred to violations of basic human rights by the state security forces and other armed groups, continued to date. It was particularly serious in the two

Kivu provinces, where illegal mining took place and where civilians were subjected to forced labour, extortion, illegal taxation and sexual exploitation. He referred in this connection to the reports by Human Rights Watch published in October 2010 and by the Free the Slaves, which had studied in detail these practices in the Eastern part of the country. He expressed particular concern over sexual violence against girls and women, who were confronted not only with indifferent or even hostile reaction from the authorities, but also with repudiation and stigmatization by their husbands and communities. They had only limited access to legal remedies due to the distance from home and their inability to cover associated costs. These situations had also been reported by the International Trade Union Confederation and Amnesty International, the former of which had reacted, deploring the cruelty and crimes.

**The Worker member of South Africa** pointed out that the armed conflict in the country had grave consequences for workers, women and children, which resulted in forced labour and lack of worker protection. State security forces continued to act with impunity committing many serious abuses, recruiting child soldiers and imposing forced labour on civilians. This included enslavement and discrimination against "pygmies". The Democratic Republic of the Congo was one of the least developed countries in the world, yet the country was rich in natural resources, in particular tin, originating in the Kivu areas. Armed groups controlled the exploitation of these mines using forced labour. The speaker referred to specific aspects of the deteriorating humanitarian situation as reported by international governmental and non-governmental organizations. He called on the Government to implement the recommendations of the Committee of Experts with a view to protecting the people, in particular women, children and workers. All acts that reinforced or in some way legitimized forced labour had to be abolished. A clear law was needed describing such acts as crimes against humanity and punishable by law. The speaker finally called for the shaming and taking action against companies involved, possibly those named by the various UN reports.

**The Worker member of Ghana** indicated that the serious situation which had been described in the 2011 report of the Committee of Experts had not improved. The climate of lawlessness and impunity prevailed in the country, as reported in numerous reports of United Nations bodies and other organizations working on the ground. The level of insecurity, violation, rape, theft and forced labour was unacceptably high, affecting the population on a daily basis. Violations of human rights by the national security and armed forces were often reported. He indicated that at least a part of the solution to these problems was political and, therefore, was in the hands of the Government itself. He indicated that local authorities, who were often involved in the ongoing violence especially in the eastern part of the country, had to assume their responsibilities, but they took advantage of the current absence of the rule of law. He called on the Government to react without delay to the ongoing sexual violence and other crimes to protect the population, to expand and strengthen the rule of law and the legitimate authority of the state, and to provide essential services to the population. He was of the view that without these priorities being met, there would be no possibility to apply the national legislation. He emphasized that it was important for the Conference Committee to send a very strong signal to the country in order to terminate forced labour and sexual slavery, the degree of which remained huge and the situation of which continued to be terrible.

**The Employer members** underlined the importance of the Convention for free labour relationships. The elimination of forced labour was a fundamental pillar of civil

societies and free market economies. In the fight against forced labour many factors had to be considered; extreme poverty, armed conflict, weak government institutions, lack of information, in conjunction with education, and cultural and traditional factors. They urged the Government to provide information as soon as possible on the situation, abrogate the legislation in force which was not in compliance with the Convention and provide detailed answers to the requests of the Committee of Experts. The Employer members had hoped to hear the Government's position. The non-appearance of the Government aggravated the situation of non-respect of the Convention and demonstrated a lack of respect towards the Office and the ILO supervisory bodies. They called for the conclusions on the case to be included in a special paragraph of the Committee's report.

The Worker members said again that it was unfortunate that the Government had not been present during the discussion. Meanwhile, they had called on the Government, without further ado, to embark upon a reform of the country's criminal law, to provide statistics on the number and nature of violations of the Convention, of the legal charges brought and of the sanctions imposed on the perpetrators, to repeal sections 18 to 21 of the Legislative Ordinance of 1971 on the minimum personal contribution, to bring charges against people who resorted to forced labour and sexual slavery, and to instruct the civilian and military authorities to put an end to the practice of forced labour everywhere in the country. They called on the Government to accept the ILO's technical assistance specifically to combat forced labour, so as to ensure that its victims could rebuild their lives and find their proper place in society. Finally, they supported the call made by the Employer members for the conclusions on the case to be included in a special paragraph of the Committee's report.

### Conclusions

The Committee deeply regretted the fact that no Government representative of the Democratic Republic of the Congo had been present in the Committee to take part in the discussion, even though the Democratic Republic of the Congo was duly accredited and registered at the Conference.

The Committee recalled that the Committee of Experts in its observation had expressed its deep concern at the atrocities committed by the State security forces and other armed groups which constituted grave violations of the Convention, and particularly the imposition of forced labour on the civilian population and the sexual slavery of women and girls in mining areas. It also noted that the Committee of Experts had referred to the necessity to include in the penal legislation effective sanctions against persons who exacted forced labour, as well as the need to formally repeal certain old texts which were contrary to the Convention.

The Committee noted with concern the information provided which bore witness to the gravity of the situation and the climate of violence, insecurity and the violation of human rights which prevailed in the country, especially in North Kivu. This information confirmed that cases of the abduction of women and children, with a view to their use as sexual slaves and the exaction of forced labour, particularly in the form of domestic work, were frequent and continued to occur. Moreover, in mines, the workers were the hostages of conflicts for the exploitation of natural resources and were the victims of exploitation and abusive practices, some of which amounted to forced labour. The Committee observed that failure to comply with the rule of law, legal insecurity, the climate of impunity and the difficulties faced by victims in gaining access to justice favoured all of these practices.

The Committee recalled that the atrocities committed, among others by the armed forces, constituted grave violations of the Convention. It appealed to the Government to

take urgent and concerted measures to bring such violations to an immediate end, to ensure that both civilians and the military authorities complied with the law and to bring to justice and punish persons exacting forced labour, irrespective of their rank or position. The Committee recalled in that regard the need to amend the penal legislation so as to provide for effective and dissuasive sanctions against those perpetrating such practices. It asked the Government to provide without delay statistical data on the number of violations committed, prosecution proceedings instituted and penal sanctions imposed on perpetrators.

The Committee requested the Government to provide for the next session of the Committee of Experts detailed information on the measures taken to bring an immediate end to sexual slavery and the exaction of forced labour from the civilian population in the East of the country and in mining areas and to guarantee a climate of stability and legal security in which recourse to such practices could not be legitimized or go unpunished. The Committee called upon the Government to avail itself of the technical assistance of the Office, which could help it to combat forced labour and to establish a programme of assistance to and the reintegration of victims.

Reiterating its deep regret that no Government representative had taken part in the discussion, the Committee decided to include its conclusions in a special paragraph of its report.

### MYANMAR (ratification: 1955)

See Part Three.

### Labour Inspection Convention, 1947 (No. 81)

### SAUDI ARABIA (ratification: 1978)

The Government communicated statistical information, which is contained in Appendix III to the present report. In addition, before the Committee, a Government representative reaffirmed that his Government was eager to reinforce labour inspection, and referred to the recent establishment of a new position of Assistant Deputy Minister for Labour Inspection and the assignment of 1,000 new inspection posts in the Ministry of Labour in order to ensure greater efficiency, effectiveness and wider coverage of all regions of the Kingdom. Directives had been issued to a number of government departments to support labour inspectors. In addition, new labour inspection forms were developed to include details of quantitative and qualitative statistics of the inspected facilities, their employees and the nature of the infringements observed. The Ministry of Labour had recently finished the development of a detailed and unified database through which all the statistical variables could be followed, thus facilitating the work of the inspection services. The new database would help producing detailed inspection reports, including full details on employees, nationalities and the nature of work. The Government representative indicated that recent statistics had shown increased inspection levels and efficiency. Inspection visits increased from 46,446 in 2006 to 90,048 in 2010, while the number of inspectors for the same period increased from 147 inspectors to 210. The amount of fines increased from US\$531,000 in 2008 to US\$2 million in 2010. He referred to the written information that was presented to the Committee and estimated that in the future, due to the assignment of 1,000 new inspectors, there would be more detailed statistics that would not only result in an improvement of the working environment, but also in achieving higher rates of compliance with applicable international labour standards. He concluded by referring to an agreement between the Ministry of Labour and the ILO Office in Beirut concerning the establishment of a policy and strategy unit in the Min-

istry of Labour, thus greatly enhancing the technical expertise and capacity of the Ministry, including in matters related to labour inspection.

**The Worker members** emphasized the importance of this governance Convention which was essential so that workers could effectively enjoy their rights at work and social protection. By detecting violations of labour legislation, labour inspection allowed the competent authorities to take the necessary measures to resolve the problems identified. The observation of the Committee of Experts dealt mainly with statistical information on the violations committed and the penalties imposed which needed to be included in the annual inspection report. Such information was essential to determine the extent to which the legislation regulating conditions of work and protection of workers while engaged in their work was effectively observed. It was particularly important to have such information in the case of migrant workers in Saudi Arabia, as they accounted for the great majority of workers in the country. The situation of migrant workers was a matter of concern in the country. The Government therefore needed to make every effort to provide, in its report to the Committee of Experts, detailed information on: violations concerning migrant workers employed by their employers in occupations other than those specified in their work permits; migrant workers engaged by other employers; delays in the payment of wages; the absence of enterprise rules; the non-recruitment of Saudi nationals to the positions reserved for them by law; and the violations of the regulations on occupational safety and health.

**The Employer members** stated that this was a technical case concerning the reporting requirements under the Convention. It was clear that without an effective and efficient labour inspectorate, there could be no effective implementation of employment and labour laws. They were pleased to hear from the Government concerning the number of different improvements in its labour inspection system, including increasing the number of labour inspectors, drawing up new inspection forms and making good use of the Internet. The first point raised by the Committee of Experts related to the Government's failure to include in the annual report of the labour inspectorate statistical data, as required under the Convention. The submitted written information fulfilled that requirement, from what they could ascertain, but it remained up to the Committee of Experts to make that determination. They agreed with the Worker members that the issue of migrant workers was very important in that region of the world, and understood that the labour inspection situation for these workers was critical. The Committee of Experts had also commented on the inspections done by other Government agencies, and therefore getting a fuller picture of that process would be vital to obtaining a complete understanding of the labour inspection system. They urged the Government to provide all information that it had not yet submitted with respect to its labour inspection system.

**The Government member of Egypt** took note of the information provided by the Government and noted the collaboration which it was maintaining with the ILO. Noting the lack of statistical information in the annual labour inspection report, he considered that such information would be very useful for verifying the effectiveness of inspection activities. He indicated that the Government was taking positive measures, for example, the recruitment of 1,000 new inspectors, the use of new methods and the establishment of databases which would result in better compliance with the Convention. He said that it would be appropriate for the ILO Regional Office in Beirut to offer technical assistance to the country.

**The Worker member of France** emphasized that the statistical information on labour legislation infringements and penalties imposed were key in evaluating the degree

of observance of the Convention. The lack of statistics suggested that inspections could not go ahead freely in enterprises and that employees who were the victims of abuse in the employment relationship could not talk freely to labour inspectors, who themselves faced problems in relation to reporting. However, as the Committee of Experts had noted, such data appeared to exist since the Government's website contained information on infringements concerning migrant workers. The Government should therefore include such data in its next report. The Conference Committee should urge the Government to take the necessary steps, in observance of social dialogue and freedom of expression, to ensure the functioning of an inspection system that was in conformity with the provisions of the Convention. That required an adequate number of inspectors and an inspection system which operated in full independence and had the freedom to monitor and report the results of infringements that it had recorded.

**The Worker member of Nepal** joined his colleagues in expressing concern over the failure of the Government of Saudi Arabia to comply with the Convention, and expressed his concern over the lack of adequate labour inspection to protect the rights of workers in the country, especially migrant workers. Many workers from his country travelled to Saudi Arabia annually in search of work and prosperity, and over 200,000 currently worked there, included among the six million migrant workers from all over the world. Many of these workers were taken advantage of by private employment agencies that promised decent wages and conditions of work but, in fact, provided only a fraction of that promise to the workers upon arrival. The employers in Saudi Arabia treated these workers badly, including forcing them to work long hours, paying them little to nothing, providing poor and unsafe working conditions, and preventing those who wished to leave by taking their passports. Those workers who escaped without their passports were not able to return home and lived in appalling conditions in shanty towns or detention centres. Women domestic workers were particularly vulnerable to poor treatment. Migrant workers were made much more vulnerable because of the sponsorship system (*kafala*), under which workers were much less likely to complain or seek redress for violations of their rights and could not leave the employer and seek other work. He was concerned that the Government was not fulfilling its responsibilities under the Convention, as it had not provided enough information to assess the situation properly. He was also concerned that many labour inspectors were tasked to enforce migration laws rather than protecting workers, as required under the Convention. The Government needed to provide the Committee of Experts and the Conference Committee with much more information on its labour inspection system so that a proper assessment could be made of compliance with the Convention. Finally, he called upon the Government to indicate if and how workers, including migrant and domestic workers, were informed of their rights and of the means to enforce those rights.

**The Worker member of the United Kingdom**, referring to the Committee of Experts' observation regarding the Government's failure to provide detailed information on the work of the labour inspectorate, stated that the data to be provided by the Government should include information about the labour inspectors' powers to enter the workplace, to examine compliance and to enforce sanctions. She also indicated that more statistics were required on the number of inspection visits that had been carried out, the nature of violations observed and the penalties imposed. Such information should be broken down by nationality, gender and occupation of the workers, and the size of the workplace. She stressed that in the case of

Saudi Arabia it was absolutely critical that this data was provided since according to accounts of non-governmental organizations (NGOs) and the workers themselves, the labour inspectorate had been unsuccessful in ensuring widespread compliance. The Government had to explain how, despite the activities of the labour inspectorate, there remained extensive reports of workers, in particular migrant workers, who were kept suspended from proper employment status under a sponsorship system, and who lived and worked in terrible conditions. There were reports of domestic workers working 20 hours per day and suffering violent beatings and sexual abuse or of construction workers who were forced to work extreme long hours, and whose safety was of little interest to their employers. Certain NGOs also feared that the labour inspectorate might be more interested in controlling migration than ensuring workers' rights. She added that while the Government might claim that these allegations were fictional or isolated incidents, a number of governments had taken the matter extremely seriously, for instance, the Overseas Workers' Affairs section of the House of Representatives of the Philippines had sent a fact-finding mission, the Indonesian regions of West Nusa Tenggara and West Java had placed bans on the recruitment of domestic workers, and Sri Lanka, Nepal and India had also considered restrictions on the supply of women domestic workers. In these circumstances, the speaker called upon the Government to provide, at its earliest opportunity, detailed information to the ILO and to avail itself of ILO technical assistance so as to assess gaps in law and implementation and ensure compliance with the Convention, in particular with respect to migrant workers.

The Government representative stated that national legislation, in its entirety, prohibited all practices that ran counter to the law. If such actions previously discussed had taken place, they constituted clear infringements of the law and they needed to be detected by the labour inspectorate. He reaffirmed the Government's determination to implement the Convention and combat all forms of violations to its provisions, in particular those concerning migrant workers. He reaffirmed that the Government would do its utmost to prevent violations, including those with respect to migrant workers. Problems could arise in this respect. Certain practices had been identified, and the Government needed to take measures to prevent such violations. While he thanked the speakers who had participated in the discussion for their comments, he noted that the Government had not received any reports from countries that had sent migrant workers to Saudi Arabia. He admitted that certain practices of an illegal nature had occurred, but those were few in number and the Government would do its utmost to eliminate them. He understood that the fears expressed by the Worker members were genuine, which was why the Government was adopting new legislation, such as the Code on the protection of wages, to end certain processes. The Government had undertaken measures to protect wages directly paid to workers in cooperation with the Emirates to ensure that those practices were applied throughout the Kingdom and covered all forms of workers, including domestic workers. It had revised the system for transfer of funds so that workers could make those transfers via banks. In addition, the Government had just adopted a list of employment agencies that negotiated contracts and provided services to employees. The Government would continue making efforts in this area and would identify practices that ran counter to laws, humanitarian principles and the religion of Islam. Finally, he thanked the Government representative of Egypt, in particular his proposal that through the ILO Office in Beirut his Government would enhance cooperation and train officials in the collection and presentation of statistics.

The Worker members noted that the Government representative's statement gave reason to hope for full application of the Convention. Implementation of the Convention enabled Saudi Arabia to keep track of developments in the labour market and the application of labour legislation. The Worker members emphasized that migrant workers were an important part of the workforce and it was therefore crucial that inspectors verified whether labour legislation was being applied effectively. The Government should supply detailed information in its next report, as it had undertaken to do.

### Conclusions

The Committee took note of the statement made by the Government representative and the discussion that followed. The Committee noted that the issues raised by the Committee of Experts concerned the absence of statistical information in the annual labour inspection report, which made it impossible to evaluate the level of compliance with the Convention in practice.

The Committee took note of the statement made by the Government representative, who had emphasized that, according to the Committee of Experts, the national law was in full compliance with the Convention and had described the steps taken by the Government to enhance the efficiency, effectiveness and coverage of the labour inspection system, including through the assignment of 1,000 new inspection posts and the development of a unified electronic database to ensure detailed statistics on the improvements made in the working environment and the higher rates of compliance achieved with the applicable legislation and international labour standards. The Committee also took note of the statistical information provided by the Government representative, both orally and in writing, demonstrating a recent increase in inspection visits, the numbers of inspectors and the fines imposed under articles 13, 25, 33, 38 and 39 of the Labour Law. It noted the indication by the Government of its commitment to continuously improve the labour inspection system, in cooperation with the ILO, so as to effectively monitor the working environment and improve the working conditions of all workers, including migrant workers, and ensure their effective protection against any unacceptable practices.

The Committee emphasized the importance of an effective system of labour inspection in ensuring the effective implementation of labour laws. It noted that the statistical information requested under Article 21 of the Convention was very important to enable an objective evaluation of the extent to which the legal provisions relating to conditions of work and the protection of workers while engaged in their work were being respected, as required by Articles 2 and 3 of the Convention. The Committee emphasized in particular the importance of statistical information on the terms and conditions of work of migrant workers in view of the predominance of migrant workers in the labour market in Saudi Arabia. Drawing the Government's attention to the vulnerability of migrant workers, especially female domestic workers, the Committee called on the Government to redouble its efforts to ensure that the labour inspectorate was able to guarantee, through both promotional and enforcement action, that the rights of migrant workers were being effectively protected. The Committee requested the Government to transmit to the ILO detailed and gender disaggregated data on all the items listed in Article 21 of the Convention, including the number of infringements reported to the competent authorities, the violations detected and the number of convictions and the penalties imposed, classified according to the legal provisions to which they related, with special reference to migrant workers, as well as statistics of the workplaces liable to labour inspection and the number of workers employed therein. It also requested the Government to furnish information on the joint inspection activities car-

ried out by the labour inspection service with other government agencies so as to provide a complete picture of the labour inspection system, its activities and impact.

The Committee also invited the Government to avail itself of the technical assistance of the ILO under the Plan of Action for the Promotion of the Ratification and Effective Implementation of the Governance Conventions, in cooperation with the ILO Office in Beirut.

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

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**CAMBODIA (ratification: 1999)**

A Government representative stated that the Government, in phase two of the “Rectangular Strategy” for Growth, Employment, Equity and Efficiency, had defined “Private Sector Development and Employment” as a strategic driving force for job creation, the improvement of working conditions and economic growth. The union movement had grown exponentially in tandem with the growth of the garment, hotel and tourism industry. The Government was strongly committed to address the objective of efficiency and protection of rights and the freedom and dignity of the people within the context of the Strategy. Legal and judicial reform formed a core component of the Strategy, which included the strengthening of the judicial capacity relating to fundamental labour rights, including freedom of association and collective bargaining, as well as training on industrial relations. With regard to the investigation of the three cases relating to the murders of former trade union leaders, the Government stated that no updated information existed since the release on bail of the two suspects by the Supreme Court. The Government would provide the ILO with information in the event of any new developments. In the context of the immature industrial relations in the country and the growth of the garment industry, the number of trade unions and labour disputes, the Government with the assistance of the ILO, had established the Council of Arbitration through which labour disputes were resolved peacefully. As a result, the number of strikes had been halved during the last three years. The Government was also actively preparing a draft Union Law, which was expected to guarantee the right of workers to organize and bargain collectively. The draft law would also promote collective bargaining through harmonizing the rules for certifying unions with the most representative status and minority unions, creating a legal framework for collective bargaining agreements and specifying unfair labour practices of both employers and workers. The speaker hoped that the Committee would continue to cooperate with the Government to further improve industrial relations and the application of freedom of association through institutional capacity building.

The Worker members emphasized that there was a general climate of anti-trade union activity in Cambodia. It included anti-trade union harassment, intimidation and dismissals of trade unionists as well as discriminatory measures against free trade unions. The report of the Committee of Experts also referred to police violence, cases of assault and murders of trade unionists. The report mentioned the names of trade unionists for whose murder the perpetrators had never been punished. The Committee of Experts had requested precise information from the Government and that had not been sent so far. In general, steps had to be taken to ensure the independence and effectiveness of the judicial system. That point had been taken up, not only by the Committee of Experts, but also by the United Nations (UN) Special Rapporteur on the situation of human rights in Cambodia. Furthermore, the Government had announced the forthcoming vote on a

labour court law and a trade union law, the latter having been sent to the ILO and in connection with which the Government was receiving technical assistance from the Office. With regard to the labour court, Cambodia had an Arbitration Council which derived from the labour legislation. The Worker members, while not denying the usefulness of such a body, observed nevertheless that it could not replace a genuine judicial body. Moreover, they had noted that the employers, particularly in cases of anti-union discrimination, often decided not to implement arbitration awards. With regard to the draft trade union law, it was essential that it was discussed with all the social partners. But according to the information in the workers’ possession, such dialogue was occurring only between the Government and the private sector employers, the workers only having observer status. It also appeared that the law presented a number of problems of conformity with the Convention. For that reason, it was necessary to consult the trade unions before continuing with the draft law.

The Employer members expressed their disappointment about the statement by the Government, which had shown that no significant action had been taken and which had provided no new information. They felt that they could have the same discussion as last year. They indicated that this was the fifth time this serious case was discussed, which involved the violation of civil liberties, assassinations of trade unionists, death threats, a climate of impunity, repression and lack of trade union law. It was a double-footnoted case last year. After the observations of the Committee of Experts in 2007 and 2008 and the direct contact mission in 2008, the Law on Peaceful Demonstration had been adopted in 2009, but this law was in breach of the Convention, which had to be rectified. They regretted that there had been little progress made in the field of freedom of association and the right to organize. The International Trade Union Confederation (ITUC) had reported on acts of violence and harassment against trade unionists. The Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) continued to struggle to be recognized by the Government as a valid social partner. Investigations on the murder of trade union leaders were insufficient. Functional labour courts were not yet established. The UN Special Rapporteur on the human rights situation in Cambodia had recommended that measures be taken to enhance the independence and effectiveness of the judiciary. In summary, this case was “dead in the water” and progress could not be seriously discussed. They emphasized, therefore, that technical assistance had to be provided to the Government.

The Employer member of Cambodia expressed the view that progress achieved since the ratification of the Convention in 1999 was remarkable in many ways. Based on the register of the Ministry of Labour and Vocational Training, 1,725 unions, 41 federations of trade unions, seven confederations of trade unions covering all industries and a National Union Alliance of Cambodia had been registered in 2010. Some 80 to 90 per cent of trade unions belonged to the garment industry, which meant that approximately 1,380 to 1,553 unions existed in an industry with approximately 300 factories. This indicated that workers were free to organize. In addition, the Labour Law allowed multiple unions in one enterprise. Many workers belonged to multiple unions at an enterprise. Employers thus faced practical problems with these unions, including the problem of double counting of members, and competition and fighting among unions. The employers had to negotiate with several of these unions at a time. It was widely acknowledged by all social partners that the union movement was disorganized and fragmented. She indicated that the employers sought to cooperate with a most representative union and encouraged better structures and representativeness of unions, in

order to ensure constructive and meaningful dialogue. She hoped that this would become a reality with the adoption of the draft Trade Union Law. She mentioned that article 36, paragraphs 5 and 6, of the Constitution guaranteed the citizens the right to form and join unions, and that sections 266 to 278 of the Labour Law provided for freedom of association. She further mentioned several tripartite mechanisms that existed in the country. She referred to the eight public-private tripartite working groups, which had not been mentioned previously by the supervisory mechanism. The eighth working group dealt with labour and social affairs and had prepared the draft Trade Union Law. She also mentioned that the social partners were represented in the governing structures of the ILO Better Work programmes, the Labour Arbitration Council, the National Social Security Fund and the Employer Youth Employment Programme. She reiterated that the principle of freedom of association was practiced in Cambodia. She regretted the murders of trade union leaders.

**The Worker member of Indonesia** deplored the continuing anti-union discrimination practices in Cambodia. In 2010, as a direct result of trade union activities, over 1,000 workers had been dismissed from their jobs, 35 workers had been injured and 11 had been arrested. Workers were threatened by employers or black listed as a result of union activities. In September 2010, 817 workers had been suspended or dismissed, 10 workers had been arrested and 28 workers had been injured for taking part in a national strike in which hundreds of thousands of workers had asked for an increase in minimum wage. Paho Sak, the president of FTUWKC, had also been violently attacked. The speaker was concerned with the arrest and detention of Sous Chanta, a trade union leader of the United Apparel Garment Factory, as the arrest seemed to have been fabricated to punish him for his trade union activities. These were just some examples of anti-union violence and intimidation that had taken place since the Committee had last considered this case. In order to prevent workers from exercising their right to organize, employers made recourse to numerous tactics, including the increasing use of short term contracts, subcontracting, outsourcing and yellow unions. The speaker called upon the Government to ensure that workers could freely associate, workers' rights were respected and perpetrators of anti-union violence were held accountable.

**The Worker member of Finland** expressed deep concern over the continuing failure of the Government to bring its law and practice in compliance with the Convention. Notwithstanding the repeated calls by the ILO supervisory bodies, the Government after seven years had still not exonerated those wrongly convicted for the murders of the trade union leaders and had not ensured impartial investigations to bring the real perpetrators to justice. A culture of impunity continued to prevail and those who instigated violence against trade unionists had little to fear from the authorities. Employers often appealed against the decisions of the Arbitration Council to the courts or simply ignored them. Workers who sought the enforcement of their rights were forced to take legal action in civil or criminal courts, which was costly and lengthy. The judicial system in the country was corrupt, and lacked capacity and impartiality. It was critical for the Government to take action in this area and she, therefore, urged the Government to adopt and fully implement its proposed Law on the Status of Judges and Prosecutors and the Law on the Organisation and Functioning of the Courts. While underlining the seriousness of the case, the speaker deplored the lack of commitment of the Government and urged it to take concrete steps to ensure genuine freedom of association for Cambodian workers.

**An observer representing Education International** said that there was no teachers' union in Cambodia, as no pub-

lic employee enjoyed freedom of association in the country. The Labour Law of 1997 did not authorize them to establish a union or to have access to collective bargaining procedures. Indeed, public officials were governed by a law of 1994 which provided that all aspects governing the industrial relations of public officials were to be determined by law, without negotiation. In that respect, the Committee on Freedom of Association had emphasized the incompatibility of the Common Statute of Civil Servants with the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Despite the recommendations made by the Committee on Freedom of Association in 2004, no amendment had been made. She indicated that the Cambodian Independent Teachers Association (CITA) and its members were the victims of discrimination and harassment. In 2009, the CITA had submitted a new complaint relating to intimidatory measures by members of the authorities and the police forces. High-level government officials had used their position to bring pressure to bear on teachers to dissuade them from joining the CITA or to leave the association. As they were appointed by the Government, the directors of educational establishments and authorities were effectively obliged to show allegiance to the regime. In 2010, CITA had submitted to the Ministry 34 individual cases of teachers who had suffered discrimination because of their trade union activities. The cases related to prejudice in relation to promotion, wage cuts, transfers or dismissals. Only 14 of the cases had been resolved. She concluded that, despite the reiterated calls made to the Government of Cambodia to amend the Common Statute of Civil Servants so as to guarantee in full the right to organize and to collective bargaining of public officials, the workers feared that the current legislative amendments were not going in the right direction, as emphasized by other Worker members.

**The Worker member of the United States** indicated that while the Government had engaged in consultations with trade unions regarding the adoption of a new Trade Union Law, he was deeply concerned about the quality of those consultations and their outcome. The current draft law reflected few of the recommendations made by the trade unions, but largely reflected the priorities of garment sector employers. This draft law had to be substantially amended prior to its eventual adoption, otherwise, it would only perpetuate the current dysfunction. Amongst other things, this draft law continued the previous law's exclusion of civil servants, police, air and maritime workers, judges and domestic workers; it imposed qualifications for trade union leadership which were inconsistent with the principles of freedom of association; it allowed the administrative authorities to suspend or cancel a trade union's registration; and it gave sole bargaining rights to a union that represented far less than the majority of workers in the workplace. He urged the Government to take into account the views of the trade unions on all these issues.

**The Government representative** clarified that the cases concerning the former trade union leaders were not yet finalized, as all necessary information was still being collected. He assured that justice would be served soon. He reiterated the willingness of the Government to improve freedom of association and collective bargaining and pledged that the situation would improve with the promulgation of the draft Trade Union Law. False information had been used by the ITUC, since the alleged black list referred to did not exist. The Government would take into account the comments and recommendations made during the discussion of the case.

**The Employer members** argued that there was a serious problem of understanding within the Committee as to the standing of the case, which was illustrated by the signifi-

cant disconnect between the statements made by the Government and the employer member of Cambodia. The ILO had to assist the Government to provide the Committee of Experts with a comprehensive report of the situation in law and practice, which also had to include a copy of the draft trade union law. This would enable the Committee of Experts to clearly delineate the legal situation as regards the right to freedom of association and collective bargaining and to make observations on the draft law. The Employer members insisted that the case had to move forward and, for this purpose, ground work had to be done by the Government in cooperation with the ILO in order for the Conference Committee to engage in a real dialogue with the Government next year.

The Worker members emphasized that they could not understand why the Government had not acted or taken little action to resolve situations involving serious violations of freedom of association in Cambodia. The Government needed to take all the necessary measures as soon as possible to bring to an end violations of the rights of workers engaged in a trade union organization. With respect to the judicial authority, they observed that the Government still had much more to do, especially in terms of the legislative amendments to guarantee the independence of the judiciary. The draft Trade Union Law was not in conformity with the Convention. Any modification of Cambodian legislation needed to be made in consultation with the trade unions. In conclusion, they called on the Government to request ILO technical assistance.

### **Conclusions**

The Committee took note of the statement made by the Government representative, as well as the discussion that followed. 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, concerns about the independent and effective functioning of the judiciary, 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 representative concerning the growth of the trade union movement and the evolution of freedom of association in the country. He referred to the “Rectangular Strategy” adopted by the Government to ensure growth, employment, equity and efficiency. This included plans for legal and judicial reform and training of the judiciary in the fundamental rights of organizing and collective bargaining. The Government welcomes the technical assistance of the Office in this regard, as well as with respect to the preparation of a draft trade union law aimed at guaranteeing the right to organize and promoting collective bargaining.

The Committee deplored the fact that full, independent and impartial investigations had still not been carried out into the assassination of the trade unionists Chea Vichea, Ros Sovannareth and Hy Vuthy. It further noted with concern the allegations of threats and intimidation suffered by trade union leaders and members. Recalling 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 bring an end to impunity in relation to such violent acts against trade unionists and to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice.

The Committee noted the concerns raised with respect to the judicial system by the Committee of Experts and the 2010 report of the UN Special Rapporteur on the situation of human rights in Cambodia. It urged the Government to adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts and ensure their full implementation. It requested the Government to provide information on the

progress made in this regard, as well as in respect of the creation of labour courts.

The Committee observed that a legislative reform process was under way and considered that the Government should intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, to ensure that the final draft legislation would be fully in conformity with the Convention. In particular, the Committee trusted that the new legislation would ensure that civil servants, teachers, air and maritime transport workers, judges and domestic workers are fully guaranteed the rights under the Convention. It requested the Government to transmit the draft texts to the Committee of Experts so that it would be in a position to comment as to their conformity with the Convention.

The Committee requested the Government to provide a full report on all measures taken in this regard, and provide data by industry on the number of unions, affiliation, number of collective agreements and their coverage, to the Committee of Experts at its meeting this year. The Committee 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.

### **GUATEMALA (ratification: 1952)**

The Government provided the following written information.

The Government again reiterates its commitment to the protection and promotion of freedom of association and underlines the absolute priority that must be given to protecting the life and physical safety of all the people of Guatemala, particularly trade unionists. Accordingly, it wishes to point out that measures have repeatedly been taken to combat the widespread violence in the country. Despite the fact that this is a difficult phase in Guatemala’s history, progress has been made in the application of justice as a whole, due to the combined efforts of all institutions involved in the administration of justice.

As an expression of the Government’s desire to give special attention to labour relations, the Inter-Institutional Committee on Labour Relations in Guatemala – which comprises the Ministry of Labour and Social Welfare, the Ministry of Economy and the External Relations, which currently also includes the Ministry of the Interior, each within their respective jurisdictions and without prejudice to the autonomy and independence of the President of the Judiciary, the Attorney-General and Public Prosecutor – met 18 times in the past year. At these meetings the Committee discussed the country’s labour problems, as a result of which it was able to draw up a “road map” with dates and specific activities that the Government of Guatemala is carrying out in order to strengthen the implementation enforcement of labour laws, in conjunction with the judiciary and the Office of the Attorney-General.

In this context, the Government wishes to state more vigorously that it does not tolerate or encourage any threats to, or assaults on, the physical safety or life of Guatemalan citizens, particularly trade unionists, or attacks on trade union premises, inasmuch as it is the duty of the State to safeguard private property as an inherent human right. The Government fulfils its obligation to investigate acts of violence and/or offences relating to private property. In order to improve the investigation of offences committed against trade unionists, the Inter-Institutional Committee on Labour Relations in Guatemala and the Tripartite Committee on International Labour Affairs have requested that the responsible unit be strengthened.

The Government is pleased to state that the Office of the Prosecutor-General has been restructured and, under Agreement No. 49-2011 of 20 May 2011 to amend Agreement No. 37-2010 containing the regulations governing the structure and functioning of the Human Rights

Department of the Prosecutor's Office, it has established a Special Prosecutor's Office to investigate offences against trade unionists. These changes will appear in the Prosecutor-General's classification of posts and salaries.

The Supreme Court of Justice has also made important changes in the way it operates, specifically with regard to labour issues, for which a new management model has been adopted that seeks to separate administrative from judicial functions, in order to focus expert resources on judicial matters and assign administrative matters to appropriately trained staff. All labour courts are accordingly now housed in a single building, which will streamline and expedite the services provided. The measures described above call for close coordination between the institutions responsible for administering justice, so as to cover every aspect of the protection of workers' rights.

The Constitutional Court, which is a permanent court with its own jurisdiction, whose essential function is to uphold the constitutional order and which acts independently of other state bodies in order to guarantee the rights of the people of Guatemala, has handed down the following rulings with respect to the application of procedural law and labour law:

- Appeals to maintain workers' rights (*amparos*): If for any reason during the processing of such appeals a case could not proceed or if it could be declared irreceivable because the correct formalities were not observed or because of a procedural irregularity, the Constitutional Court has ruled that, in particularly relevant cases in which specific rights are discussed (existence of an employment contract, justified or wrongful dismissal, entitlement to payment of outstanding wages, etc.), the appeal interrupts the statute of limitations as it might pertain to a given right – generally with respect to workers' rights. Those concerned can thus initiate ordinary legal proceedings without regard to the statute of limitations.
- Restrictions on the right to appeal: The Constitutional Court has determined that litigants in legal proceedings with specific appeals procedures may not have recourse to other appeals procedures. In accordance with section 365 of the Labour Code, under the principle of "special jurisdiction" an appeal may only be lodged against a final judgment setting aside a case or pronouncing a verdict. No appeal is admissible if it does not fulfil one of these conditions.
- Precedence given to worker's claims (*amparos laborales*): Under the authority conferred on it by the Habeas Corpus Act (*Ley de Amparo, Exhibición Personal y Constitucionalidad*), the Constitutional Court has amended Agreement 4-89 to the effect that appeals for protection under the Constitution can no longer hinder the course of ordinary court actions. There were two key amendments that should be highlighted under this new legislation. First, the Agreement expressly stipulates that, so long as provisional protection of the courts has not been officially decreed by the Constitutional Court, ordinary court proceedings must follow their normal course. This modifies previous practice whereby courts of law would suspend proceedings whenever any of their rulings was challenged on grounds of infringement of constitutional rights. The second amendment concerns requests for protection by the court also at the appellate level and that such requests must be substantiated. This is to avoid simple appeals, which

in the past tended to be lodged mechanically and systematically merely to hold up the proceedings. By requiring that full grounds be submitted, the Constitutional Court's role, other than that of examining the appeal in detail to determine whether there is any irregularity from the constitutional standpoint, is limited to considering the case that is placed before it.

These rulings of the Constitutional Court are legally binding and apply to all legal proceedings initiated by workers, which constitutes significant progress in the defence of labour rights. Pursuing its systematic and integrated approach, and in order to strengthen the enforcement of labour legislation in the country, the Government has signed an Inter-Institutional Framework Agreement for the Exchange of Information between the Ministry of Economy and the Ministry of Labour and Social Welfare (Decree 29-89 of the Guatemalan Congress), whereby the general labour inspectorate keeps a single centralized registry (part of the Integrated Labour System) of all entities entitled to the benefits conferred under the aforementioned Decree 29-89 for the Development of Export Processing Zones (*maquilas*). As a result, it is now possible to cross-check the information that is used in the labour inspectorate's enforcement of labour laws. This is reinforced by the Directorate of Trade and Investment Services of the Ministry of Economy which, through its Industrial Policy Department, verifies that enterprises make proper use of the benefits to which they are entitled. The State of Guatemala thus complies with the legislation in force by establishing an efficient mechanism for the Ministry of Economy to carry out its supervisory activities, in coordination with the Ministry of Labour and Social Welfare and for the greater benefit of the workers.

The Government emphasizes that the legitimacy of the Tripartite Committee on International Labour Affairs and of its members, as well as the representativity of workers' organizations, can be established only through the Labour Register of the General Labour Directorate of the Ministry of Labour and Social Welfare, with which they are required to update their registration each year. Otherwise, not only do they have no legal personality but it is impossible for them to establish their representativity. The Government's invitation to the employers' and workers' sectors to be part of the Tripartite Committee on International Labour Affairs was published at the end of 2010 in the most widely read newspaper in the country so that all organizations that wished to participate could do so.

Regarding the amendments that are needed for Guatemala's legislation to comply with the international labour Conventions that it has ratified, a committee is to be appointed under an agreement currently being drafted by the General Secretariat of the Presidential Office to study how the labour legislation needs to be amended to fulfil the obligations deriving from ILO Conventions ratified by Guatemala, along with other commitments entered into within the framework of Chapter XVI of the Dominican Republic–Central America – United States Free Trade Agreement (DR–CAFTA).

In order to guarantee that the general labour inspectorate can carry out its activities in places of work without hindrance, the Ministry of Labour and Social Welfare, by virtue of Ministerial Agreement No. 42.2011, has laid down the procedure to be followed if the labour inspectors encounter opposition.

Finally, the Government draws attention to the fact that it has made a considerable effort to improve labour justice in the country, and that in the past two years much has been done to establish the basis for far-reaching changes in the implementation of Guatemala's labour legislation.

In addition, before the Committee, a Government representative reported on initiatives and progress made in the

country in the area of labour since the last session of the Conference. In follow-up to the conclusions reached by the Committee on that occasion, the Government had received a visit from Dr Alfonso Valdivieso, accompanied by ILO officials, from 9 to 13 May 2011. The members of the mission had been received by the Ministry of Labour and Social Welfare, the Labour Committee of the Congress of the Republic, the Attorney-General and the Public Prosecutor, the Supreme Court of Justice, the International Commission against Impunity in Guatemala (CICIG), and the Constitutional Court. His Government was willing to address the recommendations of the mission.

With regard to the observation of the Committee of Experts and the cases pending with the Attorney-General's Office, the Office of the Public Prosecutor had undergone internal reorganization, having issued an agreement reforming the regulations on the organization and operation of the human rights section of the Office of the Attorney-General, and a special prosecution unit was being created for crimes against trade unionists. On the issue of legislation, the President of the Republic had created a presidential commission to study labour legislation reform in order to implement obligations arising from ratified ILO Conventions, which brought together the Minister of Labour and Social Welfare, the Minister of the Economy and the Minister of External Relations. With regard to trade union membership rates and the very small number of collective agreements, it must be recalled that, in accordance with the Convention, the Minister of Labour and Social Welfare was legally prevented from doing anything about the low level of unionization and had therefore refrained from taking action. Furthermore, the Labour Code provided that the Minister of Labour and Social Welfare should formulate and implement a national policy to protect and develop trade unionism, as evidenced by the fact that, in 2011, 46 trade unions had been registered and, in November 2010, the first collective agreement on working conditions had been signed between the National League against Cancer and its trade union.

With regard to the exercise of trade union rights in practice at *maquilas* (export processing zones), the speaker indicated that the Government had accepted technical assistance from the Office to deal with the issue and to study the recommendations made. The Government had prepared an Inter-institutional Framework Agreement for the Exchange of Information between the Ministry of the Economy and the Ministry of Labour and Social Welfare, and the Inspectorate-General of Labour maintained a single centralized register of all trading enterprises eligible to benefit from the Act to foster and develop export and *maquila* activities. Since the framework agreement had entered into force, the Ministry of Labour had inspected 747 registered export companies and had established that 20 enterprises were failing to comply with labour legislation, of which 11 had rectified the situation, four had had their tax benefits revoked, and the rest were still being investigated.

With regard to labour inspection, a permanent programme of training for labour inspectors had been introduced at the national level, with support from the United States Department of Labour and from the ILO. A first national meeting of labour inspectors and health and safety officials had been held, in which 90 per cent of labour inspectors had taken part. Training had also been enhanced as regards the introduction and use of inspection protocols and in best practices in the use of the electronic case system. The Government of Canada had also supported the training labour inspectors in Guatemala through the "Real Card" project. Lastly, the Ministry of Labour and Social Welfare had published a ministerial agreement strengthening the role of labour inspectors to

avoid that they encounter obstacles when inspecting enterprises in all productive sectors within the country. With regard to the registration of trade unions, workers' organizations had been asked to update their details as required by law in order to provide legal certainty for their activities. With respect to the registration of the Trade Union Confederation of Guatemala (UNSTIRAGUA), the Government had provided the mission with a document fully clarifying the Union's legal status. The speaker concluded by stating that the Government of Guatemala was displaying political will, as a result of which various initiatives had been strengthened and were starting to bear fruit. It was receiving invaluable assistance from the Governments of the United States, Canada and Spain, the European Union, and the Office, to all of which it expressed its deep appreciation.

Another Government representative, magistrate of the Supreme Court of Justice, indicated, with reference to judicial issues, that the programme "Zero tolerance for corruption, peddling of influence and impunity" had been launched and that the labour courts created to overcome the backlog of labour cases were fully operational. A specific unit with the capacity to monitor and follow the progress of labour procedures had been established allowing matters to be expedited and the guidance and information provided to those concerned. A computerized system allowing judges to take action of their own initiative in the case of non-execution of sentences and reinstatement orders, had also been established. Over a period of 19 months, the Chamber for the Protection of Rights (*amparo*) and Preliminary Hearings (*antejuicio*) had overcome a backlog of over 1,400 labour cases. That was being achieved, inter alia, with the assistance of the United States Agency for International Development. Moreover, a labour inspection office was operating in the same building to provide on-the-spot guidance to users on labour and procedural issues, thereby facilitating access to information and justice. That had also strengthened the State's inter-institutional links.

With regard to the measures taken by the Supreme Court of Justice, she indicated that the Criminal Chamber had adopted measures relating to the access to legal assistance for victims, the coordination of inter-institutional action and collaboration with civil society. Coordination mechanisms had been established between the judicial authorities and a series of victim support institutions, through the operation of a programme combining municipal victim support bodies, as well as judicial facilitators trained and supported by the judicial authorities. Magistrates and prosecutors in the courts in criminal matters were particularly vulnerable to threats and other forms of coercion. The ordinary criminal courts were not adapted to cope with that and special criminal tribunals had been created to hear cases involving higher risk crimes and to respond more effectively to the generalized situation of violence which existed in the country. That was a response by the Supreme Court of Justice to the situation of impunity.

With regard to crimes against trade unionists, she indicated that every effort was being made to ensure that they were duly investigated and brought to justice. The possibility was envisaged of entrusting one of the existing criminal tribunals with the specific function of hearing cases of crimes against trade unionists, in view of the specificity of the victims, through the training of magistrates and auxiliary personnel to raise their awareness of the role of trade unions in the country. She also referred to the measures adopted in relation to working women. Since November 2010, six judicial instances had been in operation specializing in the murder and violence against women, including women workers for violence at the workplace. These measures had been made possible

through the support of the United States Embassy, Spanish cooperation and the United Nations Population Fund. In conclusion, she thanked the governments, international organizations and civil society which had made it possible to improve the judicial system in the country.

**The Employer members** emphasized that it was a recurring case which was well known in the Committee since it had been discussed on at least 15 occasions, the last of which had been in 2010. This year it also came with a specific request from the Committee of Experts that the Government should submit further information at the Conference. Since 2001, violence had become increasingly widespread in the country as a result of the growth in drug trafficking and its impact on the exercise of freedom of association, and that had concealed or obscured some progress which could have been noted previously in relation to legislative changes. The observations of the Committee of Experts dealt with the situation of violence against trade unionists, on the one hand, and with the legislative changes that ensured the free establishment and operation of trade unions, on the other. The information supplied by various organizations was a source of concern for all parties. It should be emphasized that technical assistance had been provided by the ILO on numerous occasions aimed at supporting change in the regulatory framework, even though some major issues were still unresolved. In view of the gravity and urgency of the issue, the speaker emphasized that he would focus on the situation of widespread violence, which showed no signs of changing for the better. With a view to improving the situation, a number of direct contacts and high-level missions had visited the country. The Government had made an undertaking to draw up a roadmap to eliminate the violence, which had sought, unsuccessfully, to achieve agreement among the parties in the context of social dialogue. In June 2010, the Government had also agreed to the visit of an important international dignitary, accompanied by ILO officials, and that had gone ahead recently with the visit of Mr Valdivieso.

The Employer members stated that the measures that called for the elimination of acts of violence could be divided into two categories. The aim of the first category was to strengthen the institutions responsible for ensuring effective respect for freedom of association in practice. Guatemala was a developing country, still poor compared with other countries in the region, where the situation of violence appeared to be aggravated by significant institutional weakness which needed to be rectified. Both the roadmap and the repeated requests by the Committee of Experts and this Committee stressed the need to: increase budgetary allocations and reinforce the Office of the Public Prosecutor; increase the number of magistrates, inspectors and staff of the Ministry of Labour and Social Welfare; strengthen relations between the institutions; expedite proceedings in criminal and labour law cases relating to freedom of association; boost resources for increasing protection for trade unionists and their families and for witnesses who had been assaulted or threatened; and enforce sentences that have been passed by the courts. The second category of measures concerned the data and information relating to the evaluation of actions undertaken to analyse developments regarding this phenomenon.

In 2010, the Employer members had vigorously expressed their concern and the Government had been requested to demonstrate its political will by sufficient action to make the issue a priority, especially through budgetary allocations, the enforcement of court sentences and improved resources for the judiciary and administration. The Committee of Experts found no evidence of sufficient progress made, or at least regretted that the report submitted did not include information on strengthening of the institutions or evaluation of the progress made. They

therefore voiced much greater concern than in previous years, and that was certainly the reason for requesting further information at the present session of the Conference. A worsening of the situation was also noted, especially in view of the conclusions of the Committee on Freedom of Association in 2009 and 2010.

The Employer members welcomed the information supplied by the Government and the magistrates of the Supreme Court of Justice in relation to the training of judges, the number of trade unions and the restructuring of the judiciary. However, that information was insufficient since it was also supposed to cover developments in the situation regarding the acts of violence. The investigation was important and should enable a clear definition of violent acts which took place in a context of widespread violence and those which resulted from measures taken specifically against trade unions. Serious violence had occurred resulting in the death of employers, in the very exercise of freedom of enterprises and right to collective bargaining. The Government had demonstrated goodwill through the acceptance of various high-level, direct contacts and technical assistance missions, and through its regular submission of reports. But goodwill was insufficient. In addition, the budget limitations resulting from a very fragile economic situation were not incompatible with priority and urgent actions in that sphere. The dialogue with the Government and the cooperation with this Committee and the Committee of Experts should be preserved as the best instrument for guaranteeing basic labour rights. Nothing should be allowed to weaken the capacity for investment and economic development in the country, since that was crucial for the strengthening of the institutions that would enable effect to be given to the obligations established by the Convention.

**The Worker members** recalled the statements they had made to the Committee, at the June 2010 Session of the Conference, with regard to the acts of violence against trade unionists in Guatemala, the legislative difficulties involved in implementing Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the matter of judicial impunity. At the time, they had presented very specific conclusions aimed at guaranteeing the full and comprehensive exercise of freedom of association as part of the strengthening of democracy in Guatemala and had expressed their strong desire that the Committee's conclusions be included in a special paragraph of its report so as to draw attention to the contempt with which the country had treated Convention No. 87 since at least 1991. Their view had not prevailed, however, and after a highly animated discussion the Committee had opted to follow the proposal of the Employer members requesting 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". Out of respect for the ILO, the Worker members had gone along with the proposal. Yet, what new developments had there been in 2011 with regard to the conclusions adopted in 2010? Until the statement that had just been heard from the Government representative, the matter of the visit by an international public figure had not been clear; in any case it was the Government itself that had chosen the person that suited it best. At its previous session, the Committee of Experts had had very little legislative or factual information on the situation in the country at its disposal, whereas the Government had been supposed to communicate a detailed report in 2010 on tangible progress on all the points raised by this Committee. The Worker members had rejected any suggestion that the Committee of Experts be held to account for basing its comments solely on the documents in its possession and had emphasized that those comments reflected a strictly literal interpreta-

tion of the Convention. It was obvious from the information obtained from all sides that nothing had changed and that the Government's lack of political will reflected its contempt for the workers. Legislative texts might be amended, but the same could not be said of their enforcement. The reality behind the situation was plainly economic greed.

The Worker members also noted the high-level mission that had taken place from 9 to 14 May 2011 and that the Government had, on 1 October 2010, requested ILO technical assistance to clarify the matter of UNISITRAGUA's registration as a trade union. They recalled the tripartite mission that had visited the country in February 2009, during which the members of the mission representing workers had sensed a total lack of consideration on the part of the Government. That nothing had changed since the 2009 high-level mission was all too clear from the conclusions adopted by the Committee in 2010: the worsening of the situation of violence and impunity, insufficient political will to take action to combat violence against trade union leaders and members and to combat impunity, the urgent need to ensure simple and prompt recourse or any other effective recourse to competent courts or tribunal, and the need to take measures to strengthen social dialogue, redefine the representation bodies and guarantee access for workers' representatives that had been freely elected by the organizations existing in the country, in accordance with the comments of the supervisory bodies.

The high-level mission that had taken place in May 2011 was supposed to clarify those four points. In its report the mission had begun by recalling the staggering number of union leaders and trade unionists who had been murdered or whose lives had been threatened since 2007. It had referred to the generalized climate of violence and to the very limited resources employed by the judiciary to eradicate violence and restore the rule of law. It had also raised the legislative problems that were regularly mentioned by the ILO supervisory bodies, drawing attention especially to the provisions of Guatemala's Labour Code that were in contradiction with Convention No. 87. The high-level mission had expressed its deep regret that, since the previous year, there had been no progress in the reforms called for by the Committee of Experts and that the Tripartite Commission on Labour Affairs had not presented a single Bill to Congress. While noting the arguments advanced by the Guatemalan authorities with regard to the progress made in the coverage of collective agreements in *maquilas*, the mission had expressed its doubts on the subject given the extremely low level of union membership in those areas, which it had been able to verify through its contacts with the union federations. In addition, it had asserted that it was urgent that the Trade Unions' Unity of Guatemala (CUSG), the General Confederation of Workers of Guatemala (CGTG) and UNISATRAGUA take part in the activities of the Tripartite Commission on Labour Affairs, of which they were not members. The high-level mission added that a social dialogue institution that ignored such an essential part of the trade union movement could not adequately achieve its objectives. Finally, the mission's report included its observations on the registration of trade unions, though there was no indication that the Government recognized that there was any need to envisage establishing a procedure for facilitating their registration. The one positive aspect was that the high-level mission had taken note of the creation of a bipartite working group within the Tripartite Commission on Labour Affairs, with the mandate to draw up a Bill on the establishment of an Economic and Social Council. If that Bill was not to be just for show, then it would certainly need the benefit of ILO technical assistance.

An observer of the International Trade Union Confederation (ITUC) stated that, for the past 57 years, the State had, under both military and civil regimes, been systematically violating Convention No. 87. There existed an unwritten policy against freedom of association that resulted in the Government having to appear before the Committee for 15 consecutive years. Despite a succession of high-level missions, direct contacts and technical assistance, the Committee of Experts was still calling on the Government to guarantee the protection of trade unionists facing death threats, to speed up judicial procedures and to investigate murders and other crimes against trade unionists so as to punish those responsible and to resolve the serious problem of judicial impunity for such crimes. During the high-level mission that visited the country in May 2011, the Minister of Labour and Social Welfare claimed that the trade unions' accusations were unfounded and were just looking for confrontation. The speaker wondered whether the recent murder of union leaders, the systematic anti-union harassment, the mass dismissals of trade unionists, the refusal of employers to comply with court rulings in favour of trade unionists and the failure to investigate several murders were also just looking for confrontation. As the conclusions of the high-level mission showed, the situation continued to be delicate, serious and preoccupying.

The Employer member of Guatemala welcomed the visit of Mr Valdivieso as the head of the high-level mission entrusted with examining the issues that were pending. The speaker reiterated the willingness of the employers of Guatemala to promote the recommendations that were made and emphasized that he shared the concern of the mission regarding the acts of violence against trade unionists. Nevertheless, it was important to take into account the context in which such acts of violence were occurring, and the efforts made by the country to strengthen the rule of law. It was of vital interest to employers that acts of violence against trade unionists and employers were investigated, with a view to bringing those responsible to justice and identifying whether the causes of the crimes were linked to the professional activities of the victims. One of the figures that gave rise to concern was the number of violent deaths of employers, which had amounted to 28 in 2010.

Those concerns were shared by the judicial authorities and the magistrates of the Supreme Court of Justice were following the matter closely, resulting in the establishment of new labour courts. The Tripartite Commission on International Labour Affairs had been urging the Office of the Attorney-General of the Republic to strengthen investigations into these acts, while the executive authorities had also commenced the reinforcement of the general labour inspectorate. The employers of Guatemala would monitor, through the Board of the General Labour Inspectorate, that the process continued. More transparent procedures had been established for appointments to high-level positions with responsibility for justice and the work of the CICIG was a step in the right direction in combating the climate of impunity. Guatemala was a pioneer in the implementation of real concrete measures adapted to the actual situation, with the support of the international community, with a view to finding a solution to a problem that was threatening to spread throughout the region. It was not true to say that there existed a climate of anti-union violence, but rather that violence affected all sectors equally.

With regard to the need to adopt amendments to bring the national legislation into conformity with ILO Conventions, the speaker recalled the need to seek consensus in tripartite dialogue forums and reaffirmed the will of employers to achieve such agreements. He expressed disagreement with the Committee of Experts concerning the

need to amend the legislation respecting the right to strike, which was not regulated by any ILO Conventions. He added that social dialogue was under threat due to the divisions among trade union leaders in the country.

He indicated that union membership and collective bargaining rates needed to be analysed in terms of the population engaged in the formal economy, rather than the whole of the economically active population. Moreover, the membership of representative organizations had fallen throughout the world, and Guatemala was no exception. Figures indicated that anti-union discrimination was practically non-existent in the *maquila* sector. There had been no unlawful closures as a result of the close collaboration between the private sector and the labour authorities. Finally, he emphasized the progress achieved in the application of justice and the contribution made by civil society to strengthening the rule of law, which was the only way of getting to the roots of the problems highlighted by the Committee of Experts that were difficult to resolve. Problems still remained, but progress was being made to guarantee the full exercise of rights for all citizens.

**The Government member of Argentina**, speaking on behalf of the Government members of the Committee which were members of the Group of Latin American and Caribbean countries (GRULAC), welcomed the information provided by the Government, the magistrates of the Supreme Court of Justice and the social partners. GRULAC noted that the active participation of the Government reflected the political will to resolve the challenges that the country faced in applying the Convention. The speaker welcomed the visit of Mr Valdivieso, accompanied by officials of the ILO, in compliance with the Committee's 2010 conclusions. The mission's recommendations should help the authorities to tackle the problems the Government faced. Guatemala needed the support of the ILO and the Committee's supervisory mechanism should be used to help governments meet the commitments they entered into upon ratification of ILO Conventions. In conclusion, the speaker encouraged the Government and the Office to continue their efforts to ensure the full application of the Convention.

**The Government member of Belgium**, speaking also on behalf of the Government of Luxembourg, regretted having to repeat the statement he had made in 2010 and expressed his concern in its regard. The Government of Guatemala had, since 1991, been the subject of several observations by 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. The Guatemalan authorities must ensure freedom of association, in direct collaboration with the social partners and with the assistance of the ILO. He welcomed that a Tripartite National Commission for full implementation of the Convention, as well as a roadmap, had been established. The tripartite nature of that Commission must be preserved and if possible encouraged by an inclusive dialogue. Moreover, over the past three years, the number of violent deaths of trade unionists had increased dramatically, in a context of insecurity and increasing violence affecting the whole of the population. The Government of Guatemala must take measures to prevent harassment, persecution and assassination of trade unionists, and to combat impunity. The results of the investigations carried out should be made public. Only through such steps, the Government would prove its political willingness to combat, credibly, violence committed against trade union members and to combat impunity, in accordance with the recommendations accepted by Guatemala within the framework of the Universal Periodic Review by the United Nations Human Rights Council. In conclusion, the speaker reaffirmed the

importance of the cooperation between the authorities of Guatemala and the ILO.

**The Government member of the United States** noted that since 2008, in the context of the Dominican Republic–Central America–United States Free Trade Agreement (DR–CAFTA), her Government was reviewing many of the same issues as the Committee of Experts with regard to Guatemala's application of the Convention and had engaged extensively with the Guatemalan Government in an effort to resolve the issues raised in a public submission, filed by the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and six Guatemalan unions, as well as to address systemic concerns about the enforcement of labour law in Guatemala. Although some positive steps had been taken, the Government remained gravely troubled by the overall lack of progress to date. The speaker noted that the Government of Guatemala had acknowledged the serious challenges it faced in effectively protecting the right to freedom of association and had on several occasions availed itself of ILO technical assistance to overcome these challenges. Nonetheless, devastating acts of violence against trade unionists continued; there were numerous shortcomings in the criminal, civil and labour courts that prevented effective enforcement of labour laws; and the situation of impunity remained as serious as ever. In view of these challenges, the speaker once again strongly urged the Government to intensify its efforts, in close collaboration with the ILO and with the full involvement of the social partners, to take the concrete and sustainable measures, which were urgently required, to guarantee freedom of association and the right to organize in Guatemala. Finally, the speaker expressed the hope that the Government of Guatemala would act decisively and without further delay to implement the conclusions and recommendations of the recent high-level mission so as to mark a long-awaited turning point in the application of the Convention in Guatemala and genuine progress toward full respect for the most fundamental of workers' rights.

**The Worker member of the United States** recalled that Guatemala was one of the most frequently reviewed countries by the supervisory bodies of the ILO with regard to violations of the right to freedom of association and collective bargaining. For the last 20 years the supervisory bodies had identified and denounced serious, widespread and systematic violations of these fundamental rights and the ILO had sent several high-level missions to Guatemala, the latest one less than a month ago. Despite these efforts, Guatemala could be described as experiencing a near complete breakdown in the systems of labour and criminal justice. Much of this could be attributed to a complete lack of political will and successive administrations, which had together misused millions of dollars in capacity-building funds and technical assistance oriented towards the improvement of labour administration, judicial reforms and enhancing the capacity of public prosecutors to combat violence against trade unionists. With regard to anti-union violence, he recalled that freedom of association could only be exercised in conditions in which fundamental rights, in particular those relating to human life and personal safety, were fully respected and guaranteed. Statistics provided by the ITUC indicated that Guatemala was the second most dangerous country in the world in which to be a trade unionist. Furthermore, statistics provided in relation to the ILO high-level mission indicated that 53 trade unionists had been assassinated during the last five years. The most recent killing had taken place on 26 May 2011, in which Mr Idar Joel Hernandez Godoy, Director of Finance for Izabal Banana Workers' Union (SITRABI), was killed while driving the union's truck. During the last five years, three other SITRABI leaders had been murdered and in 1999 five

members of SITRABI's executive board had been forced into exile. In this regard, the speaker noted that despite the establishment of an office of the Special Prosecutor for crimes against trade unionists and journalists in 2002, there had been no progress in bringing the persons responsible for these crimes to justice. Police and department-level prosecutors often failed to undertake competent investigations and too frequently failed to investigate all possible motives, especially ones related to the victim's trade union activity. This had also been indicated by the high-level mission, which had noted that in recent years there had been a certain tendency among investigators to privilege motives other than trade union activities. This tendency was in his view largely responsible for the 98 per cent rate of impunity in Guatemala. While referring to the Committee of Experts' observation, he expressed his concerns that the announced budget cuts for the justice system in 2011 would worsen the situation. In conclusion, he urged the Conference Committee to include its conclusions on Guatemala in a special paragraph in its report and called upon the Government of Guatemala to combat the violence which was an impediment to the full and free exercise of freedom of association.

A **Worker member of Colombia** stated that the case of Guatemala was a serious, persistent and urgent case to which the Government had not provided a serious and convincing reply. It was a case of repeated and systematic non-compliance. The Government had maintained an anti-union policy and had allowed employers to maintain practices aimed at destroying the trade union movement, while the ILO supervisory bodies had been dealing with the case for more than 20 years. These bodies had identified at least 12 kinds of practices which obstructed trade unions' rights to become established, including as a prerequisite, authorizations for trade union registration; the possibility for employers to challenge the establishment of a trade union; the sale of blacklists of workers who had belonged to unions; the judicial suspension of trade union immunity; the creation of "solidarity organizations" under the control of the employers; the fraudulent closure or change of name of the workplace; and the use of legal proceedings against workers. These practices were based on legislation which was contrary to the Convention and had not been changed, nor were there any government initiatives to change this legislation or to introduce mechanisms to provide protection against such abuses. The result of anti-union policies was that Guatemala had an extremely low rate of trade union membership (less than 2 per cent). He stated that nearly 200 pending applications for the registration of trade unions had received no reply from the Ministry of Labour and that as a result of the imposition of illegal and unfair requirements that delayed the deposit of union statutes more than half of the trade unions established in Guatemala (561 out of 961) had ceased to exist. None of the productive sectors in Guatemala achieved a trade union membership rate of even 1 per cent. Membership rates were as follows: 0.01 per cent in services and commerce; 0.31 per cent in the financial sector; 0.11 per cent in construction; 0.5 per cent in the *maquila* (export processing) sector; 0.6 per cent in industry; and 0.47 per cent in agriculture. The overall rate of unionization did not exceed 0.33 per cent. The Single Confederation of Workers of Colombia (CUT) regretted that a legitimate and autonomous trade union federation such as the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) was exposed to constant attacks for its repeated denunciation of violations of international labour standards, especially freedom of association. The speaker asked the Committee to remind Guatemala that it was unacceptable to exclude workers associated in different

federations from social dialogue on grounds of submitting complaints and defending the working class.

The **Government member of Germany** expressed regret at the continuing violations of trade unions' rights. While he welcomed the efforts made by the Government of Guatemala, he hoped that the Government would take note of the discussion which took place before the Conference Committee and act accordingly, especially with regard to improving the administration of justice.

The **Worker member of the Bolivarian Republic of Venezuela** expressed solidarity with the workers of Guatemala and, in particular, organizations such as the MSICG, in the face of acts of harassment, intimidation and persecution. She expressed particular concern at the serious and repeated violations occurring in export processing zones and provided the following data gathered by the MSICG from official records: of 90,000 workers in the *maquila* sector, only 488 were unionized, spread among six unions, all in precarious situations, and only three of which had managed to negotiate collective agreements, and they had done so merely for the sake of appearance, as the agreements either restricted the rights set out in legislation, or at best, restated them. She underlined the fact that, between 2006 and 2009, 71 *maquila* closures had been requested from the labour inspectorate and in the majority of cases, employers had not fulfilled their labour obligations. Although the Government had claimed to have imposed penalties on certain enterprises by suspending their tax benefits, in reality, the benefits enjoyed by these enterprises had only been suspended once the enterprises were no longer active. There had in fact been an increase in the tax benefits provided for by Decree No. 29-89 through an initiative promoted in Congress. She referred to the inclusion of representatives of the judicial authorities in the Government delegation, pointing out that one of the most serious issues was the systematic failure of the justice system. In that regard, she recalled that the MSICG had submitted proposals in that respect during the mission that had taken place in May 2011, and that its proposals had been intended to guarantee rapid and straightforward access to the competent tribunals for protection against acts that violated fundamental rights. She mentioned the significant judicial backlog and the fact that only 1 per cent of cases, brought with the aim of exercising the right to strike, resulted in the strikes in question being declared legal. It was being claimed that abuses of the *amparo* mechanism were causing the judicial backlog, but it was most often the Government of Guatemala, in its capacity as an employer, that submitted *amparo* claims. The Government brought 40 per cent of *amparo* cases, while private employers brought 36 per cent. The Committee had requested an increase in the resources allocated to the justice system, but the opposite had occurred, and the Supreme Court of Justice itself had stated, on 12 May 2011, that the 2011 budget for the justice system had suffered enormous cuts, which meant that many judicial functions might have to be put on hold. She concluded by requesting that, in view of the Government's lack of political will and refusal to cooperate over many years, the Committee's conclusions should feature in a special paragraph.

The **Worker member of Uruguay** said that the members of the Inter-Union Assembly of Workers – National Convention of Workers (PIT-CNT) deplored the fact that the absence of freedom of association in Guatemala was so serious that the MSICG – which represented over 225,000 paying members and, as a representative autonomous confederation, was the principal complainant against Guatemala before the ILO's supervisory bodies – had been identified by the Government in its 2010 reports as seeking to destabilize the country and had been accused of terrorism on the sole grounds of having denounced the

absence of freedom of association in the country. He requested that in the Committee's conclusions the Government be requested to provide protection for the MSICG and its work teams and to put an end to the repression and criminalization of its activities simply for upholding freedom of association. If trade unions were to function in a climate of freedom of association, they had to be able to enjoy all civil liberties in full respect for human rights, especially as they related to people's life and safety. The fact that such a situation existed meant that terrorist practices and activities were being protected or concealed, which was tantamount to state terrorism on the part of the very institution that should be enforcing those rights rather than denying them. There were other trade union rights that were being trampled on through the Government's interference, its failure to enforce labour legislation, the lack of any effective judicial procedures and the denial of the workers' right to establish trade unions of their own choosing. Instead, there was an obligation on the Government to promote freedom of association and the establishment of trade unions by taking steps to facilitate the exercise of those rights. That was not how the Government of Guatemala was behaving.

**The Government member of Norway** recalled that the Government of Guatemala had, on several occasions, appeared before the Conference Committee with regard to violations of the Convention. On these occasions, his Government, along with other countries, had urged Guatemala to take measures to bring its law and practice in line with the Convention. In this regard, the speaker associated himself with the statement made by the Government member of Belgium.

**Another Worker member of Colombia** said that, for all the Government's assertions of its good intentions, it should not be forgotten that for the past 15 years the Committee had been unable to obtain any reliable indication that it could look forward to legislative changes that might be conducive to the full exercise of workers' rights as they related to freedom of association. As early as 1998, the Committee of Experts had called on Guatemala in no uncertain terms to bring its legislation into line with international labour standards, and for the workers it was unacceptable that such a request be ignored. It was unfortunately obvious that there were still restrictions in terms of freedom of association, collective bargaining and the right to strike, which had been criminalized. That was why union membership was so low that those who claimed that the rule of law existed in Guatemala should be ashamed. A State that failed to respect these rights was a failed State that was doomed to failure; there could be no democracy if workers' rights were not respected. He wondered: (1) how much longer the dilatory tactics of successive Guatemalan governments were going to continue; (2) why the current Government had not submitted the relevant Bills to Congress; (3) whether a level of unionization of under 2 per cent was something that the Government and the employers could be proud of; and (4) how the Government could hope to establish the rule of law in a country that did not respect workers' rights even minimally. The speaker recalled that the high-level mission that had visited Guatemala in May 2011 had clearly indicated its concern at the legislative situation in the country, and especially the criminalization of strike action. Although he hoped that the Committee would see genuine progress in 2012, he requested that the conclusions of the Committee be included in a special paragraph in its report.

**The Worker member of Brazil** expressed his support for the trade union movement of Guatemala. The absence of democracy could well be one of the causes behind the murders of trade unionists in Guatemala. The report of the Committee of Experts gave concrete and alarming exam-

ples of situations encountered by trade unionists: 47 trade unionists assassinated between 2007 and 2010; acts of intimidation and acts of violence committed against trade unionists and trade union offices, as well as the absence of negotiations with the enterprises of the country, were all disgraceful situations for Guatemala and for Latin America. In that connection, special protection had to be put in place for trade unionists and ensured by the Prosecutor responsible for human rights. Furthermore, it was important for all trade unions of Guatemala to participate in all dialogue forums as it was equally important to avoid the discrimination of the trade union movement of the indigenous peoples so as to ensure its participation in social dialogue. For it was not up to the Government, nor the employers, to choose their interlocutors in social dialogue as the latter should be engaged with all the social movements and all the trade union movements of the country.

**An observer representing the World Federation of Trade Unions** said that the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG), an independent trade union confederation representing more than 255,000 workers, regretted the fact that the Government had not provided the Committee with a reply to the comments made by the MSICG in 2010, and further regretted the fact that the Government was failing to respect the ILO supervisory bodies and those present on the Committee, displaying no political will at all. She illustrated this with the following examples: (1) despite the Committee's request to the Government to increase the budget allocations for labour inspection, the Office of the Attorney-General, the police and the Supreme Court of Justice, the Supreme Court had revealed the fact that the justice system had suffered unthinkable cutbacks; (2) in 2010, the Government had informed the Committee of an increase of 30 labour inspectors, but the number of inspectors had fallen from 197 to 185; (3) whenever the State was being questioned about anti-union violence, it created or suppressed the unit for crimes against trade unionists or the Office of the Attorney-General to suit itself; (4) the Government cited as a step forward the Ministerial Agreement No. 106-2011, issued on 3 March 2011, which, according to the Government, would allow the police, together with labour inspectors, to enter a workplace if an employer denied access for three days, but only if there were signs of the worst forms of child labour, if *maquilas* were to be closed, or if more than ten workers had been dismissed. She said that the aforementioned Agreement represented a serious setback and a flagrant violation of section 281 of the Labour Code, which covered the obligation of the labour inspection services to enter premises, accompanied by the police, at any time if an employer refused access and in any circumstances; (5) the Government had stated that it had recovered large sums of money for workers dismissed from *maquilas* but, between 2005 and 2010, workers had lost more than 73 per cent of the labour benefits to which they had been entitled because of failures on the part of the labour inspection services; (6) with regard to *maquilas*, in the case of a certain enterprise, the public prosecutor for human rights had identified violations of workers' rights and reasonable indications of crimes by labour inspectors, but nothing had been done about it; and (7) the State continued to point to the creation of committees for legislative reforms that never materialized, despite the creation of hundreds of committees. Lastly, she requested that the conclusions in the case should be included in a special paragraph as an act of justice for all the workers who had become victims of anti-union violence in its various forms, including murder, dismissal, and being unable to find work because of having formed a trade union.

The Government representative reaffirmed that the Government of Guatemala was not tolerant towards, nor did it endeavour to incite individuals to threaten, physically harm or kill any citizen of Guatemala, targeting trade unions or union premises, and that it took seriously the duty of the State to safeguard private property as the right of the individual. He reiterated that the Office of the Public Prosecutor would undertake an internal restructuring with the creation of the Special Investigation Unit into Crimes against Trade Unionists. He added that the mission that had recently visited the country had observed in its conclusions that violence was generalized and that it affected trade unionists, employers and all Guatemalan citizens, and that there was not therefore any stigmatization of workers. The situation was of concern to the Government and it was making efforts to resolve it, as indicated by the magistrates who were present. With regard to the legitimacy of the Tripartite Commission for International Affairs, he indicated that its representative status could not be challenged, as the Ministry of Labour had published in the newspaper with the largest circulation the call for employers and workers on an equal footing to propose their representatives in a participatory manner. With reference to the number of labour inspectors, he indicated that there were now 214, which showed that the promise to increase their number had been kept. He noted that efforts were being made gradually, such as, for example, the changes in the Office of the Public Prosecutor. He expressed concern that the efforts that were being made by the Government could be described as a joke when they consisted of changes that required major efforts, with the collaboration of the ILO and the assistance of other organizations, and that some of them were the result of agreement reached in the Tripartite Commission. The work of the Commission that would revise the legislation would include following up the draft reforms to the Labour Code formulated by the Tripartite Commission with ILO assistance, which were known as the "Marin Draft". He called for the Committee to support the Government, which he said would continue its efforts for the full application of the Convention. He added that a new generation of citizens of Guatemala were taking up high-level positions and that they had a vision of the country in which all sectors had to work together, especially in relation to national production, which involved a collective vision of progress.

The Employer members referred to the seriousness of the issue and expressed the unanimous concern of the Employers' group. The Government of Guatemala had spoken of gradual changes, but it needed to demonstrate a more evident political will to strengthen the country's institutions and to assess the progress made. According to the Government there had already been some progress, such as the creation of a special investigation unit and, hopefully, the provision of a budget and the adoption of measures to speed up procedures; but the Employer members hoped that the Government would take much more decisive action to put a stop to anti-union violence. They trusted that the efforts deployed in the Committee would not mean slowing the country's economic development and investment and that the necessary legislative changes would come about through dialogue.

The Worker members welcomed the comments and encouraging remarks made by the different speakers towards the workers of Guatemala. All the legislative reforms recommended by the various ILO missions, the Committee of Experts, and the Conference Committee needed to be undertaken with the attentive assistance of the Office, and needed to have as their main objective the bringing into conformity of the country's practice with Conventions Nos 87 and 98, and to guarantee workers that they could establish trade unions in full freedom, without any threat or pressure, in a climate free from fear.

The Government also needed to undertake additional reforms on the following points: (1) a significant increase in the budget allocated to the Office of the Public Prosecutor, the Supreme Court of Justice, the police, and the labour inspectorate so as to make the action of the judiciary more rapid, effective, and independent; (2) the implementation of a profound fiscal reform so as to ensure the rule of law and strengthen the institutions responsible for the observance of human rights and trade union rights; (3) the effective reinstatement of all dismissed workers who won their appeals; (4) the guarantee of the ending of impunity so that perpetrators, instigators and accomplices of offences committed against persons defending trade union rights were arrested, brought to justice and convicted, which would mean that the acts committed against trade unionists were no longer systematically categorized as common law offences. Having taken due note of the good will expressed by the Government to establish a constructive and participatory dialogue, they emphasized the fact that all trade unions of Guatemala should be invited, especially the CUSG, CGTG and UNSITRAGUA, and that the invitation should be made public. They indicated that they trusted that the next report of the Committee of Experts would note the real progress on the different points raised. That would require the Government to embark rapidly on the necessary reforms with the relevant institutions, especially in consultation with workers' organizations. In the meantime, the conclusions of the Conference Committee on the present case should appear in a special paragraph of its report.

The Employer members agreed with the proposal of the Worker members to include the conclusions in a special paragraphs of the Committee's report.

### **Conclusions**

The Committee noted the statements made by the Government representative and a magistrate of the Supreme Court of Justice, as well as the discussion that followed. It also noted the numerous cases examined by the Committee on Freedom of Association and that a high-level mission had visited Guatemala from 9 to 13 May 2011.

The Committee noted that the Committee of Experts continued to express deep concern at the following issues: the numerous serious acts of violence, including the murder of trade unionists and threats against them; legislative provisions and practices incompatible with the rights embodied in the Convention; and problems concerning the composition of the national tripartite commission. The Committee observed that the Committee of Experts had also noted the slowness and ineffectiveness of criminal procedures in relation to acts of violence, the excessive delays in judicial procedures and the lack of independence of the judicial authorities, all of which was giving rise to a serious situation of almost total impunity.

The Committee noted that the Government representative had indicated that his Government's attitude was not one of tolerance, that it did not encourage people to threaten or endanger the life and physical integrity of any citizen of Guatemala, that it fulfilled its obligation to investigate acts of violence, and that under Agreement No. 49-2011 of 20 May 2011 it had established a Special Investigation Unit for Crimes against Trade Unionists. He had added that the Constitutional Court of Justice had amended Agreement No. 4-89 to ensure that proceedings relating to constitutional appeals for protection did not hinder the course of ordinary legal procedures. He had further stated that the Inter-Institutional Committee on Labour Relations had examined the country's labour problems and that the efforts made were being reflected in a "roadmap" setting out dates and specific activities, which the Government of Guatemala was following by strengthening the implementation and enforcement of labour laws, and that there was an agreement

by the General Secretariat of the Presidential Office which would appoint a Presidential Committee to study how the labour laws needed to be amended to fulfil the obligations deriving from the ILO Conventions ratified by Guatemala. The Government representative had emphasized that the Government's call for the proposal of representatives of employers and workers for the national tripartite commission, which had been set up at the end of 2010, had been published in a widely read daily newspaper so that all organizations wishing to participate could do so. The Government representative had indicated that, in order to guarantee that the general labour inspectorate could carry out its activities without any hindrance in its access to workplaces, Ministerial Agreement No. 42-2011 set out the procedure to be followed in cases of resistance to labour inspection. He had also referred to the increase in the number of trade unions registered. Finally, the magistrate from the Supreme Court of Justice had provided full information on the measures to facilitate criminal and labour procedures and other measures for the restructuring of the judicial system.

The Committee noted that it was dealing with an important case that had been under discussion for many years and that the Government had received numerous technical assistance missions on the various pending issues. The Committee noted with deep concern the persistent climate of violence in the country and the growing degree of impunity. It further noted with deep concern that the climate of violence was generalized, that it affected trade unionists, entrepreneurs (28 murders in 2010, according to sources mentioned by the Employer members) and other categories, and that the figure of 53 trade union leaders and members murdered in recent years showed that they were a particularly vulnerable group.

The Committee recalled the importance of guaranteeing as a matter of urgency that trade unions and employers' organizations and their representatives were able to carry out their activities in a climate that was free from fear, threats and violence, and of identifying those cases of violence committed for reasons related to their representative functions. The Committee considered that it was important to improve the climate for investment and economic growth which would also have a positive impact in combating impunity.

The Committee emphasized the need for all the necessary measures to be taken without delay so that the corresponding investigations could be conducted to determine those responsible for the acts of violence against trade union leaders and members, bring them to justice and punish them in accordance with the law. The Committee welcomed the recent establishment of the Special Investigation Unit for Crimes against Trade Unionists and trusted that it would be provided with the necessary resources to carry out investigations. It trusted that the International Commission against Impunity in Guatemala (CICIG) would, as the Government had promised the last mission to visit the country, collaborate with the Attorney General's Office in investigating and resolving the 53 murders of trade union leaders and members. While noting the Government's indications concerning the reform in the judicial system and of the measures to improve its functioning, the Committee stressed that further steps were needed to strengthen the judicial authorities, the police and the labour inspection services and provide them with greater human and financial resources. The Committee drew attention to the need for a reform with a view to reinforcing the rule of law and the institutions responsible for justice, as well as their independence.

The Committee recalled the intrinsic link that existed between freedom of association, democracy and respect for civil liberties, and especially the right to personal safety as a precondition for compliance with the Convention.

The Committee regretted to observe that, despite having received specific technical assistance from the ILO, there

had been no significant progress in the legislative reforms called for by the Committee of Experts for many years. It trusted that the Government would in the very near future be in a position to provide information on concrete progress in that area. The Committee requested the Government to take steps to strengthen social dialogue and, in accordance with the conclusions of the high-level mission, to ensure the integration of the named representative trade union confederations in the national tripartite commission.

The Committee expressed its serious concern at the situation and noted the lack of clear and effective political will of the Government. The Committee considered that all measures needed to be taken on an urgent basis and in tripartite consultation to address all issues of violence and impunity. This should be done in full coordination with the state institutions concerned. ILO technical assistance should continue to be provided to enable the Government to address all legislative problems that were still pending with a view to achieving full conformity with the Convention.

The Committee emphasized the need to apply effectively, and without delay, court orders for the reinstatement of dismissed trade unionists.

The Committee requested the Government to send the Committee of Experts a detailed report this year containing information on all the points raised so that a full evaluation of the situation could be undertaken and expressed the firm hope that next year the Committee of Experts would be in a position to note substantial progress in the application of the Convention.

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

#### MYANMAR (ratification: 1955)

A Government representative stated that a legal reform was currently under way in order to bring the national legislation in line with international legal instruments to which Myanmar was a party. One of the new laws under consideration by the Parliament in this process was the draft Labour Organizations Law. The Attorney General and the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) were involved in the drafting process. ILO's technical advice had been sought on multiple occasions. Through this process, every effort was made to bring the law in conformity with the Convention. He indicated that, once the drafting process was completed, the text would be shared with the ILO on a confidential basis, while it would be promptly submitted to the Parliament. The speaker indicated that in Myanmar there were many social organizations and they were allowed to organize, assemble, march and make public talks. For example, workers of Weng Hong Hunt and Opal garment factories and Taiyi shoes factory had staged strikes in February 2010. The workers' demands had been met through tripartite meetings. The Government had not prohibited anything nor taken any punitive action against anyone. This demonstrated that the rights of civil liberties and freedom of association were not hampered or violated.

As regards Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Min and Myo Min, the speaker stated that they had never worked in any factories or other establishments and were neither workers nor trade unionists. Action had been taken against them for their violation of existing laws. They had been tried in a fair manner while respecting their rights to a lawyer, presenting supporting witnesses, and cross examination by their lawyers. Detailed information would be provided to the Committee of Experts. He also mentioned that, since 1988, the Government had granted amnesty on five occasions, including the one given under section 204(b) of the Constitution, and had suspended the execution of sentences 11 times in accordance with the Criminal Procedure Section 401(1).

As a result, 114,950 persons had been released and capital punishments had not been carried out to date. Prisoners had the opportunity to suspend their sentences and to be released early on the basis of good conduct.

The 2008 Constitution guaranteed, under section 354, citizens' rights, including freedom of expression, assembly and association. It was believed that this section was in line with the Convention. President U Thein Sein had indicated, in his inaugural address on 30 March 2011, that the Government was determined to improve the living conditions of workers. He also indicated that laws on employment opportunities and the safeguarding of rights of workers would be reviewed in order to bring them in line with today's needs, circumstances and commitments. He concluded by stating that much remained to be done, but immediate efforts would be undertaken to fully implement the Convention.

**The Employer members** recalled that Myanmar had ratified this Convention 56 years ago, that this case had been discussed 14 times by the Conference Committee since 1992, and that there had been 21 observations made by the Committee of Experts on the application of this Convention by Myanmar. Last year, the Government representative had admitted that there were no trade unions in Myanmar. The conclusions of the Conference Committee highlighted the gravity of the allegations made. There were fundamental divergences between the requirements of the Convention and the law and practice in the country: free and independent trade unions did not yet exist. They noted the new element in the Government representative's statement, i.e. the draft labour organization law, but regretted that no indication was given as to its content. With regard to the complaint filed under article 26 of the ILO Constitution by Workers' delegates in June 2010, and the examination by the Governing Body of the possibility of the creation of a Commission of Inquiry on the non-observance by Myanmar of this Convention, the Employer members recalled the position of the Employers' group in the Governing Body which had considered it more appropriate first to ask the Government to provide more information on the allegations contained in the complaint. They deplored that the Government missed, today, the opportunity to provide such information.

Noting the numerous examples given in the report of the Committee of Experts of union activists and sympathizers sentenced to lengthy prison terms, the Employer member recalled their statement made two years ago that respect for the right to life and other civil liberties was a fundamental prerequisite for the exercise of the rights contained in the Convention. Moreover, the Committee of Experts' observations highlighted several legislative provisions which restricted or prohibited freedom of association. Freedom of assembly and speech were not permitted. Making reference to this year's discussion on the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar, they concluded that the Government was very far away from drafting and enacting legislation in line with the Convention, much less implementing it in law and practice. In the absence of action from the Government, this case was a continued failure to implement.

**The Worker members** said that the same discussion had been repeated for the past 20 years. The Committee of Experts reiterated, with regret, the same observation, the Government reiterated without regret the same replies, which were off the subject, and the Conference Committee continued to regret the murders, arrests of trade unionists and multiple other violations of freedom of association. The report of the Committee of Experts once again contained an extensive, but not exhaustive list of persons who had been murdered, detained or tortured for absolutely ordinary trade union activities, such as speeches made on socio-economic issues or the mere communica-

tion of information to the trade union movement. For each person cited, the fundamental rights and essential civil liberties provided for in the Convention, had been violated by the authorities. In such cases, there was no special complaints mechanism, as for forced labour. That was when the regime showed its real face. Each time, the same excuses were trotted out, such as the commission of illegal acts, the existence of terrorist organizations or interference in the country's internal affairs. While, in accordance with Article 8 of the Convention, trade unions had to respect the law, the same Article provided that the law of the land shall not be such as to impair the guarantees provided for in this Convention. Over recent years, the Conference Committee had emphasized the intrinsic links between freedom of association and democracy. However, the Government had proceeded to hold elections without establishing the basic conditions necessary for reliable elections, namely freedom of association, including the right to organize. Indeed, there was still no legal basis for the right to organize in Burma/Myanmar. The new Constitution made the right of association subject to "the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality". Furthermore, several legislative provisions contained important restrictions on the right to organize. Order No. 6/88 required permission for the establishment of any organization. Order No. 2/88 prohibited the gathering, walking or marching in procession by a group of five or more people. The Unlawful Association Act of 1908 provided for prison sentences. The 1926 Trade Union Act made the recognition of trade unions subject to membership by 50 per cent of the workers concerned. Finally, the 1964 Act established a compulsory system for the representation of workers and imposed a single trade union. Last year, the Government had indicated that the Orders and the Unlawful Association Act would be repealed after the elections in 2010 and that new legislation on trade unions was being prepared. The Government had just repeated that statement. However, none of the announced measures had been adopted. Declaration 1/2006, which qualified the Federation of Trade Unions of Burma (FTUB) as a terrorist organization, had not been repealed and the repression of seafarers for exercising freedom of association was continuing, including abroad. There was still no tangible information on the new legislation on labour organizations, which would be in conformity with the principles of the Convention. In short, there was still no freedom of association in Burma/Myanmar.

**The Government member of Hungary**, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the candidate countries (Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland), the potential candidate countries (Albania, Bosnia and Herzegovina and Serbia), Norway, the Republic of Moldova, Armenia and Ukraine, acknowledged the commitment of the Government of Burma/Myanmar to respect the Convention and to cooperate with the ILO. She noted with deep regret, the serious allegations presented in the report of the Committee of Experts concerning the grave violations of human rights, murder, arbitrary arrest and long-term imprisonment of trade unionists for the exercise of ordinary trade union activities. Noting that it was estimated that there were still more than 2,000 political prisoners in the country, she renewed the call on the Government to release, without delay, all persons detained for exercising their fundamental human rights, including freedom of expression and freedom of association. The speaker welcomed the visit to the country of the ILO high-level mission in February 2011, and took note of the presentation of a draft labour organization law, encouraging the Gov-

ernment to provide a copy and to engage in meaningful consultations for its effective implementation. Revision of the national legislation with a view to complying with the Convention, should be a priority. Taking note of the recent information provided by the Government of Burma/Myanmar and the ILO high-level mission, the speaker was in favour of deferring the decision to appoint a Commission of Inquiry in light of further developments, including the continuation of the cooperation of the Government with the ILO.

**The Government member of the United States** recalled that the ILO supervisory bodies had used, on many occasions, the strongest language available to them to deplore the persistent failure of the Burmese Government to guarantee the fundamental and inalienable right to freedom of association. Free and independent trade unions still did not exist in Burma. Recalling the Government representative's statement, during the special sitting on the application of the Forced Labour Convention, 1930 (No. 29), that there had been many recent changes in Burma as well as the expression by the Government of its renewed political will and firm commitment to cooperate with the ILO, she called on the Government of Burma to use these changes and new attitude to establish, at long last, the necessary legal basis for the respect for, and realization of, freedom of association and the right to organize. The speaker expressed the hope that the Government would soon adopt trade union legislation in line with the Convention and enforce it so that, in the future, workers would be able to exercise their rights to freedom of association without fear, intimidation and threats of violence. With reference to the deferred decision to establish a Commission of Inquiry to review Burma's application of the Convention, the government action in response to the request by the Governing Body to transmit to the Office the draft law on labour organizations would be an important consideration for the Conference Committee and the Governing Body in November 2011. The speaker also called for the extension of the ILO presence in Burma so that it could provide advice and assistance in matters relating to the exercise of freedom of association.

**The Worker member of Italy** agreed with the Employer members that the Government of Burma missed the opportunity to provide the Conference Committee with adequate information on the changes implemented in the country. She deplored the fact that, despite having been ratified 56 years ago, the Convention was still not implemented in Burma. On 17 August 2010, the Government had declared that "the drafting process of legislation for the formation of workers' organizations will be based on three pillars, namely, the new Constitution, the continued assistance and advice from the ILO standards department, and Convention No. 87 itself". But, three days later, a decree allowed the firing and blacklisting of workers who launched or participated in industrial protests for better working conditions. This allowed the Burmese authorities to prevent industrial actions. In addition, the Government gave instructions with a view to forming committees to supervise workers, reducing the number of protests and demonstrations and not allowing the formation of labour unions. The speaker referred to the discussion by the Human Rights Council, of the outcome of Burma's Universal Periodic Review of January 2011. The Government was buying time by serving the old story that Burma was a country in transition putting in place the requested changes. The basis for the Burmese legal order remained the highly flawed Constitution which could not enable the formation of independent trade unions. She called on the ILO Governing Body to establish a Commission of Inquiry on the violation of the right to freedom of association and the crimes committed by the military junta and the new Government. The Conference Committee should

request the Government of Burma to change the Constitution, to establish, through open consultation, a new law allowing free trade union organizations and stating that nobody should be punished for exercising the rights of freedom of association, opinion and expression, and to give real signs of change as a matter of urgency, such as to free all prisoners of conscience, including labour activists. The first sign of change should be to withdraw the charges of terrorism against the FTUB and its General Secretary and to allow this organization to operate freely in Burma. The speaker called on the ILO to strengthen its action and to avoid falling in the trap of "wait and see" which the military regime used for years to avoid effective decisions by international institutions. She looked forward to the extension of the ILO presence to cover, in full cooperation with workers and employers, the matters related to the implementation of the Convention.

**The Worker member of Sweden** deplored the absolute non-compliance of the Burmese Government with the Convention and the high number of imprisonments, long jail sentences, killings, disappearances, arrests and torture of trade unionists and workers, all brutal testimony of the Government's policy and action. The Committee on Freedom of Association and the Conference Committee had repeatedly recalled the serious cases of violation of the Convention by Burma. Presently, 54 workers' representatives and labour activists were in jail. Workers in Burma knew the risks associated with trade union activity but they also knew that informing each other and the international community on such violations was crucial. She called on the military regime of Burma, firstly, to recognize the FTUB as a legitimate trade union and to secure its freedom to carry out its work without interference and, secondly, to change the Constitution so as to guarantee full freedom of association.

**The Government member of the Russian Federation** said that his country recognized that it was important for ILO Members to meet the international obligations that they had assumed. Myanmar had undertaken wide-reaching constitutional reforms. General elections had been held and its new parliament was functioning. The reforms had aimed in particular at granting trade unions fundamental rights. Those rights were enshrined in the new Constitution, and a new labour organization act would be adopted with a view to bringing legislation into line with the Convention. In that context, it was essential to strengthen co-operation between the Government and the ILO to ensure the success of the reforms undertaken throughout the country.

**An observer representing the International Trade Union Confederation (ITUC)**, cited the case of a strike at the Tailor Garment Factory in the Hlaingtharyar industrial zone as well as the recommendation from the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) to its members not to recruit workers at higher wages as it could encourage claims in other factories leading to demonstrations, and underlined that these issues, attitude and practice were the same as those reported in his intervention in 2009. The notable difference was that the price of basic commodities had risen significantly since then while workers had no right to organize and to bargain collectively to obtain decent work. Orders Nos 2/88 and 6/88, the Unlawful Association Act and Declaration No. 1/2006 were still applied and 54 FTUB members and workers' rights activists were still in detention. The fact that none of the six persons, the immediate release of whom the Conference Committee had requested in its 2010 conclusions, had been included in the so-called "amnesty" granted by the new Government, raised questions as to its attitude towards the ILO. Burma needed to reform in a comprehensive manner, the Constitution and the legislation in order for workers to be protected. In

addition, workers needed to be provided with education on their rights. However, drafting a trade union law while 54 workers' activists were in jail, would be totally unacceptable. The speaker called on the ILO, in consultation with the Worker members, to issue clear recommendations on time-bound steps the Government should take to meet its obligations. Enforcement actions should be prepared by the ILO to prevent further delays on the part of the Government. He called for the recognition of the FTUB as a legitimate trade union and considered it was time for a Commission of Inquiry to be established to verify the allegations of violations of fundamental rights in Burma, so as to provide the input for the needed changes in the country.

**The Government member of Cuba** reaffirmed her Government's support for the principles of the Convention and observed that the statement by the Government of Myanmar illustrated the most recent efforts made by the country and its Government to implement the Convention. She considered that, in examining the case, the results achieved by the Government so far should be taken into account and recognized. They were the fruit of technical cooperation and bilateral dialogue between the Government and the ILO. She concluded by encouraging further technical cooperation, continued open and unconditional dialogue, and an appropriate analysis of the situation and internal conditions in the country, which would contribute to achieving the objectives set out in the Convention.

**The Government member of Canada** indicated that her country remained greatly frustrated and discouraged by the Government's lack of commitment to address and rectify the serious allegations made against it. She joined the international community in calling for a transition to genuine democracy and, in this regard, strongly underlined the importance of freedom of association. No country can claim to aspire to the goals of the ILO, or to meet its commitments towards it, if its workers and employers cannot freely associate and discuss their rights. She called on the authorities of the country to immediately release all persons imprisoned for the exercise of trade union activities. In this regard, the regime's action against persons exercising basic freedom of association rights ran contrary to its commitment to democracy and securing the rights associated with freedom of association. The speaker stated that Canada is anxiously awaiting the completion of the legislation to bring the trade union law in line with the Convention. The authorities should avail themselves of the ILO's technical assistance by providing it with an opportunity to comment on the actual text of the draft legislation in order to ensure complete conformity with the Convention. Furthermore, the implementation of new legislation must be supported by a policy of active application if it is to have any real meaning. Finally, the speaker hoped to be informed in the near future of the authorities' positive response to extend the ILO presence in the country with a view to covering matters related to the Convention and reiterated that the decision regarding the appointment of a Commission of Inquiry was postponed to November 2011 in order to assess progress and the extent to which the authorities had met their promise of early implementation and application of the new legislation, as well as the provision of a copy of the draft legislation to the ILO, and that Canada would be looking for serious progress to be reported in November.

**The Worker member of Japan** recalled that, despite the very serious discussions that had repeatedly taken place in the Conference Committee on this case, 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 Association Act. These being the pieces of legislation most seriously impairing the

right to organize, there was no other way than to repeal them. The Constitution, on which the Government relied to give effect to the provisions of the Convention, had broad exclusion clauses in its controversial section 354 and should be amended to be brought in line with the Convention. A new law on freedom of association, enabling the creation of trade unions without previous authorization in all sectors, with the right to affiliate to federations, confederations and international organizations, should be adopted and its draft text should be discussed with the ILO, including its Bureau for Employers' Activities (ACT/EMP) and its Bureau for Workers' Activities (ACTRAV). The speaker recalled that the Committee on Freedom of Association had declared the FTUB a legitimate trade union, whereas the Government had qualified it, and its General Secretary, as terrorists. The Government should understand that the society was not sustainable without free and democratic trade unions and that genuine freedom of association could not be realized without civil liberties and respect for civil society. In view of the lack of progress on these issues for more than two decades, she called for additional and stronger measures, namely the appointment of a Commission of Inquiry on the issue of freedom of association, as well as an extension of the ILO presence in the country to cover matters related to the Convention.

**The Government representative** thanked the speakers who had made objective and constructive remarks on the implementation of the Convention by Myanmar. He reiterated the request that in future deliberations of the Committee, all delegates use the correct name of his country – the Republic of the Union of Myanmar – as recognized throughout the United Nations system. The statements alleging that persons associated to the Supplementary Understanding mechanism had been the subject of reprisals and that labour activists were detained due to their trade union activities were unfounded. Those arrests were solely based on the violation of existing laws. Although there was no particular law yet in place concerning labour organizations, the speaker asserted that the workers' rights in Myanmar were not compromised, as illustrated by recent strikes, where tripartite meetings were held to find mutually acceptable solutions and no worker was apprehended. Finally, the Government representative pledged to continue to cooperate with the ILO in all aspects and called upon the international community to understand the practical constraints of the Government, to acknowledge its efforts and encourage constructive engagement with the ILO. He cautioned that any action that could possibly lead to coercive measures would be counterproductive.

**The Worker members** denounced anew, the murder, torture and detention of trade unionists for ordinary trade union activities. The Government had referred to the release of prisoners, but they had only been released at the end of their sentences. Furthermore, no trade unionist detained had been freed. Unless respect for fundamental civil liberties was re-established, continual violations of freedom of association, both in law and in practice, would occur for many years to come. In that regard, the Worker members reiterated their call for the Constitution, particularly section 354, to be amended; for orders and acts on so-called illegal associations to be repealed; and for the accusation of terrorism against the FTUB and its General Secretary to be retracted. Additionally, the Worker members once more called for instructions to be given to the authorities to cease all anti-union discrimination against seafarers and to revise the model agreement concerning Myanmar seafarers, to release Myo Aung Thant and all trade union activists and political prisoners who had exercised their rights to freedom of expression and association, and, in the meantime, to provide them with access to

legal and medical assistance. Lastly, impunity for both acts of violence against trade unionists and the use of forced labour needed to end. New legislation on trade unions, both concise and simple, should be adopted. Such an act needed to recognize the right of both workers and employers freely to form organizations of their own choosing and to join those organizations. It should give organizations, including those in exile, the freedom to operate and to defend the interests of their members. By virtue of the principles laid down in the Convention, such legislation should not impose specific conditions on the exercise of freedom of association, providing only for a simple act of registration and prohibiting interference in organizations' internal affairs. The Government had stated its willingness to work on a draft act behind closed doors, with support from the Office. The draft should, however, be prepared overtly, with respect for the principles of social dialogue arising from the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In order to make progress towards those goals, the Worker members proposed that all available ILO instruments and measures, both legal and practical, should be considered and implemented. A specific liaison officer should be named to examine complaints relating to the exercise of the rights enshrined in the Convention, and regular information on the liaison officer's programme of work should be provided. In addition, a new Commission of Inquiry on the application of the Convention should be established, in accordance with the procedure set out in article 26 of the ILO Constitution.

The Employer members believed that, since no information had been supplied that would change the basis for the 2010 conclusions of the Committee on this case, the starting point for this year's conclusions should be the 2010 conclusions. Two new elements should be added: (i) the Government should be requested to respond, as soon as possible but in time before the next session of the Governing Body (November 2011), to the allegations contained in the complaint submitted by Worker delegates in 2006, under article 26 of the ILO Constitution; and (ii) the Government should be requested to closely consult the ILO on the draft trade union legislation and to establish a timeline for its enactment, once it would have been verified by the ILO that the legislation was in conformity with the Convention. In this regard, the Employer members wished to highlight that the enactment of a law was not the end but rather the beginning. Once adopted, that trade union law would need to be implemented in law and in practice with access to an independent judiciary for enforcement. They remained sceptical about the condition of this case in spite of the change of Government and the new quasi-parliamentary system. There were no apparent indicators of change: there was no democracy, no tripartism, no civil liberties, no freedom of association, but rather a climate of fear, violence and intimidation. The Employer members reiterated their request to include the conclusions of this case in a special paragraph of the Committee's report.

The Worker members supported the proposal made by the Employer members to include the conclusions of the present case in a special paragraph of the Committee's report.

### 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 took note of the commitment made by the Government representative that the Government would

provide the draft labour organizations law to the ILO on a confidential basis once it was finalized. As regards the practical application of the Convention, the Government had repeated its previous statements that people were free to protest without fear and that the detained persons named in the Committee of Experts' comments were not workers and their sentencing was totally unrelated to trade union rights.

The Committee observed that once again it had for discussion grave comments from the Committee of Experts who had been obliged to deplore that no progress had been made with respect to any of the outstanding areas of non-compliance with the Convention, nor were there any meaningful replies to the serious allegations of arrest, detention, long prison sentences, torture and denial of workers' basic civil liberties.

The Committee deplored the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations and took note of the article 26 complaint brought against the Government in June 2010 for non-observance of this Convention.

The Committee regretted that it had no detailed information on the draft legislation referred to by the Government, despite the assurances given last year that progress would be made in this regard following the elections in November 2010. In light of the information available to it, the Committee could only conclude that the Government remains very far away from drafting and enacting legislation in conformity with the Convention, much less implementing it. In addition, the Committee regretted that there were no mechanisms available in the country permitting complaints of serious violations of trade union rights such as those mentioned above.

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. In this regard, it once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act and to ensure an effective constitutional and legislative framework for the full and effective exercise of trade union rights.

The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed with regret that the Government still had not ensured the necessary environment for freedom of association that would give credibility to the stated transition to democracy. It therefore once again called upon the Government to take concrete steps 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 without delay. It further recalled the importance for the effective application of the Convention of access to an independent judiciary for enforcement of the legislation.

The Committee emphasized that it was crucial that the Government take all necessary measures immediately to ensure a climate wherein workers and employers can exercise their freedom of association rights without fear, intimidation, threat or violence. The Committee continued to observe with extreme concern that the numerous detained persons referred to in previous discussions remained in prison, despite the calls for their release and without even benefiting from the recent wide amnesty granted by the Government. The Committee was therefore once again obliged 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 Federation of Trade Unions of Burma and the Seafarers' Union of Burma, 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 further recalled the link between freedom of association and forced labour and reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters related to the Convention and to establish a complaints mechanism for violation of trade union rights.

The Committee urged the Government to transmit to the ILO the draft law referred to as well as a full reply to all matters raised in the article 26 complaint. It expected that the Government would also provide this information and a detailed report on the concrete measures taken and the adoption of a timeline for the enactment of the necessary legislation for examination by the Committee of Experts at its meeting this year. The Committee considered that it had been discussing this grave matter for far too long without any visible, meaningful and concrete progress. In view of its continuing frustration, the Committee urgently called upon the Government to take the steps that would enable the Governing Body to be in a position to observe significant progress on all the above matters at its November 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.

#### NIGERIA (ratification: 1960)

A Government representative stated that the Government had encountered difficulties in submitting the reports on the application of ratified Conventions and deeply regretted the non-submission of some of the 25 reports due. Emphasizing that the Government remained committed to the international community as a whole, his Government pledged to submit all due reports before the end of the Committee's work. In light of the existing limitations in Nigeria in terms of the number and skills of reporting officers, the Government would appreciate the technical assistance of the ILO in this regard. Furthermore, the Committee of Experts' comments focused on alleged violations of the Convention by the Nigerian export processing zone (EPZ) authorities. Noting the request to amend the law establishing the EPZs in Nigeria, the speaker indicated that the Government had recently issued a guideline for the interpretation of that law, so as to ensure that the fundamental right to organize and bargain collectively would not be restricted. The outstanding labour bills mentioned by the Committee of Experts, were before the newly elected National Assembly. The Ministry of Labour had recently set up a new lobby team to co-opt the social partners and to seek ILO assistance in liaising with the legislature in order to achieve results. The speaker reiterated the commitment of his Government to providing up-to-date information, submitting the reports due and cooperating with the Office and the social partners to remedy the situation.

The Worker members indicated that the case had been examined several times during the 1980s and that the conclusions had been included in a special paragraph of the Committee's report in 1991, 1995, 1996 and 1997, since the Government had repeatedly failed to put an end to the serious violations of the Convention. The Committee of Experts had expressed its profound regret at the Government's failure to provide either a report or a reply to the requests made to it, thus demonstrating a total lack of cooperation. However, the matters raised by the Committee of Experts concerned important provisions of the Convention and, on account of the violations of those provisions, the situation of the workers, especially of workers in the administration, continued to deteriorate.

First, the Committee of Experts had previously noted that section 11 of the Trade Union Act, which denied the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Service, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria and Nigeria Telecommunications, had not been amended by the Trade Union (Amendment) Act. In the EPZs, the situation was particularly serious and evidence of serious violations of the Convention had been collected. Section 13(1) of the Nigeria Export Processing Zones Authority Decree (1992), made it impossible for workers to form or join trade unions, to the extent that access to the EPZs was prohibited for worker representatives. The Committee of Experts had recorded numerous violations of the Convention, especially the broad powers of the registrar to inspect union accounts at any time, under sections 39 and 40 of the Trade Union Act. It was therefore essential that the Government amend those provisions. Moreover, even though the Act recognized the right to collective bargaining, each wage agreement concluded in the private sector had to be registered with the Ministry of Labour, which decided whether or not it would be binding, and there were restrictions on the right to strike owing to the imposition of compulsory arbitration leading to a final award. The EPZ authorities were both judge and judged in disputes under their jurisdiction, since section 4 of the above Decree prevented the trade unions from settling disputes between employers and workers. Finally, arbitration imposed by the authorities at the request of one party to the dispute restricted the autonomy of the bargaining partners.

Any issues relating to strikes were covered by legislation which imposed procedures that rendered the right to strike meaningless. Since the workers were obliged under the law to take a vote before holding a strike, the legislator should ensure that only the votes cast were taken into account. The list of essential services had been extended to include, in particular, the Central Bank of Nigeria, the postal service and port maintenance, but essential services should only be those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. Consequently, it was absolutely necessary to redefine which services were deemed to be essential. In addition, all strikes relating to conflicts of interest or economic issues were prohibited. The Worker members also indicated that the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the National Union of Petroleum and Natural Gas Workers (NUPENG) had indicated that the major companies in the sector had constantly opposed attempts by the respective unions to be recognized with a view to negotiating collective agreements. The powers conferred on the minister enabling the administrative dissolution of trade unions formed part of a clear intent to tame the trade unions and keep a sword of Damocles hanging over them. The comments made by the International Trade Union Confederation (ITUC) made an already gloomy situation appear even darker. Many restrictions remained in force and violence, culminating in the murder of a trade unionist, continued to be perpetrated on trade union leaders. The Government needed to give answers to crucial questions, especially with regard to the amendment of section 9 of the Trade Union Act, and to undertake to repeal the provisions conferring extensive powers on a minister and thus enabling him to dissolve trade unions through an administrative procedure. The Government also needed to put an end to EPZs being areas beyond the law and take steps to remove the immunity enjoyed by the EPZ authorities so that the workers would not be at the mercy of the employers.

The Employer members highlighted that Nigeria had become a member of the ILO in 1960 and had ratified the

Convention in the same year. In their view, it was of much concern that no report had been received from the Government, although the Conference Committee was examining this case for the fifth time and had included thrice its conclusions in special paragraphs, and the Committee of Experts had issued five observations since the adoption in 2005 of legislation amending trade union laws. This failure to report had obliged the Committee of Experts to repeat its previous observation. The Employer members considered that the most serious instances of non-compliance included: (i) violence against trade union members and leaders; (ii) trade union monopoly; (iii) restricted access for trade union representatives in EPZs; (iv) exclusion of a wide range of government departments and services from the right to organize; (v) interference from public authorities resulting in the ability to supervise union accounts at any time; (vi) minimum union membership requirement; (vii) broad definition of essential services; (viii) sanctions against strikes; (ix) dissolution of workers' and employers' organizations; and (x) restriction of the right of unions to form federations or confederations. These long-standing comments of the Committee of Experts remained relevant despite the amendment of trade union laws in 2005. Considering that the lack of information about the situation on the ground was regrettable, the Employer members urged the Government to respond to the observations made by the Committee of Experts.

As regards the remaining issues raised by the Committee of Experts, they wished to make two comments. First, noting that the Committee of Experts construed the compulsory arbitration prior to strike action currently in place as a restriction on the "right to strike" in violation of Article 3 of the Convention, the Employer members wished to express caution and pointed out that they had consistently asserted in this Committee that there was no right to strike under Article 3. In this regard, they referred to comments made at the 31st Session of the International Labour Conference (ILC) in 1948, according to which the Convention was not intended to be a "code of regulations" for the right to organize, but rather a concise statement of certain fundamental principles. The Employer members noted this was not a case of restricting the right to strike – a right not enshrined in the Convention – but rather that it violated Article 3 in terms of the right of workers' organizations to organize activities and formulate their programmes. While arbitration could be helpful in resolving workplace disputes and hence avoiding recourse to industrial action, it should be entered voluntarily by the parties that would be bound by the outcome. Second, the Committee of Experts further suggested that, pursuant to Article 3, legislation concerning the strike vote should require the majority of the votes cast, not the majority of the workers. The Employer members were concerned that the Committee of Experts was going beyond what the Convention stipulated and felt that observations on compliance with Article 3 should not extend beyond the four basic rights guaranteed in this provision. Finally, they noted the ITUC's comments on violations of the right to strike, arrest and detention of strikers, police repression during demonstrations and the refusal to recognize a trade union. As regards the Collective Labour Relations Bill pending before Parliament, the Employer members were unaware of its status, content, or plans for implementation. The Government had missed five times the opportunity to comment on the Committee of Experts' observations since the adoption of the most recent trade union legislation. The Employer members again urged the Government to remedy its apparent current lack of collaboration with the Committee of Experts, and to report in detail not only on legislative aspects but also on the current practice at the national level. The Employer members noted the Government representative's comments that

future legislation or guidance would address many of the issues highlighted, however they viewed this with caution given the past failure of legislation to address such issues.

**The Worker member of Nigeria** indicated that the crux of the violations of trade union rights in his country was that it had been under military dictatorship for 29 years out of its first 39 years of independence. Thus, the law that had deprived, for ten years, workers in EPZs of the right to organize was a fall-out of military mentality, according to which the right to unionize was an impediment to productivity or good business. He welcomed the fact that the Constitution had repealed that legislative act. Furthermore, the military had banned categories of purely civilian workers from unionization, including staff in the Central Bank, Prison Service and the Mint. The subsequent democratic governments had continued in this vein. Those workers were defenceless even when subjected to subhuman treatment. With reference to the Customs and Excise Department and the Immigration Department, which had been unionized in 1979, the speaker indicated that, after the union had accused, in 1986, the relevant minister of unethical practices, the secretary, Bernard Odulana, had been detained without trial, and the union had been decreed out of existence. Henceforth, all efforts to lift the ban on that union had been turned down. Since 2000, a series of labour disputes over the continuous increase in the price of petroleum products had resulted in mass strikes in which the Government had used excessive force. During the general strike of June 2003, armed policemen deployed to stop the strike had shot dead 16 Nigerians. In 2005, new legislation had been adopted criminalizing workers who called a strike on "disputes of interest", i.e. disputes that did not concern issues arising from the workers' conditions of service or the existing collective agreement. Thus, unions were effectively banned from protesting against the Government's socio-economic policies. The law also prohibited strikes that could affect the highways or the aviation industry, and prescribed prison terms for workers taking part in strikes contrary to the law. Finally, the speaker stressed that State authorities should not exercise the power to dissolve unions or pronounce on collective agreements freely entered into between employers and workers. Noting that the Government had been unable or reluctant to respond to these issues in a meaningful manner, he considered that it was imperative that decisive steps be taken which would assist the Government in tackling these matters with the seriousness they deserved. As regards the draft labour legislation, the speaker indicated that the labour bills mentioned by the Government were no longer before the National Assembly, since, according to the procedure, they lapsed if they were not considered within a certain period of time.

**The Worker member of the United States** expressed deep concern regarding the severe restrictions to freedom of association that applied in the EPZs due to the continuing failure of the Government to both amend the relevant law and sanction anti-union discrimination in practice. This Committee had repeatedly called upon the Government to amend the Export Processing Zones Authority Decree, which provided, *inter alia*, that "no person shall enter, remain in or reside in a Zone without the prior permission of the Authority". This provision was used to deny trade union representatives' access to workers employed within the EPZs. He stressed that governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions could communicate with workers, in order to apprise them of potential advantages of unionization. The same Decree banned strikes for a period of ten years from the commencement of a company's operations within a Zone, which was contrary to the Convention.

Furthermore, the Export Processing Zone Authority (EPZA) was empowered to resolve disputes between workers and employers. The EPZA had rebuffed prior efforts by the Ministry of Labour to establish an office in the EPZ to enhance labour inspection. In practice, freedom of association was routinely frustrated by the deployment of armed security guards to prevent trade union representatives from speaking with EPZ workers. Workers suspected of being pro-union were often subject to disciplinary sanctions or dismissed. It had also been reported that newly recruited workers in the EPZs were required to sign individual employment contracts in which they committed not to join a union. In this climate of fear and reprisals, the right of workers in EPZs to freely associate was severely limited. He finally noted that the Government continued to fail to submit reports on the application of the Convention, which signalled deep disregard for the fundamental rights of workers and tacit support for the ongoing violations occurring in the EPZs.

**The Worker member of Swaziland** pointed out that the situation of workers in the Customs and Excise Department, the Immigration Services, the prison services, the Security Printing and Minting Company Limited, the Central Bank and Telecommunications had not changed with respect to the enjoyment of their rights to organize and freely associate. Government actions continued to treat these workers as essential services workers. This Committee had, however, previously noted with concern that the definition of essential services provided for in the relevant legislation was overly broad. Since workers in these establishments were deprived of their right to freely form and join trade unions, they organized in socio-cultural leanings thereby reinforcing tribal and ethnic divisions. It had to be noted in this regard that ethnicity and tribalism were some of the issues threatening the cohesion, peace and stability of Nigeria. Furthermore, within these government departments and services, there were industrial discontents that could be effectively channelled and addressed through trade union organizations and the instrumentality of the collective bargaining mechanism. Employees were, however, left with no other option than to resort to petition writing and other self-help initiatives. Workers at the Security Printing and Minting Company Limited had repeatedly indicated their willingness to form and join trade unions of their choice, but the company management continued to deny their rights, including through the contracting of casual workers. It was particularly disturbing to note that the Government had not made any tangible progress nor had it taken visible and commensurate actions to give account to the comments of the Committee of Experts.

**The Government representative** expressed appreciation for the views of the social partners and laid out the three avenues of action that the Government should take for the proper implementation of the Convention. Firstly, the amendments to certain provisions of the current Trade Unions Act were urgent. Five pieces of legislation were awaiting adoption and the Government would intensify its actions to secure the passage of the bills. In this respect, a lobby group had been created recently to speak to legislators regarding these bills. The support of the social partners was essential to achieve the speedy enactment of this legislation. It needed to be recognized that such bills might require certain amendments, due to their prolonged stay at the legislative level. The Government would, through the Federal Ministry of Labour and Productivity, address any lapses or new areas of concern that were not covered by such bills, in collaboration with the social partners and with ILO technical assistance. Secondly, regarding the EPZs, it needed to be recognized that the legislation in this regard had been enacted during the military era. The speaker expressed the desire to see this leg-

islation amended, to allow for the right to organize within the EPZ. He underlined that interim measures had been taken, in the form of Ministerial Guidelines, which had been negotiated in cooperation with stakeholders. The Government would fully implement these Ministerial Guidelines, to ensure the effective implementation of the Convention. Thirdly, regarding the alleged restrictions regarding the right to organize for persons who were essential services workers, these inequities had their root in the military era, and these concerns would be addressed through the abovementioned bills. With respect to issues not covered by this forthcoming legislation, the speaker indicated an openness to further negotiations, and that the assistance of the social partners was essential in achieving proper compliance. The speaker also rejected the view that unions in some sectors were organized along tribal lines, emphasizing that unions in Nigeria were issue-based organizations. He concluded by stating that bold steps would be taken, in collaboration with the social partners and the Office, to achieve the aims of the Convention.

**The Employer members** expressed regret that an examination by this Committee was required to see a response from the Government, citing its failure to submit reports in reply to the Government to the Committee of Experts for several years. They noted that a new National Assembly had been formed, and that a lobby team had been created by the Ministry of Labour and Productivity. In addition, the Government had confirmed that a draft bill was still before the Assembly, which would address the Employer members' concerns regarding the EPZ. However, the suggestion that such pending legislation would address the current breaches should be taken with much caution. The Government had had years to make such changes, and regretfully, had not, even in the course of the previous amendments in 2005. The conclusions should record the Government's agreement to avail itself of ILO technical assistance, and to work with the Office to address the concerns with regard to the Convention. The conclusions should also reflect the Government's commitment to working with the international community, in addition to the Government's commitment to making a full report in time for examination by the Committee of Experts at its forthcoming session.

**The Worker members**, replying to the statement made by the Employer members concerning the right to strike, reaffirmed their full support for the practice of the Committee of Experts on the issue, which coincided, furthermore, with that of the Committee on Freedom of Association, which was a tripartite body. They also noted with great concern that the Government was voluntarily shirking its obligations and undermining the Convention by its attitude, even though the Government representative had talked of change in referring to the draft legislation under consideration. The Government should take the following measures to: bring its legislation fully into line with the Convention without delay; repeal those provisions in its domestic legislation that gave the Ministry of Labour and Productivity the power to dissolve workers' and employers' organizations by administrative means; shed light on the circumstances surrounding the murders of trade union leaders and attacks resulting in serious injury; prosecute those responsible for criminal acts; stop depriving workers employed in public administration of the right to form trade unions; rid the petroleum industry of persistent anti-union attitudes; stop interference in internal trade union affairs; restore the right to organize to employees of the Central Bank, the prison services, the Immigration Department, the Security Printing and Minting Company Limited and the Customs and Excise Department; and establish, under ILO supervision, a timeline for bringing legislation on those various issues into conformity with

the Convention, in close cooperation with the social partners. The Government should also submit a report on measures taken before the next session of the Committee of Experts.

### Conclusions

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

The Committee took note of the Government representative's statement in relation to the difficulties encountered in supplying reports to the Committee of Experts. He further referred to the issuance of a recent Ministerial Guideline to prevent anti-union discrimination against any worker in the export processing zones (EPZs), which would remain in force until the EPZ law was amended. In addition, five Labour Bills had been drafted with the technical assistance of the ILO. He requested ILO training of newly elected legislators to raise their awareness of the obligations of the Government towards the ILO and expressed the hope that this would facilitate the said Bills being rapidly passed into law. He added that their passage should assist the necessary alignment of the Collective Labour Relations Bill with Convention No. 87.

The Committee noted with concern that there were a number of serious and wide-ranging issues raised by the Committee of Experts. These included reports of the murder of a trade union leader and violence against trade unionists, trade union monopoly and restrictions on the right to organize of certain categories of workers covered by the Convention, restrictions on unionizing rights of EPZ workers as well as on the access of trade union representatives to the EPZs and interference by the public authorities in trade union activities and functioning.

The Committee, as the Committee of Experts had done in its 2011 observation, recalled that freedom of association could only be exercised in conditions in which fundamental rights and in particular those relating to human life and personal safety were fully respected and guaranteed. It requested the Government to provide detailed information on the results of the investigations being carried out with respect to the serious allegations of violence against trade unionists and on the results of any judicial proceedings in this regard and to ensure that any perpetrators were punished.

The Committee requested the Government to indicate the steps taken to amend the provision permitting administrative dissolution of workers' or employers' organizations and to refrain in practice and amend legislation permitting interference in the right of public sector workers to organize freely, which contravened Articles 2 and 3 of the Convention. More generally, it requested the Government to refrain from interference in trade union activities, particularly as regards the petrol sector, which contravened the Convention, and to restore the right to organize in the government services and departments mentioned in the observation of the Committee of Experts.

Noting the request for ILO technical assistance made by the Government representative, the Committee expressed the hope that such assistance could occur in the near future so as to enable the Government to take appropriate measures, in full consultation with the social partners, for the rapid adoption of the necessary legislation to bring the law and practice – including as regards EPZs – into conformity with the Convention and expected that the Government would provide in a timely manner full details of the steps taken in this regard and the legislation adopted to the Committee of Experts for examination at its session this year.

### PAKISTAN (ratification: 1951)

The Government communicated the following written information.

The provisions of this Convention were enforced in Pakistan through implementation of the Industrial Relations Act, 2008. However, after the 18th Constitutional Amendment the legislation under labour laws has been transferred to the provinces. All the provinces are in the process of adopting the Industrial Relations Act/Ordinance. In order to cater for the need of registration of trade unions and federations; regulation of industrial relations; and resolution of industrial disputes in the federal capital and establishments in more than one province, a new law has been drafted and is in the process of promulgation. In reply to the observation with regard to the adoption of national and/or provincial legislations on trade unions and industrial relations, the Government stated that a Federal Law on industrial relations and registration of trade unions and federations was drafted and consulted with all the social partners on 13 May 2011 in a tripartite meeting. The law caters for: registration of trade unions and federations; regulation of industrial resolutions; and resolution of industrial disputes in the federal capital and matters pertaining to more than one province. The law will be enacted after the budget session of the Parliament. The provinces are in the process of adopting the Industrial Relations Act, copies of which will be provided as they are finalized. In reply to the observation requesting the Government to provide information on the adoption of the draft Export Processing Zone (Employment and Service Conditions) Rules, the Government stated that a copy will be provided when the rules have been finalized. In reply to the observation requesting the Government to provide information on the amendment of section 27-B of the Banking Companies Ordinance of 1962, the Government stated that its repeal was approved by the Cabinet on 1 May 2010 and is being vetted by the Law and Justice Division before sending it to Parliament for enactment. Finally, in reply to the observation requesting the Government to indicate whether the Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act, was still in force, the Government stated that it had been repealed.

In addition, before the Committee a Government representative expressed his Government's firm commitment to bringing the law and practice regarding the right to freedom of association and collective bargaining into line with international standards. Over the past few years, much progress had been made in improving the legislation and similar efforts were ongoing in other areas. The right to freedom of association and the right to organize had been secured and guaranteed under the Constitution. Immediately upon coming into power, the Government had taken measures, including repealing laws that were either restrictive or contrary to the promotion of trade unionism. During the last three years, the Government had promulgated the Labour Policy 2010 and had repealed Chief Executive Order No. VI in order to restore unions in Pakistan International Airlines (PIA), as had been requested by the Committee of Experts. The Industrial Relations Ordinance, 2002, had been repealed, and the Industrial Relations Act, 2008, promulgated. Trade union activities in the country had been restored. Furthermore, section 2-A of the Service Tribunal Act had been repealed and workers of state corporations could now go to the labour court for redress of grievances. The repealing of section 27-B from the Banking Companies Ordinance of 1962 had also been initiated. The provisions of the Convention were being implemented through the enforcement of the Industrial Relations Act, 2008. This Act had been in force until recently. However, following the 18th Constitutional Amendment in 2008 more autonomy has been granted to the provinces, and this decentralization process, which had started in 2001, had made the implementation of the Industrial Relations Act more democratic and people-friendly. The current implementation mechanism was a three-tier system providing indus-

trial machinery at federal, provincial and district levels to facilitate workers and employers to register their respective trade unions and federations and to resolve industrial disputes. Registration of trade unions had been institutionalized in such a way that they could be actively present in remote areas of Pakistan. Due to an efficient infrastructure for the implementation of the Industrial Relations Ordinance, 1969, industrial peace had been observed in the country and no prominent strike had occurred despite privatization, retrenchment and other factors related to globalization.

Previously, the subject of labour had been the shared competence of the federal and provincial levels, pursuant to the Concurrent List of the Constitution, and the Industrial Relations Act had been implemented at the federal and provincial levels. In order to provide for greater autonomy, the 18th Constitutional Amendment had been introduced in 2010, and the subject of labour was transferred to the provinces. The provinces were now responsible for legislating and implementing all labour laws, including the Industrial Relations Act. Several provinces had already introduced industrial relations acts. New legislation for the regulation of industrial relations, the registration of trade unions and federations, and the resolution of industrial disputes at the federal level were at the final stage. In a meeting held on 3 May 2011, the Implementation Commission on Devolution had given concurrence to the draft Industrial Relations Act, 2011. A national level tripartite consultation on the draft had been held on 13 May 2011 to seek the views of the social partners. A select tripartite committee had held further deliberations on the draft bill on 16 May 2011. All efforts had been made to ensure that the new law would address the complications that had been created during the process of reform, particularly the problem accrued to national industry-wide trade unions. Due to the budget session, the Government had not been able to announce the promulgation of ordinances in this regard, but planned to do so shortly. The speaker indicated that cooperation with the ILO had made a positive contribution towards helping Pakistan in overcoming many of its problems. This cooperation was ongoing, and was presently directed towards labour law reform, employment generation through human resources development, expansion of social protection including the informal economy, and promoting tripartism. He concluded that there was full freedom in Pakistan to exercise the right to association as provided for in the Convention, and reiterated his Government's commitment to upholding social justice through promoting workers' welfare and granting freedom of association and collective bargaining.

**The Employer members** noted the Government's commitment to address and correct any law and practice that was not in line with the Convention. Since 1987, this was the 11th time the Committee had examined this case. The last examination dated from 2009 when the Committee had not been able to have an effective discussion because no copies of draft legislation had been provided to the Committee of Experts for its review and comment. This case concerned the difficulties in registering trade unions for the industries, acts of violence against protesters, night-time raids, arrests, and harassment of trade union leaders and members, as well as other violations of the Convention. As the Committee of Experts had pointed out, freedom of association could only be exercised in a climate that was free from violence, pressure or threats of any kind against leaders and members of workers' organizations. Basic civil liberties such as freedom of expression should be respected under the Convention. Although the Committee of Experts had asked the Government to report on these issues, they had not been addressed in the

written information provided by the Government to this Committee.

The Employer members noted that the Industrial Relations Act, 2008, had expired on 30 April 2010, which potentially had implications for national unions. According to the Government, the legislative gap was to be addressed by the provincial governments but in the meantime, the Industrial Relations Ordinance of 1969 was again in effect. The issue was whether provincial law covering industrial relations would override the 1969 Ordinance, which was a national statute. The written information provided by the Government indicated that a new statute would need to be drafted addressing registration of trade unions and federations; the regulation of industrial relations; and the resolution of industrial disputes in the capital and businesses operating in more than one province. The Employer members advised the Government to consider submitting the draft legislation to the ILO before enacting the legislation so as to ensure that all relevant issues had been addressed. With respect to the adoption of rules in the export processing zones (EPZs) regarding the right to organize, the Employer members queried whether these rules would ever be enacted. The written information that had been provided by the Government stated that the Presidential Ordinance of 1999 had been repealed but information in this regard should be provided to the Committee of Experts, as this Ordinance restricted the right to strike. The Convention did not address this issue nor could the conclusions on this case. The Banking Companies Ordinance, 1962, restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment. According to the Committee of Experts, a bill to repeal section 27-B of the Banking Companies Ordinance had been submitted to Parliament. In conclusion, the Employer members requested the Government to provide further information to the Committee of Experts in 2011 on the status and likely timing of further steps towards enactment, and to provide a copy of the legislation that was being considered.

**The Worker members** stated that trade union rights had long been a critical issue in Pakistan. The application of the Convention in the country had been discussed by this Committee on numerous occasions, which demonstrated the persistence of serious problems. There were multiple violations of the Convention relating to the difficulties inherent in the system for the registration of unions, acts of violence against trade unionists, the refusal to recognize the right to strike of certain workers and a general climate in which freedom of association could not be exercised. Successive governments, whether civilian or military, had repeatedly promised that they would remedy the situation, but their promises had on each occasion been no more than empty words. The first problem concerned the right to associate freely, which was confined to a small minority of workers, while the great majority of workers did not have the right to join a union or to engage in collective bargaining. That was the case, among others, for workers employed in the railways, government services, hospitals, education, security services, EPZs and agriculture. The Committee of Experts had expressed concern regarding the 18th Constitutional Amendment, under the terms of which matters relating to industrial relations and trade unions were devolved to the provinces. The outcome of the reform was already known. Indeed, the Factories Act, 1934, which provided for inspections of factories, had also been progressively delegated to the provincial governments and to the lower levels of the public authorities. The consequence was that labour inspections were almost never carried out, which meant that employers were free to flout the legislation on wages and conditions of work with impunity. A ruling by the Supreme

Court of 2 June 2011 had abolished the role of the National Industrial Relations Commission on the ground that the respective federal legislation no longer existed. Consequently, trade unions operating at the federal level could no longer exist. The Government needed to make every effort to ensure that provincial legislation was brought into conformity with the provisions of the Convention. In the written information that it had provided to the Committee, the Government reported a Federal Law which appeared to contradict the comments of the Committee of Experts. However, it was not possible to be certain that this Law would effectively guarantee freedom of association in the absence of further information on the subject. The second problem concerned EPZs. The Government had previously indicated that the Export Processing Zones (Employment and Service Conditions) Rules, 2009, had been drawn up in consultation with the concerned partners and that it would be submitted to Cabinet for approval. Nevertheless, no information had been provided on the adoption of that text or the process of prior consultation. Workers in EPZs did not have the right to organize or to strike, and it was possible to impose sentences of imprisonment in the case of unlawful strikes, go-slows and picketing. The third point raised in the observation of the Committee of Experts concerned freedom of association in the banking sector. Pursuant to the Banking Companies Ordinance, 1962, workers in banks and financial institutions, which were mainly private enterprises, did not have the right to exercise trade union activities during bank opening hours. In November 2009, a member of the staff union of the Muslim Commercial Bank was reported to have been detained for his trade union activities. Moreover, the possibility of becoming an officer in a banking union was strictly limited to employees of the bank in question. As a result, trade union rights ended with the termination of the employment relationship with the bank, which was in contradiction with the principles of freedom of association. The Committee on Freedom of Association had been examining a complaint regarding the above Ordinance since 1997, although without yet any positive outcome. The Worker members insisted that the Government should amend the legislation on an urgent basis so as to allow workers in the banking sector to exercise the right to freedom of association accorded to them by the Convention.

Other problems persisted in relation to freedom of association, and both national unions and the International Trade Union Confederation (ITUC) had indicated their concern in that respect to the Committee of Experts. The Federal Government had broad powers to prohibit any strike over 30 days which was liable to cause "serious hardship to the community" or was "prejudicial to the national interests". In the case of public utility services, a strike could be prohibited at any time, before or after its commencement. For a strike to be declared legal, strike notice had to be provided one month in advance. Moreover, a climate of violence, pressure and threats against the officers and members of workers' organizations reigned in many workplaces. Numerous cases of the arrest, detention and discrimination against trade union activists had been reported during the year. Employers often opposed the unionization of their employees by having recourse to intimidation, dismissal and the use of blacklists. If an employer opposed the registration of a union, the procedures for its registration and appeals to the courts could take years. Moreover, certain employers falsely declared their employees as managerial staff, without granting them the corresponding salary, to prevent them from joining a union. The list of restrictions on freedom of association was long and there were numerous violations of the Convention. The observations made over the years by the Committee of Experts were very clear in

that regard and the discussions in this Committee had been rich, but also frustrating. The Worker members expressed the strong hope that the discussion would incite the Government to take measures in the near future to bring an end to the failure to respect freedom of association in the country. In practical terms, the Government needed to: adapt its legislation urgently to the provisions of the Convention on the various points raised in the observation of the Committee of Experts; lift the restrictions on the right to associate; provide full information concerning the adoption in the provinces of legal texts on unions and industrial relations; provide copies of such legal texts when they had been adopted; supply information on the adoption of the new EPZ rules and the process of prior consultation; and take all the necessary measures to create a climate guaranteeing freedom of association free from violence, pressure and threats against the officers and members of unions.

**The Worker member of Pakistan** recalled that the country had ratified both fundamental Conventions concerning freedom of association and collective bargaining. However, the Committee of Experts had repeatedly asked the Government to address the gaps between the principles of Convention No. 87 and the law and practice in the country. The Government had indicated that tripartite consultation had been held on 13 May 2011 with regard to a new industrial relation law at the federal level. However, the Industrial Relations Act, 2008 had expired following the 18th Constitutional Amendment and had not yet been replaced. This had created a legal vacuum, which could have been avoided had social dialogue been held prior to this Amendment. It resulted in the removal of legal status from national organizations, and the Supreme Court had ruled that such organizations could not be registered. Consequently, such entities had been refused participation in negotiations, and 1.5 million workers engaged in national level enterprises were therefore denied the right to organize. The Committee should request the Government to demonstrate political will, in spite of the Supreme Court ruling, due to its obligations under international law to implement fully the Convention. In addition, the Banking Companies Ordinance remained in violation of the principles of freedom of association. Bank workers had been dismissed due to their engagement in union activities, and such dismissed workers could still not hold office in these organizations. Finally, referring to several cases of the Committee on Freedom of Association, he emphasized that the Government must expedite the process of bringing its legislation into full conformity with the Convention and work with the social partners to this end.

**The Worker member of Italy** recalled that the Constitution foresaw the principle of freedom of association, and that the Government had ratified the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 50 years ago. However, violations of workers' rights remained systematic and pervasive, and the majority of the labour force did not have the right to join trade unions or engage in collective bargaining. Pakistani trade unions had been presenting complaints to the ILO concerning this matter since 1997. The entry into force of the 18th Constitutional Amendment, had put an end to the Industrial Relations Act, 2008, and had entitled the provinces to issue their own industrial relations acts. On 2 June 2011, a judgment of the Supreme Court had abolished the role of the National Industrial Relations Commission. Consequently, unions operating at the federal level would cease to exist, and only provincial unions, registered under the provincial industrial acts that existed in certain provinces, would continue to operate. Turning to the sectors in which unionization was not permitted, the speaker underlined that union organizing was banned in government services, civil enterprises working

for the Ministry of Defence Lines Pakistan Railway, agriculture, and specific public sector enterprises, in addition to the workplaces to which the Essential Services Act, 1952, applied. Moreover, section 27-B of the Banking Companies Ordinance prohibited trade union activities in banking and financial institutions during working hours, and permitted the dismissal of bank employees who violated this law. There were serious trade union restrictions in the EPZs, through the Export Processing Zone Authority Ordinance, 1980 and the Export Processing Zone Act, 1982, which withdrew the coverage of various labour laws from these sectors, and prohibited workers in the EPZs from engaging in strikes, go-slow action or from refusing to work. Furthermore, conditions of workers at the existing industrial areas were poor, with the payment of minimal wages, frequent dismissals, and employer hostility to union organizing. The systematic and artificial promotion of workers into management grades was used by employers in both the private and public sectors to undermine trade unions. Additionally, a large number of workers in smaller enterprises were excluded from protections due to the restrictions of the Factories Act and the Industrial and Commercial Employment (Standing Orders) Ordinance. The speaker recalled the conclusions of the Committee on Freedom of Association, at its March 2011 session, that a legal vacuum had been created by the absence of labour courts, and that the High Court of Sindh had revitalized the unacceptable Industrial Relations Ordinance, 1969. The Committee on Freedom of Association had also recommended that new legislation be adopted at the national level, in consultation with the social partners, that provincial legislation be brought into conformity with the Convention and that the National Industrial Relations Commission should continue to work. She emphasized her full support for these recommendations, and expressed the hope that the Government would repeal the constitutional amendments and would comply with the principles of freedom of association and collective bargaining in all sectors, including in the EPZ.

Another Government representative indicated that the diversity of views expressed, in addition to the comments made by the Committee of Experts, would help the Government to re-examine the problems raised and find solutions. Freedom of expression was fully respected, which comprised an independent and strong judiciary, dynamic civil society and media. The Government was fully committed to implementing the provisions of the Convention, in letter and spirit, and the steps taken by the Government in recent years were a reflection of this commitment. All national unions and federations were functioning normally despite the fact that the Industrial Relations Act, 2011, was not yet in force. It would be promulgated within days and would enter into force shortly. It would cover trade unions with nation-wide status. Several provinces had already introduced their own industrial relations acts. Separate labour courts would be established in EPZs. Section 27-B of the Banking Companies Ordinance, 1962, would be repealed and the Committee of Experts, as well as the social partners, would be informed as soon as the process was completed. The positive measures taken over the last three years showed that freedom of association and collective bargaining existed in Pakistan. Workers and employers without distinction whatsoever had the right to establish and join organizations of their own choosing. They had the right to elect their representatives and to formulate their programmes. No administrative authority was entitled to dissolve or suspend workers' or employers' organizations. The right to strike was guaranteed. Over the recent months, the Government's commitment towards these principles had enabled workers employed in large corporations such as the Karachi Electric Supply Company, Pakistan International Airlines and the

Pakistan Telecommunications Company Ltd, to achieve changes in their employment conditions and to increase their salaries through exercising their right to strike. The Government had reinstated hundreds of workers. In response to the statement made by the Worker member of Pakistan, he reaffirmed the Government's full commitment to work together through social dialogue to address the issues that had been raised. Finally, he thanked the ILO for the positive contribution it had made towards enhancing the Government's capacity to implement the provisions of the Convention, and thanked the social partners for their guidance and support in the resolution of these problems.

The Worker members expressed the hope that the Convention would be applied effectively in Pakistan. Trade union action was built on the conviction that a world with greater respect for trade union activities and the rights of workers was possible. The Committee should adopt strong conclusions and clearly call on the authorities to put an end to violations of workers' rights. The Government should, therefore, do everything in its power to bring its legislation and practice into line with the Convention and to guarantee full freedom of association for all workers. In that regard, the Worker members reiterated the specific requests made to the Government in their introductory remarks. Furthermore, both the observation of the Committee of Experts and this Committee's conclusions from 2009 were very clear. The Government should accept ILO technical assistance to bring its legislation into conformity with the Convention, as the current situation deprived thousands of workers of their freedom of association. The Worker members concluded by observing that the Government seemed to recognize the difficulties and called on it to act promptly.

The Employer members recalled that this had been a long-standing case of the Committee, and that the Government had previously provided assurances that the necessary action would be taken to reach compliance. Therefore, while recognizing the sincerity of the Government representative, they expressed scepticism regarding the assurances provided to the Committee regarding the actions that would be taken in the future. There was no doubt that, to resolve the issues raised, urgent action was required. At minimum, in addition to several points raised by the Worker members, the conclusions should state that ILO technical assistance should be undertaken promptly. Additionally, the Government should submit the text of the various legislative changes discussed to the Committee of Experts, in time for examination at its forthcoming session. This would allow a fuller appreciation of the ongoing legislative action within the country and provide an assessment as to whether compliance had been achieved with respect to the international obligations under 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 took note of the Government representative's statement which referred to the process of decentralization in the country. The representative stated that this had made the implementation set-up of the Industrial Relations Act more democratic and people friendly. The current implementation mechanism was a three-tier system which provided institutional machinery at federal, provincial and district levels to facilitate for the workers and employers the registration of their respective trade unions and federations and to resolve industrial disputes. Following the Constitutional Amendment introduced in 2010, the subject of labour had been transferred to the provinces which were responsible for legislation and implementation. The provinces were

currently in the process of adopting laws and some had already introduced Industrial Relations Acts. Following consultation with the social partners, new legislation for regulation of industrial relations, registration of trade unions and federations and resolutions of industrial disputes at the federal level was at the final stage. He finally thanked the ILO for the assistance that it had provided to the Government with respect to labour law reform and other labour matters.

The Committee noted that the comments of the Committee of Experts referred to long-standing discrepancies between the Convention and the law and practice in the country. The Committee further noted that new concerns were raised in relation to the apparent absence of national legislation regulating labour relations at the federal level and the implications for the right to organize of many categories of workers.

The Committee requested the Government immediately to provide all relevant draft legislation to the ILO for its assistance in ensuring that the new legislation would be in full conformity with the Convention. It further requested the Government to provide to the Committee of Experts for its examination this year all provincial laws relevant to the application of the Convention and detailed information on the progress made in adopting rules in export processing zones, with respect to the repeal of the Presidential Ordinance of 1999 and as regards the status of section 27-B of the Banking Companies Ordinance of 1962. Finally, concerned with the need to ensure a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations, the Committee requested the Government to conduct an independent investigation into the serious allegations of violence against trade unionists and to report to the Committee of Experts on the outcome and the measures taken to punish those found to be responsible.

The Committee trusted that all necessary measures would be taken rapidly to bring the law and practice into full conformity with the Convention and expected to be in a position to note progress in this regard in the very near future.

#### PANAMA (ratification: 1958)

A Government representative stated that Panama had received with great satisfaction the report of the Committee of Experts, in which, after examination of the reports which had been sent, Panama was listed among the "cases of progress" with regard to the application of Convention No. 87. His Government recognized the importance of the Committee of Experts, as demonstrated by the provision on 1 June 2011 of all the requested reports, including the one concerning Convention No. 87. In view of the above, his Government had been surprised to be informed that Panama was on the list of 25 cases to be examined in the Committee. He indicated that Panama, once again, questioned the procedures and the lack of transparency, as repeated by his Government individually and through the Group of Latin American and Caribbean countries (GRULAC) and the way in which the countries were selected, as well as the lack of proportion concerning those invited to communicate information to the Committee on the cases under discussion. His Government recognized and valued the Committee on the Application of Standards. Through its spirit of cooperation, based on objective and reliable information and equal treatment for all members of the Organization, it was possible to reveal weaknesses, the efforts and good practices in the implementation of ratified Conventions.

Referring to the observation of the Committee of Experts, he indicated that its requests had been met through the following legislative initiatives: Act No. 68 of 26 October 2010 amending sections 493 and 494 of the Labour Code concerning the effects of a strike, and establishing other provisions; Act No. 30 of 5 April 2011 repealing section 7 of Act No. 29 of 2010 restricting the right to

collective bargaining during the first six years of operation of enterprises; Act No. 32 of 5 April 2011 establishing a special, comprehensive and simplified regime for the establishment and operation of export processing zones and laying down other provisions (taking account of the observations made to the Government of Panama on the application of the Convention). With regard to the remaining observations made by the Committee of Experts to Panama, he made the following comments. With regard to the legal personality of the National Union of Workers of the University of Panama (SINTUP), it was the responsibility of the Ministry of Government to grant legal personality or legal recognition, in accordance with the Constitution of Panama, as for public sector workers' organizations, that was not the responsibility of the Ministry of Labour and Professional Development (MITRADEL). In a ruling on the application for the protection of constitutional guarantees (*amparo*) filed by SINTUP, which challenged the failure of MITRADEL to grant legal personality to the union, the Plenary of the Supreme Court of Justice decided not to admit the *amparo* action because recognition of legal personality for the union concerned was a matter for the Ministry of Government. With regard to the workers' allegations of harassment and murders, his Government upheld the principle of freedom of association and the principle of human life. Accordingly, the National Government had been supplying information, punctually and responsibly, to the ILO on the previously mentioned criminal proceedings being handled by the judiciary with a view to clarifying the allegations made to the ILO. The judiciary had examined the cases and the Government of Panama had forwarded the rulings on the murder cases, which had resulted in convictions, to the Committee on the Application of Standards. With regard to Article 2 of the Convention, he emphasized the following measures: (a) section 174 (now section 179) and section 178 (now section 182) had been amended in the Single Text of the Administrative Careers Act of 4 August 2008. He said the Administrative Careers Directorate in Panama had established a committee composed of men and women workers of the associations of public servants which existed for evaluating the various matters relating to the international Conventions ratified by Panama. (b) With regard to the measures which had been taken to reduce the minimum numbers (40 for workers, ten for employers) needed to establish their respective organizations, he said that the social partners in Panama were satisfied that the minimum number of 40 for establishing an organization was the most widely accepted by the main workers' confederations and federations in Panama. The number required for establishing an association of public servants was 50. Indeed, the Government was considering a review of that subject by the committee set up by the Administrative Careers Directorate in connection with bringing the Act into line with international Conventions. (c) With regard to the request made to the Government to take the necessary measures to ensure the right to strike of public servants who did not exercise authority in the name of the State and with regard to the request to amend the legislation so that workers' federations and confederations could call and hold strikes against the Government's economic and social policy, as well as strikes that were unrelated to a collective agreement, he said that the single text of the Administrative Careers Act did not envisage any obstacles to workers who did not belong to associations of public servants taking part in a strike or calling a strike. (d) With regard to the comments of the Committee of Experts concerning section 3 of Act No. 68 amending section 493(1) of the Labour Code, he said that the only intervention by the police during a strike was to protect people and property, not to stop the strike, in accordance with the

outcome of tripartite discussions in a round table on dialogue held in October 2010.

With regard to the right of organizations to elect their representatives in full freedom, in accordance with Article 3 of the Convention, he made the following comments. (a) With regard to the repeated calls made by the Committee of Experts to take the necessary steps to amend the national legislation to allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country, he said that the National Constitution would have to be amended but that, nevertheless, foreign workers enjoyed all the benefits deriving from the collective agreements of the enterprises in which they worked. They could also participate as members of trade unions and the rights deriving from their employment relationship were therefore respected. (b) With regard to the request by the Committee of Experts to amend section 180-A of Act No. 24 of 2 July 2007 requiring public servants who were not affiliated to associations to pay ordinary dues to the association which obtained improvements in labour conditions, he said that the social partners considered the deduction of the dues as an acquired right for the trade unions and they had stated that its suppression would be a violation of their acquired rights. With regard to the right of organizations to organize their activities and to formulate their programmes in full freedom, he provided the following indications. (a) His Government was of the opinion that the intention of section 452 of the Labour Code was to prevent negotiations conducted by the parties to a dispute from disrupting the State's constitutional duties to provide citizens with the basic public services, which had to be guaranteed by law. Hence arbitration was a mechanism of dialogue for avoiding the continuation of a strike that would result in economic losses for the State and the citizens of the country. (b) The Committee of Experts had asked the Government to take steps to ensure that, in the event of a strike, the right of non-striking workers to enter the workplace was guaranteed. The Government indicated that that section was the product of tripartite consensus reached by the round table on dialogue held in October 2010, and that it therefore had the approval of all the social partners in Panama. With regard to the right of public servants to collective bargaining established in Article 6 of the Convention, he made the following comments. (a) With regard to the right to collective bargaining of municipal workers and workers in decentralized institutions, no distinction was made between public servants, who were all officials in the administration of the State, whether they provided services in the central state administration or served in autonomous municipalities. The Administrative Careers Act therefore applied to all public officials without any distinction whatsoever. (b) With regard to collective agreements of officials in the administration of the State, officials in municipal authorities or decentralized institutions, the Administrative Careers Act provided for negotiation of their claims by means of complaints. In addition, there was a bill regulating municipal administrative careers which envisaged mechanisms for the settlement of disputes of municipal public servants by means of complaints or lists of demands.

**The Employer members** said that the case under discussion had been selected according to the usual criteria. It had been examined on previous occasions at the initiative of the Employers' group, most recently in 2009, but that the situation had since changed considerably, due in part to the efforts of the Committee and the new approach being taken by the Government. Those efforts had been recognized by the Committee of Experts in its latest report, when it noted with satisfaction the progress that had been made. There were still some points that needed to change, such as the fact that workers could be prevented

from entering their place of work and that senior executives could be allowed to enter only on condition they did not start up production. But the Employer members did not recognize the progress that had been made and they were not the ones who had requested that the case be included for discussion.

The other observations of the Committee of Experts referred, in the first place, to the right of employees in the public service to establish and join trade unions. The only restrictions on that right were found in an Act of 1994 and from the Constitution. The Convention was applicable to all workers, including public servants, save for the derogation provided for in Article 9 of the Convention concerning the armed forces and the police. It was to be hoped that this matter would finally be resolved by changes to the regulations. The Government representative had referred in his statement to the amendment of the Administrative Careers Act, but it was not clear whether the amendment actually covered that point. It was to be hoped that additional information would be forthcoming in the discussion. The requirement for the establishment of a trade union of a number of workers that the Committee of Experts itself considered excessive and inappropriate and the further requirement that the members of the executive board of trade unions be of Panamanian nationality, were areas where improvements could be made, as the Employer members had been advocating for a long time. They hoped that those changes would not be long in coming. Finally, they drew attention to the point raised by the Committee of Experts regarding the deduction of union dues while a collective agreement or accord was in force. It was strange that, on the one hand, the Committee of Experts considered that deducting contributions from non-unionized public servants was contrary to Convention No. 87, while on the other it deemed that applying the same requirement to workers who were not public servants was valid only if the amount of the contribution was not so great as to limit their right to join the union of their own choosing. They were not aware of the real reasons for such a double standard, and they emphasized that as employers they were somewhat reticent about the practice of imposing union contributions on all the workers, especially where collective agreements covered the entire workforce. Freedom of association and the right to organize did not require the payment of a contribution to a specific trade union or employers' organization. With regard to the Committee of Experts' comments concerning the right to strike, they reiterated their view that an interpretation could not be inferred of its scope and limits. Regarding the acts of violence mentioned in the report, the Government representative had dealt with the matter in his statement, and the Employer members hoped that more information could have been given. In conclusion, they emphasized that there were still areas where Panama's laws and regulations needed to be amended to achieve compliance with the Convention, especially in relation to the prohibition of public servants from joining trade unions and the requirement for non-unionized workers to pay union dues. That said, they noted that, unlike 2009, there had been significant improvements in the country's regulations, and those, they believed, should be taken into account. Meanwhile, they hoped that in the course of the discussion it would become clear when and how the Government intended to introduce the remaining reforms.

**The Worker members** indicated that, according to information from the International Trade Union Confederation (ITUC), Panama had suffered from a climate of instability and violence throughout 2010, the climate of violence had been noted in the Committee's conclusions for many years. By way of reminder, the case of the application of the Convention by Panama had been examined five times during the last ten years, and Panama had

been the subject of 57 complaints which had been submitted to the Committee on Freedom of Association by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), the National Council of Organized Workers (CONATO) and the National Union of Workers of the University of Panama (SINTUP). The report of the Committee of Experts referred to the situation of SINTUP and of the Single Union of Construction and Allied Industries Workers (SUNTRAC). Six murders of trade unionists, 700 cases of injury and 101 arrests had been reported for 2010, and the right to freedom of association was being violated in all sectors of activity.

The Worker members recalled that at the end of the Committee's work in 2009 it had expressed the hope that the situation would change when the Government changed. However, the latest information suggested that nothing had been done. The points raised by the Committee of Experts in its latest report again concerned the compatibility of the Administrative Careers Act No. 9 and Act No. 44 of 1995 amending certain provisions of the Labour Code with Article 2 of the Convention. The Conference Committee had also noted them in its conclusions in 2009. Recalling that the Government had referred to two preliminary draft tools amending the above Acts, the Worker members regretted that no progress had been made. With regard to the application of Article 3 of the Convention, the report of the Committee of Experts emphasized that the Government had reiterated the need for a revision of the National Constitution. There was good reason to wonder why no such reform had yet been launched, given that the problem was a long-standing one. Moreover, the Committee of Experts had repeatedly emphasized in vain the need to amend section 180-A of Act No. 24 of July 2007 so as to abolish the requirement for public servants who were not affiliated to organizations to pay trade union dues. Even though the Government considered that it had measures concerning the exercise of the right to strike, the Worker members held a different view. Although that right, which was a corollary to the right of trade unions to conduct their activities in full freedom and to formulate their programme of action, and was enshrined in the Constitution of the country, the exercise thereof was hampered by the following obstacles: (1) a strike had to be approved by an absolute majority of workers in the enterprise concerned; (2) a strike could only be held if it concerned a dispute relating to an enterprise agreement; (3) national federations and confederations were denied the right to call strikes; (4) in the public service, the law provided for a very extensive minimum service and also for the possibility of imposing compulsory conciliation and arbitration; (5) in services considered essential, the Government had the possibility to requisition 50 per cent or more of the workforce; and (6) strikes were prohibited for workers employed by the Panama Canal Authority, in the export processing zones and in recently established enterprises. All those obstacles had been noted in the report of the Committee of Experts. The Worker members noted that the points raised were not new and they regretted that bringing the legislation into conformity with the Convention always came up against the same argument from the Government, namely that it was difficult or even impossible to launch a process of legislative change, which presupposed a prior dialogue and consensus between workers and employers. Observing that the trade unions were clearly unable to engage in negotiations which they knew in advance would lead to denial of their rights, the Worker members called on the Government to stop using that argument to justify the fact that they had not implemented the recommendations already made by the Committee in 2009.

**The Employer member of Panama** expressed his surprise at the inclusion of Panama on the list and insisted that the request to do so came neither from the employers of Panama nor from the International Organisation of Employers (IOE). For the most part, the problems raised by the application of the Convention had been resolved, especially as they related to the private sector. Panama was one of the countries in the subregion that had a genuinely dynamic employment creation policy, which was one of the principal concerns of the ILO. Moreover, the Government possessed all the political will to make the necessary changes. He referred to Act No. 30/2010 and to the provisions that had been adopted to comply with the recommendations of the Committee on Freedom of Association in Case No. 1931, and recalled the background to the occasion. The Government had suspended the Act and set up a broad social dialogue panel. The reason why Panama had been cited by the Conference Committee six times was the closure of enterprises preventing managers and non-strikers from entering their place of work. Today, enterprises were not being closed and it was possible to enter. He stressed that both the current government and previous governments had requested ILO technical assistance, which they had not received. In 2006 a mission had been sent to Panama in connection with Case No. 1931, but it had been unable to hold even a single meeting with the social partners because the workers' side refused to budge an inch from its position on the labour law. The cause of all the problems was the combined application of the labour legislation of 1972 that had been adopted when the country's situation was altogether different. In those days its economy had been based on industry. But for the past 15 years that was no longer the case. The services sector now played a much bigger role in the economy than industry. Panama had requested ILO technical assistance to help reform its Labour Code on a tripartite basis. As for the public sector, the Government had just appointed a commission of prominent people to consider proposed amendments to the Constitution. He indicated that he was in favour of the establishment of trade unions in the public sector and of the possibility for foreigners to be on a union's executive board, and the workers' side should present a proposal for reform. In conclusion, he reiterated firmly the request for technical assistance.

**The Worker member of Panama** said that it would shortly be the first anniversary of the horrific episode known as the Bocas del Toro massacre, when a humble people had been savagely attacked for protesting against Act No. 30, known as the *Chorizo* Act, which was intended to repress freedom of association, trample underfoot the right to strike and disregard collective agreements, among other objectives. As a result of a popular struggle, with extremely grave consequences for the people concerned, the Act had been repealed. The Government only admitted to two deaths, Antonio Smith and Virgilio Castillo, although a commission appointed by the Government acknowledged four deaths, while other reports, for example by the Office of the Ombudsperson, referred to ten deaths, half of them of children and almost all of them indigenous, and over 500 injured, including 70 who suffered partial or total loss of sight as a result of gunshot wounds to the face. Hundreds had also been detained and were still faced with trumped up charges, together with the persecution, arrest and death threats against trade union leaders. The Government had been responsible for more deaths in the last two years than over the preceding 22 years. He emphasized that the right to organize was denied to broad sectors of workers, applications for legal personality were refused and there was no right to organize for public employees, bank employees, workers in the Colón Free Zone, the education sector, ports and call centres, among others. The right to strike

was not recognized for Canal workers. A regime of terror and persecution reigned in certain institutions, and specifically in the Social Security Fund, from which Gabriel Pascual and Juan Samaniego had been dismissed for opposing arbitrary measures intended to justify its privatization, while members of the Board of Directors of the Fund were subject to attempts to mount trumped up charges. Workers' representatives had been dismissed in the education sector. He indicated that another issue was the attempt by the Government to criminalize social protest by legislative means, such as Act No. 14, known as the *Ley carcelazo*, under which demonstrators were subject to prison sentences, and the Act on telephone surveillance, or the *Ley Pinchazo*, under which the telephones of trade union leaders had been tapped during the last two presidential terms. Finally, he called for the investigation of the murders in Bocas del Toro, which had occurred during protests at the lack of safety regulations in the construction sector, and for the exercise of the right to strike to be permitted for Canal workers, together with the other rights afforded by the Convention, so that all workers in the public and private sectors were able to exercise their right to freedom of association.

**The Government member of the United States** observed that, in the context of the pending United States–Panama Trade Promotion Agreement and its strong protections for fundamental workers' rights, her Government had been cooperating closely with the Government of Panama to resolve concerns regarding certain areas of its labour legislation. She noted that the observations of the Committee of Experts had been a key frame of reference in that undertaking. She noted that the Committee of Experts had commented for many years on legal provisions that restricted the rights of workers and employers without distinction to establish and join organizations of their own choosing and to organize their activities in full freedom. She commended the recent steps taken by the Government to amend and strengthen a number of key labour laws and urged the Government to continue along the path of legislative reform, fully involving civil society, including trade union stakeholders at all stages. In so doing, the Government should follow the detailed recommendations of the Committee of Experts and avail itself of the technical assistance provided by the ILO. Regular ILO assistance might provide an important stimulus for achieving tripartite consensus on the legislative measures recommended by the Committee of Experts. She also urged the Government to take the necessary steps to ensure that all workers in Panama were able to exercise their freedom of association rights in a climate that was free of violence and in which fundamental human rights were respected and fully guaranteed.

**The Worker member of the Bolivarian Republic of Venezuela** referred to the violation by the Government of the right of public servants to stability of employment, through the adoption of Act No. 43 of 2009 which had retroactively abolished the stability of 35,000 public employees and had led to the dismissal of 25,000 of them, as well as the elimination of the Administrative Careers Appeals Board, which was the body entrusted with hearing cases of dismissal in the public service. Trade union leaders in the public sector were continuously being dismissed without the legal procedures in force being observed, with their trade union immunity being ignored and their right to strike denied. He referred to the case of the trade unions of the Panama Canal, which had been denied the right to strike by the Supreme Court ruling of April 2009, despite the fact that the right to strike was set out in the National Constitution and Panama had ratified Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee of Experts had noted violations of the right to organize in the

public sector and threats, harassment and massive dismissals of trade unionists. Sections 174 and 178 of the Administrative Careers Act No. 9 of 1994 continued to provide that there could be no more than one association in an institution and that the associations could have provincial or local chapters, but not more than one chapter per province. As indicated by the Government, even though Act No. 9 of 1994 had been amended by Act No. 43 of 30 July 2009, sections 174 and 178 had not been amended, in clear violation of Article 2 of the Convention. The Government of Panama had indicated that, in order to bring the law into line with the Convention, it would have to amend article 64 of the Constitution, which was the prerogative of the highest legislative authorities of the country. Thus, the Government was playing a cat and mouse game, while its refusal to recognize freedom of association was notorious. The Committee of Experts had also noted that the right of public servants to establish associations had been recognized in law, but that it was not exercised in practice. The right of organizations to organize their activities and to formulate their programmes in full freedom was established in the Convention and included the right to strike. However, in practice, this right was being denied to public sector workers. The Committee of Experts had recalled that the right to strike could be restricted only for those public servants who exercised authority in the name of the State. He also referred to the comments of the Committee of Experts concerning the prohibition of strikes by federations and confederations, the prohibition of strikes against the economic and social policies of the Government and the illegality of strikes which were not related to an enterprise collective agreement. All of these left no room for freedom of association, collective bargaining and industrial relations in Panama.

**The Government member of Argentina**, speaking on behalf of the Government members of the Committee, which were members of GRULAC, focused on certain elements of the statement made by the Government representative, which constituted progress in the implementation of the Convention. In its General Report, the Committee of Experts had expressed satisfaction at the steps taken by the Government of Panama for the implementation of the Convention and had included Panama among the cases of progress. Underlying that classification in the General Report of the Committee of Experts was the fact that the Government of Panama had adopted measures, which included legislative initiatives, such as the laws promulgated in 2010 and 2011, which took into account the observations and recommendations of the Committee of Experts and the Committee on the Application of Standards. These included the amendments to the Labour Code and significant changes in national policies and practices, such as the establishment of the Special Commission on the round table for dialogue in October 2010, in order to promote an environment conducive to dialogue, which had resulted in various tripartite agreements. Moreover, the Executive Decree of May 2001 had led to the issuance of work permits for foreign workers, who had benefited from an extraordinary regularization procedure undertaken by the National Migration Service. With regard to the observation of the Committee of Experts on the divergences between law and practice, he encouraged the Government of Panama and the social partners to continue their constructive dialogue in order to reach common agreements, especially with reference to amendments to be made to bring the Administrative Careers Act and the national law on associations, trade unions and the number of persons required for their establishment, into line with the Convention. In conclusion, he urged the ILO to continue working with Panama by providing technical cooperation in the area of freedom of association and to

support the Government's proposal to create a Supreme Labour Council, which had tripartite support.

**The Worker member of Colombia** emphasized the importance of recognizing freedom of association without so many restrictions in order to build a genuine social state based on the rule of law. He expressed concern at the lack of guarantees in Panama to ensure that trade unions could develop in a climate of respect, which had resulted in the low rate of unionization, due to the enormous bureaucratic hurdles that trade unionists had to overcome in order to assume their role in defence of workers' rights. He requested the Government to take the necessary steps to ensure that trade unions could exercise their rights fully, without State interventionism, specifically by: removing the restriction requiring a minimum of 40 workers in order to form a trade union; introducing automatic registration, thereby avoiding situations such as those of the trade union in the health sector that had been seeking registration for several years and the failure to recognize a court ruling for the registration of an organization in Balboa and Cristobal; and allowing workers to choose the type of statutes they considered appropriate. The recommendations of the Committee of Experts should be followed up without further delay by the Government, with support from employers, with a view to the strengthening of democracy. Protecting freedom of association in a social state based on the rule of law was the best investment a government could make, as proved by the case of Switzerland. One of the secrets of that country's development was clear and transparent tripartism. Valuing freedom of association, as the Government representative had said, could not remain merely rhetorical, but needed to be translated into real actions in law and practice.

**The Worker member of Honduras** indicated that the Committee of Experts had referred to the following issues: the denial of the right to strike in export processing zones, in recently established enterprises and for public servants; the prohibition of the right to strike of federations and confederations; the referral of disputes to compulsory arbitration in the private transport sector and the determination of a minimum service of 50 per cent for personnel in that sector. Nevertheless, as indicated by the Committee on Freedom of Association, strikes could only be restricted in services the interruption of which would endanger the life, personal health or safety of the whole or part of the population. The Committee on Freedom of Association and the Committee of Experts had indicated on numerous occasions that public transport was not an essential service, unless it consisted of a service of fundamental importance, which could only be ascertained in specific conditions, or when the strike went on too long. Moreover, the classification of strikes needed to be carried out by an independent body distinct from the administrative authorities, which lacked objectivity. With regard to public servants, he indicated that not all employees of the public administration should be considered as public officials. Indeed, the public service should be limited to those officials exercising authority in the name of the State. With regard to the prohibition of the right to strike of federations and confederations, he considered that it consisted of an arbitrary limitation intended to prevent general strikes which, according to the supervisory bodies, were legitimate. Similarly, the imposition of compulsory arbitration was arbitrary and contrary to the right to strike. In the final analysis, the sole objective of excessive regulation of strikes was to annul the right to strike.

**The Government representative** said that the current Government of Panama was fully aware of its responsibilities under the multilateral system and was not attempting to evade the responsibilities deriving from events that had occurred during previous administrations. It had therefore decided to take the necessary measures to rem-

edy the consequences of those events. Panama recognized the importance of freedom of association, which was one of the main elements for the achievement of lasting peace. He referred to the adoption in May of the Executive Decree regularizing the issue of work permits for foreign workers through an extraordinary process undertaken by the National Migration Service. Over 13,000 migrant workers had benefited from the programme, known as *Crisol de Razas*. The economic and development policies of the national Government had generated economic growth, under the impact of a significant programme of investment in infrastructure and social projects. It was intended to create an attractive environment for foreign investment, without restricting the freedom of association of workers or the right to organize and to collective bargaining. The Government recognized that there had been divergences for years between law and practice and noted that the ILO technical assistance mission on freedom of association issues had not yet taken place. Nevertheless, there had been some positive progress in that regard. Efforts were being made to establish a Higher Labour Council. The Government hoped to be able to count on the ILO to continue working together. Emphasis should be placed on the freedoms and rights enjoyed by workers in Panama: they participated in the Minimum Wage Commission, which regulated matters relating to wages throughout the country; they participated in the Panamanian Institute for Labour Studies (IPEL) in relation to training for trade unions; and they received financial support from the Ministry of Labour and Employment Development for expenditure on education (US\$2,154,800 had been allocated during the previous biennium). In practice, trade union leaders in Panama participated in all areas of economic, social, political and labour affairs, in full exercise of the right to freedom of association. With regard to labour jurisdiction, the Ministry of Labour and Employment Development facilitated cases of reinstatement following violations of trade union protection for unions that were being established, and it maintained a constant interest in furthering all the procedures for which it was responsible. With regard to public servants, a commission had been established composed of the FENASEP and other associations of public servants with a view to examining the various issues relating to the international Conventions that had been ratified. There was also a bill regulating municipal administrative careers. Furthermore, through the dialogue body which had repealed Act No. 30 of 2010, the participation of trade union confederations had been made more democratic. An amendment to section 1066 had allowed the participation of the National Council of Organized Workers (CONATO) and the Independent Confederation of Labour Union Unity (CONUSI), as illustrated by the participation in the present Conference of trade union organizations without interference from the Government, in accordance with their own rules. In conclusion, he said that in Panama there were 144,679 unionized workers governed by the Labour Code, of whom 124,097 were men and 20,582 were women. They were members of 398 unions, 50 federations, six confederations, three central organizations and other types of associations.

**The Employer members** referred to five issues. First, it was important to recognize the Government's efforts to adapt its legislation to the Convention, so as to guarantee freedom of association, free enterprise and free access to enterprises. Second, efforts to promote social dialogue should be acknowledged, even though they had not yet resulted in specific benefits. Third, there were still outstanding issues, such as the right to organize of public employees, which would require amendments to legislation, and the need for workers to pay trade union dues before being able to benefit from collective agreements.

Fourth, the Government should continue to be requested to amend the Labour Code, for which it would need to receive effective technical assistance from the ILO, and to strengthen social dialogue; even though on this last point, there existed a shared responsibility. All parties could thus assume their respective responsibilities. Lastly, the Government should be requested to continue providing detailed information on acts of violence so that the development of the situation could be properly assessed.

The **Worker members** emphasized that the case of Panama was one which regularly returned to the list of individual cases for the violation of the Convention, and that the issues had not changed over the years. In 2009, the Committee had indicated in its conclusions that it trusted that the new Government would implement the measures decided upon. With regard to the Government's request for technical assistance, they recalled that the Committee had regretted in 2005 that the technical assistance it had proposed to the Government in 2003 had not yet been provided, and that no significant progress had been made in the application of the Convention. And yet the Government had expressed at that time its commitment to accept a technical assistance mission and to resolve the problems through dialogue with the social partners, and the Committee had expressed the firm hope that the Government would take the necessary measures with ILO technical assistance, in close collaboration with the social partners, so that workers' and employers' organizations could benefit in full from the rights and guarantees enshrined in the Convention without interference by the public authorities. Although a technical assistance mission had visited Panama in 2006, the situation had remained unchanged. In that context, the Worker members indicated that the mere fact that the Government was requesting a technical assistance mission did not constitute a sufficient guarantee and called for a high-level ILO mission to visit the country with a view to resolving, with the social partners, the problems of application of the Convention.

### **Conclusions**

The Committee took note of the Government representative's statements and the discussion that followed.

The Committee observed that the Committee of Experts had for many years been commenting on the serious legal restrictions on the right of workers and employers to freely establish organizations of their own choosing, to freely elect their representatives and the right to organize their administration and activities. The Committee observed that the Committee of Experts had noted the allegations of serious acts of persecution and violence against trade unionists.

The Committee noted the statements of the Government representative indicating that positive legislative amendments had been made in relation to certain of the issues referred to by the Committee of Experts or that agreements had been reached, and that a commission of public figures was addressing the issues raised by the Committee of Experts relating to the possible reform of constitutional provisions. He had added that certain legal issues in the public sector raised by the Committee of Experts had been or could be submitted to a joint commission. He emphasized that associations of public servants had the right to strike. With regard to the contributions payable by non-unionized workers in recognition of the benefits of collective bargaining, the Government representative had indicated that the unions were opposed to the abolition of the contribution. Information had been provided to the Committee of Experts on the judicial sentences handed down to those responsible for acts of violence against workers. Finally, he had recalled that the ILO assistance mission requested by the Government had not taken place.

The Committee noted with concern the allegations of murders and other serious acts of violence against trade unionists, as well as employment-related anti-union acts. The Committee noted that the Government had sent a reply on that subject to the Committee of Experts, which would examine and assess those matters at its next session.

The Committee welcomed the progress made by the Government with respect to certain matters raised by the Committee of Experts, including the amendment of the legislation so that the enterprise management could now enter its premises during a strike. The Committee nevertheless regretted that, despite the efforts mentioned by the Government, it was still unable to note significant progress in relation to the other important modifications requested in the legislation, in which the restrictions affected both workers and their organizations and employers and their organizations.

The Committee urged the Government to prepare on an urgent basis, with the technical assistance of the ILO and the intensification of social dialogue on the subject, specific draft provisions to amend the legislation to bring it into conformity with the Convention, including as regards the deficiencies in relation to trade union rights in the public sector and the compulsory dues for non-unionized workers, as well as with respect to the restrictions to the rights of employers' organizations to carry out their activities.

The Committee emphasized the joint responsibility of the Government and the social partners for the reinforcement of social dialogue. Recalling that freedom of association could only be exercised in a climate free from violence in which fundamental human rights were fully respected and guaranteed, the Committee requested the Government to provide further information on the alleged acts of violence against workers and trade unionists.

The Committee requested the Government to send a report for examination at the next meeting of the Committee of Experts in 2011 explaining the measures adopted. In the light of the different views expressed in the Committee concerning legal and factual situations related to the Convention, it invited the Government to accept an ILO mission to assist effective social dialogue on these matters, which should report to the Committee of Experts at its next meeting.

### **SERBIA (ratification: 2000)**

A Government representative began by responding to the point raised in the 2011 observation of the Committee of Experts concerning the need to amend section 216 of the Labour Code, which provided that employers' associations might be established by employers that employ no less than 5 per cent of the total number of employees in a certain branch, group, subgroup, line of business or territory of a certain territorial unit, in order to establish a reasonable minimum membership requirement. She indicated that in cooperation with the social partners, the draft amendment to the Labour Law was currently in preparation, which had been planned for adoption by the end of 2010. The adoption of the revised Labour Code, however, was now expected to take place after the parliamentary elections envisaged in 2012. The new Labour Code would define requirements for the establishment and official recognition of employers' and workers' organizations, which would be in line with the relevant comments of the Committee of Experts. As regards the comments made by the International Trade Union Confederation (ITUC) and the Confederation of Autonomous Trade Unions of Serbia (CATUS) alleging physical assaults against trade union officials and members, especially in the education and health sectors, she indicated that the Government was not aware of these attacks. It had tried to obtain additional information from the CATUS, but had not received any replies on this matter. The labour inspectorate had not received any complaints regarding this issue either, while

it had taken appropriate steps as regards other reported cases.

With respect to the Serbian Chamber of Commerce, she clarified that in accordance with the Labour Code, chambers of commerce were not parties to social dialogue. The Law on Chambers of Commerce had been amended and it provided that membership to the Chamber of Commerce was no longer compulsory. Concerning the new employers' organization, she stated that the Ministry of Trade and Services had indicated that the Ministry only intended to support the process of organization of interested actors in the trade sector, and had no intention to favour any particular employers' organization whatsoever, or to exert any influence on the manner in which parties to social dialogue organized themselves, or to violate any national or international legislation. She also stated that the new employers' organization had moved out of the premises of the Chamber of Commerce and now had its own premises and administrative structure. She emphasized that the Government would continue to ensure social dialogue took place on the basis of the freely expressed will of all parties without any pressure or influence from the State.

**The Employer members** recalled that this Committee had already discussed this case twice. For many years, the Committee of Experts had urged the Government to amend section 216 of the Labour Law to bring it into compliance with Article 2 of the Convention. The arbitrary threshold in the Labour Law concerned unacceptable State intervention, which was further aggravated by two other legal requirements: (i) in the event a request for representativeness was rejected because the conditions were not met, the organization in question could only renew the request after three years; and (ii) an employer organization was only recognized as a representative organization with the right to bargain collectively if the organization comprised at least ten per cent of all employers that employed at least 15 per cent of the total number of employees. These conditions were not in compliance with either Convention No. 87, or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In addition, the prominent role attributed to the Chamber of Commerce in social dialogue was not in compliance with the Convention. This problem had been raised since 2004 and was still not solved. The obligatory membership of employers in the Chamber of Commerce was objectionable. This situation was aggravated by the fact that the Chamber of Commerce was responsible for collective bargaining, thus effectively taking over the function of the employer organizations. As a result the right not to associate was not guaranteed and the establishment of employer organizations was obstructed due to this double membership. The information provided by the Government that obligatory membership would be abolished by 2013 did not change the current situation. Neither could the problem be solved by the newly established employers' organization, which was using resources of the Chamber of Commerce to raise membership among Serbian enterprises. On the contrary, these measures seemed to indicate that the Government was trying to give the impression of applying the Convention, while continuing to suppress free employers' organizations. This form of State intervention in the establishment of employers' organizations was unacceptable. In this context, the Employer members did not trust the Government's renewed announcement that the legislation would be amended and serious action had to be undertaken to prove that this was not, yet again, an empty promise.

**The Worker members** recalled that the case essentially concerned failure to respect Article 2 of the Convention. The system for registering a trade union did not guarantee freedom of association because registration procedures were very complicated and authorization was required

from the Ministry of Labour. Furthermore, in order for a trade union to be recognized as a negotiating agent, it must represent at least 15 per cent of workers. Section 233 of the Labour Law imposed a time limit of three years before an organization that had already applied for registration unsuccessfully could request a new decision on its representativeness. The Worker members also reminded the Government of its obligations under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) with regard to involving the social partners fully in drafting any new legislation, which obviously implied that workers should not be subject to pressure from employers based on their trade union membership or activities. The Worker members asked the Government to provide explanations concerning the alleged physical aggressions against the trade unionists mentioned in the report of the Committee of Experts.

**The Worker member of Serbia** indicated that this case on tripartism was rather typical in countries in transition. It had resulted from the Government abusing the law and conferring on itself too much freedom in interpreting the legislation. The Government's fundamental abuses commenced from the registration of new organizations, continuing with the decision regarding representativeness of organizations. This morning, the Ministry of Labour had convened a meeting where the social partners had been informed of a draft law addressing these matters. This draft was based on long standing and numerous complaints of the social partners. The Committee should send a clear message to the Government in order to prevent similar cases from arising in the future.

**The Government representative** reiterated that the provision under section 233 of the Labour Law concerned the request for revision of an established official recognition of representativeness of trade unions or employers' organizations, but that with respect to those workers' and employers' organizations to which official recognition of representativeness had not been previously granted, requests for such recognition might be submitted at any moment. She indicated that the Government would continue to support all forms of employers' associations and trade unions and strengthen social dialogue in compliance with ILO Conventions and other international instruments. The battle for growth, jobs and effective reform processes was not possible without social agreement at all levels.

**The Worker members** took note of the fact that the Government had acknowledged that a problem existed with registration and certification procedures and that it was prepared to amend the legislation in that regard. However, the Government had not been clear on the subject of the full participation of the social partners in the process. The Government should therefore engage in consultations with representative employers' and workers' organizations and accept technical assistance from the Office in reviewing registration and certification procedures.

**The Employer members** urged the Government to change the provisions of the Labour Law concerning the establishment of employer organizations as had repeatedly been requested by the Committee of Experts. Under the current laws, social dialogue was an empty shell. The practice that the Chamber of Commerce had effectively taken over the role of authoritative employer organizations had to be ended as soon as possible. Law and practice had to be brought into compliance with Conventions Nos 87 and 98. Employer organizations had to be formed and established free from State intervention. Considering the repeated empty promises by the Government, the Employer members had almost lost their patience. The Government had therefore to act quickly, otherwise the Employers' group would file a complaint of violation of freedom of association with the ILO.

## Conclusions

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

The Committee recalled that the Committee of Experts had been making comments for a number of years concerning the restrictions placed on the right of employers to establish and join organizations of their own choosing. The Committee of Experts' comments also referred to serious allegations of physical assaults of union officials and members, especially in the educational and health-care sectors. The Committee requested the Government to undertake, without delay, independent investigations into the allegations and report accordingly.

The Committee took note of the Government representative's statement that the Government was in the process of reviewing its Labour Law, in cooperation with the social partners. As regards the allegations of physical assaults against trade union leaders and members, she indicated that the Government was not aware of such attacks nor had they been reported to the labour inspectorate. Once provided with the relevant information, the Government would take the necessary steps to resolve the issue in accordance with the Convention. The Government asserted that a law had been adopted to eliminate the compulsory membership of the Serbian Chamber of Commerce, which would enter into force on 1 January 2013.

The Committee expressed its serious concern at the lack of progress made towards ensuring that the Chamber of Commerce did not, through its legislatively imposed compulsory membership, effectively interfere with the rights of employers to join the organization of their own choosing and carry out their activities freely. The Committee further observed with concern the serious allegations of difficulties encountered in the registration procedures and the lengthy period (three years) required before a determination of representativeness could be challenged. The Committee stressed that the Government must refrain from interference with the formation and the functioning of workers' and employers' organizations. The Committee expressed its serious concern at the favouritism by the Government of an employers' organization which is closely connected to the Chamber of Commerce and which is using the financial and human resources of the Chamber.

The Committee took note of the indication that a new law on trade union registration and activity had been drafted. It urged the Government to take meaningful steps to strengthen social dialogue in the country and to submit any draft texts to the workers' and employers' organizations for full consultation. It considered that the Government should accelerate the long-awaited action on the outstanding matters raised under the Convention and the amendment of section 216 of the Labour Law, especially the repeal of the 5 per cent threshold. The Committee urged the Government to ask for the technical assistance of the ILO with a view to bringing the legislation and practice into full conformity with the Convention without any delay. It urged the Government to provide detailed information on the concrete and tangible progress made in this regard to the Committee of Experts with its next report.

### SWAZILAND (ratification: 1978)

The Government communicated the following information concerning the progress made on the recommendations by the ILO tripartite high-level mission (HLM), that had visited the country 25–28 October 2010.

#### A. *Matters in progress*

With respect to the National Steering Committee on Social Dialogue's consideration to pursue the recommendation of the 2006 high-level mission to review the provisions of the Constitution in so far as they may have an

impact on the Convention. The issue was placed on the agenda of the above Committee scheduled for 13 and 21 April 2011. These meetings had to be postponed due to a workers' protest action on 12–15 April 2011. The issue will now be placed in the next scheduled meeting of the above Committee to be held on 13 July 2011.

With respect to the recommendation that the Government pass a formal decree or proclamation explicitly nullifying all provisions of the King's Proclamation of 1973, during a social dialogue meeting held on 10 March 2011, the Minister of Justice and the Attorney General took part in the discussions with the social partners. The Attorney General would provide legal direction and guidance on how to address this recommendation. On 26 May 2011, the Minister of Justice and the Attorney General reported that the Cabinet reiterated its previous position that the King's Proclamation of 1973 was automatically nullified by the coming into effect of the Constitution of 2005, as the supreme law of the country. Every law that was in conflict with the Constitution was automatically nullified by the coming into force of the Constitution. There were other legislations that also were nullified and it would not make sense only to single out the Proclamation at this stage. The Constitution stipulated the manner in which laws were passed. In terms of obtaining dispensation, laws were made by the King in Parliament. The Constitution allowed for Proclamations to declare a state of emergency. The country was currently undergoing law reforms, and had approached several international organizations including the Commonwealth, the European Union and the United Nations Development Programme for technical and financial assistance to conduct a legislative review and provide drafting expertise. Currently, the Commonwealth was assisting the country with the drafting of legislation to enable the Constitution to be fully functional. In view of the concerns and issues raised by the social partners and taking into consideration their implications for the economic development of the country, the Minister of Justice requested permission to go back to the Cabinet to further consult on the matter.

The ILO had been requested to carefully examine the Suppression of Terrorism Act, 2008, on the application of the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and give expert advice on the areas that were offensive and might be used to intimidate. This Act was drafted in line with the provisions of the United Nations standards and with technical assistance from the European Union and was used in line with its objective to suppress all acts of terrorism. Still awaiting the ILO's guidance and advice on the matter, as requested in the letter dated 30 March 2011. On 26 April 2011, during a consultative meeting with the Director of the ILO Office in Pretoria, the Director was again reminded about the matter.

The ILO had been requested by the Government, in letters dated 20 August 2010 and 30 March 2011, to give expert advice on the provisions and the impact of the Public Order Act, 1963, on the application of Conventions Nos 87 and 98. The ILO Office in Pretoria had been given copies of the Police Act and regulations to facilitate the drafting of guidelines on the conduct and responsibilities of the social partners during protest actions. During the consultative meeting of 26 April 2011 with the Director of the ILO Office in Pretoria, the matter was raised again. He made a proposal to have a workshop with the police, the Government, workers and employers on how to manage protest actions in the future. This workshop would be facilitated by the ILO on 27–28 June 2011. All parties had been consulted and encouraged to participate.

With respect to the agreement between the Government and social partners on a timetable for the finalization of the Prisons (Amendment) Bill, the Minister of Justice and

the Attorney General attended the social dialogue meeting on 10 March 2011 and were expected to come back with a progress report. During the social dialogue meeting held on 26 May 2011, the Minister of Justice and the Attorney General reported that the above Bill would be presented to the social partners during the social dialogue meeting scheduled for 13 July 2011. The social partners were in agreement that the draft Bill would be submitted to the Labour Advisory Board before it was published as a Bill.

With respect to the recommendation that the Public Service Bill be placed on the agenda of the National Steering Committee on Social Dialogue for consideration (social partners were calling for the withdrawal of the Bill so that their comments be incorporated), the Minister of Public Service, who also attended the social dialogue meeting on 10 March 2011, explained that it was currently being debated in Parliament. Further proposals for amendment could be forwarded through the parliamentary structures. However, arrangements were being made to assist the parties to have a meeting with the relevant Committee to make their submissions. Before debating the Bill, the Assembly published a notice in the local media, calling upon the public to make their input, and the Swaziland National Association for Civil Servants submitted their proposals. A formal request was made with the Clerk of Parliament to facilitate a meeting with the relevant Committee. The Clerk was given an indication that the Senate would prefer to meet with social partners once the Bill had been tabled in the Senate.

Pursuant to recommendations that formal discussions take place between the social partners and the Commissioner of Police regarding the application of the Public Order Act and its impact on freedom of association and the right to collective bargaining, these discussions, including the participation of the Commissioner of Labour, took place before the last protest action in September 2010 and were fruitful. The ILO had requested to be given all the relevant pieces of legislation to draft guidelines to the National Steering Committee on Social Dialogue. The police, workers and the Ministry of Labour would have workshops on their responsibilities during protest actions. Recently, workers had expressed a wish to meet with the Prime Minister to discuss some of their concerns. The Prime Minister had agreed, subject to confirmation of a date by the social partners. A meeting with the social partners and the Commissioner of Police was scheduled for 6 April 2011. This meeting discussed the role and responsibilities of the social partners during the protest action which took place on 12–13 April 2011. The police were commended for the good work as there were no incidences of violence during the protest march of 18 March 2011. Teachers and labour organizations were also applauded for monitoring the proceedings during the march, although there were some incidences of stone throwing directed at the police who did not retaliate. The May Day celebrations, 2011, were peaceful and there were no incidences of violence towards the workers. This achievement was a result of constant consultations between the police and the social partners.

In order to build the capacity of the police and sensitize them on international human rights instruments and Conventions Nos 87 and 98 relating to freedom of association, collective bargaining and protection of the right to organize, a formal request was made to the ILO to hold workshops with the police, workers, employers and the Ministry of Labour on their role during protests, as requested in the letters dated 20 August 2010 and 30 March 2011. This capacity-building workshop will be held on 27–28 June 2011 as proposed.

With respect to the recommendation that progress be made on the National Steering Committee on Social Dialogue, the Government had reconsidered the structure to

operationalize social dialogue. The current structure was officially launched by the Prime Minister in July 2010. Members of the National Steering Committee on Social Dialogue were appointed under Legal Notice No. 127 of 2010. The National Steering Committee on Social Dialogue had been meeting monthly since February 2010 and a lot of ground had been covered to ensure meaningful and effective dialogue in the country. In September 2010, the Committee and relevant social partners held a workshop on the social dialogue process. This training was facilitated by the Director of the ILO Country Office in Pretoria. The Committee was currently in the process of drafting and finalizing a Constitution to institutionalize and guide the process of social dialogue. The recommendations of the ILO high-level mission had dominated the agenda of the social dialogue meetings. The Chairperson of the Committee had successfully invited two ministers, the Minister for Public Service and the Minister of Justice, and also the Attorney General to dialogue with the Committee on the Public Service Bill, the nullification of the King's Proclamation of 1973 and the amendment of the Prisons Act, to ensure the right to organize and to negotiate collectively for prison staff. The Committee would be undertaking a study visit to the National Economic Development and Labour Council (NEDLAC) in South Africa to learn from their good practice as they had benefited through dialogue. This visit was rescheduled for July 2011, as the one planned for April 2011 could not take place after cancellation by NEDLAC. New dates had been proposed for early July through the ILO Office in Pretoria.

#### *B. Summary of completed matters*

The Government pursued the giving of royal assent to the Industrial Relations (Amendment) Bill, to ensure that the identified areas of the Industrial Relations Act were properly addressed, which was received, and the Act came into force on 15 November 2010. This Amendment Act provided for: (i) an enhanced union right to collective bargaining (section 42) by requiring employers with more than two unrecognized unions to give bargaining rights to such unions; (ii) no requirement for compulsory supervision of strike balloting by the Conciliation Mediation and Arbitration Commission (section 86); (iii) strike notice period had been reduced (section 86); (iv) removal of the statutory restriction on the nomination of candidates for union office (section 29); and (v) establishment of a minimum service in sanitary services (section 2), so that certain categories of workers in the sanitary services were not unduly denied the right to strike.

Finally, with respect to the coroner's investigation on the death of Mr Sipho Steven Jele, the coroner completed this investigation and submitted a report, which was shared with the social partners. The conclusion in the report was that Sipho Jele committed suicide. The coroner's hearing was made public and the Jele family were allowed to use their own pathologist and they also had their own legal representative, throughout the hearing. Copies of the report were given to the workers' and employers' federations. The report was forwarded electronically to the ILO Office in Pretoria.

In addition, before the Committee a **Government representative** recalled that, during the presentation of the report of the ILO tripartite high-level mission, his Government had pledged its full commitment to addressing the issues identified by the Committee of Experts. With a view to giving a detailed account of the progress achieved to date, he provided the following additional information.

In the first place, he highlighted the written information provided concerning: first, the adoption of the Industrial Relations (Amendment) Act No. 6, of 2010; second, the national social dialogue structure; third, the coroner's

report on the death of Mr Sipho Jele; fourth, the timetable for the amendment of the Prisons (Amendment) Bill; and fifth, the situation with regard to the King's Proclamation to the Nation of 12 April 1973. He added that, sixth, the Suppression of Terrorism Act, 2008 had been drafted in line with the Model Legislation Provisions on Measures to Combat Terrorism, developed by the Commonwealth Secretariat and approved by the Experts of the Commonwealth Security Council, also known as the Counter Terrorism Committee. Seventh, the consultations that had taken place between the social partners and the Commissioner of Police on the application of the Public Order Act, 1963 had been either organized under the umbrella of the National Steering Committee on Social Dialogue or initiated by the Ministry of Labour and Social Security prior to protest actions with a view to achieving understanding by all parties and ensuring peaceful actions. He reported, however, that protest actions on 12 to 14 April 2011 had not been peaceful as they had coincided with demonstrations by other groups advocating for regime change. No government could reasonably be expected to take a casual approach to serious threats of regime change. Every government had the responsibility to ensure the safety of its national interest. Despite the progress made in the management of strikes and protest actions, he recalled that a formal request had been made to the ILO to help develop guidelines on the conduct and responsibilities of the police and social partners during strike and protest actions. Copies of the Police Act and Regulations had been provided to the ILO to facilitate the drafting of such guidelines. Eighth, in relation to the Public Service Bill, the workers had been able to make their input to the text which had been examined by the Labour Advisory Board. The Bill had already been debated by the House of Assembly and would be presented to the Senate. Ninth, on 26 April 2011, the Government had requested the ILO to provide assistance with the review of the provisions of the Constitution and their impact on the Convention. Tenth, in relation to the issue of anti-union discrimination in export processing zones (EPZs), the speaker indicated that a joint inspection of the textile and apparel industry had been conducted in November 2010, covering 23 establishments employing up to 15,939 workers, that follow-up inspections were currently being conducted and that those deliberately failing to comply with labour laws were being prosecuted. Finally, sections 40 and 97(1) of the Industrial Relations Act, 2000, respectively covering civil liability and criminal liability of organizations or their office bearers for damage and other unlawful behaviour during strikes and protest actions, were on the agenda of the Labour Advisory Board.

**The Worker members** said that it was not surprising to see Swaziland before the Conference Committee, following a special paragraph the previous year and the ILO tripartite high-level mission in October 2010. Swaziland had a long history of repressing trade unions, and the Government's replies promised only scant progress. The country continued to be scarred by police brutality in the face of non-violent demonstrations, which on 1 May 2010 had led to the death of a demonstrator in custody. Trade union leaders were still being arrested and harassed in their homes, for example following the entirely legal days of protest held at the beginning of April 2011. In terms of legislation, the amendments and repeals requested for years were still being awaited, despite ILO high-level missions in 2006 and 2010. The Government was in the habit of systematically citing the drafting of bills which subsequently turned out not to exist. After all of these years, the Industrial Relations Act (IRA) had been amended only in certain areas relating to restrictions on the appointment of trade union leaders, the supervision of strike ballots and collective bargaining in enterprises with

more than two trade unions. However, those amendments would remain empty words unless other articles of the IRA, such as provisions on the civil and criminal liability of trade union officials and their unions, were amended and a number of other general acts directly or indirectly seriously affecting trade union activities were repealed or amended. The Public Order Act, the Police Act and even the 1973 Proclamation of a State of Emergency, which had formally been revoked but was incorporated in the new Constitution, all allowed legitimate trade union activities to be repressed or penalized. Within the long list of such legislative texts, the recent 2008 Suppression of Terrorism Act was particularly formidable in so far as it provided a basis for justifying a wide range of attacks on freedom of association. In its statement this year, the Government had again contented itself with giving updated information on bills and discussions it said were under way, so as to delay any change. The situation with regard to social dialogue was equally worrying. The Government had referred to a National Steering Committee on Social Dialogue, the structure of which had apparently been bolstered. Genuine social dialogue, however, could not exist when one of the parties lived under permanent threat of arrest or aggression. The developments reported in that regard illustrated once again the false promises made by the Government to the ILO.

**The Employer members**, while stressing that this was a serious case, indicated that their view was slightly less negative than that of the Worker members, in light of the written and oral information supplied by the Government which necessitated the examination and appraisal of the Committee of Experts. The Conference Committee was examining this case for the tenth time and had included its conclusions in a special paragraph of its report in 2009 and 2010. Following its 2010 conclusions, an ILO tripartite high-level mission had visited the country in October 2010. The present case dealt primarily with three issues: violation of civil liberties, interference in trade union affairs and lack of effective social dialogue. The information provided by the Government appeared to indicate a change of attitude that needed to be acknowledged but that would need to be evidenced by future action. The Employer members had therefore adjusted their position so as to focus on approaches accelerating the Government's attempts to solve the long-standing issues. However, the information submitted by the Government only constituted a small first step. Legislation needed to be brought into line with the requirements of the Convention and needed to be implemented with a rigorous system of labour inspection and administrative complaints process with recourse to an independent judiciary with enforcement authority. While this year's May Day had been peaceful, police interference in peaceful protest activities persisted and needed to cease. Stressing that many measures remained to be taken to give effect to the Convention, the Employer members believed that ongoing ILO technical assistance was crucial to tackle the issues relating to legislation, social dialogue and police interference. They called for a commitment by the Government to taking advantage of the technical assistance of the ILO so that by the end of 2011 concrete proposals would be enacted and measures would be taken to ensure their implementation. It was critical that the Government provide substantial evidence that its change of attitude was sustainable.

**The Worker member of Swaziland** drew the attention of the Committee on the governance and human rights crises in the country. Indicating that workers could not meet, march or use the media freely, he stated that social dialogue in such a context was a farce for the following reasons: (i) the continuous arrests and harassment of trade union and civil society leaders did not create a climate

favourable to genuine negotiations; (ii) the lack of serious political will relegated the negotiation process to the level of a mere talk-shop; (iii) social dialogue was being organized only as a public relations exercise to give the impression that human rights and trade union rights violations were being addressed; (iv) the authorities, including the head of State, publicly demonized any form of negotiation with the trade union movement and civil society; (v) the public institutions such as the judiciary, the media, security and religious institutions were used against trade unions and civil society; and (vi) it would be fundamental that the process be inclusive, transparent, accountable and binding. In this context, any claim of progress would only be intended to mislead the Committee. As regards the legal framework, the speaker noted that the Government had refused to withdraw the Public Service Bill from Parliament for discussion by the National Steering Committee on Social Dialogue. Sanitary workers were still denied the right to strike despite the recommendations of the ILO tripartite high-level mission. Section 40 of the Industrial Relations Act had still not been amended, leaving trade unions and their leaders open to criminal and civil liability, a brutal tool used by the Government to suppress trade union activity. There was no agreed timetable for the finalization of the Prisons Amendment Bill, and prison staff was still denied the right to organize and to bargain collectively. Defying the ILO tripartite high-level mission recommendations, the Government refused to issue a decree or proclamation explicitly nullifying all of the provisions of the Proclamation of 1973. The speaker dismissed the findings of the coroner's report as wanting and speculative and requested the Committee to assist the Government in setting up an independent inquest into the death of Mr Sipho Jele. The Public Order Act of 1963 continued to be used by the Government to suppress trade union activities in the country, including during the 12 to 15 April 2011 demonstrations and, more recently, on 14 May 2011 in relation to a trade union workshop. He noted with concern the statement made by the Government representative concerning set and agreed time frames with various institutions to address the violations and questioned the seriousness of this commitment undertaken before the Committee. Finally, he called for the Committee to retain its conclusions on Swaziland in a special paragraph of its report and to ask the Governing Body, in November 2011, to consider setting up a Commission of Inquiry on the issues at stake.

**The Employer member of Swaziland** noted the significant progress on this case since last year: (i) the provisions of the Industrial Relations Act had been amended and had received royal assent; (ii) the National Steering Committee on Social Dialogue had been launched in July 2010 and had been meeting on a monthly basis, sometimes in the presence of Ministers, a protocol for social dialogue had been established, and a study tour to the National Economic Development and Labour Council (NEDLAC) in South Africa was scheduled (she thanked the ILO Office in Pretoria for the support provided with several of the abovementioned points); (iii) the ILO tripartite high-level mission had highlighted the issues to be addressed, which the Government should endeavour to resolve as a matter of urgency; (iv) the coroner's report on the death of a protester who had been arrested on 1 May 2010 had been communicated to the ILO, and the 2011 May Day celebrations had not been tainted by violent incidents (she applauded the maturity displayed by the police force on that day and congratulated the workers for the formation of the Trade Union Congress of Swaziland which was a positive development); and (v) the ILO Office in Pretoria had been requested to provide expert advice on the provisions of the Public Order Act of 1963 and to conduct a workshop with the police, government officials, workers

and employers on how to manage protest actions in the future. Having noted these positive developments, she condemned in the strongest terms the frequent dawn raids by the police targeted at union leaders against whom no charges were brought, the invasion of lawful trade union meetings by the police and the latter's growing tendency to interfere with lawful protest actions. As regards the status of the Proclamation of 1973, this matter should be addressed in a different forum as it did not fall within the purview of the tripartite structure. She expressed her concern at the extremely slow process of aligning national legislation with the provisions of the Constitution. In conclusion, drawing the attention of the Committee to the very difficult economic situation currently faced by Swaziland and recalling the significant progress made in relation to the issues raised by the Committee of Experts, she asked the Conference Committee not to include the conclusions concerning Swaziland in a special paragraph of its report, but to strongly encourage the Government to finalize the outstanding report.

**The Government member of Hungary**, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the candidate countries (Turkey, Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland), potential candidate countries (Albania and Bosnia and Herzegovina), Norway, the Republic of Moldova, and Switzerland, recalled that the human rights situation in Swaziland in general, and the lack of compliance with the Convention in particular, was a long-lasting case that had been discussed by the Committee several times. She shared her deep concern about allegations of Government-sponsored actions against trade union activities and dismissal of workers who had taken part in lawful actions and exercised their right to participate in peaceful strikes, including the disruption of the 2010 May Day demonstrations and the arrest and death in custody of a participant. Taking note of the comments of the Committee of Experts as well as the steps taken so far to amend the legislation, she urged the Government, with the assistance of the ILO, to bring its legislation into conformity with the Convention, preferably in a tripartite manner, and to ensure its effective enforcement. Issues remained to be addressed, among which the right of certain groups of workers to organize and to take lawful industrial actions. She called on the Government to provide detailed information regarding the reported acts of violence against trade union activists and participants in lawful and peaceful strikes.

**The Worker member of Nigeria**, recalling the history of repression of trade unionists by military governments in his country, expressed solidarity with the situation of Swazi workers. The legislation negatively affected the rights of trade unionists, and the Government still showed open disdain for processes that could help reform those laws. Thus, the Proclamation of 1973 was still in force, although the 2005 Constitution was supposedly in operation, and had continued to close democratic spaces including for trade unions and workers. The Suppression of Terrorism Act, 2008 had become, consciously, a tool for the Government to harass, raid and detain trade union members and leaders and to legitimize the disruption of trade union activities by police and security agents. The Public Order Act, 1963 was still being used by the police to harass workers, their families, neighbours and communities, and to undertake dawn raids and detain trade union leaders to prevent their participation in planned protest marches. Such treatment had been experienced by Mr Dlamini, President of the Swaziland Federation of Trade Unions (SFTU); Mr Kunene, President of the Swaziland Federation of Labour; Ms Mazibuko, President of the Swaziland National Association of Teachers; Mr Ncongwane, Secretary-General of the Swaziland Federation of

Labour; and other leaders. Workers continued to be routinely and tacitly labelled as terrorists, and their activities continued to be disrupted, even after the inclusion of the Committee's conclusions in a special paragraph of its report and the ILO tripartite high-level mission. The speaker expressed the strong conviction that a Commission of Inquiry would help establish the truth in terms of the status of legislation and the violations in practice of the workers' right to organize.

**The Government member of Zimbabwe**, having followed closely the Government's statement and in light of the submitted written information, noted the Government's eagerness to implement the recommendations of the ILO tripartite high-level mission. He called on the ILO to extend more technical assistance to the Government with a view to enabling it to fully implement these recommendations.

**The Worker member of Denmark** observed that despite the ILO tripartite high-level mission, the Government had yet to demonstrate progress towards compliance with the Convention. Since 1973, the Government had ruled the country through the use of force, brutality and the absence of the rule of law and of social dialogue. There was a long tradition of trade union repression and, despite the Government's promises, the situation had not improved. Highlighting the gravity and extent of the violations and the fact that the harassment, arrest and detention of trade union leaders had simply been triggered by their exercise of democratic rights, he indicated that those violations had a disturbing effect on wages and working conditions in every sector of the economy, including export. Poor rights and labour standards were used by some governments as a way to attract investments. In particular, labour standards violations might be used to encourage foreign direct investment, especially inside EPZs, where fiscal and legal exemptions were granted to enterprises. The EU was, together with South Africa, the largest trading partner of Swaziland whose main export to European countries was sugar. While evoking the fact that European workers were also consumers, he emphasized the importance of remembering that this sweet-tasting product was produced in the shadow of workers' rights violations. The speaker hoped that European countries would draw the obvious conclusions from the lack of progress with respect to democracy and human rights in Swaziland. Given that ratification of and compliance with labour standards was a necessary precondition for sustainable development, governments and leaders in Europe needed to investigate the continued violations of fundamental workers' rights in that country. Finally, he hoped that the EU would withdraw the preferential trade arrangements enjoyed by Swaziland at present if national laws were not brought into line with ILO standards, and that African countries would also take action against these violations.

**The Employer member of South Africa** declared that individuals were the products but not the prisoners of their past and were thus free to craft a new future. The progress made was encouraging, *inter alia*, the approval of minimum services for sanitary workers and the clear statement of the Government concerning the hierarchical superiority of the Constitution as compared to the 1973 Proclamation. According to South Africa's experience, genuine social dialogue was essential to build democracy, enable the exercise of fundamental human rights, resolve social tensions, lay the basis for durable social dialogue institutions and create an environment conducive to business prosperity. The speaker was pleased to recommend to the social partners of Swaziland to undertake a visit to NEDLAC. The Government should create the environment for social dialogue, end the arrests of union and civil society members, eliminate laws limiting freedom of association and ensure access to information. Emphasizing the need for

the Government to acknowledge the importance of social dialogue, he expressed support for all future efforts to address the issues raised in this Committee and called for the full commitment of all partners and the international community.

**The Worker member of South Africa**, recalling that this case had been discussed for several years, was concerned that it might become a perennial stigma before the Committee. Drastic measures were needed so as to bring the country towards a lasting solution, to ensure the end of impunity and unfulfilled promises and to prevent the accentuation of the crisis which had equally been felt by South African workers, not least because their own members had also been direct victims of Swazi police brutality. With reference to his country's experience in seeking the achievement of social dialogue, the speaker indicated that Swaziland was currently facing a serious and protracted economic crisis. While security had been the only persistent expenditure increase despite growing poverty, workers were used as scapegoats by the regime, with looming massive retrenchments, pay cuts and reduction in social expenditure. Trade unions had become the targets of State brutality since the banning of political parties. He wished to record his disappointment with the failure of the Government to address the underlying causes of the crisis and called for more serious action to ensure that the necessary steps towards the fulfilment of its obligations were taken. The speaker concluded by supporting the call for further economic pressure and the inclusion of the conclusions of this case in a special paragraph of the Committee's report.

**The Government member of Namibia** referred to the several consultations held between the ILO, its Office in Pretoria and the Government. He stated that the country's openness and willingness to engage at the regional and international level, in order to address domestic issues, together with the progress made on the matters raised during the 99th Session of the ILC (June 2010), including the granting of the Royal Assent to the Industrial Relations (Amendment) Act of 2000, were commendable. The speaker encouraged the Government to show more commitment towards the safeguarding of workers' rights, including the right to bargain collectively, and recommended the acceleration of the application of the Amendment Act. He also commended the Government on the institutionalization of social dialogue, which showed the existing positive engagement between the Government and the social partners. The monthly meetings held by the National Steering Committee on Social Dialogue, since February 2010, indicated that a lot had been done, in order to ensure meaningful and effective social dialogue on labour issues. The speaker concluded by calling on the ILO to provide the necessary technical assistance in order to address any shortcomings with regard to the Suppression of Terrorism Act of 2008, while also calling upon the international community to render the necessary support to the tripartite process.

**The Government member of Lesotho** noted the measures taken by the Government to implement the recommendations of the ILO tripartite high-level mission and commended the Government for its efforts in this regard. The social partners should continue to work together harmoniously to finalize the implementation of the recommendations and to accelerate the finding of solutions to the outstanding issues. She called on the international community, and on the ILO in particular, to continue to assist the Government in its endeavours, stressing that the experienced delays could be due to capacity limitations at the national level.

**The Worker member of Guinea**, based on the experience of Guinean trade unions of freedom of association breaches, highlighted the serious violations of freedom of

association that had occurred in Swaziland since the death in detention in 2010 of Mr Sipho Jele, following his arrest during the May Day celebrations. On 6 September 2010, during a peaceful meeting of activists supporting democracy, 50 persons, including trade union activists from Swaziland and delegates from the Congress of South African Trade Unions (COSATU), had been arrested by the police. The activists from Swaziland had been released and the South African activists had been immediately expelled. On 12 April 2011, the police and the army had violently repressed peaceful demonstrations and arrested hundreds of demonstrators, including eight trade union leaders. Mr Maxwell Dlamini, President of the National Union of Students of Swaziland, had been arrested and tortured by the police even before those peaceful demonstrations; he had been obliged, together with his fellow accused, to sign a declaration recognizing the possession of explosives and had been refused bail and access to his lawyer, as well as the right to pass his exams. The speaker emphasized the need to drop the charges against Mr Dlamini, to guarantee his physical integrity and to order his immediate release. The speaker hoped that the Committee would duly take into account such facts when drafting its conclusions.

**The Government member of Mozambique** stated that Swaziland was a friendly neighbouring country, and he therefore understood its political and labour problems. Dialogue should be frank and open, and the Government's efforts should be encouraged. The country should continue developing so as to be able to promote development in the region as a result. It was to be hoped that the Government would have the opportunity to engage in dialogue with the social partners and would continue moving forward, with technical assistance from the ILO.

**The Government representative** emphasized that substantial progress had been made in a short period of time to address the recommendations of the ILO tripartite high-level mission. In addition to the indications given in his opening statement, the speaker affirmed the Government's commitment to addressing all issues, including those reported as works in progress, such as the review of the Prisons (Amendment) Bill and the Public Services Bill. The Government would also address issues relating to the King's Proclamation of 1973 and the Public Order Act of 1963, despite the complexity involved. It was hoped that the ILO would continue to provide technical assistance to address the outstanding issues, and assistance would also be sought from other organizations, such as the UNDP and the EU. In conclusion, the speaker reiterated that the Government was fully committed to addressing the challenges faced in a meaningful way, to ensure compliance with the Convention.

**The Employer members** disagreed with the representative of the Government that substantial progress had been made. However, some small and incremental changes had occurred. The Committee's conclusions should address the root causes of the issues in the country. There was no meaningful social dialogue process, and the National Steering Committee on Social Dialogue did not constitute a sufficient response. A robust institutionalized social dialogue process need not be entirely at the national level, but could occur at different parts in the governmental structure. Moreover, the Committee's conclusions should list all the existent statutory gaps and gaps in practice. Both the legislative and civil liberties issues needed to be meaningfully addressed and expedient time frames were required in this regard. Lastly, ILO technical assistance, on an ongoing basis, was essential in this respect.

**The Worker members** underlined that the situation in Swaziland had been worrying for many years due to the harassment and persecution of trade unionists, numerous acts which contravened fundamental provisions of the

Convention, and the lack of will shown by the Government. The Government should put an end to acts of violence against trade unionists, repression of trade union activities and the denial of human rights. Furthermore, the events that had occurred during the commemoration of May Day 2010 should form the subject of an independent investigation. The Government should carry out the legislative reforms recommended by the Committee of Experts and the high-level tripartite mission. In particular, amendments should be made to the Industrial Relations Act, the Public Order Act and the Prisons Act, and the Proclamation of a State of Emergency and the Suppression of Terrorism Act should be repealed. More particularly, the Government should create the conditions needed for significant and sustainable social dialogue. It should also be observed that the situation had barely changed, despite assistance and recommendations from the ILO. Consequently, the Government should submit, before the next session of the Committee of Experts, information allowing that Committee to assess whether significant progress had been made. If it had not, a complaint could be brought under article 26 of the Constitution. In conclusion, the Worker members requested that the Committee's conclusions on the case be included in a special paragraph of its report.

### Conclusions

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

**The Committee took note of the Government representative's statement that, following the high-level tripartite mission which visited the country in October 2010, a number of steps had been taken by the Government. In particular, the Industrial Relations Act was amended in accordance with the requests of the Committee of Experts and came into force on 15 November 2010. The coroner's report into the death of Mr Sipho Jele had been shared with the ILO and the workers' and employers' federations. In addition, the National Social Dialogue structure was now fully functional and had been meeting on a monthly basis. In addition, it was agreed that a prison bill had to be submitted to the Labour Advisory Board for consideration. As regards the outstanding questions in relation to the 2008 Suppression of Terrorism Act and the 1963 Public Order Act, he stated that his Government was awaiting ILO feedback and expert advice on the matters that were affecting the application of the Convention. The 1973 King's Proclamation had been discussed in the Steering Committee on Social Dialogue and the question of the compliance of constitutional provisions with the Convention had been placed on the agenda for the Steering Committee's July meeting. As regards police intervention in protest actions, he stated that while a number of demonstrations over recent months had been peaceful, unfortunately one planned protest coincided with other groups advocating for regime change and the Government was therefore obliged to ensure the safety and security of the nation and its people. The Committee further noted the detailed written information provided which indicated the status of each of the recommendations of the high-level tripartite mission and the steps taken or envisaged.**

**The Committee recalled that it had discussed the question of the application of the Convention in Swaziland for many years and that it had placed its conclusions in a special paragraph in 2009 and 2010. The Committee welcomed the visit of the high-level tripartite mission to the country in October 2010, as well as the subsequent legislative changes as requested by the Committee of Experts and other plans to address policy concerns and civil liberty issues that had been raised. It deeply regretted, however, that this progress did not appear to be transposed into the practice in the country and that, as long as certain legislative texts restricting free-**

dom of association and basic civil liberties remained in force, compliance with the Convention could not be assured. In particular, the Committee deplored the continuing allegations of arrest and detention following peaceful protest actions, and regretted to be obliged once again to recall the importance it attached to the full respect of rights and 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 could only develop in a climate free from violence, threats or fear.

The Committee firmly called upon the Government to intensify its efforts to institutionalize social dialogue and anchor genuine social dialogue through durable institutions at various levels of the Government, which could only be assured in a climate where democracy reigned and fundamental human rights were fully guaranteed. It urged the Government, in full consultation with the social partners and with the ongoing technical assistance of the ILO, to establish time frames for addressing all issues on an expedited basis. In this regard, it requested the Government to elaborate a roadmap for the implementation of the long called-for measures:

- to ensure that the 1973 King's Proclamation had no practical effect;
- to amend the 1963 Public Order Act so that legitimate and peaceful trade union activities could take place without interference;
- to avail itself of ILO assistance in training the police and drafting guidelines to ensure that their actions did not violate the fundamental rights consecrated in the Convention;
- to ensure, including through necessary amendment, that the 2008 Suppression of Terrorism Act may not be invoked as a cover-up to suppress trade union activities;
- to place the Public Service Bill before the Social Dialogue Steering Committee to ensure full tripartite debate prior to adoption;
- to consult the Social Dialogue Steering Committee on the proposed amendments to ensure the right to organize to prison officers, as well as the outstanding matters in the Industrial Relations Act; and
- to establish an effective system of labour inspection and effective enforcement mechanisms, including an independent judiciary.

The Committee expressed the firm hope that significant progress would be made on these matters by the end of the year and that the Committee of Experts and this Committee would be in a position to note significant and sustainable progress in this regard.

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

#### **TURKEY (ratification: 1993)**

A Government representative stated that the constitutional amendment that had entered into force on 12 September 2010 had to be considered as major progress. This amendment was extremely important and demonstrated the Government's sincerity and commitment to the democratic process and the promotion of trade union rights. The constitutional changes included the repeal of the prohibition of certain forms of industrial action, of membership in more than one trade union at the same time and in the same industrial branch and of the conclusion of more than one collective labour agreement at the same workplace for the same period. Moreover, the provisions concerning the liability of trade unions for any material damage caused during a strike were also repealed. In addition,

a Public Employees Arbitration Board had been established to make final decisions regarding the conclusion of collective agreements covering public servants, and the discretionary power of the Council of Ministers had been eliminated in this respect. The scope of collective agreements for civil servants had been extended to include social and financial rights, the right to apply to the Ombudsperson had been ensured, and all disciplinary decisions of senior officials concerning civil servants were open to judicial review. The right to apply to the Constitutional Court has been recognized for all individuals in cases of breaches of the fundamental human rights, including trade union rights. Finally the Economic and Social Council had been given constitutional status. The constitutional changes necessitated the substantial adaptation of existing trade union legislation and draft bills, including the legislation concerning public servants' trade unions. An intensive process of consultation between the social partners and relevant public organizations had been continuing in the light of these changes. The speaker remained confident that the revised draft bills resulting from this process would meet the expectations of the Committee of Experts regarding trade union legislation. However, it was important that the social partners be more supportive and encouraging of this process. Such support was required particularly with respect to some remaining controversial issues including the formation of unions on the basis of workplace and occupations, the establishment of federations, and the elimination of thresholds for union competency for collective bargaining. In this context, he stated that due to the upcoming general elections for Parliament on 12 June 2011, and the time needed for revising the legislation regarding the industrial relations system, the harmonization process of the legislation had not been fully completed. It was thus impossible to provide a timetable for future legislative changes.

Turning to some positive steps demonstrating the Government's good intentions regarding unionization of civil servants, he informed the Committee that a new Act had been adopted by Parliament in February 2011 containing provisions concerning the promotion of unionization in the public sector. The new Act provided for the payment of a premium to every member of public service trade unions, repealed the remaining restrictive provisions of Decree No. 399 concerning contract personnel in the public sector, and clarified their rights to establish trade unions. A Decree having the force of law was also recently issued for that purpose. With regard to measures to prevent the excessive use of force by the security forces, the measures taken had produced the expected results. This year's May Day celebrations had been peaceful and no incidents had taken place. However, the allegations concerning the detention of some trade union officers and members during public marches were exceptional cases, rather than the rule. During the many marches and demonstrations organized by the trade unions last year, only a few individuals had been taken into custody, mostly for throwing stones and Molotov cocktails at the police, damaging public and private property or insisting on holding rallies or marches in unauthorized places. In any case, legal action could be taken against alleged mistreatment by the public authorities. Concerning the provisions on the auditing of trade unions under the Associations Act, according to the Ministry of Interior's records, these provisions had not been applied in practice. In conclusion, his Government was deeply disappointed that Turkey had been included on the list of individual cases despite all the progress made. This progress had not been taken into consideration when the list had been determined. After having achieved such reforms, the Committee could have demonstrated greater appreciation and encouragement. The inclusion of Turkey on the list could only undermine

the credibility of the Committee's working methods and might even imply that the political considerations outweighed the technical aspects of the issue.

**The Worker members** recalled that this was the fifth time in seven years that this case had been discussed. The ILO high-level mission to Turkey, requested by the Committee in 2007, had resulted in a detailed assessment of the required legislative changes. With the suggestions made subsequent to this assessment, and the political will expressed by the Government, it had appeared that a solution was within reach. However, in 2009, the Committee concluded that no actual legislative changes had been enacted. Nonetheless, the adoption of Act No. 5982 in 2010 resulted in the repeal of some provisions of the Constitution that had been criticized for restricting trade union freedom. However, for such constitutional amendments to have an impact on the rights of trade unions, implementing legislation was necessary. Such legislation had not even been proposed. Moreover, Act No. 4688 on public servants' trade unions had not changed since the discussion of this case began in 2005, and workers in the public sector had not participated in any social dialogue since 2007. Additionally, Acts Nos 2821 and 2822 included several restrictions on trade union rights and specific changes had been requested by both this Committee and the Committee of Experts. Despite the Government's indication that a draft trade union law had been prepared which addressed the provisions allowing governmental interference in the internal affairs of trade unions, there had not been any progress in the submission of the draft to the legislator, nor did this draft address all of the issues raised by the Committee of Experts. Particularly, the Committee of Experts had indicated that self-employed workers, home-based workers, apprentices, senior public workers and retired workers should be guaranteed the right to organize, that restrictions on the right to strike should be limited to public servants exercising authority in the name of the State and to essential services in the strict sense of the term, and that the waiting period before the calling of a strike should be reduced.

The Worker members underlined that no progress had been made since the constitutional amendments, and these had already been noted at the Committee's previous session. This was particularly worrying in light of the increasing violations of trade union rights in practice. The Government's measures addressing civil liberties and the use of violence had not been effective, and the Government should be urged to ensure a climate free from violence, pressure, or threats of any kind. This included judicial harassment, including cases where trade unionists had been arrested for unclear motives and had their cases prolonged for significant periods of time. Regarding the issue of the threshold of 50 per cent plus one required in a company to get the right to collective bargaining, the Worker members emphasized that this had resulted in very few unions enjoying this right. Only a small percentage of organized Turkish workers were covered by a collective agreement and this was a major obstacle in establishing trade unions. Additionally, the law did not provide protection against the dismissal of workers in companies with fewer than 30 employees, meaning a lack of protection for these workers against unfair dismissal for organizing trade unions. This resulted in a low rate of organization in small companies, where trade union protection would be the most needed. The growth of the Turkish economy, without guaranteed rights for workers would result in unbalanced growth and the unfair distribution of benefits. The Worker members concluded by expressing their disappointment that the Government had not delivered on the promises made. No plan of action with a clear timeline had been provided, as requested by the Committee in 2009 and 2010, and use had not been made of ILO

assistance for revising the legislation. However, full compliance with the Convention was within reach, and the Government was strongly urged to make all necessary efforts to bring its legislation and practice into conformity with the Convention, without delay.

**The Employer members** recalled that the previous year's discussion of this case had been positive, and they expressed the hope that this year's would be as well. Particularly, the inconsistent approach to social dialogue could be discussed and addressed constructively. The Government's response to the high-level mission in March 2010 had been to amend the Constitution in only 16 days, and this amendment had been approved by the electorate in September 2010. The Government had previously indicated that some legislative amendments would be required. In this regard, a draft law on trade unions had been prepared to amend Acts Nos 2821 and 2822, in consultation with the social partners, which indicated that social dialogue was under way. The Committee of Experts had noted that the draft law appeared to address a number of the concerns that had been raised, including eight specific improvements, and this was to be commended. However, the Committee of Experts had highlighted that the draft law did not address all issues, and that there were no amendments to Act No. 4688. The Employer members recognized the challenges and difficulties in drafting legislation to address the remaining issues. They emphasized that the Committee's conclusions could not address the Committee of Experts' observations on the right to strike. Regarding the new approach of the Government to the use of force by the police, which had been noted at the Committee's last session, the Employer members reiterated that civil liberties constituted an essential prerequisite to freedom of association. Training had to be provided to the police and the cultural change that was needed would take time to occur, and some problems still existed with regard to trade unions and the police. The Committee's conclusions should urge the Government to continue to take all the necessary measures, in an expeditious manner, 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 Government should be urged to review, in consultation with the social partners, any legislation that might have been applied in practice in a manner contrary to the Convention. The Government should also provide a report, containing sufficient information, before the Committee of Experts' next session. While time was required for issues to be dealt with through the legislative process, the examination of this case could hopefully speed up such developments. The Employer members highlighted that progress had been made, and that additional steps were required to finish the process.

**A Worker member of Turkey** indicated that the amendment of the Constitution in 2010 should be noted as progress, but underlined that the demands regarding the restrictions on the right to strike and a description of the terms "civil servants" and "workers employed in the public sector" had not been addressed in this process. Despite the amendments made to Acts Nos 2821 and 2822, these Acts were still far from maintaining a peaceful climate in the workplace during trade union activities. Two cases were cited to illustrate the frequent violations of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Organizing had become almost impossible due to the dismissal of workers who joined unions, in addition to the implementation of flexible work and subcontracting. The Government had prepared a draft law on trade unions in order to bring the legislation into conformity with the Convention, but this draft was not acceptable to the social partners as it inadequately addressed the needs of workers and included sev-

eral restrictions. Finally, the speaker emphasized that, after the holding of two tripartite meetings in 2010 and 2011, certain points of conflict remained. The Government would therefore need to make a very strong commitment to the Committee, including adopting a plan of action with clear time lines.

**Another Worker member of Turkey** recalled that a law on civil servants' trade unionism had been ratified by the Grand National Assembly in 2001. However, civil servants remained deprived of the right to strike and to bargain collectively. The Constitution also prohibited civil servants in specific public sectors from establishing or joining trade unions. In the past seven years, Turkey had been included in the final list on five occasions and, every year, the Government had promised to undertake positive reforms in order to comply with the Convention. In 2010, a referendum was held to amend some articles of the Constitution, but public workers' trade unions had not been consulted due to the lack of social dialogue and the amendments were prepared without consensus. Social dialogue was not functioning. As regards Act No. 4688, no steps had been taken to amend its provisions to bring it into conformity with the Convention. To solve the problems facing public workers' trade unions and their members, the Committee should urge the Government to initiate negotiations immediately with the representatives of the civil servants to bring Act No. 4688 into conformity with the Convention. Clear time lines should be requested to ensure its realization before the 2012 International Labour Conference.

**The Employer member of Turkey** highlighted that some recent developments had created concerns within the Turkish Confederation of Employers' Associations (TISK). Recalling the importance of tripartism, the speaker underlined that the text provided to the high-level mission in May 2010 had not been discussed or agreed upon by the Turkish social partners. He disagreed with the Committee of Experts' assessment that these developments were an improvement as they had lacked concurrence from the social partners. The speaker indicated that discussions concerning Acts Nos 2821 and 2822 remained on the agenda for the social partners, and that TISK had hosted tripartite meetings in this regard. The texts finalized through negotiations were acceptable, except for provisions permitting the establishment of workplace and occupational trade unions and federations, as it did not fit well with the Turkish tradition of industrial relations and could contribute to a breakdown of peaceful relations at workplaces. Three trade union confederations had also raised reservations in this regard during discussions. Consultations among the social partners on these amendments would continue until consensus was reached. Following the upcoming general election, the Turkish employers would continue to support the Government's efforts to improve the relevant legislation.

**An observer representing the International Trade Union Confederation (ITUC)** spoke in memory of a retired teacher and former trade unionist who had passed away during a demonstration held on 31 May 2011. Mentioning the arrest and imprisonment of two specific trade unionists, and the trial of 111 trade unionists on 3 June 2011 facing sentences of five years of imprisonment, he highlighted that according to the ITUC annual survey, 66 per cent of the dismissals following trade union activities had been recorded in Turkey. The events that had occurred during this International Labour Conference showed that trade unions activities were being prevented by using methods such as killings, judicial harassment, arrest and dismissal. The labour legislation was not in conformity with ILO Conventions and only 5 per cent of the workers could enjoy the right to collective bargaining. Almost half of the workforce was in the informal economy and 25 per

cent of the society was living below the poverty line. The main reason for this was the limitation of trade union rights. The national legislation regarding trade unions continued to provide for a 10 per cent threshold applying to a whole sector, and a 50 per cent threshold in the workplace, a notary obligation for joining or resigning from a union, a prohibition of the right to strike and long legal proceedings regarding reinstatement, not in conformity with international standards. Trials regarding the closing of four trade unions were ongoing. The Government had not made the necessary legal amendments. Despite the short period in which the constitutional amendments had been adopted, the number of dismissals and arrests had increased. The Government should be strongly called upon to apply the Convention.

**Another observer representing the ITUC** added to the statement made by the previous speaker, that half a million public servants did not have the right to join trade unions. High-level elected trade union executive committee members as well as ordinary members, most of them women, were facing judicial harassment, dismissals and exile from their workplaces because they organized and attended trade union activities. Listing specific examples of women trade unionists facing such measures, she indicated that these cases were still extraordinary cases. However, the risk was high that they would become ordinary. The Committee should therefore include the conclusions on this case in a special paragraph of its report.

**The Worker member of France**, speaking also on behalf of Education International and of the Public Services International, referred to a number of violations of the Convention over recent years affecting trade unionists in the public service and in education. She referred to the cases of several trade unionists (Metin Findik, Seher Tumer, 31 members of the Confederation of Public Employees' Trade Unions and of its teachers' union, Eğitim-Sen, including trade union leaders) had been arrested without being informed of the charges made against them. Some of them had been the victims of repressive measures, such as wage reductions, dismissals, the prohibition of employment in public services, and a ban on travelling abroad and therefore on attending international trade union meetings. There was still no verdict two years after the beginning of the trial, which was contrary to the case law of the ILO that rapid procedures needed to be guaranteed in cases of trials of trade unionists. The courts needed to deliver their rulings as rapidly as possible in order to bring an end to the pressure that was being exerted on those charged. Moreover, the multiplication of the number of precarious contracts was leading teachers to give up union membership so that they could find employment. In addition, the right to strike of public employees was limited, and even non-existent, while participation in a strike still constituted grounds for dismissal from the public service. The legislative amendments requested on that point by the Committee of Experts had still not been adopted. In that respect, she referred to the April 2009 ruling by the European Court of Human Rights in the case of *Enerji Yapi-Yol Sen v. Turkey*, in which the Court had emphasized that, while the right to strike was not absolute and could be made subject to certain conditions and limitations, a prohibition applied to all public employees was too broad and contrary to the European Convention on Human Rights. The Government needed to implement the Convention strictly, stop interfering in trade union affairs and guarantee human, civil and trade union rights.

**The Worker member of Finland** pointed out that the problem was not only that national legislation was not in full conformity with international standards, but also that it was not effectively enforced. Widespread anti-union discrimination and failures in the justice system remained

serious problems. Over the last few months, hundreds of workers had been dismissed because of their trade union activities. She referred to a specific incident which took place in 2008. Although the ensuing investigation made by the Ministry of Labour concluded that the dismissals were unlawful, the company refused to pay the fine. The judicial proceedings had been extremely slow. Unfortunately, the employer launched an appeal against the ruling that was in favour of the workers concerned, and the case was pending before the Supreme Court. This example was not isolated: since the beginning of 2011, 163 workers had been dismissed for union activity in the metal sector alone. Anti-union discrimination, especially unfair dismissal, in the absence of speedy remedy was one of the most serious violations of freedom of association as it jeopardized the very existence of unions. As a party to Conventions Nos 87 and 98 and the European Convention on Human Rights, Turkey had a responsibility to protect workers' rights to form and join trade unions as well as to bargain collectively.

**The Worker member of Germany**, speaking also on behalf of the Worker member of Austria, expressed concern at the persistent violations of trade union rights. Attacks on freedom of association, freedom of assembly and the right to bargain collectively were of particular importance for German and Austrian trade unions in view of the large number of enterprises of both countries operating in Turkey. There were still insufficient guarantees for trade union rights, and reforms must be accelerated. Social and trade union rights should enjoy higher priority in negotiations for Turkey's admission to the European Union. It was not only a matter of amending legislation, but also of improving both the situation in practice and legal protection. He expressed full support for the statement made by the Worker members, and those made by the Worker members of Turkey.

**The Government representative** underlined that the social partners were involved in the ongoing review of legislation. As the previous draft bills had not been found to address the issues raised by the Committee of Experts, revisions were under way and several meetings had been held with the social partners in this regard. Only a few issues remained controversial. Turning to the issue of anti-union discrimination, the speaker highlighted that there were legislative provisions prohibiting such practices, and that both workers and employers could have judicial recourse on these matters. Anti-union activity by employers was punishable by three years' imprisonment and compensation for the worker involved included not less than one year's wages and the possibility of reinstatement. This covered all workers and all workplaces. Turning to the allegations of the detention of trade unionists, the speaker emphasized that any such charges were unrelated to trade union activity. Some trade unionists were also members of illegal organizations. The judiciary was independent, and persons would not be prosecuted on charges without concrete evidence of illegal activity. He then addressed the death of a trade unionist, indicating that the demonstration at which this had occurred had been of a political nature and not related to trade union activities. However, the incident was under investigation and appropriate measures would be taken. He indicated that the imprisonment of a former trade union official had been unrelated to trade union activity, or being an officer of a trade union. Addressing the arrests of 111 trade union members, the speaker indicated that these charges were related to the organization of demonstrations in areas that were not authorized for these purposes. Addressing newly established trade unions, he emphasized that the new legislation would authorize trade unions to be established and bargain collectively. Public servants were able to set

up associations to represent their interests, except for the purpose of collective bargaining.

**The Employer members** indicated that nothing had arisen during the discussion to alter their opening statement. Consequently, their introductory remarks also stood as their final remarks on the case.

**The Worker members** stated that the discussion and the information provided by the Government had strengthened their view that it was both urgent and feasible to bring the legislation into conformity with the Convention. A few amendments to the Constitution had been made, but the relevant legislation was still the same as in 2005 and the Government had not provided a plan of action with a clear time line as requested by this Committee. The Government had not made use of the recommended ongoing assistance of the ILO in revising the legislation nor had it provided any substantive new information. Furthermore, several examples presented during the discussion had shown that the rights of workers to establish and join trade unions freely were even more under pressure. It was feasible to make the necessary changes in a relatively short period of time because, with the help of the Committee of Experts and the ILO, the required changes had become perfectly clear. The two missions that had taken place had helped the move forward, and the Worker members requested that a new high-level mission be sent to facilitate the efforts to bring the legislation into conformity with Conventions Nos 87 and 98, in consultation with the social partners, and to facilitate social dialogue. The Government was also requested to provide a time-bound plan to take the necessary steps; to accept the technical assistance of the ILO to complete this process as soon as possible; and to report on the legislative amendments adopted before the next session of the Committee of Experts. In order to convey the urgency of the matter to the Government, the Worker members asked that the conclusions of the Committee on this case be included in a special paragraph of its report.

### Conclusions

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

**The Committee** noted the Government representative's explanation of the constitutional amendments that had come into force and which addressed requests made by the Committee of Experts for many years. He referred to the need for more support from the social partners in the process of legislative revision to bring about the pending requests from the Committee of Experts, particularly as regards the controversial matters. While the Government was committed to improving the trade union legislation, he recalled that the process of revision takes time in any democracy and delays had occurred as the National Assembly had not met over the last three months due to the election campaign. For this reason, he was unable to provide a timetable for the possible legislative changes. He referred to the adoption in February 2011 of an Act providing for a collective agreement premium for members of public servant trade unions and to the abrogation of a criticized provision concerning contract personnel in the public sector. He stated that positive results had been seen in the prevention of excessive use of force by the security forces and observed that this year's May Day celebrations had taken place without incident. The detention of some trade union officers and members during public marches and demonstrations were mainly individual cases involving violence, damaging of property or holding marches in places not allocated for that purpose. He also referred to other persons mentioned before the Committee and affirmed that they had been convicted for having committed criminal acts. As regards trade union auditing under

the Associations Act, he stated that this provision had not been used in practice.

The Committee recalled that it had discussed this case on several occasions. The Committee welcomed the entering into force of the constitutional amendment under Law No. 5892 repealing several provisions of the Constitution which previously restricted the right to organize, following the September 2010 referendum. The Committee noted with concern, however, the new allegations of restrictions placed on freedom of association and assembly of trade unionists. In this respect, it once again recalled that respect for civil liberties was an essential prerequisite to freedom of association 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 be applied in a manner contrary to this fundamental principle and to consider any necessary amendments or abrogation.

The Committee regretted that no specific progress had been made on the long-awaited draft law on trade unions, amending Acts Nos 2821 and 2822, nor had any timetable been provided in this respect. It further regretted that several provisions in contravention with the Convention remained: the exclusion from the right to organize of certain categories of public employees, self-employed, home workers, apprentices, unemployed; and restrictions to the right to elect representatives in full freedom and to organize activities in full freedom. The Committee further noted with regret that there had been no further proposals to amend Act No. 4688 on public employees' trade unions.

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 continue to avail itself of the ongoing technical assistance of the ILO. The Committee requested the Government to discuss with the ILO within the remaining days of the Conference how this technical assistance could be made most effective, aimed at 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 to transmit all relevant legislative texts to the Committee of Experts before its next meeting.

#### **ZIMBABWE (ratification: 2003)**

The Government provided the following written information.

In March 2010, the Government of Zimbabwe accepted the recommendations of the Commission of Inquiry. It also accepted the support (technical and financial) offered by the Office. In August 2010, the ILO Assistance Package was launched in Harare back to back with a high-level information-sharing session involving the International Labour Office and senior government officials drawn from the Ministries of Labour, Public Service, Justice, Home Affairs, Foreign Affairs, Office of the President and Cabinet, Public Service Commission, Attorney General's Office, Labour Court and the Ombudsperson's Office. A roadmap of the implementation of key activities between September and December 2010 was put in place with the concurrence of the social partners. Broad consultations on the harmonization and review of labour laws commenced during the period. In February 2011, the timelines of the implementation of the agreed activities were revised in consultation with the social partners. A new roadmap focusing on the key issues was adopted by the social partners. In March 2011, the Ministry engaged the Office (International Labour Standards Department) to finalize the programmes and the budget during the 310th

Session of the Governing Body. April 2011, the agreed activities were commenced with the support of the Office. May–June 2011, the Office finalized the programmes and modules to be used in the dialogue sessions and capacity-building programmes for the law enforcement agencies and judicial officials.

The Government provided the following information with regard to the implementation of the agreed activities to give effect to the recommendations of the Commission of Inquiry.

(1) A Government meeting to examine the draft principles of harmonization and review of labour laws was held on 20 April 2011 at Compensation House. The meeting took place and comments were factored in. (2) A tripartite technical meeting concerning draft principles of harmonization and review of labour laws was due to be held on 27 April 2011 at Rainbow Towers, Harare, but was postponed to 18 May 2011. (3) Bilateral planning between the Ministry of Labour and Social Services and Ministry of Youth on the formulation of the implementation matrix of the employment policy framework and the preparation of the agenda of the inaugural meeting of the Employment Forum was undertaken on 28 and 29 April 2011 at Rainbow Towers, Harare. The concept note for the inaugural meeting of the Employment Forum was formulated. (4) The inaugural meeting of the Decent Work Country Programme National Steering Committee was held on 4 May 2011 at Rainbow Towers, Harare. The Ministry prepared the terms of reference of the Committee, which were agreed by the social partners. The meeting was held, and was officially opened by the Hon. Minister. (5) On 5 May 2011, the following were addressed: (a) follow-up with the Attorney General's Office concerning the list of trade unionists that have pending court cases under the Public Order and Security Act (POSA); (b) communicating with Ministry of Justice regarding the CEACR's comments and direct requests on issues pertaining to the Prisons (General) Regulations (Convention No. 29) and the Criminal Law Codification and Reform Act (Convention No. 105); (c) communicating with the Department of Social Services regarding the Reform of the Children's Act in the wake of the CEACR's comments in the context of Convention No. 182; and (d) communicating with NSSA–OHS in the context of the CEACR's comments concerning Conventions Nos 81 and 155. These are legislative concerns which the CEACR raised in respect of other pieces of legislation which relate to labour issues. The Attorney General's Office is looking into the issue of the pending cases of the trade unionists. (6) A tripartite technical meeting concerning draft principles of harmonization and review of labour laws was held on 18 May 2011 at Rainbow Towers, Harare. The Ministry presented a zero draft and all 11 draft principles were adopted. The ZCTU proposed new draft principles which are to be considered during the period 12–15 July 2011. The dates were agreed upon. (7) An inaugural meeting of the Employment Forum was held on 20 May 2011 at Rainbow Towers, Harare. The Employment Forum was launched and the social partners participated. (8) A tripartite workshop on social dialogue with special emphasis on legislative agenda of social dialogue chambers; lessons from NEDLAC, was held at the Kadoma Hotel. The social partners participated in the workshop. This was a prelude to the negotiation of the draft legislation principles of the Tripartite Negotiating Forum (TNF), to take place during the period 12–15 July 2011. (9) The first capacity-building workshop to orient the new members of the Zimbabwe Decent Work Country Programme National Steering Committee was held on 26 and 27 May 2011 at the Kadoma Hotel. Members drawn from Government, the ZCTU and EMCOZ were inducted. (10) A meeting of the principals from government and the social partners to

receive the draft principles of harmonization and review of labour laws was due to be held on 26 May 2011 in the 12th floor boardroom, Compensation House. This was postponed to allow the technical committee to consider the new proposals from the ZCTU. The proposals are to be considered during the period 12–15 July 2011. (11) The finalization of Memoranda to Cabinet Committee on Legislation (CCL) by the officials from the concerned government ministries was due to be undertaken on 27 May 2011 in the 12th floor boardroom, Compensation House. This had to be postponed and will take place only once the principals have considered the draft principles from the technical committee. (12) The principles are due to be submitted to the CCL on 30 May 2011. This will happen once the principals have considered the draft principles. (13) A meeting to formulate the principles for the TNF is planned for 12–15 July 2011 at the Troutbeck Inn, Nyanga. The TNF technical committee was mandated to come up with draft principles. (14) A round-table discussion of the interface between international labour standards and national laws involving the Human Rights Commission, the Organ for National Healing, Reconciliation and Integration, Ombudsperson and social partners is planned on 19 July 2011 at Rainbow Towers, Harare. The programme is being developed by the ILO (International Labour Standards Department). (15) A first capacity-building workshop for the law enforcement agencies (all ten provinces will be covered resources permitting) is planned on 20–22 July 2011 at Rainbow Towers, Harare. The programme is being developed by the ILO (International Labour Standards Department). (16) A first capacity-building workshop for the judiciary and labour officers (all ten provinces will be covered, resources permitting) is planned on 25–29 July 2011 at the Kadoma Hotel. The programme is being developed by the ILO (International Labour Standards Department). (17) A meeting between the ministry officials and the general secretaries of all the registered employment councils to discuss the comments of the CEACR regarding the legislative application of the Weekly Rest (Industry) Convention, 1921 (No. 14), is planned on 2–3 August 2011 in Nyanga. The issue of the ILO supporting the meeting is to be discussed, as it only emerged when all the outstanding comments of the CEACR were being examined. (18) A second capacity-building workshop for the judiciary and labour officers is planned on 26–30 September 2011 at the Kadoma Hotel. The dates have been agreed to by the ILO (International Labour Standards Department), which is the facilitator. (19) A third capacity-building workshop for the judiciary and labour officers is planned on 12–16 December 2011 at the Kadoma Hotel. The dates have been agreed to by the ILO (International Labour Standards Department), which is the facilitator.

In conclusion, the Government of Zimbabwe has taken all measures necessary to implement the recommendations of the Commission of Inquiry and related requests from the Committee of Experts. As demonstrated above, the Government of Zimbabwe is working with the social partners and the Office. The Government of Zimbabwe intends to submit a comprehensive report concerning the implementation of the recommendations of the Commission of Inquiry in its next report.

In addition, before the Committee, a **Government representative**, the Minister of Labour and Social Services, recalled that her Government had accepted the recommendations of the Commission of Inquiry and was fully committed to their implementation with the technical assistance of the Office, which, together with the Government and the social partners had launched its “technical assistance package” in August 2010. A roadmap covering key issues to be addressed had been agreed upon by the Government and the social partners on that occasion.

While she regretted that there was little progress to be noted as yet due to certain administrative obstacles, she affirmed that work had now begun on the basis of an agreed roadmap. She indicated that her Government and the social partners had agreed, on a technical level, on draft principles for the harmonization and review of the labour laws, which took into account the comments and observations of the Committee of Experts, as well as the legislative recommendations of the Commission of Inquiry. In July 2011, a meeting of the principals in the Government, labour and business would be convened to consider these draft principles prior to their submission to Cabinet for approval. Furthermore, work had already commenced to create an independent social dialogue mechanism. The Government and its social partners would be meeting in July 2011 to finalize the draft principles for the legislation on the Tripartite Negotiating Forum. Further, work had begun to give effect to the recommendation of the Committee of Experts relating to the promotion of employment in line with the Employment Policy Convention, 1964 (No. 122). The National Employment Policy Framework, formulated with the involvement of the social partners, was now in place; the Employment Forum, the organ responsible for the coordination of the implementation of the national employment policy, had been launched. Beginning in July 2011, further capacity-building activities were scheduled to take place. These would involve Government officials, including the law enforcement agencies, which in their daily duties interfaced with workers. The idea was to bring knowledge about international labour standards to Government officials beyond the confines of the Ministry of Labour, in particular to those agencies and high-ranking officials that dealt with the application of the Public Order and Security Act (POSA). She expected a transformation and new approach by these departments to issues involving organized workers and employers. Dialogue sessions on international labour standards and human rights in the world of work would also be carried out with the Organ for National Healing, Reconciliation and Integration, the Human Rights Commission and the Office of the Ombudsperson. These new bodies had been set up to promote national cohesion and human rights. The Ministry of Labour’s agenda was to ensure that human rights in the world of work were taken on board. She called on the Committee to give the implementation of these dialogue sessions and capacity-building programmes a chance. She also indicated that it was in this context that all the outstanding cases referred to by the Committee of Experts were being looked into. The Government was also looking into the allegation that the Secretary-General of the General Agriculture and Plantation Workers Union had been forced into exile. The list of trade unionists alleged to have been arrested under the POSA while performing trade union duties, as referred to in the report of the Commission of Inquiry, had been submitted to the Attorney General’s Office. The Attorney General’s Office had indicated that it was liaising with all the concerned area prosecutors with a view to ascertaining the nature of the cases. She expected to get feedback from the Attorney General’s Office in due time. She concluded by thanking the Committee for having afforded her delegation the opportunity to inform it about the implementation of the Commission of Inquiry’s recommendations which, in her view, should not be viewed as an event, but as a process. She also thanked the Office for the support and the extra mile which the International Labour Standards Department had agreed to walk with Zimbabwe. Her Government might not have covered a lot of ground yet, but was determined to fulfil its part of the bargain. As an expression of her Government’s political will and commitment, the Minister of Public Service and the Chairperson of the

Public Service Commission were present at the Conference, along with the Ministry of Labour delegates. Should her Government be listed at the next Committee's session, it would be able to report on progress in the implementation of the recommendations of the Commission of Inquiry.

**The Employer members** recalled that this was the fourth examination of the application of the Convention by Zimbabwe. In 2007 and 2008, the Conference Committee conclusions had been placed in a special paragraph (in 2008, the special paragraph on the continued failure to implement). During the last two discussions of the case, the Government had not appeared before the Committee. In the 2008 conclusions, the Committee had urged other governments that had ratified the Convention to give serious consideration to the submission of an article 26 complaint and had called upon the Governing Body to approve a Commission of Inquiry pursuant to article 26 of the ILO Constitution. The complaints examined by the Commission of Inquiry set up in 2009 referred in particular to serious allegations of violations of basic civil liberties, including the quasi-systematic arrest, detention, harassment and intimidation of trade union leaders and members for the exercise of legitimate trade union activities. In its recommendations, the Commission called for: the harmonization of the relevant legislative texts, and particularly the Labour Act, the Public Service Act and the POSA, with Conventions Nos 87 and 98, as requested by the ILO supervisory bodies; the cessation with immediate effect of all anti-union practices, as documented in its report; the Zimbabwe Human Rights Commission to be rendered operational as soon as possible, with adequate resources; the provision of training on freedom of association and collective bargaining, civil liberties and human rights to key personnel in the country, most notably the police, security forces and the social partners; the reinforcement of the rule of law and the role of the courts in Zimbabwe, by ensuring that the courts were respected, properly resourced and provided with appropriate training and support; the continued strengthening of social dialogue; and the continuation of ILO technical assistance in these areas. Turning to the Government's remarks, they observed that the Government had only focused on the two last points and had not given the real context. They encouraged the Government to address the other points.

**The Worker members** observed that the case had been examined by the Committee on several occasions and that in November 2008, it had given rise to a complaint under article 26 of the ILO Constitution alleging the Government's failure to respect Conventions Nos 87 and 98. The Commission of Inquiry that had been set up to examine that complaint had submitted its report to the Governing Body in March 2010. In the Government's reports on the application of the aforementioned Conventions, it had undertaken to cooperate with the ILO and to comply with the Commission of Inquiry's recommendations, specifically by amending the legislation in force to bring it in line with Conventions Nos 87 and 98, by putting a stop to anti-union practices with immediate effect, by continuing the process that the Commission of Inquiry had started whereby people could be heard by the Human Rights Commission and by the Organ for National Healing, Reconciliation and Integration, by providing training on freedom of association and collective bargaining, civil liberties and human rights for key personnel in the country, by strengthening the juridical framework and the role of the courts and of social dialogue, and by continuing to collaborate with the ILO. Those recommendations had been accepted by the Government in March 2010, and in August 2010 the ILO had launched its technical assistance programme. Referring to the written information communicated by the Government, the Worker members stressed

that, despite the acceptance of the aforementioned conclusions and recommendations, there had been few tangible results, notwithstanding the many meetings that had taken place or were planned. In August 2010, the Government had announced its intention to amend the POSA so as to prohibit its use against trade unions, while recognizing the need to conduct an awareness-raising campaign among members of the police and security forces. The Government now had to demonstrate that the relevant laws and regulations actually existed. In fact, it appeared that, in spite of the roadmap on the essential action to be taken that had been drawn up in collaboration with the social partners, anti-union harassment and arrests aimed both at the leaders of the Zimbabwe Congress of Trade Unions (ZCTU) and at other trade unions, notably the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ), continued to take place. The Worker members attached great importance to the application in law and in practice of the principle of freedom of association, and they regretted the lack of information provided by the Government on the implementation of the Commission of Inquiry's recommendations with respect to: the effective timetable for bringing the legislation into line with the Convention; the possibility for Zimbabwe's Human Rights Commission to receive complaints of violations of human rights and trade union rights perpetrated since 1990; the effective involvement of the Government in the preparation of the training activities mentioned in the roadmap (notably, the training scheduled for September 2011 on the development of clear lines of conduct for the police and security forces) so as to demonstrate its support for the recommendations of the Commission of Inquiry; the participation of representatives of the labour and criminal courts in the activities scheduled for December 2011 with a view to strengthening the rule of law and the role of the courts; and the strengthening of the role of social dialogue in the development of all policies concerned with labour issues. Finally, they emphasized the need for the ILO to find adequate funding for the technical assistance activities called for by the Commission of Inquiry and to develop effective cooperation with other international institutions in this respect.

**The Worker member of Zimbabwe** recalled that this was the first discussion of this case following the establishment of the Commission of Inquiry in 2009, which had visited Zimbabwe and gathered information from individuals who had volunteered to submit their experiences of human and trade union rights violations. He further recalled that, following the acceptance by the Government of Zimbabwe of the findings and recommendations of the Commission of Inquiry, the ILO had proposed a technical assistance package to support their implementation. Unfortunately, instead of taking advantage of the "package", the Government had waited for cosmetic get-togethers during the month of May in anticipation of the International Labour Conference in June 2011. He stated that, while a tripartite technical committee was engaged in the labour law reform, this process was taking longer than expected. It was the Government's lethargic manner that the ZCTU was worried about. He recalled that the labour law reform had been originated with a piecemeal amendment of the Labour Relations Act in 1992 and 1996, and continued in 2002 with the harmonization of the Public Service Act and the Labour Act, before being followed by yet another de-harmonization of the two Acts and a return to the status quo in 2002. Instead of implementing the Commission of Inquiry's recommendations, the Government had further trampled on trade union rights by arresting and denying workers their constitutional right to commemorate internationally recognized events, such as International Women's Day on 8 March 2011, Workers' Day on 1 May 2011, and Health and Safety Day on 6 June

2011. In Harare and Bulawayo, for example, police had been advised by the ZCTU of its intention to mark International Women's Day. In Harare, processions had been denied. In Bulawayo, the police had denied the commemorations altogether. The ZCTU had applied to the Magistrate Court on 7 March 2011 to have the commemorations legalized. The Court had granted permission. However, on the day of the commemoration, about 30 police officers dressed in riot gear, wielding baton sticks, had disrupted the event and arrested 19 trade union leaders. Another 20 officers had raided the venue, threatening anyone who dared to participate in the event. On May Day 2011, the police had either refused the ZCTU permission to commemorate or denied permission for processions in many centres around the country. Noting the serious consequences it would have had on the morale of workers, the ZCTU had made an urgent application to the High Court to challenge the widespread refusals. Despite the order to allow all ZCTU commemorations to be staged without police interference, in some centres the police had still prohibited commemorations from taking place. He argued that some of the Commission's recommendations could have been implemented already without funding from the ILO. For example, the Government could already have advised the police and other security agencies not to interfere with trade union activities, as guaranteed by section 26 of the POSA. It could also have ensured that all anti-union practices ceased, in particular in places where workers had previously been dismissed because of their union activities, as had been the case with the entire union executive in the postal and telecommunications sector, including the present speaker. To demonstrate its good will, the Government could have withdrawn court cases involving trade unionists, as requested by the Commission of Inquiry. Currently, Ms Gertrude Hambira was in exile after receiving threats from senior members of the army in respect of her trade union operations. The Committee of Experts had recalled for the third time that the civil service and the prison services staff should enjoy collective bargaining rights. The current labour law reform appeared to keep the Labour Act and the Public Service Act as two separate laws, i.e. one for the private sector and another for the civil service. The ZCTU suspected that, by maintaining two separate pieces of legislation, the Government was avoiding the demand by civil servants to affiliate to the ZCTU. The right to strike did not exist unless workers illegally resorted to collective job actions. In many cases, strikes were both politicized and criminalized, leading to arrests, torture or detention of workers. In July 2009, the TNF had been on a study tour to South Africa to learn from the South African experience on making tripartism work in practice. While it had been a good learning tour, it had brought no concrete results. Other than signing and launching the Kadoma Declaration by the President, the policy-making TNF had not met again. The ZCTU called on the Government to commit to specific timelines for the completion of the labour law reform, ensuring that civil servants, prison staff and the police enjoyed collective bargaining rights under the National Employment Council (NEC), based on a single harmonized labour legislation. Lastly, the critical recommendations concerning civil liberties, the rule of law and good governance did not require funding and could have been implemented. The Government should inform the Committee of the reasons for failing to do so.

**The Employer member of Zimbabwe** noted that the Government had appeared before the Committee to report on the follow-up to the recommendations of the ILO Commission of Inquiry, which it had accepted in full. He was not aware of the allegations of non-compliance raised by the Worker member of Zimbabwe, otherwise he would

have immediately called for a meeting of the TNF. Three points needed to be raised: the written information supplied by the Government; the state of social dialogue in Zimbabwe; and the election of the Government of Zimbabwe to the ILO Governing Body. As regards the first point, he stated that the Government's report on the steps taken so far to implement the recommendations of the Commission of Inquiry was accurate. In relation to the second point, while recognizing that social dialogue still faced enormous challenges, he declared himself optimistic about it and stated that the country had to sit down and find solutions with the involvement of social partners. While believing that the Government was sincere and was doing its best, this did not imply, however, that the allegations of the violation of Conventions Nos 87 and 98 were without foundation. The acts resulting in the derailing of social dialogue originated from other arms of the State, which might not understand social dialogue. In this regard, the implementation of the recommendations of the Commission of Inquiry was anxiously awaited. As to the third point, he thanked the governments that had elected the Government of Zimbabwe to the Governing Body, which represented an honour for the country. While some ILO members were of the view that Zimbabwe should not be elected because of alleged continuing violations of Conventions Nos 87 and 98, he considered that the Government was aware of the onerous responsibility it was taking on by sitting on the ILO Governing Body, its members having a higher level of accountability than other ILO members. Such a level of responsibility would strengthen the responsibilities of the Government with respect to compliance with ILO Conventions. He concluded by underlining that the recommendations of the Commission of Inquiry were a solid foundation for Zimbabwe and progress made in implementing them so far had showed room for improvement. The process of implementing the recommendations of the Commission of Inquiry should be expedited.

**The Government member of Hungary**, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the candidate countries (Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland), the potential candidate countries (Albania and Bosnia and Herzegovina), Norway, and the Republic of Moldova, noted with interest the launch of the ILO technical assistance package in August 2010, which aimed to support the Government and the social partners in implementing the recommendations of the Commission of Inquiry so as to ensure full freedom of association and protection of the right to organize in the country. Recalling the Government's statement in reply to the 2009 report of the Commission of Inquiry that the recommendations would be implemented in the context of its current legislative and institutional reform programme and that ILO support was welcome, she strongly expected that the long awaited harmonization of the labour laws and the amendment of the Labour Act and the Public Service Act would soon be finalized and that the legislation would be brought in full compliance with the Convention. Noting with regret the allegations submitted by the ZCTU related to the banning of trade union activities, she urged the Government to take the necessary measures to ensure, in law and practice, the right of trade unions to organize, without any interference, including by the police and security forces. In particular, she urged the Government to ensure that the POSA was not used to infringe upon legitimate trade union rights, including the right of workers' organizations to express their views on the Government's economic and social policy. Recalling the Government's strong commitment expressed at the launch of the ILO technical assistance package to implement the recommendations of the Commission of Inquiry, she urged it to take all the nec-

essary measures to ensure full compliance with all aspects of the Convention, and thereby guarantee full respect for freedom of association and protection of the right to organize.

**The Government member of Switzerland** aligned herself with the statement of the Government member of Hungary.

**The Government member of Swaziland** considered that Zimbabwe should be commended for accepting to implement the recommendations of the Commission of Inquiry and ILO assistance. The Government was committed and willing to take all the necessary measures to address the comments made by the Committee of Experts: a roadmap for the implementation of the recommendations had been put in place in consultation with the relevant stakeholders, and the harmonization and review of labour laws had been undertaken. He thanked the ILO for its continued support to Zimbabwe and requested the Committee to give Zimbabwe an opportunity to fully implement the recommendations of the Commission of Inquiry and submit a progress report in time for consideration by the Committee of Experts.

**The Worker member of China** recalled the Committee of Experts' report, which stated that the tripartite constituents in Zimbabwe had identified seven priority activities to be carried out from September to December 2010, and that further activities, to be carried out in 2011, were in the process of being developed in consultation with the social partners. He underlined the importance of social dialogue as an invaluable mechanism for reducing social tensions in times of crisis and designing measures to fit national policies. While unions were encouraged by the strengthening of social dialogue, which was fundamental to implementing the recommendations of the Commission of Inquiry, he was not optimistic about social dialogue in practice, since there had been no tripartite policy meetings for two years in Zimbabwe. He urged the Government and the social partners to accept the need for tripartism and the appeal by the ZCTU. He feared that the signing and launching of the Kadoma Declaration and labour law reform was window dressing rather than substance. He recalled that social dialogue structures and processes could resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress. For this dialogue to be effective, there needed to be respect for the fundamental rights of freedom of association and collective bargaining. Autonomous, independent and strong workers' organizations were critical for effective social dialogue, and he urged the Government to take the necessary measures to ensure that the POSA was not used to infringe upon the legitimate rights of workers' organizations to express their views on the Government's economic and social policy.

**The Government member of Namibia** noted that the Commission of Inquiry had completed its work in December 2009, and expressed his satisfaction that the Government was committed to implementing its recommendations. He called on the Government, employers and workers of Zimbabwe to engage in constructive social dialogue that would lead to the implementation of the Convention. He also requested the ILO to continue to provide the country with technical assistance.

**The Worker member of Norway** stated that the Commission of Inquiry's report gave detailed information about serious violations of labour rights, reported frequent arrests, detentions, assaults and torture as weapons of intimidation and harassment against trade unionists, described the breakdown of collective bargaining and social dialogue and the lack of institutional protection for trade union rights, and identified several aspects of the law that were not in conformity with ILO Conventions Nos 87

and 98 and which needed to be repealed. Although the Government had accepted the recommendations of the Commission of Inquiry, the situation had not improved, which demonstrated a lack of political will to implement those recommendations. She urged the Government to follow up and implement in totality the recommendations of the Commission of Inquiry in both law and practice, and to bring its labour legislation into conformity with Conventions Nos 87 and 98. For trade unions in Zimbabwe to exercise their freedom of association, expression and movement, it was imperative that all repressive laws, such as the POSA, be repealed. The Government needed to desist from interfering in trade union activities, stop the harassment of trade union leaders and members and drop all pending charges against trade unionists under the POSA. Constructive and meaningful dialogue could only be held in an environment of common understanding, trust and mutual respect among the social partners. Unfortunately, this kind of environment was currently wishful thinking.

**The Government member of Cuba** declared that the Government was making positive efforts to comply with the Convention and emphasized the important role played by ILO technical cooperation. She pointed out that account had to be taken of the Government's implementation of all the ILO technical assistance measures and recalled some of the measures highlighted by the Government, including the meetings held to examine the provisional principles for the harmonization and revision of the national legislation. She concluded by emphasizing that the facts showed the Government's political will to comply with the provisions of the Convention and encouraged the Government to maintain an open dialogue with the social partners and continue with the technical cooperation.

**The Worker member of Ghana** drew attention to the Government's responsibility for a huge number of trade union rights violations and its failure to create an environment which was conducive to the free exercise of the right to freedom of association. Employers in Zimbabwe trampled on workers' rights and rarely faced any negative consequences. On the contrary, they could often count on the Government's support. He referred to concrete incidents, including physical assaults against trade unionists and dismissals and fines in retaliation for taking part in strikes. This exemplified how the lack of enforcement of trade union rights by the authorities encouraged other parties, including some public sector employers, to violate them, which was unacceptable. He sincerely hoped that the Conference Committee would acknowledge this in its conclusions.

**The Worker member of Zambia** recalled that trade union rights were human rights, and for any society to progress, it was imperative that these fundamental rights were upheld and respected. He noted the efforts of local governments, but regretted that persistent political tensions led to breaches of trade union rights. He condemned over 119 trade union violations that had occurred during the past two years and denounced police action that often disregarded even court orders. He concluded by stating that freedom of association as enshrined in the Convention which Zimbabwe had ratified in 2003, had clearly not been materialized and this brought into serious question the Government's will to implement the recommendations of the Commission of Inquiry.

**The Worker member of Brazil** referred to the information supplied by the Government concerning the steps taken to implement the Convention and indicated that there were no technical reasons for Zimbabwe to be on the Committee's list of cases for non-observance of Convention No. 87 since progress had been made. She criticized the use of the Convention as a pretext for putting

pressure on a country for political reasons and economic interests. She pointed out that since the country had started to demand compliance with the agreement on land resettlement, economic sanctions had been imposed, all because the country wished to develop a national economy independent of the International Monetary Fund (IMF) and the World Bank. She stated that the attacks related to mineral wealth and that the countries of the North had accumulated a large part of their riches on the basis of slavery, colonization and an aggressive policy of plundering and violence against the countries of the South. She stressed that the Committee should concentrate on the hard facts and congratulated the country for its efforts to implement the ILO's recommendations and support its struggle to retain control over its resources. She concluded by emphasizing that it was a serious mistake to accept that major multinationals should continue to exert pressure to have countries included on the list for reasons which had nothing to do with the fundamental principles of the ILO.

The Government representative appreciated the support expressed for the roadmap that her country was following in implementing the recommendations of the Commission of Inquiry and addressing the outstanding issues raised by the Committee of Experts. Her country's socio-political landscape was characterized by underlying dynamics which were the subject of other forums, such as the Southern African Development Community and the African Union. She pointed out that the totality of the Zimbabwe landscape was being reformed and the labour market had not been spared. The issues or incidents quoted and the continued restrictions over trade union meetings or activities cited were the very subject of the planned activities starting from July 2011. The Office would be working with the Ministry in Harare in July 2011, and dialogue sessions with the concerned organs of the Government would also commence at that time. This was about changing a mindset, which would only be achieved through knowledge sharing. She therefore again appealed to the Committee to provide the opportunity to implement her Government's objectives, with the support of the Office. The political will and the commitment of the Government were not questionable. The Government had sincerely accepted the recommendations of the Commission of Inquiry, it had designed a set of activities to be pursued to give effect to those recommendations, and those activities were the backbone of the agreed roadmap, which the Office was supporting.

The Employer members stated that they had expected something more concrete and tangible than mere expressions of goodwill. Unlike previous discussions, that of today had been constructive. However, the Government had been emphasizing process over substance. The Government needed to initiate and adopt substantive changes in line with the Convention's requirements. Priority should be placed on those parts of law and practice that infringed individual and civil liberties. The Employer members supported the recommendations of the Worker members and called for the conclusions to be included in a special paragraph of the Committee's report.

The Worker members observed that the core of the discussion revolved around the follow-up to the very specific and unambiguous recommendations of the Commission of Inquiry. The recommendations to the authorities included the cessation with immediate effect of attacks against trade unionists, the establishment of a Human Rights Commission, training in human rights for the security forces, the strengthening of the rule of law, and the amendment of legislation to bring it in line with the Conventions. Consequently, the Worker members asked that the following recommendations be included in the conclusions: (i) that a timetable showing fixed deadlines for

bringing legislation into line with the Convention be prepared and respected; (ii) that all violations of human rights and trade union rights perpetrated since 1990 be placed on the agenda of the Human Rights Commission; (iii) that concrete steps be taken to organize workshops on the drafting of clear rules of conduct for the police and security forces, and the preparation and dissemination of training materials, so as to demonstrate the Government's endorsement of the Commission of Inquiry's recommendations; (iv) that participation in the events planned for December 2011, with respect to the strengthening of the rule of law and the role of the courts, be expanded to include a broader public, comprising not just the labour courts but the criminal courts as well; transparency was essential for all cases brought to court and sanctions should be commensurate with the seriousness of the complaints; (v) social dialogue had to be revived and the Government should consult the social partners on the development of the new policies; and (vi) the ILO should find adequate funding so as to be able to continue providing technical assistance and should share its assessment of the situation in Zimbabwe with other international institutions in order to ensure better collaboration and a more effective implementation of the Commission of Inquiry's recommendations. They called on the Governing Body to continue following up Zimbabwe's compliance with the recommendations of the Commission of Inquiry and requested the Government, at the earliest opportunity, to provide detailed information in response to the comments of the Committee of Experts. Finally, they endorsed the Employer members' proposal that the conclusions on the case be included in a special paragraph of the Committee's report.

### Conclusions

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

The Committee recalled that the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Conventions Nos 87 and 98 had completed its work in December 2009 and submitted its report to the Governing Body at its March 2010 session. The Committee recalled that the Government had accepted the Commission's recommendations that the relevant legislative texts be brought into line with Conventions Nos 87 and 98; all anti-union practices – arrests, detentions, violence, torture, intimidation and harassment, interference and anti-union discrimination – be ceased with immediate effect; national institutions to continue the process the Commission had started whereby people can be heard, in particular, referring to the Human Rights Commission and the Organ for National Healing, Reconciliation and Integration; training on freedom of association and collective bargaining, civil liberties and human rights be given to key personnel in the country; the rule of law and the role of the courts be reinforced; social dialogue strengthened in recognition of its importance to the maintenance of democracy; and ILO technical assistance to the country continued.

The Committee noted the statement of the Government representative reaffirming her Government's political will and commitment to ensuring the implementation of the Commission of Inquiry's recommendations and expressing her deep appreciation for the assistance afforded by the ILO in this regard. While she had regretted that there was little progress to be noted as yet due to certain administrative obstacles, she had affirmed that work had now begun on the basis of an agreed roadmap. In particular, draft principles for the harmonization and review of the labour laws had been agreed with the social partners, taking into account the comments of the Commission of Inquiry and the Committee of Experts. In addition, the tripartite partners were finaliz-

ing the draft principles for the legislated Tripartite Negotiating Forum (TNF). She had stated that issues related to the Public Order and Security Act (POSA) were high on the dialogue sessions with high-ranking officials in the targeted government ministries and agencies, and expected a transformation and new approach by these departments to issues affecting workers' and employers' organizations. She had indicated that her Ministry was working on placing labour rights on the agenda of the Organ for National Healing, Reconciliation and Integration, the Human Rights Commission and the Office of the Ombudsperson.

The Committee noted with concern new allegations of violations of freedom of association in practice and, in particular, those relating to the forced exile of the General Secretary of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ), as well as several instances of banning of trade union activities. In this respect, the Committee recalled the importance it attached to respect for basic civil liberties, including freedom and security of the person and freedom of assembly, which were crucial to the effective exercise of freedom of association and constituted a fundamental aspect of trade union rights. The Committee requested the Government to ensure that the POSA was not applied in practice in a manner contrary to this fundamental principle and to carry out a full review of its application in practice with the social partners. It urged the Government to take the necessary measures to ensure that the GAPWUZ leader could come back to the country and that her safety was ensured.

The Committee noted the launch of the ILO technical assistance programme and the written and oral information that had been provided on the activities that had taken place already and those that were scheduled to take place before the end of 2011. In particular, the Committee noted that the outstanding cases of trade unionists arrested under the POSA had been identified and urged the Government to ensure that these cases were withdrawn without further delay.

The Committee noted the process of the labour law review and harmonization initiated in the country and welcomed the fact that this process involved the social partners. The Committee urged the Government to proceed with this work and all other measures for the implementation of the recommendations of the Commission of Inquiry as a matter of urgency and recommended to the Government to elaborate a roadmap to this effect with clearly delineated timelines, which should be strictly respected. Priority should be given to addressing all concerns related to fundamental civil liberties and all human rights violations, including those relating to trade union rights, which should be included in the review to be carried out by the Human Rights Commission. Concrete steps should be taken for the preparation of workshops ensuring that the police and security forces were trained for the full respect of human and trade union rights and to enable the elaboration and promulgation of clear lines of conduct in this regard.

The Committee expressed the firm hope that the law and practice would be brought fully in line with the Convention in the very near future, encouraged the Government to continue cooperating with the ILO and the social partners in this respect, and asked the Government to provide a detailed report to the Committee of Experts in this regard for examination at its next meeting.

The Employer members reaffirmed their agreement with the Committee's conclusions. Upon further consideration, unlike other governments, after recent Commissions of Inquiries, the Government of Zimbabwe had accepted the Commission of Inquiry's recommendations and had formulated a roadmap for the purpose of implementing those recommendations. However, this roadmap focused primarily on process over substance. More substantive progress had to be demonstrated by next year. The Employer

members did not support including the conclusions on this case in a special paragraph of the Committee's report this year, but would revisit this next year if there was no real and concrete progress on the recommendations of the Commission of Inquiry.

The Worker members took note of the statement by the Employer members and said that their refusal to include the conclusions on this case in a special paragraph of the report of the Committee gave rise to problems. This case remained serious regarding violations of civil liberties and freedom of association, as well as the situation confronting trade union leaders. It was not certain that the Government had the political will to move forward. The recommendations set out in the conclusions were clear and detailed. They constituted a roadmap and the ILO should ensure constant monitoring of the progress achieved in their application. The Committee of Experts needed to assess the situation in its next report. For their part, the Worker members would closely follow the evolution in the application of the Convention and would assess the situation at the next session of the Conference.

The Worker member of Zimbabwe expressed his disappointment regarding the Committee's conclusions. He hoped that the Government of Zimbabwe would indeed implement the measures presented by the Government representative to the Committee, but expressed doubt that this would occur due to a lack of political will.

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

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**BELARUS** (ratification: 1956)

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The Government communicated the following written information concerning measures taken to implement the recommendations of the Conference Committee and the Commission of Inquiry since the last examination of this case by the Conference Committee in June 2010. Over the past few years, the Government of the Republic of Belarus has been taking consistent and targeted steps to promote social dialogue in the country. In 2010, a tripartite Working Group, including representatives of the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU), was established to draft a General Agreement for 2011–13. This Agreement was signed on 30 December 2010. The chapter of the General Agreement concerning interaction between the parties contains a number of provisions aimed at further development of social dialogue and tripartism in the Republic of Belarus. In particular, the parties to the General Agreement have committed themselves to: building their relations on the basis of the principles of social partnership set forth in the legislation of the Republic of Belarus and the ILO Conventions ratified by the Republic of Belarus; promoting collective bargaining and improving the functioning of sectoral and local councils for labour and social issues; consulting on the development and implementation of socio-economic policies; and taking all the necessary measures to prevent collective labour disputes in the social sphere and foster their settlement. In accordance with its provisions, the General Agreement is applicable to all employers (employers' organizations), trade unions (trade union associations) and workers of the Republic of Belarus. The two trade union associations acting in the Republic of Belarus (the FPB and the CDTU) can thus benefit from the guarantees stipulated in the General Agreement regardless of their representativeness. Guided by the spirit of cooperation embodied in the General Agreement, the Government decided to restore preferential rental treatment for trade unions. According to the Presidential Decree of 5 November 2010 (No. 569), a reduction multiplier of 0.1 is applied to the basic rental

rates for premises rented by trade unions, regardless of their affiliation. Thus, the rental fee is ten times less. This decision was welcomed by all trade unions.

A tripartite Working Group whose establishment was approved at the meeting of the Council for the Improvement of Legislation in the Social and Labour Sphere on 14 May 2010, began its work in October 2010. The Working Group includes six persons – two representatives from each party, i.e. the Government, employers' organizations and the trade union associations (the FPB and the CDTU). When necessary, the parties are entitled to invite experts and other stakeholders to take part in the Group's meetings. The Working Group promotes joint efforts of the social partners to elaborate agreed approaches for the implementation of the recommendations of the Commission of Inquiry as concerns registration. In this respect, the Government recalls that the Commission of Inquiry recommended to remove any obstacles related to the legal address requirement and explains that legal address is an address of premises where the governing body of the trade union is located. In this respect, republican-level trade unions and their organizational structures at regional and district levels do not experience any difficulties since their addresses are not bound to any particular enterprise. Primary trade union organizations, however, seek to have a legal address in the territory of an enterprise where their members work (although no such requirement is established by the legislation and some primary organizations have a legal address outside the enterprise). By providing a primary trade union organization with premises for the purpose of legal address, the employer recognizes it as a partner in the social dialogue including collective bargaining. Thus, the legal address issue is a matter of recognition of a primary trade union organization as a social partner by the employer. As a rule, larger trade unions that can put serious pressure on the employer solve the issue of premises in their favour. It is more difficult to settle this matter for trade union organizations with smaller membership. In order to settle the issue of legal address, the Government suggested that options for an agreement with social partners concerning the provisions of premises be elaborated by the tripartite Working Group. For example, such an agreement could become a part of the General Agreement for 2011–13. In addition, it was proposed to ask the ILO to provide assistance in this matter.

During the 310th Session of the Governing Body (March 2011), the Government and the ILO agreed to hold a tripartite seminar with the participation of the ILO. Following consultations with the ILO, the seminar was scheduled to be held on 13 May 2011. Although the tripartite Working Group has been working actively in March and April 2011 and four meetings of the Working Group with participation of all the stakeholders were held on 3 and 17 March and on 22 and 29 April 2011, the process of reconciling the positions of all the parties has not been completed yet. It was therefore decided to postpone the seminar. The Government together with the social partners and the Office will continue its work in this respect. The Government of the Republic of Belarus continues its work aimed at establishing constructive relations with all the social partners and developing cooperation with the International Labour Office, thus reaffirming its sustainable commitment to social dialogue and tripartism.

In addition, before the Committee, a **Government representative** stated that the tripartite National Council on Labour and Social Issues (NCLSI) had put the elaboration of the new General Agreement on its agenda. A tripartite working group had been set up to work on the General Agreement with the participation of all large trade unions, including the FPB) and the CDTU. The General Agree-

ment had been signed on 30 December 2010 and covered all employers' and workers' organizations so that both large trade unions could benefit from the guarantees provided therein. The General Agreement laid down several provisions on the promotion of social dialogue and tripartism. Thus, the parties committed themselves under the General Agreement to strengthen their relationship according to the principles of social dialogue as enshrined in national legislation and the ILO Conventions, to promote the conclusion of collective bargaining agreements, to undertake consultations on the implementation of national economic and social policy and to take the necessary steps to prevent labour disputes. In March 2011, it had been decided to hold on 13 May a tripartite seminar in Minsk with the participation of all interested parties and the ILO. Agreement had been reached that all questions relating to the preparation of the seminar would be discussed in the tripartite working group. On the day following the seminar, a meeting of the Council for the Improvement of Legislation in the Social and Labour Sphere with ILO representatives had been scheduled to discuss the issues of registration and trade union pluralism at enterprise level, taking into account the outcome of the seminar. After several meetings of the tripartite working group and the adoption of a draft seminar programme by the social partners, the CDTU had withdrawn on 29 April its support for the programme although it included agenda items concerning registration and trade union pluralism at enterprise level. It was worth noting in this regard that nearly all disputes relating to collective bargaining agreements in enterprises were due to the fact that national legislation contained no requirements concerning trade union representativeness. Given that the Government did not wish to carry out the seminar without the CDTU, it had been decided to postpone the activity. The Government representative called on all social partners to act sensibly and come to an agreement. The Government would continue to collaborate with the ILO with a view to holding the seminar. In conclusion, the Government had taken steps to develop social dialogue and tripartism by strengthening the institutions of social dialogue, by including the CDTU in the NCLSI where it was currently actively participating, and by treating the FPB (4 million members) and the CDTU (10,000 members) on an equal footing without regard to representativeness. Mindful that the recommendations of the Commission of Inquiry had not yet been fully met, the Government was willing, despite the difficult economic situation, to pursue its cooperation with the ILO, to focus its efforts even more on relating positively with all social partners, to comply with its obligations under the General Agreement and to continue to take consistent steps towards a generalized social dialogue that would benefit all parties.

**The Employer members** recalled that this case had been discussed by the Committee for the past ten years under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), inter alia as a follow-up to the Commission of Inquiry, and that it was the first time that the case was discussed under this Convention. Given the fact that the statement by the Government was principally based on the conclusions of the Commission of Inquiry and did not address the issues covered by this Convention, he emphasized the narrower focus of Convention No. 98 and thanked the Committee of Experts for helping the Conference Committee to concentrate on just a few of the Commission of Inquiry's recommendations. As regards the concerns expressed by the Committee of Experts on the allegations of the continuing – and apparently increasing – discriminatory use of fixed-term contracts for anti-union purposes, the Government should prevent this from happening by putting in place legal as well as practical measures. The Employer members re-

requested the Government to provide specific information, in a subsequent report to the Committee of Experts, on the situation of a member of the Belarus Independent Trade Union (BITU) as well as on allegations of interference in trade union affairs at several plants where workers were represented by BITU, and to indicate if these issues were on the agenda of the NCLSI. As regards the issue of collective bargaining where there were multiple unions in the workplace, the organization of a seminar – which had had to be postponed – was a step to create some understanding. But, fundamentally, the Government had focused its interventions on the overall issue of freedom of association and might have lost sight of anti-union activities that also needed to be addressed within the framework of an overall regime regarding the right to organize and collective bargaining.

**The Worker members**, referring to the double footnote to the Committee of Experts' observation, said that the end of the serious violations of freedom of association in Belarus was nowhere in sight. One of the most serious problems was the unquestionable discrimination against the members of free and independent trade unions, who continued to be threatened with dismissal or non-renewal of their fixed-term contracts. Presidential Decree No. 29 of 1999, which authorized one-year contracts for all types of workers, had been extensively used to discriminate against members of independent unions, and the new Decree No. 164 of 31 March 2010 had not put an end to the practice. Authorizing employers to offer indefinite contracts to workers with at least five years' seniority who observed discipline at work once again gave free rein to anti-union pressure and discrimination for this five-year period. The seven trade unionists whose reinstatement in their jobs the Government had announced in December 2009 had had their dismissal confirmed on appeal on 21 May 2010. In a clear sign that there had been no progress in the matter, the Government had made no mention of that fact or of the anti-union pressure exerted in the Council for the Improvement of Legislation in the Social and Labour Sphere, nor had it said anything about the climate of anti-union discrimination in the country at large. Another very painful issue was that of collective bargaining in enterprises where there was more than one trade union. True, the Government had reported the signing on 30 December 2010 of a General Agreement for 2011–13 which, based as it was on the principles of social dialogue embodied in national labour laws and ILO Conventions, did cover collective bargaining. The very rudiments of collective bargaining were not yet in place however. To begin with, anti-union discrimination continued to exist. Moreover, the system of registration of trade unions was still strictly regulated. For example, unions were required to provide a legal address, and yet primary trade unions could only acquire such an address if they were recognized as a counterpart by the employer. That meant that registration was dependent on the arbitrary decision of the employer. Finally, with the presence of the CDTU on the Council for the Improvement of Legislation in the Social and Labour Sphere and various working groups, Belarus was experiencing the beginnings of a fragile process of social dialogue. Yet independent trade unions were still confined in a ghetto both in law and in practice, a situation that was not going to end so long as the points raised previously remained unresolved. That in turn presupposed the full implementation of the recommendations of the Commission of Inquiry.

**The Worker member of Belarus** stated that the recommendations of the Commission of Inquiry continued to have a positive effect on the Government's actions to promote social dialogue. All trade unions, whether large or small, including the CDTU, had been afforded the possibility to participate in social dialogue within various

national bodies, to have representatives in the NCLSI, to work on the elaboration of the General Agreement and to participate in the tripartite working group dealing with the issue of trade union registration. The rental costs for trade union premises had been significantly reduced and were currently cheaper than for any other organizations. All trade unions enjoyed the rights and guarantees necessary for collective bargaining, and, depending on whether there was a union representing the majority of workers in the company, there were enterprises where only one collective agreement was signed, and others with several collective agreements in force. Moreover, despite a new requirement to ensure that long-term employment contracts were not concluded for a definite period of time, employers sometimes succeeded in putting pressure on workers to accept fixed-term contracts. The speaker concluded that the Government was genuinely trying to find solutions to the existing problems of application and to implement the recommendations of the Commission of Inquiry. There was no anti-union atmosphere, and several issues remained to be addressed in the NCLSI or through direct negotiations. He urged the whole trade union movement to work together with the FPB in this regard, and with reference to the CDTU, he regretted that this had not always been the case in practice. Finally, the Committee should take account of the real situation and give the Government the opportunity to persevere in its efforts. The ILO should continue to cooperate with the Government with a view to holding the postponed seminar.

**The Government member of Hungary**, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the candidate countries (Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland), and potential candidate countries (Albania, Bosnia and Herzegovina, and Serbia), and Norway, reiterated the deep concern of the EU that the application of the principles of the right to organize and to bargain collectively was still not guaranteed in Belarus. While welcoming the establishment of a tripartite working group to prepare the new General Agreement for 2011–13, the speaker proposed to further strengthen the tripartite cooperation by using the NCLSI to discuss in substance the issue of the violation of trade union rights. This question remained exceptionally timely given the high number of violations of trade union rights and the anti-union discrimination acts that the CDTU continued to face. The freedom of trade unions to carry out their activities was still not guaranteed and the discriminatory use of fixed-term contracts for anti-union purposes continued. Regrettably, the new Presidential Decree No. 164 of 31 March 2010 had not solved the problem. The speaker called on the Government of Belarus to ensure that all complaints of interference and anti-union discrimination be thoroughly investigated and perpetrators punished as the case may be. The Government should intensify its efforts to ensure full implementation of the Convention and recommendations of the Commission of Inquiry without delay, in close collaboration with all social partners and with the assistance of the ILO. Finally, the speaker expressed serious concerns about the human rights situation in Belarus which had significantly deteriorated since the violations of electoral standards in the presidential elections of 19 December 2010. The presence of political prisoners in the heart of Europe in the twenty-first century was unacceptable. The situation, including the intensified repressive measures against human rights defenders, members of the media and the democratic opposition, despite repeated calls from the international community, constituted serious violations of numerous international commitments undertaken by Belarus.

**The Government member of Switzerland** said that her Government concurred with the statement made on behalf of the governments of Member States of the European Union.

**The Employer member of Belarus** stated that the measures taken by the Government to implement the recommendations of the Commission of Inquiry had been effective and that, although there had been some difficulties, the process had generally been positive. The creation of the working group within the Council for the Improvement of Legislation in the Social and Labour Sphere had contributed to the rapprochement of the position of the parties, and a compromise had been reached with the trade unions at the national level and with the various branches. The CDTU had now been working for five years on an equal footing with other unions in the NCLSI. In addition, the CDTU had participated, with others, towards the adoption of a general agreement for a period of three years. Moreover, the speaker indicated that employers had complied with the labour legislation in cases of the dismissal of union members. Agreement had not been reached on all points, and the ILO's support and technical assistance was essential in this regard. The employers of Belarus were in favour of the joint resolution of these problems, including through the participation in tripartite seminars on these issues. However, all of this had to be set in a context of the economic problems facing the country. Since 2007, Belarus had been struggling due to the withdrawal of the European Union Generalized System of Preferences which had had an impact on the population as a whole as well as on private enterprises in the country. The employers of Belarus supported the full normalization of the relations between the European Union and Belarus, and hoped that the ILO could help in lifting the restrictions imposed. Hopefully, the ILO would take a realistic approach, not only in the interest of business but also for the country as a whole.

**An observer representing the International Trade Union Confederation (ITUC)** indicated that the expected changes in Belarus had not taken place and that measures had not been taken to implement the recommendations of the Commission of Inquiry. Pressure against joining trade unions through dismissals and anti-union discrimination continued. Moreover, the changes envisioned by the Government to the labour legislation was a cause for concern and the removal of references to ILO Conventions as sources of law exacerbated the labour issues in the country. There had been no measures taken to address the registration of independent trade unions, and setting up new organizations would not lead to independent trade unions if this problem was not resolved. In addition, the CDTU had not been given a reduction for the renting of premises. Turning to the general agreement, the speaker emphasized that this would not solve the problems of trade unions in the country, as these organizations continued to be segregated. He expressed the hope that the problem of the registration of trade unions would be solved, but indicated that the Government holding seminars on this issue did not amount to sufficient political will in this regard. Belarusian workers remained deprived of the inalienable right to set up independent trade unions and of their choice to become a member thereof, and measures were needed to move towards the full respect of workers' rights.

**The Government member of India** noted the systematic approach adopted by the Government of Belarus with regard to implementing the recommendations made by the Commission of Inquiry. 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 to give effect to Conventions Nos 87 and 98. The general agree-

ment signed in 2010, which the Government had formulated through social dialogue, provided a useful plan of action for the implementation of the recommendations of the Commission of Inquiry. The speaker emphasized that the constructive engagement and cooperation of the Government with the ILO and the progress that had been made in observing the Convention were important achievements.

**The Government member of the United States** regretted the paucity of substantial progress by the Government of Belarus in implementing the recommendations of the Commission of Inquiry. This was especially troubling given the detail with which this situation has been examined throughout the ILO supervisory system, and the extent to which the Office had provided its support. With respect to the application of the Convention, the Committee of Experts had expressed serious concern about the allegations of anti-union discrimination, threats, harassment and interference in internal trade union affairs. If violations of trade unions' rights were indeed increasing, it was all the more disappointing that these issues were not being adequately addressed by the Council for the Improvement of Legislation in the Social and Labour Sphere. The Government should take, without further delay, the necessary measures to ensure that the right to organize and bargain collectively was effectively guaranteed both in law and in practice. She encouraged the Government to work closely with its social partners and to hold regular consultations with the ILO so that the Committee of Experts would be in a position to confirm substantive, concrete and sustainable achievements at its next session. Considering her Government's long-standing commitment to enhancing democracy, the rule of law and respect of human rights in Belarus, she looked forward to the day when the right to organize and bargaining collectively would be a reality in Belarus.

**The Government member of the Russian Federation** emphasized the evident progress made by the Government in the implementation of the Convention and of the recommendations of the Commission of Inquiry. A constructive dialogue had been developed with all the social partners. A general agreement had been concluded for the period 2011–13 and provided, among other measures, for the development of social dialogue in the country. Tripartite seminars had been organized in collaboration with the Office and a plan of action had been adopted with a view to ensuring the implementation of the recommendations of the Commission of Inquiry. The Council for the Improvement of Legislation in the Social and Labour Sphere was empowered to examine the necessary measures for that purpose, as well as complaints from trade unions. Its composition had been modified, and it included representatives of the Government, the trade unions and employers. It had already examined issues relating to the registration of trade unions, complaints lodged by unions and the prospects for the development of the legislation respecting unions. A number of questions still needed to be resolved, such as the facilitation of the registration procedure for unions. A tripartite working group had been established for that purpose and had begun work in October 2010. As a result of this tripartite interaction, the Government had made significant progress in the implementation of the Convention and the recommendations of the Commission of Inquiry. The Government was taking tangible measures, which demonstrated its good will in that respect.

**The Government member of the Bolivarian Republic of Venezuela** emphasized the positive aspects, which had to be taken into account in the case of Belarus. This signified progress with respect to the discussions that had taken place in the Committee in 2010. The specific, coherent measures adopted by the Government to continue

to promote and implement social dialogue should not be overlooked, such as the establishment of the working group that had developed the general agreement, which had been signed in December 2010 and that applied to everyone in the country. In the context of that agreement, the Government had highlighted the preferential treatment given to trade unions regarding the cost of leasing union premises, the rent for which had been reduced to a tenth of its real value. Furthermore, the tripartite working group had been working since October 2010 to establish methods to enable implementation of the Commission of Inquiry's recommendations concerning the registration and legal domicile of trade unions, and technical assistance from the ILO was planned in this regard. Note was also taken of the planned tripartite seminar with the participation of the ILO, which indicated that progress was continuing with regard to social dialogue in the country. In conclusion, in view of the achievements so far and the ongoing technical assistance from the ILO, sufficient time was required to allow specific measures to be taken with a view to applying the Commission of Inquiry's recommendations.

**The Government member of China** emphasized that since June 2008 the Government of Belarus had engaged in cooperation with the ILO and had made remarkable progress in its work to ensure conformity with regard to its obligations under the Convention, including by the conclusion of a general agreement, the allocation of premises to trade unions at very favourable rents and the establishment of tripartite groups especially to discuss the issue of trade union registration. It was important to acknowledge the sincerity of the efforts of the Government in conjunction with the social partners and to allow sufficient time. The speaker expressed the hope that the ILO would strengthen its cooperation with the Government.

**The Government member of Cuba** emphasized the positive role of ILO technical assistance in developing the measures taken for the implementation of the Convention. The Government had made significant efforts to establish constructive relations, maintain dialogue with all the social partners and work in close collaboration with the ILO. The Government's political will had been demonstrated by the agreement to hold a tripartite seminar with a view to the effective implementation of the Convention. The continuation of technical assistance was therefore to be encouraged, together with open and unconditional dialogue and the analysis of the internal situation with a view to achieving the objectives of the Convention.

**The Government member of Canada** shared the serious concerns expressed by the Committee of Experts regarding the increasing violations of trade union rights and the continued suffering by trade union members from discrimination, including dismissals, non-renewal of labour contracts, threats, pressure and harassment. The continued interference of enterprise managers in the internal affairs of trade unions was also of concern. The Government should investigate these allegations and ensure that violations were remedied and perpetrators punished. The Government should further intensify its efforts to ensure full implementation of the recommendations of the Commission of Inquiry without delay, with the assistance of the ILO. Her Government urged the Government of Belarus to strengthen social dialogue and use the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere as a mechanism for meeting its commitments under the Convention.

**The Worker member of Poland** recalled that the Committee had, at its last session, trusted the Government to undertake specific measures to implement the recommendations of the Commission of Inquiry and to submit information on amendments proposed to specific national legislation. Unfortunately, the situation had not changed

in law or in practice with regard to the respect of human and workers' rights or the protection of independent trade unions' activities. These unions still faced obstacles in registering, the main obstacle for conducting trade union activities. Moreover, the number of violations of trade union rights had been increasing and members of independent trade unions still suffered from anti-union discrimination, including dismissals, the non-renewal of contracts, pressure and harassment, in addition to interference in internal trade union affairs. The Presidential Decree No. 164 (to improve the contract-based scheme of employment) had not solved the problem of pressure on independent trade unions, as members of these unions at many companies were forced to leave their union under the threat of non-renewal of their employment contracts. Short-term contracts also limited workers' rights to free choice of employment, including the right to not be deprived of work unfairly. The speaker underlined that the Government was expected to: (i) improve legal and administrative measures to ensure that workers enjoyed the rights enshrined in the Convention without any discrimination in law and in practice and implement fully the recommendations of the Commission of Inquiry; (ii) provide real and equal opportunities for workers to establish trade unions of their own choosing; (iii) eliminate obstacles to registration of independent trade union organizations; (iv) immediately stop the harassment and discrimination, particularly through the use of short-term contracts, against members of independent trade union organizations; (v) ensure that enterprise managers did not interfere in the internal affairs of trade unions; and (vi) instruct the Prosecutor General, the Minister of Justice and the court administrators that all complaints of interference and anti-union discrimination be thoroughly investigated and that measures be taken to punish those responsible. Lastly, she urged the Government to ensure that all allegations of anti-union discrimination be brought to the attention of the Council for the Improvement of Legislation in the Social and Labour Sphere.

**The Government representative** thanked those who had spoken in the debate, particularly the Government members who had supported her country's position. The Government was willing to accept constructive criticism and was open to dialogue and an examination of all the matters raised. The content of the discussion would be analysed thoroughly and efforts would be made to implement the Commission of Inquiry's recommendations. Some issues had yet to be resolved and for that reason the Government would continue towards the development of social dialogue and tripartism. However, it was incorrect to state that the Government was putting pressure on trade union leaders. No cases concerning wrongful dismissals or pressure had been brought before the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which had full power to examine such matters. Moreover, the labour inspection services were operating actively and had conducted inquiries into any violations of labour legislation. There were very few of the latter, however, as far as trade union rights were concerned. Furthermore, under the Labour Code, employment contracts could be for an indefinite duration or for a fixed term. Fixed-term contracts contained a number of advantages for workers, especially in terms of wages. They were concluded for between one and five years, which was not a short period, contrary to what had been said. The parties freely chose the type of contract that they wished to conclude. By concluding a fixed-term contract, they recognized that the employment relationship ended on expiry of the contract. That practice existed throughout the world and the ending of the employment relationship on expiry of a fixed-term contract was never considered to constitute dismissal. Labour relations de-

pended heavily on trust between the parties and it was to be hoped that the social partners, including the CDTU would adopt a positive attitude. The speaker emphasized that it was the Government that had taken the initiative to organize a tripartite seminar. The Government thanked the ILO and the workers' organizations which had supported the process and expressed the hope that an agreed position would be worked out shortly with all the social partners in order to resolve the issues relating to trade union registration. The Government was committed to the ILO fundamental principles and was ready to take the necessary steps, with the social partners and the ILO, to ensure their implementation in the country.

**The Employer members** noted that contract work was a complicated issue and that fixed-term contracts could be used in a manner that led to arbitrary practices. Therefore, a report from the Government was needed containing information on the context in which such labour contracts were used, to evaluate if such contracts were used against the requirements of the Convention. They indicated that the conclusions adopted by the Committee should urge the Government to address specifically the issue of anti-union discrimination, and that these questions should be brought to the attention of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere. As information had not been provided on possible employer interference with trade union activities, more information was required on the law and practice in this respect. Complaints of this nature should be investigated, and if the allegations were verified, punished. The Government needed to provide the Committee of Experts with a report on these actions, in addition to steps taken to address the collective bargaining issues and the recommendations of the Commission of Inquiry. Recalling that the Government had previously taken steps in this regard, they urged the Government to pick up the pace to become in full compliance with the Convention, as well as Convention No. 87, in law and in practice.

**The Worker members** observed that, once again, the Government of Belarus had not made sufficient progress in amending its laws and practice as it had been asked to do for years by this Committee, the Commission of Inquiry and the Committee on Freedom of Association. The Government representative had not explained how the new general agreement for 2011–13 was going to change the labour situation, prevent interference by employers, combat anti-union discrimination and organize collective bargaining with the participation of all trade unions at every level. She had given no information on the reinstatement of trade unionists in their jobs after they had been dismissed, as had been announced in 2010. On the contrary, the workers concerned had subsequently had their dismissal confirmed by the courts. A small step forward had admittedly been taken with the invitation of the BITU to engage in a national social dialogue and with the restoration of certain operating facilities for all unions. Nevertheless there was still a very long way to go before all forms of anti-union discrimination in law and in practice could be eliminated and before workers were able to establish and join trade unions of their own choosing. That was why the Worker members insisted that the Government take the following steps forthwith: revision of the system of temporary contracts, or at least putting an end to their abusive use; elimination of all existing obstacles to the registration of new trade unions; cessation of all interference by company managers in the internal affairs of trade unions; and the issuing of an instruction to the Public Prosecutor, the Minister of Justice and the judiciary to examine thoroughly all complaints of interference or discrimination and to punish those responsible. Before the next session of the Committee of Experts, the Government should also submit a report containing all rele-

vant information on allegations of discrimination, on the adoption of measures to implement the recommendations of the Commission of Inquiry and on the activities of tripartite bodies. Assistance of the Office in explaining the scope of the Convention would be welcome.

### 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 the Government's indication that a General Agreement for 2011–2013, covering all employers' and workers' organizations in the country, was signed on 30 December 2010 and that, guided by the spirit of cooperation embodied in this agreement, the Government had decided to restore preferential rental treatment for all trade unions. The Committee further took note of the information on the work of a tripartite working group set up by the Council for the Improvement of Legislation in the Social and Labour Sphere in May 2010.

**The Committee** noted with regret that no substantial progress had been made by the Government towards implementing the recommendations of the Commission of Inquiry since the discussion of this case last year, nor specifically as regards the concerns raised by the experts under the Convention.

**The Committee** further noted with regret new allegations of violations of freedom of association in the country, including allegations of interference in trade union activities, pressure and harassment. In particular, the Committee took note of the allegations of the use of fixed-term contracts to pressure workers into withdrawing their membership from the Congress of Democratic Trade Unions (CDTU) and its affiliated organizations.

Observing the Government's reference to the question of representativeness of trade unions and its refraining from addressing this point as asked by the ILO, the Committee wishes to recall that the concerns in this regard relate to the fact that the determination of trade union representativeness cannot be meaningful until the Government first puts in place the measures necessary to ensure full respect for the freedom of association rights of all workers, both in law and in practice. Such measures include the necessary legislative framework for the registration of freely chosen workers' organizations and a climate which ensures their effective recognition and the promotion of their collective bargaining rights. The Committee recalls in this respect the importance which it attaches to the need to guarantee the basic civil liberties of workers and employers and the intrinsic link between democracy and freedom of association.

**The Committee** urged the Government to intensify its efforts to ensure that freedom of association was fully and effectively guaranteed in law and in practice without delay and expressed the firm hope that the Government would continue its cooperation with the ILO and the social partners to this effect. It expected that the Government would submit, after an independent and impartial investigation, detailed observations on the allegations of anti-union discrimination, including as regards the anti-union impact of fixed-term contracts and employer interference in workers' organization, as well as information on any proposed amendments to the legislation to the Committee of Experts at its meeting this year. It trusted that the Government would provide substantive and concrete information in this regard as a demonstration of its political will to implement the Commission of Inquiry Recommendations and thus enable this Committee to be able to note significant and sustainable progress with respect to all remaining matters at its meeting next year.

**GREECE (ratification: 1962)**

A Government representative stated that the examination of the Greek case was a difficult task because it required consideration of complex information related to the reform of the collective bargaining system undertaken in the context of the current economic crisis. Her Government was aware of the sacrifices required from its people to combat the financial crisis, which had first appeared at the end of 2008, emerged in 2009 and escalated into 2010. The Government's priority had always been and remained the rescue of the national economy, fundamental for the sustainability of the welfare state and social cohesion. While appreciating the concerns raised by the Greek General Confederation of Labour (GSEE) regarding the right to organize and collective bargaining, the Government considered that this case, although raising important socio-political issues, was not a case of violation of the Convention.

The Government representative recalled that in 2009, Greece had entered a period of severe financial crisis, characterized by an extremely high deficit: the cost of public borrowing had become excessive, hindering the country's ability to obtain loans. To rescue the economy, a financial support mechanism had been established at the European level between February and April 2010 and a loan of €110 billion had been provided under the terms agreed upon between Greece and the Troika (the European Commission, the European Central Bank and the International Monetary Fund (IMF)). The terms of the loan scheduled the policy measures and the loan instalments in a period of three years. As far as labour law was concerned, the policies introduced in the Memoranda were epitomized on the following: the restriction of the public expenditure resulting in wage cuts, as a necessary component to control public deficit; improvement of the competitiveness of the economy through the decentralization of collective labour agreements; the reform of the wage-setting system; the development of flexible terms of employment; and reform of the social security system. The implementation of these measures had required prompt and effective adoption of new legislation introducing the following reforms. Firstly, regarding the GSEE's allegation about the reform of the system of collective agreements introducing the possibility of deviation among them, this reform, initiated by Act No. 3845/2010 on "Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the IMF", decentralized the system of collective agreements, by relaxing the principle according to which the collective agreements for the national, general and sector prevailed over collective agreements at the occupational and enterprise levels. Act No. 3819/2010 further provided for special enterprise level collective agreements, which could suspend, for a limited period of time, the implementation of more favourable clauses contained in the sectoral collective agreement applying to a particular enterprise. The national general collective agreement, however, remained in force and no deviation from its terms was possible. These reforms did not touch the principle of free collective bargaining enshrined in the Convention, as unions maintained the right to conclude collective agreements. The GSEE's allegation that the new legislation dismantled the solid machinery of the collective bargaining system was a socio-political argument but not a legal one. Secondly, regarding the GSEE's allegation about the exceptions from the minimum wages set by the national collective agreement for children (of 15–18 years) and young workers (of 18–24 years) these measures aimed at promoting young persons' access to the labour market and helping them to acquire work experience. The subsidization of their social security contributions by the Public Employment Service secured that their

real wages remained at the level set by the national general collective agreement. Thirdly, regarding the GSEE's allegation about permanent pay cuts introduced by Acts Nos 3833/2010 and 3845/2010 for employees in the civil service and all public sector legal entities, the said legislation was accompanied by measures to control and minimize expenses of the general government. Due to the seriousness of the situation, pay cuts had to be prompt, whereas collective bargaining was not time efficient to provide the necessary results. This was a unique and absolutely unprecedented practice in Greece. At the same time, free collective bargaining in the public sector on non-pay issues had not been affected or restricted. In the private sector, no pay cuts had been legislatively implemented and free collective bargaining had not been affected in any way. Under the heavy socio-political climate, a national general collective agreement was signed in July 2010 by the GSEE and employer's organizations. This collective agreement was of the utmost importance since it set minimum wage standards and other minimum work conditions for all employees in the country. For the first time in the history of collective agreements in Greece, the national general collective agreement had been concluded for a three-year period to provide for the stability of wages for the year 2010 and for increase of wages from 1 July 2011 and 1 July 2012, reflecting average Euro inflation of the previous year. Collective agreements signed in the country in 2010 and 2011 had similar clauses.

In 2010, the social partners showed outstanding responsibility in supporting the national effort to overcome the economic crisis, which was accompanied by the increase of unemployment and strong signs of economic recession, threatening social coherence of the country. The Government valued and respected social dialogue. However, the critical economic situation and complicated negotiations at the international level provided no room for consultations with the social partners prior to all legislative reforms. Constructive social dialogue in cases of national economic emergency was an extremely difficult task and required other time frames than those available at the time. The Government had to serve the public interest and put aside its long tradition for the observance of the free collective bargaining process, by introducing unprecedented wage cuts for employees in the public service and accelerating labour law reforms. While these measures had to some extent lowered the existing level of protection in certain labour law regulations, they had not touched upon the core of the fundamental rights set by ILO Conventions and Recommendations or the Greek Constitution. The measures affecting collective bargaining rights were limited in time and covered the years 2010 to 2012. While the Convention and the Constitution prohibited the Government from intervening in collective bargaining, these instruments did not restrict the legislator from taking measures to reform the system of collective agreements. The Government assumed full responsibility for the legislative measures taken to overcome the economic crisis. Its actions were inspired by the need to serve the public interest by saving the national economy. This case had high political sensitivity and concerned measures undertaken under the European policies and implemented under continuous monitoring and evaluation by the Troika. Such policies may also be implemented in other countries of the European Union facing similar economic crises. While the Government appreciated the EU's concerns and considered that the discussion of this case enhanced the awareness of the need for social cohesion, from the legal point of view, it considered itself to be in compliance with the core of ILO standards. It is in this spirit that the Government welcomed the Committee of Experts' suggestion for a high-level mission visit and was

already in touch with the Office for the necessary preparations, for the understanding of the economic and legal complexities of the Greek case and the evaluation of ILO standards observance in a developed country under economic crisis.

**The Worker members** stressed that the case under discussion had been selected because of the Greek trade union movement's concerns about the legislation that had been or was going to be introduced as part of the country's economic support measures. The information sent to the Committee of Experts concerned this Convention, but it also touched on related Conventions such as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Social Security (Minimum Standards) Convention, 1952 (No. 102). Moreover, it raised some of the issues covered by collective bargaining, such as protection of wages, equal remuneration, discrimination in employment and within occupations, employment policy, minimum age, social security, labour administration and workers with family responsibilities. The Committee of Experts had called on the Government to monitor the impact of the policies adopted under the international support mechanism and to send it a detailed report on the application of the relevant Conventions in 2011, and it would therefore shortly be considering these issues in the light of the very recent adoption of a new three-year budget adjustment programme to follow that of May 2010, which would entail additional austerity measures. The disputed points with respect to the Convention concerned three laws that had been adopted under the first public finance rescue plan that had been negotiated with the countries of the Euro zone and with the IMF: Act No. 3833/2010 on the "Protection of the national economy – Emergency measures to tackle the fiscal crisis"; Act No. 3845/2010 concerning the measures to implement an economic support mechanism set up by the States Members of the Eurozone and by the IMF; and Act No. 3863/2010 on the "New social security system and relevant provisions". Act No. 3845 completely changed the hierarchy of collective labour agreements that had been established under a 1990 Act by allowing collective agreements at the enterprise or branch level to derogate from national or sectoral agreements, thereby dismantling a robust collective bargaining system that had previously functioned without any problem. It removed children (of 15–18) and young workers of 18–24 years from the scope of collective labour agreements and allowed their wages and working conditions to be determined by decree. It also provided for drastic and permanent wage cuts in the public service, including areas where labour relations were determined by private contracts of employment as part of the collective agreement system. Those measures had been adopted either without the social partners being consulted at all or after a mere show of consulting them on predetermined conclusions. Although the reasons behind the measures were circumstantial, they were in fact structural in nature. The measures were quite disproportionate, and yet no more socially balanced options had been considered. Because of the combined effect of dismissals, wage freezes and the abandonment of minimum wage levels, those three laws would result in a permanent and unjustifiable dilution of workers' rights, whereas the Committee of Experts had rightly pointed out that any exceptions to existing standards – even though they might be justified in particularly pressing circumstances – must be allowed only in exceptional and temporary circumstances. The experience of the trade union movement showed that governments often took advantage of crises to introduce measures that were designed to restrict workers' rights rather than to apply carefully thought-out economic adjustment strategies. It was important to understand the real impact and implica-

tions of a case such as that of Greece and to realize that the measures that were taken were never temporary and that the ramifications of policies of austerity went far beyond the borders of a single country. As the Committee of Experts had observed in its general survey, "It appears that in some cases the imperative need to achieve fiscal consolidation has not been balanced with sufficient concern for the social and human costs of such rapid austerity measures. Not only social cohesion will be put at risk, but in such conditions the economic recovery may be accompanied by a prolonged 'human recession'. One should also remember that governing only by financially oriented criteria may lead to an undermining of social justice and equity. Public opinion is much less ready to accept drastic austerity measures if it sees that the efforts requested are not equally distributed and shared by everyone." There was every reason to worry that blaming too much on the crisis might in the long run invalidate the ILO's supervisory machinery, since it undermined the very essence of the Organization's founding principles. Greece must therefore not be allowed to become a laboratory for the radical and permanent revision of fundamental Conventions and a means of dismantling systems of collective labour relations.

**The Employer members** pointed out that the facts under examination concerned new legislation – austerity legislation enacted in 2010 by the Government and the Parliament to deal with a serious and structural financial and economic crisis. This was the first time that the crisis response had been brought before the Conference Committee but not the first time the Committee of Experts had made comments on the application of this Convention by Greece. Since the ratification of this Convention by Greece in 1962, the Conference Committee had discussed issues regarding its application in Greece only in 1989 and 1991. The Employer members observed that, since the Government had not communicated its reply to the Committee of Experts' 2010 observation, the Committee of Experts views were based solely on the complainants' allegations. For this reason, the facts on which the Committee of Experts relied upon were incomplete. Thus, the Conference Committee could not make firm recommendations. While expressing their deep concern at the grave circumstances faced by the Government, employers and workers in the country, the Employer members stressed the need to follow a careful approach in order not to make the matter more divisive or worse by pre-emptive conclusions based on an incomplete picture. The Committee's task should be limited to discussing issues regarding the Convention. As regards the complainants' argument concerning multiple levels of minimum wages, this was not exceptional and did not in itself constitute a violation of the Convention. On the first issue raised by the Committee of Experts concerning the need for full and frank consultations with employers' and workers' organizations before the enactment of emergency legislation altering the machinery for collective bargaining, they pointed out that without the Government's reply, it was not clear whether that occurred and, if so, how, or if not, why not. As regards the second issue on the potential impact of changes to the collective bargaining machinery on compliance with other ILO Conventions ratified by Greece, they commented that the Committee of Experts was conveying an impression of potential widespread breaches, which may be premature. In the absence of a Government reply, the Employer members expressed caution with regard to the Committee of Experts recommendation that the Government avail itself of technical assistance and that a high-level mission visits the country to facilitate a comprehensive understanding of the issues. In this regard, the proper application of the Convention did permit emergency measures to be implemented subject to certain ca-

veats. The terms of Article 4 of the Convention, referring to “measures appropriate to national conditions” could hardly be more relevant than in a case where there was a national economic and financial crisis in a debt laden country. The call for a mission of the type proposed by the Committee of Experts must be approached with great sensitivity at least until the Government’s position was understood, and until the situation had stabilized. Moreover, while the Committee of Experts made this suggestion, paragraph 72 of the Committee of Experts’ Report, which highlighted cases in which technical assistance for member States would be useful, did not mention Greece amongst the listed cases. While noting that legal or political observations by an international body like the ILO could be misinterpreted by outside actors and affect confidence and coherence in the direction of policy from other international actors, the Employer members urged caution in the nature and timing of ILO responses which at the very least would need the cooperation with the Government to have real benefit. Finally, they observed that the Government had indicated that an ILO mission would be welcome and this was encouraging.

**The Worker member of Greece** stressed that the suggestion for technical assistance was particularly welcome since the measures implemented in Greece were both complex and pervasive. She hoped that a high-level mission would fully clarify these measures and their wide ranging implications on the application of the Convention and other Conventions ratified by Greece. She stressed that not only the legislation invoked in the last comments remained in force, but over the last 12 months, various laws containing more than 100 legal provisions had been adopted, which further deconstructed the basis for collective agreements. The situation was an emergency situation but the measures were permanent, disproportionate and with harmful irreversible effects. Social dialogue degenerated into summary, informative and superficial procedure. Three times over the last year, workers in the public sector, especially public utility companies, saw their wages reduced up to 25 per cent by unilateral and permanent measures in violation of standing collective agreements. Last week, by a new unilateral decision, the Government increased the compulsory unemployment contribution in wages from 0.5 per cent to 3 per cent. A new element of concern was the thrust against sectoral collective agreements in a new law of December 2010, which established the special enterprise-level collective agreement. Under this law, any employer, by threatening with lay-offs, could effectively force a union to consent to standards lower than those of the binding sectoral agreements. Also, she/he could unilaterally or by consent convert full-time work contracts into part-time or into reduced-term rotation work, the worst form of flexible employment. This legislation, that favours potentially unions controlled by the employers, had weakened the workers’ bargaining position in many sectors crucial to the economy, such as tourism. A number of collective agreements which had expired at the beginning of 2010, covering thousands of workers, had been renewed with great delay, but yielded mostly zero wage increase, or their renewal was still pending. Moreover, recent data from the Labour Inspectorate showed a dramatic surge up to 2.725 per cent in just two months in individual contracts, mainly concerning reduced-term rotation work after the adoption of the abovementioned legislation. Individual contracts negated the very concept of negotiation and de facto undermined collective bargaining and the essence of trade unionism potentially rendering trade unions useless. Recalling the European Commission criticism over the Government’s inadequacy in eliminating sectoral agreements and replacing them with enterprise-level contracts, she pointed out that the European Commission and the IMF

approach to determine by law the level of bargaining in Greece went directly against the principle of free and voluntary collective bargaining embodied in Article 4 of the Convention, according to which, the determination of the bargaining level should essentially be left to the discretion of the parties. She remarked that this case posed a fundamental question regarding the value, the validity and dependability of principles under emergency conditions when they were more needed as a stable frame of reference. She concluded by stating that the qualitative and quantitative regression of the labour market, in spite of the crisis, should not settle into a long-term deep social regression and demolish social cohesion. The situation in Greece had a complex socio-political context, but the case presented by the GSEE was firmly founded on the standards framework and facts. Ratification of Conventions should be taken seriously, not only by Greece but by all parties involved in the loan mechanism. Further evidence and updated data would be presented to the ILO and hopefully to the high-level mission. The added value of this discussion lay in sending a strong message to respect standards, to uphold the autonomy of the social partners and to promote effective social dialogue in which trade unions and workers were part, and not the targets, of the solutions.

**The Employer member of Greece** wondered whether it was possible to declare discussion of this case inadmissible, given that the Committee of Experts had not had time to formulate observations and that the time allowed to the Government to submit its report had not yet expired for 2011. In addition, a high-level ILO mission was to visit the country just after the end of the current session of the Conference, as the Committee of Experts had also noted in its report. All those factors showed that this case had not yet reached the required maturity for discussion by the Conference Committee, unless the aim was to ensure that, from now on, the Conference Committee was seized with cases before the Committee of Experts had given its view. While taking note of the statement made by the Worker member of Greece, the speaker suggested that the Conference Committee should refrain from drawing any conclusion on the case and should await the results of the high-level mission and the comments of the Committee of Experts.

**The Government member of France**, speaking also on behalf of the Government members of Austria, Belgium, Cyprus, Estonia, France, Germany, Italy, Lithuania, Luxembourg, Portugal and Spain, stated that these countries were fully aware that since May 2010, Greece had adopted financial and legal measures with a view to reducing the public deficit and restructuring the labour market, aiming to advance the competitiveness of its economy. These countries believed in the importance of social dialogue, respect for workers’ rights and the autonomy of social partners in collective bargaining, and attached great importance to the upcoming ILO high-level mission to Greece.

**The Worker member of Spain** stated that the moment had come to examine this case, rather than waiting until the Greek economy had collapsed or workers’ rights no longer existed. Revising the Greek system of collective bargaining had an impact on compliance with other international labour standards and on the European social model. In reality, the crisis was being used as a pretext to dismantle a model founded on economic development and social cohesion so as to benefit financial capital and speculation. The austerity plan drawn up by the European Union using the European Governance Plan and the Pact for the Euro was founded on fiscal austerity and cutting social benefits and salaries and undermining collective bargaining, which would only serve to worsen the social situation in countries, particularly those subject to perma-

nent control of financial markets. It was unacceptable that those who had benefited from financial rescue packages using public resources were requiring workers to make ever more sacrifices. As the Committee on Freedom of Association maintained, in the case of budget adjustments or stabilization policies that entailed restrictions on the free setting of wages, the following requirements should be met: such measures should be exceptional, restricted to those necessary, not exceed a reasonable period of time (the Committee considered three years to be too long), and accompanied by sufficient guarantees to protect workers' standard of living. None of those requirements had been fulfilled in Greece. It was even more worrying that certain institutions, particularly the IMF, were putting pressure on some countries not to comply with international labour standards.

**The Worker member of Germany** emphasized that the proposals of the European Commission, Governments of Member States of the European Union, the European Central Bank and the IMF to resolve Greece's financial difficulties had resulted in the adoption of legal and administrative measures that were undermining the fundamental rights of the social partners, and especially the trade unions. The Greek Government's restrictions on the right of unions to bargain collectively were quite out of proportion; moreover, on the grounds that urgent measures were called for, it had imposed a wage freeze without setting any clear time frame. The Government's attempt to occupy what had always been the social partners' preserve should be categorically condemned, since it ran counter not only to the Convention but also to other standards of the ILO and of the European Union, whose Charter of Fundamental Rights recognized the workers' right to form trade unions and to negotiate. In May 2011, the European Trade Union Confederation called on the ministries of economy and of finance of the European Union and on the Government of Greece to respect the autonomy of the social partners. Moreover, the fact that the European Court of Justice gave precedence to capital and services over labour rights needed to be corrected, for example by including a social progress clause in the texts governing the European Union. In conclusion, the speaker expressed his unqualified support for the recommendations of the Committee of Experts with respect to the promotion of employment and equal opportunities, decent remuneration, good working conditions and the need to respect the freedom and autonomy of the social partners in negotiating and determining conditions of employment at the enterprise and sectoral levels.

**The Worker member of France** stated that the Act of 5 May 2010 called into question the precedence of the national general collective agreement since agreements concluded at the sectoral and enterprise levels could deviate from the terms of the sectoral agreements and thus from the national general collective agreement. In shifting the level of bargaining towards the enterprise, the Act under discussion had some negative side effects and favoured discriminatory and exclusionary measures, especially towards young persons, and women. The dismantling of collective bargaining had its first impact in terms of unemployment, affecting four out of ten young persons. Together with Spain, Greece had the highest share of young persons among the unemployed in Europe (40 per cent against 21.4 per cent in Europe). The general unemployment rate was likely to reach 22 per cent by the end of 2011. Young workers found themselves in an unprecedented precarious situation, holding apprenticeship contracts remunerated at 70 or 80 per cent of the minimum basic wage, or holding the so-called "newly hired" contracts. Such a deviation from minimum protection was taking place at the same time as the issue of social protection had been given special importance during this session

of the Conference. The fact that such contracts were not in conformity with ILO Conventions had already been recognized. The dismantling of that level of bargaining had also affected equality between men and women as demonstrated by the increased unemployment rate among women, at 18.7 per cent compared to 11.6 per cent for men, in addition to wage inequalities reaching 20 per cent. The categories most affected by such precarious conditions of employment were young women, mothers, older-aged women, and migrant female workers. She emphasized that a charity organization called SOS Village based in Athens and Thessaloniki, had registered an increase of 45 per cent in demands from single mothers only, in one year. The fact that the agreement was called into question engendered unacceptable social consequences and impacted negatively on the strategic objective of employment as reiterated in the ILO Global Jobs Pact as well as in numerous ILO Conventions. The standard-setting framework of the ILO was itself called into question by conditions imposed by the IMF which provoked a problem of coherence in the international decisions. In conclusion, the speaker stressed the need for the Conference to deliver a strong message in order to be able to come out of the economic crisis by guaranteeing protection and social cohesion through a process of democratic and inclusive debate and the respect for fundamental labour rights. She called for the strict application of the Convention.

**The Worker member of the Bolivarian Republic of Venezuela** expressed support for the workers of Greece in their fight against violations of their right to bargain collectively, as a result of the agreement between the IMF and the European Union. In effect, Greek workers' rights to stability, social security, decent working hours and collective bargaining, won through struggle and sacrifice, were being undermined in tackling a crisis not of their making. The measures taken would simply lead to greater exploitation of workers to benefit monopolies. The public sector had already seen two rounds of drastic wage cuts in 2010, violating collective agreements in force, while the cost of the family shopping basket, transport and electricity had risen continuously.

**The Government representative** expressed her deep appreciation for the common statement made by the Governments of Austria, Belgium, Cyprus, Estonia, France, Germany, Italy, Lithuania, Luxembourg, Portugal and Spain, and shared their view about the importance of the upcoming ILO high-level mission to Greece. She indicated that her comments would address only issues related to Convention No. 98 but recalled that the Government's reply, which had already been sent to the Office, contained all necessary information regarding the other Conventions affected, according to the GSEE allegations. She also indicated that additional information would be provided to the Committee of Experts in the context of regular reporting while any further legislative developments would be discussed during the visit of the ILO high-level mission. Her Government acknowledged that current reforms were affecting labour law, but considered that the decentralization of collective agreements that had been introduced did not restrict the freedom of collective bargaining. She further pointed out that the reforms were introducing more flexibility, but as the upcoming ILO high-level mission visit would have the opportunity to attest, did not touch upon the core of ILO standards. She expressed the view that austerity measures affected mainly job opportunities and the quality of wages but these were economic factors. She noted that social dialogue concerning some of the necessary legislative measures could not take place due to the limited time available, while collective bargaining proceeded smoothly except for the question of wage cuts in the public sector. Her

Government remained committed to the promotion of social dialogue, collective bargaining, trade union and social rights as fundamental values securing social cohesion. Economic policies, even in times of crisis, required the understanding and involvement of the people themselves. All measures taken by the Government, no matter how painful for the citizens and the country, had been taken, recognizing the need to maintain social cohesion. In the Government's view, the rescue package of the Greek economy was compatible with international labour standards. The Government representative concluded by stating that the ILO high-level mission would have the opportunity to further examine the situation and appreciate the complexity of the legal and socio-political issues involved. Her Government firmly believed that there had been no violation of ILO core labour standards, and that it would be premature to draw any conclusions at this stage.

**The Employer members** welcomed the Government's acceptance of a high-level mission. They noted the statements of the employer and worker members of Greece that conveyed the right spirit with which the Committee ought to deal with matters of significant economic, industrial and social concern. The Employer members felt that steps had been taken and it was important to ensure that these did not offend the principles and provisions of the Convention. They stressed that the Committee's conclusions needed to be realistic, to convey a thorough understanding of the situation, and to be respectful of the support that was being provided to Greece by European Union Member States and the International Monetary Fund. The Committee had to remain conscious of the broader picture. It needed to express its concern about the circumstances facing, not just the workers and the employers in the country, but also the Government, as it sought to navigate through the crisis. The Employer members expressed the view that based on the discussion and the willingness of the Government to accept further information-gathering, fact-finding and analysis, the foundations were laid for a proper assessment of the Convention.

**The Worker members** considered it was important for the Committee to send a strong message to international organizations and financial institutions, in view of the present global context in which anti-crisis measures were eroding workers' rights. The economic policies adopted to overcome the crisis and to achieve economic recovery could not be effective if they did not take into account the need to guarantee social cohesion and the social protection of all citizens. The drastic deregulation of industrial relations which was taking place in Greece would not lead to economic development or maintain the competitiveness of enterprises. In that context, the Government should embark on effective and open tripartite dialogue on the measures which had been adopted in the framework of a rescue plan, without any consultation with the social partners. That dialogue would have the objective of verifying whether the financial rescue measures which had been taken, and which jeopardized the system of industrial relations, were really justified. It would also provide an opportunity for an assessment to be made of whether it was more appropriate to adapt temporarily the Industrial Relations Act, which had up to now guaranteed social peace, rather than undertaking a definitive reform of the Act. Finally, it would show the extent to which the information communicated by the Government representative gave effect to the principles contained in the Convention. The Worker members welcomed the proposal made by the Government to accept a high-level mission and expressed the hope that the mission would address the entirety of the points raised in the discussion and that it would also contact the EU and the IMF.

## **Conclusions**

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

The Committee noted the information provided by the Government representative concerning the reform of the collective bargaining legal framework due to the current economic crisis. She stressed that the Government's top priority was, and remains, the rescue of the national economy as a fundamental requirement for the sustainability of the welfare state and maintaining social dialogue. She recalled that the terms of the necessary loan agreement between the European Commission, the European Central Bank and the International Monetary Fund (IMF) were stipulated in the Memoranda accompanying it. As regards the pay cuts in the civil service and the public sector legal entities, the Government representative stated that, due to the seriousness of the situation, the pay cuts had to be prompt and collective bargaining in these circumstances was not time efficient. While reaffirming the great importance which the Government attached to social dialogue, she emphasized that the critical economic situation and the complicated negotiations at international level provided no room for consultation with the social partners prior to the legislative reforms. The Committee noted that the Committee of Experts had before it numerous allegations from the Greek unions concerning the non-application of the Convention, particularly as regards the promotion of collective bargaining and the autonomy of the bargaining partners.

The Committee welcomed the constructive nature of this discussion on a subject whose consequence went far beyond the particular matter before it. It recalled the importance of the principle that restrictions on collective bargaining as part of a stabilization policy should be imposed only as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and they should be accompanied by adequate safeguards to protect workers' living standards. It looked forward to having at its disposal full information to enable it to determine whether this principle is being applied. The Committee requested the Government to intensify its efforts and undertake full and frank dialogue with the social partners to review the impact of the austerity measures taken or envisaged with a view to ensuring that the provisions of the Convention are fully taken into account in future action. It welcomed the Government's indication that it was working on arrangements with the ILO for the visit of the High-Level Mission proposed by the Committee of Experts. It considered that contact with the IMF and the European Union would also assist the Mission in its understanding of the situation. It invited the Government to provide additional detailed information to the Committee of Experts this year on the matters raised under the Convention and on the impact of the abovementioned measures on the application of the Convention.

## **ROMANIA (ratification: 1958)**

A Government representative assured the Committee of her Government's commitment to improving the labour legislation and complying with international labour standards. She provided information on each of the points raised by the Committee of Experts. With regard to protection against acts of anti-union discrimination and the allegations of the International Trade Union Confederation (ITUC), the Government would organize a tripartite meeting with the social partners on the subject following the present session of the Conference. However, it should be noted that the national legislation was more favourable than the Convention, as it provided that negotiations were compulsory in enterprises with at least 21 employees and that, subject to agreement between the parties, negotiations could be held also in enterprises with less than 21 employees. Moreover, the legislation did not provide

for the dismissal of trade union leaders in the case of an unlawful strike. With reference to the allegations made by the Block of National Trade Unions (BNS), the registration of collective labour agreements concluded at the enterprise level was the responsibility of the local administration. However, the lack of training of the personnel responsible for social dialogue in relation to the techniques for the resolution of disputes concerning representative status for collective bargaining and the absence of an up-to-date database of representative trade unions at the enterprise level gave rise to problems. To limit their impact, amendments were made to the Act on labour inspection, so that the registration of collective agreements concluded at the enterprise level now was carried out by the regional labour inspection services. With reference to the sanctions imposed in the case of restrictions on trade union activities, the Government would provide information in its next report, taking into account the fact that they were within the competence of the labour inspectorate and the Ministry of Justice. The Government representative referred to two types of labour disputes: conflicts of interest, relating to collective bargaining and which were subject to conciliation, and disputes as to rights, which were resolved by the courts. In 2010, a total of 73 conflicts of interest had been registered, of which 71 had been submitted to conciliation, related to the refusal to commence the compulsory annual bargaining round, to sign the negotiated contract or differences that had not been resolved in the context of the negotiations. During the first quarter of 2011, some 24 labour disputes had been registered for the same reasons. With regard to the sanctions envisaged in the case of acts of interference and anti-union discrimination, she indicated that they had been set following consultations with the social partners, in accordance with the legal regime governing penalties and the Code of Criminal Procedure. Their amount had been increased tenfold by the Social Dialogue Act. With respect to collective bargaining in the public budget sector, she considered that the exclusion of the determination of wages from bargaining was not in violation of the provisions of the Convention and the Collective Bargaining Convention, 1981 (No. 154). With reference to Case No. 2611, following the notification by the Ministry of Labour to the Court of Accounts recalling the obligation to negotiate a collective labour agreement, negotiations had commenced in February 2011 between that institution and the Legis union, and several working meetings had been held. Law No. 284/2010 on Unitary Salaries of Staff Paid from Public Funds, provided that the wage entitlements of such personnel, consisting of public officials and contractual employees, were not subject to collective bargaining, but were determined by law. She considered that this practice was not contrary to Article 6 of the Convention and made it possible to ensure equity and non-discrimination between contractual employees and public officials. Moreover, the system had been introduced at the request of representative unions at the national level with a view to eliminating inequalities and promoting employment in the private system. Finally, with reference to the modifications to the labour legislation, following long consultations with the social partners, the new Labour Code and the Social Dialogue Act had entered into force. The objective of the Labour Code was to introduce greater flexibility into industrial relations, in accordance with Romania's European commitments. The Social Dialogue Act made collective bargaining more flexible, by reinforcing the role of the unions and of bargaining at the enterprise level, and was considered as the vector of wage and employment policy. The Act on the Status of Public Officials would also be revised to take into account the new Social Dialogue Act.

**The Worker members** recalled that the Government had agreed with the social partners to proceed to improve the labour legislation, including in relation to social dialogue. Even though the Committee of Experts, at its last session, had not received any information on the changes made to a number of laws, major reforms had taken place in January 2011. The main trade unions in Romania had requested a technical opinion from the ILO on the draft Labour Code and the Social Dialogue Act. That opinion, even though it had been issued outside the working framework of the supervisory bodies, constituted an excellent basis for work inasmuch as it identified a number of provisions which posed problems of conformity with the Convention. The reform of the Labour Code and of the Social Dialogue Act, which formed part of the reforms driven by the European Union and the IMF, had not been discussed with the social partners or been the subject of democratic debate and had been implemented without taking account of the ILO's technical opinion. The reform not only constituted an attack on social dialogue, since the social partners had not been consulted on a subject which came well within their competence, but also dealt a damaging blow to collective bargaining. The purpose of the reform was to obtain a more flexible labour market, to be in step with European directives and attract foreign investors. That affected dismissals, employment contracts, working time, collective labour relations and the regulation of collective bargaining through new rules on representativeness. Thus, for example, collective bargaining would no longer be *erga omnes* but would be subject to criteria linked to the number of workers represented by the signatory organizations, and the negotiation of wages in the public sector would be according to parameters which were not open to negotiation. The Worker members emphasized that the pressure from financial institutions obliged States to engage in labour law reforms without proceeding with serious reforms of a macroeconomic nature. Social protection in the broad sense seemed to have become the only variable that could be used to save the economy and finances of States. The workers were not responsible for the crisis but it was they who had been paying the price for it over the last three years. Governments had to make choices that maintained the balance between a healthy economy and protection of the population (which included the quality of work and social protection) in order to preserve social cohesion. The Worker members recalled the working paper presented at the symposium celebrating the 60th anniversary of the Convention, which emphasized, in connection with the impact of stabilization and structural adjustment policies on wage fixing and conditions of work, that such restrictions should be applied as an exceptional measure, be limited to what was necessary, not exceed a reasonable period of time, and be accompanied by appropriate guarantees to provide effective protection of the standard of living of the workers concerned, especially those who were likely to be affected the most. Any reform of the legislation on conditions of work and collective bargaining that failed to respect those criteria and was conducted outside the process of democratic consultation of the social partners and Parliament, should immediately be declared unconstitutional. Consequently, the reform of the legislation conducted in Romania should be reviewed with the competent departments of the ILO regarding its conformity with the Convention, and the social partners and the ILO should assess whether the abovementioned criteria had been taken into account.

**The Employer members** recalled that this was the first time that the case had been examined by the Committee, although the individual case concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), had been examined in 2007 and

the Committee of Experts had made observations to the Government on Convention No. 98 in 1996, 1998, 2000, 2006, 2007 and 2009, as well as direct requests, the last of which had been in 2004. With regard to anti-union discrimination, they agreed with the Committee of Experts request for the Government to initiate discussions with the most representative social partners and to keep it informed of any developments in that respect. They added that it was appropriate to request the Government to provide its observations on a series of allegations made by the ITUC and the BNS. The request for statistical information was also appropriate. With regard to protection against acts of interference, they said that the conclusion of the Committee of Experts was premature in requesting an increase in the amount of sanctions, when information had not yet been received from the Government on the alleged anti-union discrimination. They emphasized that, before seeking to resolve the issue, it was necessary to wait for the information that the Government was to provide to the Committee of Experts. With reference to collective bargaining by public servants not engaged in the administration of the State, they recalled that the observation of the Committee of Experts referred to the analysis made by the Committee on Freedom of Association in Cases Nos 2611 and 2632. They added that the Government had indicated in its report that Law No. 330 on Unitary Salaries of Staff Paid from Public Funds had been adopted in 2009 and that it referred to all workers in the public sector, including public employees engaged in the administration of the State. They recalled that Article 6 of the Convention did not cover the situation of such employees, and that it was therefore a matter to be addressed within the context of Convention No. 154, which had also been ratified by Romania. They reaffirmed that workers in the service of the State should enjoy their right to collective bargaining subject to the limitations of each country and in accordance with the national situation. In conclusion, they indicated that the Committee of Experts had adopted the correct approach to the issue of the amendment of the national legislation. They specified that there should be tripartite revision of the system of compulsory bargaining in enterprises that had more than 21 workers.

**The Worker member of Romania** said that the Government had embarked on labour legislation reform taking account only of conditions imposed by the international financial institutions to tackle the crisis and ignoring the observations made by the social partners. Amendments to the Labour Code and the Social Dialogue Act had been adopted by Parliament under the direct responsibility of the Government, thereby preventing any democratic debate, which constituted an attack on social dialogue and the social partners. Furthermore, technical advice from the Office concerning the texts had not been taken into account. The speaker mentioned several provisions of the new Social Dialogue Act which ran contrary to the Convention, inter alia, by providing for the disappearance of collective contracts at sectoral and even national level; imposing levels of negotiation; establishing arbitrary criteria for representativeness, such as having to have local units in half the country's departments or, in a particular enterprise, having to have a number of trade union members equivalent to at least a simple majority of the number of employees at that enterprise; and making the Government the competent authority to determine the sectors in which collective negotiations would take place, which reduced the social partners to a mere advisory role. In that regard, the Office had expressed the technical opinion that the criteria of representativeness would be difficult to meet and that, in the future, collective bargaining would mainly take place with workers' representatives, thereby undermining trade unions that already existed at enterprises. Consequently, the Government should put an end

to the serious violations of international labour Conventions that it had ratified, by ensuring that its legislation was in conformity with them. To that end, a direct contacts mission would be necessary.

**The Employer member of Romania** stated that as an employer representative who had participated in the process of revision of the Labour Code and of the Social Dialogue Act, he could attest that the Government might well have committed certain formal or procedural errors but had not in any case violated the Convention or other ratified Conventions. By the end of 2010, five trade union confederations and 13 employers' confederations represented more than 60 per cent of the active population and over 90 per cent of enterprises. In view of such situation, the Government decided to revise the legislation to better reflect reality. In the course of five months of consultations, the social partners formulated proposals and the Government decided the final form of the legislation that set out concrete criteria for the determination of the representativeness of employers' and workers' organizations. Romanian employers were satisfied with the final legal text, all the more so as the negotiations were carried out in an appropriate legal framework. The speaker concluded by emphasizing that the employers did not share the trade unions' views about the alleged violation of the Convention, and he called for moderate and balanced conclusions in this case.

**The Worker member of France** expressed his astonishment at the statements made by the Employer member of Romania and the Government representative, which gave the impression that all ILO standards were observed, while in reality the legislation adopted contained anti-union provisions. He emphasized that the bailing out of the international financial system had had repercussions on the finances of countries and that the resources allocated to education and social protection had been reduced. The case of Romania was of concern to the trade union movement, as it symbolized the trend that existed in Europe, which was harming the economic, political and social rights of workers and their representative organizations. The national debt could not in any case justify the imposition of the Labour Code by virtue of an exceptional procedure, without consulting workers' organizations or any plenary discussion in Parliament. That was a serious violation of the spirit and letter of the Convention, which undermined the principles of collective bargaining, as well as other principles contained in other Conventions, with the aim of weakening workers. Such violations were tending to spread to other countries and the ILO needed to be attentive. It was therefore appropriate to invite the Government to accept a direct contacts mission with a view to bringing its legislation into conformity with the relevant international labour standards.

**The Worker member of Hungary** referred to the changes recently introduced with respect to the representativeness criteria required for engaging in enterprise-level collective bargaining and stated that the new criteria were not in conformity with Article 4 of the Convention. Raising the threshold for collective bargaining would result in many trade unions being unable to engage in collective bargaining which would be carried out only by elected workers' representatives for whom no representativeness criteria had been set. The Convention contained two essential aspects: action by public authorities to promote and develop collective bargaining; and free and voluntary negotiations which implied autonomy of the social partners. The new Romanian legislation on representativeness could not be seen as either promoting collective bargaining or respecting voluntary bargaining of autonomous partners. It was emphasized that collective bargaining was not a gift of public authorities to workers' organizations, but rather a result of more than a one hundred years' fight

of the trade union movement. Recalling that collective bargaining was today universally recognized as a fundamental workers' right, she stated that the new Romanian legislation was seriously weakening rather than promoting collective bargaining. She therefore urged the Government to take all appropriate measures, after meaningful consultations with the social partners and with the technical assistance of the ILO, in order to bring its legislation in line with the Convention.

**The Government representative** recalled that her Government was committed to improving the situation and had always been attentive to allegations and comments. The Government would keep this Committee informed of any legislative developments and would reply in detail to the points raised during the discussion. The crisis her country had gone through called for urgent legislative and administrative measures. The new legislation, which was adopted in the framework of a continuous and transparent tripartite social dialogue, offered certain flexibility and facilitated the adaptation of industrial relations to new socio-economic realities resulting from the crisis. By way of example, within one month from the adoption of the new Labour Code, 330,000 contracts of employment had been recorded as a result of labour inspection controls undertaken in the context of the fight against irregular employment. Those workers could, hereafter, enjoy the benefits of social protection. The speaker concluded by expressing the hope that the Government would continue to take advantage of the technical assistance of the Office and that it would pursue fruitful cooperation.

**The Employer members** said that they considered it appropriate to promote tripartite discussion with the main employers' and workers' organizations on controversial topics. It would be sensible to await the supplementary replies that the Government would send in its next report, so that the Committee of Experts could examine certain issues in more detail. They reminded the Government that it could request technical assistance from the ILO as regards amending national legislation on dispute settlement, collective agreements, trade unions, the status of public servants and other matters.

**The Worker members** reiterated that it was important that the Government accepted the idea of an urgent abrogation of the Labour Code and of the Social Dialogue Act, which had been adopted hastily, without consulting the social partners, and which were contrary to workers' rights and collective bargaining. In the reform process, the tripartite partners should avail themselves of the technical opinion prepared by the ILO. This process should give rise to a new debate which should not only evaluate conformity with the Convention but should also analyse whether the restrictions introduced by the laws regarding contract of employment and collective bargaining were exceptional in nature; were limited to the extent that it was necessary; did not exceed a reasonable period; and were accompanied by adequate safeguards to protect workers' living standards. The Government had to accept the technical assistance of the ILO in the form of a high-level mission which could address all these issues with the effective participation of the social partners. In addition, the Government should provide, for the next session of the Committee of Experts, detailed information on any progress made.

### Conclusions

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

**The Committee noted the conclusions and recommendations of the Committee on Freedom of Association and the comments made by the Committee of Experts concerning legislative restrictions on the scope of collective bargaining**

for public servants, including those who are not engaged in the administration of the State (such as teachers). In particular, it noted the exclusion from the scope of collective bargaining for these workers of subjects such as base salaries, pay increases, allowances and other staff entitlements which were fixed by law. In addition, Act No. 330/2009 on Unitary Salaries of Staff Paid from Public Funds stipulated that salaries were fixed exclusively by law and could not be negotiated. Finally, the Committee of Experts had been referring to the insufficiency of the fines imposed for acts of interference.

**The Committee noted that the Government representative indicated that the limitation of the scope of collective bargaining in the public service and, in particular, the exclusion from it of the salary entitlements of public servants through Act No. 330/2009 on Unitary Salaries of Staff Paid from Public Funds, had been undertaken by the Government at the initiative of the national representative trade unions. Moreover, following a long series of consultations with the social partners, the new Labour Code just came into force with the aim of bringing flexibility to labour relations in conformity with the country's European commitment and in response to the important economic constraints on the country. As regards the allegations of anti union discrimination made by the ITUC, she stated that the Government was going to organize a tripartite meeting after the International Labour Conference to discuss this matter. She stated that some problems being experienced by the Government were due to the lack of training of staff in social dialogue and the absence of an updated database of representative unions at each enterprise. As regards the insufficiency of relevant sanctions, she stated that the Law on Social Dialogue had increased the amount tenfold.**

**The Committee took note of the allegations of serious restrictions to the effective exercise of the right to collective bargaining within the context of a financial and economic crisis. It recalled the importance of the principle that restrictions on collective bargaining as part of a stabilization policy should be imposed only as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and they should be accompanied by adequate safeguards to protect workers' living standards. It expressed the firm hope that the Government would review the legislative measures recently taken, as well as those envisaged, with the technical assistance of the ILO and in full consultation with the social partners, with the aim of ensuring full respect for the abovementioned principle and to ensure that matters normally pertaining to conditions of work and employment were included in the scope of collective bargaining for those public service workers covered by the Convention.**

**The Committee requested the Government to submit all the pending matters for intensive tripartite dialogue and to provide a detailed report to the Committee of Experts for its session in 2011, on the steps taken, as well as a copy of the relevant legislative texts so that it would be in a position to assess their conformity with the Convention. It further requested the Government to provide detailed information and statistics relating to the impact of the recent legislative changes on the application of the Convention. The Committee was awaiting the next report of the Committee of Experts so that it would be able to note substantial progress in the application of the Convention in the near future. The Committee welcomed the Government's commitment to continue to avail itself of ILO technical assistance.**

**The Worker member of France stated that the new Labour Code had not been the subject of consultations but had been imposed. The consultations to which the conclusions referred concerned texts of laws that had been adopted previously. Moreover, the possibility of bargaining collectively at the branch level had been suppressed, with bargaining now being limited to the enterprise level.**

The conclusions suggested progress that did not exist in reality.

**The Chairperson** indicated that he did not agree with the views of the Worker member of France. The conclusions reflected the discussion that had taken place in the Committee, the statements of the parties, as well as the requests made by the Committee.

**The Worker member of France** replied that, while the conclusions indeed included these three elements, they did not reflect the positions that he and the Worker member of Romania had expressed during the discussion.

**The Government representative of Romania** wished to specify that the social partners had participated in the development of the Labour Code. With regard to collective bargaining at the branch level, he emphasized that while the new legislation referred to collective bargaining at the sectoral level, this corresponded to the previous bargaining at the branch level.

#### URUGUAY (ratification: 1954)

**A Government representative** said that it was quite possible that most of the members present knew little about the real situation in his country, which for the 200 years of its existence had always been looked upon by the rest of the world as a country that respected and promoted democracy, save for two occasions when it had been interrupted by a military dictatorship – most recently between 1973 and 1984. Currently the Latin Barometer, an international indicator, rated the Uruguayan people as having most confidence in the democratic system in the region than almost any country in the world. Also, the United Nations human development index had identified it as one of the leading countries of the region. Uruguay had always been respectful of human rights, especially workers' rights, and both its workers' and its employers' movements prided themselves on their total independence from the political authorities. Referring to the case under discussion and to Act No. 18566 on collective bargaining in particular, he observed that what was being questioned was not so much the Act itself as the model of social dialogue that Uruguay had followed since 1943, with the adoption of the Wages Councils (Act No. 10449). For as long as that Act had been on the statutes, real wages, national development and the employers' sector had been sustainable and continued. It was only when the application of the Act was interrupted with the advent of the dictatorship in 1968 that economic growth had come to a halt. Between 1990 and 2004, the failure to apply the Act resulted in a 23 per cent drop in real wages, as well as in the systematic decline of collective bargaining, which was reduced to the bare minimum.

From 2005 onwards, successive governments promoted a policy of far-reaching social dialogue, described by the ILO Director-General as "exemplary". It was this, among other things, which enabled Uruguay to avoid falling into recession during the recent world economic crisis and to maintain a moderate growth rate in 2009–10, which was currently on the rise again. As it was practiced in Uruguay, collective bargaining covered virtually 100 per cent of private sector workers. Its system of industrial relations traditionally involved collective bargaining at the branch level, rather than at the enterprise level, although the Act that was criticized did not prevent the conduct of bilateral collective negotiations as well. The comments did not suggest violations of the fundamental principles of the Convention or of basic human rights, such as in other cases discussed by the Committee. An examination of the agreements concluded in the course of the four rounds of negotiations held in the Wages Council revealed that 90 per cent of the decisions had been taken by majority vote and 80 per cent unanimously. Overall, during the past five years real wages had increased by around 24 per cent. The

ILO's *Global wage report 2010* had described the system of collective bargaining as a model.

He observed that his Government had adopted measures to bring national legislation into line with all the comments of the Committee on Freedom of Association. It should be borne in mind that any legislative reform required not just the agreement of the social partners, but also needed to be discussed and approved by the National Parliament. First, in July 2010 the social partners had been invited to engage in a round of negotiations to examine the comments of the Committee on Freedom of Association. The employers, who had initiated the complaint, had stated that they were unable to attend because the process of collective bargaining was starting at the same time. Secondly, a tripartite commission had been set up towards the end of 2010 to study possible amendments to Act No. 18566. It had held its last meeting on 26 May 2011. Thirdly, an eight-point work agenda had then been agreed, and a sort of preliminary agreement had been reached on two of the points. Lastly, the tripartite commission had appeared before Parliament to give an account of its creation, agenda and works, with the request that once it had completed its work its findings should serve as an essential input for the possible reform of Act No. 18566. He added that the Committee on Freedom of Association, the Committee of Experts and the Director of the International Labour Standards Department had been duly informed of all those activities. Finally, he indicated that, during the week that the Conference Committee had been meeting, high-level tripartite discussions had been held in Geneva at the suggestion of the ILO, during which there had been intense negotiations during which a climate of dialogue had developed which was sufficient for the social partners to re-establish mutual trust, and a definitive agreement had almost been reached. The outcome would be useful to continue the negotiations at the national level. In the light of the foregoing, he requested the Committee to close its discussion of the case, or to reserve its position until such time as the measures that were being applied had time to bear fruit.

**The Worker members** indicated that the present case of Uruguay examined by the Committee was not being discussed at their initiative. They recalled that, according to the information provided by the Government to the Committee of Experts, it had initiated contacts and consultations with employers' and workers' organizations with a view to examining the recommendations made by the Committee on Freedom of Association in relation to the legislation. They added that the International Organisation of Employers, the Uruguayan Chamber of Industries and the National Chamber of Commerce and Services of Uruguay had presented a complaint in February 2009 to the Committee on Freedom of Association against the Government for failure to comply with its obligations under the Conventions on freedom of association and collective bargaining. However, they noted that, in its 356th Report (March 2010), the Committee on Freedom of Association welcomed the Government's aim of promoting collective bargaining, the increased coverage of collective agreements and their number, while making certain comments on the provisions which could raise difficulties in relation to their conformity with the principles of collective bargaining, or which should be interpreted in the light of those principles. The Government had followed the conclusions of the Committee on Freedom of Association by recently re-establishing a tripartite commission to examine the Committee's conclusions. They considered that social dialogue and collective bargaining were working in Uruguay and recalled that the Committee of Experts had only requested the Government to reply to certain questions in its next report due in 2012.

The Employer members said that the employers' organizations had submitted the present case to the various ILO supervisory bodies in view of the inaction of the Government. It was of a matter of great importance, as it was closely linked to the freedom to engage in free and voluntary collective bargaining, in full compliance with the autonomous will of the parties and with Article 4 of the Convention. The Act on collective bargaining in Uruguay, adopted in 2009, did not respect that autonomy and interfered to a very large and unacceptable extent in the will of the parties to determine the subjects of bargaining, the structure of bargaining, legitimacy to engage in bargaining, the duration of collective agreements and the free exercise of entrepreneurial activities. Such unjustified interference prejudiced all the parties, and not only employers. The complaint had at first been made by the employers' organization with a view to prevention, in relation to the draft legislation, and had then been maintained due to the omissions of the Government. The complaint had been presented jointly by the International Organisation of Employers, the National Chamber of Commerce and Services of Uruguay and the Uruguayan Chamber of Industries. The conclusions of the Committee on Freedom of Association had been endorsed by the Committee of Experts and related to the following aspects: the process of reforming collective bargaining had been undertaken without full and frank consultations and was not the outcome of agreed solutions, or even a process of attempting to reach agreement. Although that might appear to be a matter covered by another Convention, it took on great importance in relation to the reform of collective bargaining in view of the requirement to promote voluntary negotiation, as set out in Article 4 of the Convention. Respect for collective autonomy needed to be demonstrated from the outset, in the reform of the system itself, but that had not occurred in the present case and consultation had been considered as a mere hurried procedure.

With regard to the content of the 2009 Act on collective bargaining, they indicated that, among other points, the new system broke with the principle of respect for what was agreed between the parties through negotiation, as it allowed a tripartite council (the Wages Council), in which decisions were adopted by simple majority, to focus collective bargaining on specific sectors, at the request of one party, and it could therefore, even though in a subsidiary manner, determine wages and other conditions of work at the branch level. The problem arose, on the one hand, through the emergence in the negotiations of a third party, the Government, which should not enter into matters that were essentially covered by bipartite bargaining and which could influence not only wages, but also other conditions of work that were normally included in the content of collective bargaining. Moreover, the majority could be obtained by the addition of the votes of the representatives of the Government and of any other of the parties and, one of the parties to a collective agreement could see its content changed or agreed to without its consent. The genuine nature of an agreement was undermined when it was modified or determined unilaterally by one of the parties with the support of a third that was not a party to the agreement. In these conditions, negotiations were no longer bipartite, free and voluntary. Moreover, the Higher Tripartite Council had been created, with the tripartite composition indicated above, which could consider the determination of matters relating to levels of tripartite and bipartite bargaining. That meant that the structure of collective bargaining was no longer a matter for the parties, as in practice it could be predetermined by the Government with the support of any other party. Accordingly, not only was the presence of an unrelated third party imposed, but the structure, and to a large extent the content of collective bargaining at the branch or sectoral level

could be determined or modified without the agreement of one of the parties. The Committee on Freedom of Association and the Committee of Experts had reminded the Government that the level of collective bargaining should be determined by the parties and should not be the subject of a vote in a tripartite body in which, moreover, the tripartite representation was not balanced. The Government would accordingly become an almost compulsory arbitrator. That had been the underlying element in the conclusions of the bodies which had examined the case and which recommended that the composition should include an equal number of members and that, in any case, a deadlock in the vote should be decided, not by the presence of the Government, but by an independent third person, preferably nominated by employers and unions.

Another matter of particular concern was the imposition of external legitimization for the negotiation of collective agreements at the enterprise level. That was a particularly serious matter in a country where there were a large number of small and medium-sized enterprises. At the enterprise level, workers should be free to choose their own representatives, and should have the possibility to have recourse to unorganized representatives in the absence of union representatives. What was not in accordance with the Convention was the fact that, in the absence of union representatives, the matter was legally required to be referred to the immediately higher trade union organization. They recalled that the Committee on Freedom of Association only admitted recourse to trade union representation at a higher level if such union representation already existed at the enterprise level. Another especially prejudicial aspect of Uruguayan legislation was the legal imposition of the automatic extension of the duration of collective agreements once they had expired, which was known as *ultractividad*. Such a crucial decision could affect the competitiveness of the economy and should be the subject of agreement between the parties or, if that could not be reached, of a tripartite agreement, although the achievement of such tripartite agreement had not even been attempted. There were other important and significant points, such as the lack of guarantees to ensure compliance with the duty of confidentiality, and supervision of the registration and publication of collective agreements, which in reality concealed an interest in a higher level of supervision of compliance with minimum legal provisions. Finally, one of the issues of most concern, if not the most worrying, was a Decree, which established the right of workers in the enterprise to occupy the workplace, and also envisaged a procedure or mechanism for legitimate occupation. That innovative right constituted unacceptable and excessive interference in the capacity to engage in voluntary bargaining, and undermined and distorted any negotiation, as in practice it compelled enterprises to close when a dispute occurred, as had occurred in Uruguay recently.

The fact that the Employers' group had called for the inclusion of the present case in the list was not the product of a caprice, but of well-founded concern. The manner in which the system of collective bargaining had developed, its future negative impact on social and economic development and its proper functioning should be a matter of concern for all the social partners, and not just for employers. The Government had not yet put forward any proposal for the amendment of the Act. The only point on which it had expressed its intention to come to an accommodation was in relation to not using the system of voting to determine conditions of work in the Wages Council, although that had not yet taken the form of firm proposals. They trusted that the Government would demonstrate the will which would allow the employers to believe that the comments of the supervisory bodies would be taken seriously.

**The Worker member of Uruguay** said that, although all those who had spoken had expressed surprise at the inclusion of Uruguay in the list, he himself was not surprised. It was an almost constant pattern that any country that managed to make progress in the field of labour rights and the protection of workers and to strengthen democracy would provoke a reaction from national employers' organizations and the International Organisation of Employers. He emphasized that the same organizations that kept silent in other cases where there was true denial of labour rights and violation of human rights, were alarmed when the workers of a small country and a great people achieved a balance that had always eluded them. Until 2005, no Uruguayan Government had worried about addressing the demands of the working classes. Now, only six years later, the country had almost 40 labour laws, putting workers on a more equal footing with other sectors in the world of work. They included acts on collective bargaining for workers in the public and private sectors, freedom of association, restricting the working day in the agricultural sector to eight hours, and constitutional protection for subcontracted workers, a landmark act on domestic workers, including rights to collective bargaining; and approval of the Occupational Safety and Health Convention, 1981 (No. 155). He added that everything could be improved, including acts, decrees and standards. Uruguay had not yet reached the peak, nor become world champion of workers' rights, so much so that workers in the public and private sectors were clamouring for the Government to give effect to the Act on bargaining in the public sector. Perhaps for that reason, the ILO Director-General had declared in 2010 that Uruguay was an example to follow in tripartism, dialogue and industrial relations. The workers had not come to defend a Government that had its own means of doing so, but to show the fruits of such struggles, cooperation and determination and to demonstrate that, when combined with a Government that was sensitive to the demands of the great majority, it was possible to achieve the objectives of social justice and to move forward towards a better distribution of wealth. The comments of the supervisory bodies had already been taken into account in Uruguay and a tripartite commission had been established with equal numbers of members, which had agreed its agenda by consensus and was working in the suggested directions in the above areas. Furthermore, a high-level mission would visit Uruguay on 28 August and could verify on the spot how labour relations were working and the outcome of collective bargaining. In the last round of bargaining, 80 per cent of agreements had been approved unanimously. A few hours previously, efforts had been made in Geneva to conclude a tripartite agreement which, although it had not been completed for lack of time, remained valid in terms of its content. He wondered why such efforts had not been made before. Lastly, he strongly challenged the inclusion of the "Uruguay case" in the session.

**The Government member of Argentina**, speaking on behalf of the Government members of the Committee which were Member States of the Group of Latin American and Caribbean countries (GRULAC), said that, having listened carefully to the statement by the Government of Uruguay on the measures taken to continue building a culture of social dialogue and collective bargaining, GRULAC welcomed the efforts of Uruguay and encouraged it to pursue its activities towards a successful tripartite solution, keeping in mind that a National Tripartite Commission had been set up to examine the application of Act No. 18566 on collective bargaining, and that it had already invited an ILO mission to visit the country at the end of August to work with the Commission and hold talks with the Government and the social partners. GRULAC also took note of the efforts of the Government

during the 100th Session of the International Labour Conference to forge an agreement between the parties.

**The Employer member of Colombia** said that he had examined the case of Uruguay in his capacity as a member of the Committee on Freedom of Association, when the issues raised had been of concern to the Employers' group because of the way in which the legislation was being adopted. Since March 2010, when the Committee on Freedom of Association had presented its conclusions, the Employers had seen little progress. It was at the Employers' insistence that the Government had begun to act. He referred to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), and in particular Paragraph 5(a), and cited paragraph 1071 of the *Digest of decisions and principles of the Freedom of Association Committee*, according to which: "It is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations." He said that the principles laid down in the Recommendation and the principle that he had cited from the *Digest* had been undermined by the composition of the Tripartite Commission, which had unbalanced bipartite representation. In conclusion, he emphasized the importance of the high-level mission due to visit the country in August 2011.

**The Worker member of France** recalled that the Convention had a number of key objectives with a view to attaining free collective bargaining that determined workers' conditions of employment at different levels, between workers' organizations, on the one hand, and employers' organizations, on the other, without interference by one organization in the affairs of another, and without the employers being able to make employment of a worker dependent on relinquishing union membership. The Convention thus protected the freedom of workers to join unions, and the independence and autonomy of both parties to the negotiations. The right to organize and the right to negotiate conditions of employment were clearly not being seriously challenged in Uruguay, although bilateralism was not being fully respected. That appeared to be the key issue in the complaint from the IOE and the employers in the country. However, the problem was that this did not seem to be the only reason. The competent public authorities could, especially by legislative means, extend the application of collective agreements to an entire branch or region or to the whole country; the provisions of such agreements were then binding on all the employers concerned and all the workers. Such provisions existed in many democratic countries and were in conformity with the Collective Agreements Recommendation, 1951 (No. 91), which was not a binding instrument. It should be added that the Convention did not go into the details of bargaining procedures or systems, which left much freedom of adaptation for national law and practice, in which there was considerable variety.

The comments of employers' organizations concerned the powers – too extensive, in their view – of the tripartite wage council, which could summon employers' and workers' organizations to negotiations, especially on minimum wages, which was not – in itself – contrary to the relevant Convention ratified by Uruguay, namely the Minimum Wage Fixing Convention, 1970 (No. 131). Similarly, the legal minimum standards in terms of wages and conditions of employment could be the subject of tripartite negotiations within wage councils if the partners agreed, which was not in violation of Convention No. 98 or of Convention No. 131. The report of the Committee of Experts essentially quoted the conclusions of the Commit-

tee on Freedom of Association relating to two complaints from employers. However, it was difficult to understand exactly the complainants' grievances other than with regard to the limitations on full bipartism, even though they might be opposed to wage councils dealing with conditions of work, which was an established fact also found in the conclusions of the Committee on Freedom of Association. First, the Committee of Experts asked the Government to amend the legislation to enable non-organized workers, in the absence of trade unions, to choose representatives to participate in bargaining on conditions of work in the enterprise; that was not a requirement of the Convention, but of Recommendation No. 91, a non-binding standard and the last resort when a union was unable to organize, but it should be noted that, in a context of employer pressure against the organization of employees, their autonomous bargaining capacity was drastically reduced, or even totally absent. It would be preferable for higher-level unions, such as branch unions, to have competence for bargaining at the enterprise or group level, which would offer real guarantees of independence vis-à-vis the employer and could help the workers to organize. It appeared that the complainants wished extended collective agreements to have a limited content, reduced to monitoring the application of legal minimum standards and the resolution of formal issues. That would amount to undermining the principle of the extension of agreements, the aim of which was to improve conditions of employment in the branch or country, which, in his opinion, was in line with the interests of employed persons and was a practice that existed in his country and had never been criticized as such by the Committee of Experts. Moreover, the employers disagreed with the fact that agreements that had expired remained in force until they had been replaced by new agreements. The principle of extending the validity of collective agreements therefore appeared to be just, in order to avoid the deterioration of conditions of employment if an agreement expired and the employer refused to negotiate a new one. The Committee of Experts had concluded by calling for the recommendations of the Committee on Freedom of Association to be discussed by a tripartite body. However, the question arose as to the ulterior political motives of the complainant employers' organizations which, instead of apparently defending the Convention, appeared to want to reduce the protective power of agreements which extended on a branch or national basis or, when such agreements expired, might refuse to negotiate agreements that were more favourable to the workers. It was to be hoped that the Committee of Experts, on the basis of the reply expected in the Government's next report due in 2012, would undertake an autonomous analysis of current law and practice in order to draw its own conclusions.

**The Employer member of Mexico** said that the comments of the Committee of Experts on the case had caused him serious concern. Interference by the Government, leading to the restriction of one of the most important rights of the parties involved in industrial relations, was unacceptable. In an atmosphere of interference, he recalled that the matter at hand was one of principle. He was not satisfied with the information provided by the Government that it had "already begun a round of negotiations". That was not enough. The Act violated the Convention and should be amended. Collective bargaining was a search for balance between both parties. It was intolerable to ignore this principle, and particularly to ignore the opinions of the supervisory body. He found it extraordinary that the workers had not expressed themselves in a different way, perhaps because they had not realized that, by means of this unique and invasive intervention, their acquired rights could be undermined by the decision of a third party outside of theirs involved in industrial relations.

**The Worker member of the Bolivarian Republic of Venezuela**, speaking also on behalf of the Trade Union Confederation of the Americas – International Trade Union Confederation and the World Federation of Trade Unions, recalled that Uruguay was a country that had lived through one of the most cruel dictatorships during which it was unthinkable to speak of freedom of association, and particularly of collective bargaining. The trade union organization at that time had been clandestine, but gave rise to the Inter-Trade Union Assembly – Workers' National Convention (PIT-CNT), the current name of which was adopted during the dictatorship, and which had defended workers in a context of far-reaching anti-union repression. The composition of the Tripartite Advisory Council was currently in accordance with the Convention and was made up of two representatives of the three sectors represented, precisely to comply with the requirements of the Committee on Freedom of Association. She recalled that, at the recent ILO American Regional Meeting held in Chile in December 2010, Uruguay had been cited as an example of social dialogue and of major progress in the field of social justice. She therefore wondered how it was possible that the present case was now being examined by the present Committee. She reaffirmed that what was actually happening in Uruguay was that, since the arrival in power of progressist governments in 2005, workers' rights had been improved substantially, even above the requirements of ILO Conventions. More specifically, it was the only country in the world in which domestic workers benefited from collective agreements, and a large number of labour laws had been approved, including on freedom of association, the eight-hour day and collective bargaining in the public and private sectors. Workers were regaining rights which had been trampled underfoot by the dictatorship and by right-wing governments, supported by certain employers, who were now demanding respect for the right to organize and collective bargaining. Democracy was one of the treasures of the people of Uruguay. Those who were now denouncing the situation in the Conference Committee were those who had been in violation of democracy and social dialogue, and who had left the tripartite body on two occasions. Their absence had been due to the will of the employers. The report of the Committee of Experts indicated that most of the points covered by the complaint had been remedied and it also noted with satisfaction the adoption of the Act on collective bargaining in the public sector. In certain countries in Latin America, social progress was being achieved despite the intentions of certain employer sectors, which availed themselves of international mechanisms with a view to holding back such progress. That perhaps explained why the present case was being discussed, instead of others that had been cited.

**The Employer member of Uruguay** said that collective bargaining was the cornerstone of collective labour relations, and expressed regret that the process of dialogue had not been effective when it came to adopting the Act in question. The recommendations of the Committee on Freedom of Association and the Committee of Experts, along with the analysis of the Governing Body, should be respected. In consequence, no other option remained but to consider amending Act No. 18566, particularly within the tripartite forum created in response to the observations made by the Committee of Experts. The case should not be set aside until the Government had incorporated the recommendations of both the Committee on Freedom of Association and the Committee of Experts.

**An observer representing the International Organisation of Employers (IOE)** said that the legal framework for the voluntary negotiation of collective agreements, and particularly the autonomy of the social partners, were fundamental to the principles of freedom of association em-

bodied in Conventions Nos 87, 98 and 154, particularly when a country had ratified them, as was the case with Uruguay. When legislating on the system of collective bargaining, the concerns of all the social partners, including the employers, needed to be taken into account. The Act on collective bargaining, above all, needed to be the product of tripartite consensus, as it was the fundamental instrument that gave collective agreements their social legitimacy. She voiced the profound disquiet of the international employers' community at the recent adoption of Act No. 18566, which consolidated the intervention of the State and undermined the principle of collective autonomy in labour relations. It was worrying that the Government should thus disregard the recommendations of the Committee on Freedom of Association and the Committee of Experts regarding the lack of compliance of the Act with the Convention. The IOE trusted that the consultations that had now been entered into with the social partners to consider the recommendations of the ILO's supervisory bodies would be conducted in good faith and with a determination to reach solutions that were acceptable to all the parties concerned and welcomed the information that a direct contacts mission was to visit Uruguay at the end of August. She concluded by calling on the Government to: apply the principles of freedom of association and collective bargaining without delay; to examine the provisions of Act No. 18566 in detail and in the light of the recommendations of the Committee on Freedom of Association and the Committee of Experts so as to find solutions that were acceptable to all parties; draft a bill with the assistance of the Office that reflected those recommendations, and submit it to Parliament through a priority procedure; and analyze the issues raised by the Committee of Experts in its direct request on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) with a view to achieving acceptable solutions for all the parties.

**The Government representative** expressed regret at the employers' misunderstanding of the situation. He underlined that the social partners were always consulted and that the Act had not been imposed on any of the parties. The Employers had withdrawn from the negotiations, which had obliged the Government to play a role in the matter. Since then, a number of meetings had been held. In fact, Uruguay had ample tripartite space to generate dialogue. With regard to the requirement for Government endorsement in relation to wage councils, he said that the new section 5 of the Act on wage councils stipulated they could establish working conditions if they were agreed between employers and workers. This had been fully explained to the Committee on Freedom of Association, which regrettably had focused on the bill, rather than the Act that had been adopted. With regard to the Higher Tripartite Council, it was composed of nine Government representatives and six representatives from each social sector, in accordance with the system followed in the ILO. Concerning the automatic prolongation of collective agreements, he underlined that collective agreements remained in force for the period agreed by the parties. If no duration had been agreed, a decision could be taken to prolong the application of an agreement, as established in the legislation of many other member States. He denied that the Government had approved a decree allowing occupation of the workplace. The original draft had contained a provision to that effect, but it had been withdrawn after the previous President had made a commitment to the employers of Uruguay. In reality, the Decree provided for a procedure for bringing an end to the occupation of a workplace. In fact, as the Committee on Freedom of Association had acknowledged, occupation of a workplace was a form of workers' action. The Decree provided a means of ending workplace occupation if it

restricted the exercise of fundamental rights. He concluded by affirming that the issues examined did not affect life or fundamental rights in the country, and that they should be resolved at the national level.

**The Worker members** noted the information supplied by the Government, and in particular its wish to establish a system of industrial relations at the national and sectoral levels ensuring solidarity between enterprises and workers. Apart from the Government's willingness to comply with the recommendations of the supervisory bodies, reference should be made to the forthcoming ILO mission and the organization of a tripartite meeting during the work of the Conference aimed at restoring trust between the social partners. The forthcoming ILO mission should closely analyse the Employer members' remarks and the Government should re-examine them and keep the Committee of Experts informed.

**The Employer members** hoped that the reference made by the Government representative to the deficiencies in the Employers' knowledge was not symptomatic of its approach to dialogue. They indicated that the matters under examination were those addressed by the Committee of Experts and the Committee on Freedom of Association. Although the Government referred to an agreement concerning the modification of the tripartite Council, up to now there had only been indications of the intention to modify it, but no concrete proposals, which meant that it was still governed by the Decree in that respect. With regard to the automatic prolongation of collective agreements, they recalled that the Committee on Freedom of Association had indicated that their automatic extension should be the subject of tripartite agreement. They acknowledged that the provisions envisaging the right to occupy the workplace had been withdrawn from the draft text. At the same time, while recognizing the good economic performance of the country, they maintained that the present issue was a legal matter and that it was a serious question for employers, as any additional imposition, without the agreement of the parties, constituted unacceptable interference. In practice, through subsidiarity, external bodies were being legitimized, the structure of collective bargaining was being modified, the duration of collective agreements was being changed and the right to occupy the workplace was being established, which made it necessary to close down enterprises. They regretted the lack of will to amend the law. They nevertheless urged the Government to engage in sincere and full consultations with a view to carrying through that modification, for which purpose a draft text would need to be drawn up with the assistance of the Office. In that respect, they welcomed the mission and hoped that all the points raised would be addressed.

**The Government representative** specified that there had never been any question of a direct contacts mission, but that what had been agreed to was a mission.

### **Conclusions**

**The Committee noted the statements of the Government representative and the discussion that followed. It also noted the conclusions and recommendations of Case No. 2699 examined by the Committee on Freedom of Association.**

**The Committee observed that the Committee of Experts, in the same way as the Committee on Freedom of Association, had commented on certain provisions of Act No. 18566 of 2009 on collective bargaining relating to, among others: (i) the exchange of information necessary to allow the normal conduct of collective bargaining; (ii) the composition and powers of the Higher Tripartite Council; (iii) the possibility for wages councils to establish conditions of work; (iv) the parties engaged in bipartite collective bargaining; and (v) the effects and duration of collective agreements.**

The Committee noted the statements of the Government representative according to which, as from 2005, successive governments had promoted a policy of in-depth social dialogue. He had recalled that the model of industrial relations in Uruguay traditionally consisted of collective bargaining at the branch level, and not the enterprise level, but that nevertheless the Act which had been the subject of the complaint did not prevent bilateral collective bargaining. He emphasized that any reform of the legislation would have to have, not only the agreement of the social partners, but also the approval of the National Parliament, which was sovereign and independent of the executive authority. The Government representative had indicated that, at the end of 2010, a tripartite commission had been established to examine possible reforms of Act No. 18566 and that an agenda had been agreed for its work. An ILO mission, headed by the Director of the International Labour Standards Department, had been organized and would visit the country in August. Finally, he had indicated that in accordance with the recommendations of the ILO, a high-level tripartite body had been established during the present International Labour Conference and that intense negotiations were being undertaken which had resulted, in his opinion, in a climate of confidence that was sufficient to re-establish confidence between the social partners, to such an extent that a definitive agreement had almost been reached.

The Committee noted the widespread exercise of trade union rights in the country and the respect for human rights, as well as the Government's indication of its will to comply with the provisions of the Convention. The Committee welcomed the fact that tripartite negotiation on the matters under examination had continued during the present Conference and that an ILO mission would visit Uruguay in relation to those issues at the end of the month of August 2011. The Committee trusted that the mission would be able to note tangible progress. The Committee trusted that, with the objective of bringing the legislation fully into conformity with the Convention, the necessary measures would be taken without delay to prepare a bill that reflected the comments of the supervisory bodies.

The Committee requested the Government to send a report to the Committee of Experts this year containing information on any progress in relation to the matters raised and hoped that it would be able to note progress in the very near future.

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**Maternity Protection Convention (Revised), 1952 (No. 103)**

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**SRI LANKA (ratification: 1993)**

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A Government representative explained that in the past decade a Gender Bureau had been set up which handled issues relating to women workers, including maternity benefits and facilities. The Ministry of Women Empowerment and Child Development also dealt with women's issues. Medical treatment and hospitalization was free for all citizens and the Government spent 4.5 per cent of its national budget on health. Family health officers provided advisory services to pregnant women at their homes or in clinics throughout the pre- and post-natal periods and nutritional food was provided to them free of charge. It was a priority for the Government to strengthen service delivery for pregnant mothers and their infants, especially in remote villages, plantations and the Northern and Eastern provinces. As a result, infant and maternal mortality in Sri Lanka were the lowest in South Asia. The social security system for the private sector consisted of an Employees Provident fund, and an Employees' Trust Fund, which covered maternity medical benefits and health, and services were provided to all employees with a contract of service. Hospitalization and indoor treatment expenses for

public sector employees were covered by the "Agrahara" Insurance Scheme.

In reply to the questions posed by the Committee of Experts concerning the compliance with Article 3 of the Convention, the speaker explained that currently three categories of employees benefited from maternity benefits. First, public sector and quasi-Government employees covered by the Statutory Board were entitled to 14 days optional pre-natal leave and 70 days post-natal leave. Second, employees covered by the Shop and Office Employees Act No. 19 of 1954 were also entitled to 14 days optional pre-natal leave and 70 days post-natal leave for the first two children, but for subsequent children they were entitled to only 14 days optional pre-natal leave and 28 days post-natal leave. Third, all other private sector employees covered by the Maternity Benefits Ordinance were subject to the same conditions of maternity leave as shop and office employees. In the event that the 14 optional leave days before confinement were not availed of, all three categories of employees could use them after confinement. National tripartite consultations were needed to discuss the extension of compulsory post-natal leave to six weeks as requested by the Committee of Experts. With regard to nursing breaks, public sector employees were entitled to one-hour nursing breaks per day until the child was 6 months old, shop and office employees were not entitled to nursing breaks and all other private sector employees were entitled to two nursing breaks until the child was 1 year old. Employees covered by one of the 95 collective agreements in force enjoyed higher maternity benefits. Employees covered by the Shop and Office Employees Act and the Wages Boards were entitled to 119 days and 102 days of general leave respectively per annum. The high number of leave days had negatively affected the attraction of foreign direct investment and had created an obstacle to bringing down unemployment. Employers had already voiced their concern that an extension of maternity leave would raise costs. The Government was currently considering the improvement of the social security system, including maternity benefits, but recent efforts to introduce a new social security bill had failed. As regards Article 4(4) of the Convention, national law provided that the Employer was responsible for the payment of maternity benefits, which included medical and cash benefits. Female workers in need had access to free medical service before and after confinement. It was difficult for the Government to provide additional maternity and cash benefits. With respect to article 4(1), section 10A of the Maternity Benefits Ordinance provided that the employment of women could not be terminated for the reason of pregnancy or confinement, or illness in consequence thereof. Public sector employees were allowed to extend maternity leave on a half- or no-pay basis. The relevant laws had to be amended to cover any situation of illness as a result of pregnancy or confinement and the Government was hoping to discuss this matter in the National Labour Advisory Council (NLAC). Concerning Article 1(1), the coverage of domestic workers by the provisions of the Convention seemed difficult. In the view of the Government, the difficulty of developing countries in this respect was taken into account by Article 17 of the Convention. However, the Government intended to discuss the matter at the NLAC.

The Worker members recalled that a communication of the Lanka Jathika Estate Workers' Union (LJEW) had been submitted to the Committee of Experts and that the latter had in fact concluded that the Convention was not satisfactorily applied. Even though the national legislation seemed to comply with Article 3 of the Convention, it was a significant departure from the Convention in that maternity leave was reduced to six weeks, four of which occur after confinement, on two occasions: when the child

was stillborn, or when the worker had already at least two children. These exceptions were clearly not permitted by the Convention. Furthermore, Article 4(4) of the Convention provided that during maternity leave, the worker was entitled to maternity benefits and health care paid by a compulsory social insurance or a public fund. However, the national legislation provided for maternity benefits to be paid by the employer. This clause appeared to be mainly applied in plantations. Unfortunately, employers were using the Convention as a pretext for not applying national legislation. In addition, benefits paid in such cases appeared to be much lower than the level specified by the Convention. Contrary to the provisions of Article 3(6), the national legislation did not provide for an extension of paid maternity leave, but only leave without pay in the event that the employee fell ill during pregnancy or as a result of childbirth. In addition, the national legislation did not apply to domestic workers nor to workers in subsistence agriculture. Finally, Articles 5 and 6 of the Convention, which provided for the right to nursing breaks and protection against dismissal respectively, were not included in national legislation. The worker members consequently requested that the Government avail itself of an ILO technical assistance mission.

**The Employer members** welcomed the information provided by the Government. They regretted that Sri Lanka still did not comply with the Convention. According to the Employer members, when considering the ratification of a Convention, a country had to first evaluate the possibility of the application in domestic law and practice and its institutional capacity to submit the corresponding reports. Article 3(3) of the Convention provided that the period of compulsory leave after confinement shall in no case be less than six weeks. Sri Lanka's legislation did not meet this requirement. The domestic legislation neither complied with Article 1 by excluding domestic and agriculture workers from the maternity protection laws. It also violated Article 3(2) and (3), since the duration of maternity leave was made conditional upon the number of children a worker had. The situation concerning Article 4(4) and (8) of the Convention raised concern, since the Government had ascertained that it could not provide maternity benefits through a system of compulsory social insurance or government funds. Until today, cash benefits continued to be provided by the employer, contrary to the provisions of Article 4(8). This situation not only promoted discrimination against women, but could also negatively affect the formal employment of women in the country. Further conflicts between the domestic legislation and the Convention were observed in the Shop and Office Employees Act No. 19 of 1954, which did not count nursing breaks as paid working hours, and by the fact that there was no protection from dismissal for public officials, who were pregnant, on maternity leave or nursing. The Employer members considered it necessary to amend national legislation in order to comply with the Convention and the amendments had to be made in consultation with the social partners. For this purpose, the Government had to seek technical assistance from the ILO.

**The Worker member of Sri Lanka** indicated that the Establishment Code regulating the public service and the Shop and Office Employees Act covering the private sector had been changed to their current form in the process of amending the national legislation following the ratification of the Convention. At present, there existed differences in maternity leave entitlement between the public and private sectors, and between general shop and office employees and the private sector employees who were covered by the Wages Boards. In the public sector, 12-week maternity leave was granted for any number of childbirths, with Poya days (Buddhist public holidays)

and public holidays falling within the 12 weeks also counted, which entitled a woman in this sector to approximately 104 days of leave. In the private sector, 12-week leave was granted only for the first two childbirths, after which only six weeks were granted, but weekly holidays, Poya days and public holidays were added. For workers at general shops and offices, the entitlement was similar to the one for the public sector, thereby granting these workers approximately 104 days of leave. As regards private sector workers covered by the Wages Boards, the entitlement was similar to the one for general shop and office workers, but Poya days and Sundays were not added. As regards compulsory post-natal leave, for all categories of workers, ten weeks of leave were granted for the first two births. They were, however, reduced to six weeks for subsequent childbirths. This situation had remained unchanged, but after a new Government had come to power, the Secretary of Labour had recently responded positively, stating that the issue would be tabled at the next session of the National Labour Advisory Council. The Worker member welcomed this initiative and indicated that trade unions were ready to work with the Government on this matter. He regretted, however, the concern expressed by the employers that an extension of maternity leave would raise costs. He also regretted that the Government had stated that more maternity leave entitlements had had negative impacts on the attraction of foreign direct investments. He stated that the view of the employers was unanimously rejected by Sri Lankan workers. He indicated support for the recommendation of the Committee of Experts that the Government take all necessary measures in the very near future to apply fully the provisions of the Convention equally across all economic sectors, including plantation workers who were adversely affected. He welcomed technical assistance of the Office in this regard.

**The Employer member of Sri Lanka** indicated that the manner in which the Convention was applied should not cause any adverse impact on employment. He recalled that the essence of the issues raised related to the differences in benefits given to different categories of employees. However, one should be cautious not to make changes that would have a negative impact on employment opportunities for women. It was extremely important to understand practical realities that could have negative consequences and which would ultimately be counterproductive. He recalled that no one could expect that every country implement the principles of the Convention in a uniform manner. Every country had to strive to work towards what was provided for in the Convention. The level of economic development was directly linked to the granting of maternity benefits. Sri Lanka had a good set of social protection laws for workers, although it was still a developing country. He reiterated his support to the Government for it to address this issue in a manner that would not prejudice or hinder employment opportunities for women.

**The Worker member of Zambia** indicated that maternity protection was very important because not only did it protect mothers, ultimately, it protected the workers of the future. The compulsory six-week post-natal leave had to be implemented, since research had shown that infant mortality greatly reduced when mothers had more post-natal leave. He recalled that the right to maternity protection and benefits should not depend on the number of children a woman already had. He regretted the low ratification rate of the Convention. The ILO therefore should promote its ratification.

**The Government representative** thanked the various speakers for their suggestions and comments. She indicated that an intra-ministerial committee had been formed and was currently studying discrepancies between the

national legislation and the Convention. The findings of this Committee would have to be discussed in a high-level tripartite forum and the following recommendations would be tabled before the NLAC for endorsement. She finally indicated that her Government would request technical assistance from the ILO to address the issues discussed during this session.

The **Employer members** emphasized that all parties seemed to be in agreement that the Government should amend its domestic legislation to bring it fully into line with the Convention. Such amendments should be adopted in consultation with the social partners, in a form that would not promote discrimination against women in the workplace. Maternity benefits should be funded through maternity insurance or by the Government, but under no circumstances should they be financed by employers. Given the amount of time that had passed and the nature of the violations, the Government should request and accept technical assistance from the ILO in order to comply with the Convention.

The **Worker members**, while thanking the Government for the information provided, had hoped that it would give greater consideration to the aims of the Convention, particularly the situation of working women and the need to ensure maternity protection, that is, the health of both mother and unborn child, within the framework of responsibility shared between the public authorities and society (including enterprises). The Government should also examine the possibility of introducing maternity insurance to give adequate effect to Article 4(4) of the Convention, and to ensure that maternity protection was dealt with in a manner that did not discriminate against women. They reacted strongly to the suggestion made by the Employer member of Sri Lanka, stressing that, once a Convention had been ratified by a State, there could be no flexibility in interpretation, nor à la carte application of the provisions of the Convention. Finally, they invited the Government to accept technical assistance from the Office to implement these objectives.

### Conclusions

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

It recalled that the Committee of Experts had considered the application of the Convention to be unsatisfactory on a number of points and requested the Government to take legislative action with a view to fully implement its provisions regarding the length and extension of the paid maternity leave, nursing breaks with respect to the Shop and Office Employees Act No. 19 of 1954, and protection against dismissal for public employees covered by the Establishment Code.

The Committee noted the efforts described by the Government to enhance maternity protection in the country, which included, among others, provision of free medical care and hospitalization, counselling services by family health officers and free nutritional food for pregnant women. As Sri Lanka had a high population density, maternity leave policy was articulated to suit the economic challenges and parents were advised to have only two children. As a result of these measures, infant and maternal mortality in Sri Lanka were the lowest in South Asia. The Committee noted the Government's statement that any gaps in national law and practice not fulfilled in terms of the Convention would be considered at tripartite forums of the National Labour Advisory Council (NLAC) and corrective measures would be taken after having given due consideration as to how such measures affected female employment, competitiveness and achievement of the country's development goals. An intra-ministerial committee consisting of senior government representatives had been established to study discrepancies in law and submit its findings for endorsement by NLAC. The

Government proposed to initiate consultations with the trade unions and employers' organizations on the need to establish in the legislation the right to compulsory post-natal leave of at least six weeks and to abolish the distinction in the length of maternity leave based on the number of children, in compliance with Article 3 of the Convention. The Government intended to refer to NLAC other issues raised by the Committee of Experts, namely, the need to extend paid maternity leave in the event of delayed confinement or sickness, to guarantee nursing breaks to the workers covered by the Shop and Office Employees Act, and to extend coverage to self employed rural agricultural workers and domestic workers. The Government also promised to initiate action to repeal the redundant provision relating to alternative maternity benefits in the Maternity Benefits Ordinance in consultation with the trade unions and employers of the plantation sector.

While noting the strong commitment of the Government to consultations with the social partners, the Committee regretted that no concrete action had been taken by the Government to date to advance effectively the solution of these long-standing issues. The Committee therefore expressed the firm hope that the Government would do all in its powers to undertake in the very near future legislative action on all the matters requested by the Committee of Experts. Furthermore, recalling that the employer should not be individually liable for the payment of maternity cash benefits, which should be financed collectively, the Committee hoped that, notwithstanding the difficulties involved, the Government would undertake to replace progressively the direct employer liability system by a social insurance scheme and would initiate the necessary studies for this purpose, bearing in mind the need to avoid any adverse effect on the employment of women and on the enterprises with a high intensity of women workers. Finally, the Committee welcomed the decision of the Government to avail itself of the technical assistance of the ILO to achieve tangible progress in the application of the Convention and requested the Office to provide such assistance.

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

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**FIJI** (ratification: 2002)

A Government representative indicated that in 2008 the National Council for Building a Better Fiji (NCBBF) had adopted the People's Charter for Change, Peace and Progress (People's Charter) which aimed to build a society based on equality of opportunity for all Fijian citizens pursuant to the findings and recommendations contained in the Report on the State of the Nation and the Economy (SNE Report). The Charter contained key measures and actions to be taken, such as the promulgation of an anti-discrimination law; the development of education, vocational training and job placement; the promotion of multicultural education and the gradual phasing out of institutional names that denoted racial affiliations; and the elimination of racial and inappropriate categorization and profiling in government records and registers. Other measures included the increase of the participation of women at all levels of decision-making; the enactment of a code of conduct for public servants and persons who held statutory appointments; the reform of the public sector, including the removal of any political interference and the compulsory training of civil servants; the development of cooperation between the Government and the private sector; and the introduction of a national minimum wage. The Charter also contained specific measures concerning indigenous peoples and their institutions. The implementation of the measures envisaged by the Charter included: a new non-racially based Constitution which

guaranteed a system of one person one vote; public-awareness campaigns to promote national identity; national anthem and flag ceremonies to be observed in schools and important national state functions as a way of promoting national identity; elimination of race-based names of primary and secondary schools; and a common name “Fijian” to be used by all citizens of Fiji irrespective of ethnic origin.

Concrete steps that had been taken by the Government to further these strategies included the following: renaming the country as “Fiji” and providing the name “Fijian”, referring to all citizens of Fiji and not just the indigenous peoples; removing racial and inappropriate categorization and profiling in government records and registers, for example, forms that had required persons of Indian descent to state their father’s name had been withdrawn; promoting Fiji Day celebrations which had become an annual event. Most schools and organizations in the country were observing Fiji flag-raising ceremonies and the singing of the national anthem. The Ministry of Education, Culture, Art and Heritage had advanced many of the strategies towards national identity and social cohesion through such things as appropriate curriculum development and affirmative programmes, addressing teaching of the vernacular languages, comparative religious studies, and establishing special schools and institutions, including strengthening technical and vocational education and training. A new syllabus called “Healthy living and physical education for classes 3 and 4” had been developed and included human growth and development, building healthy relationships, safety, personal and community health and physical education. The Inclusive Education Policy also ensured education for pupils with disabilities and the Ministry observed a zero tolerance policy on abuse of children and declared drug-free zones in all education institutions. Mixed race and religious schools were being encouraged. An anti-discrimination law would be promulgated. The two main vernacular languages were to be taught in the education curriculum. The encouragement and promotion of religious freedom and understanding in schools and society would be encouraged and promoted, and the introduction of an education curriculum to include multicultural and comparative religious studies courses was also foreseen.

With regard to the National Policy on Sexual Harassment in the Workplace, which had been developed in 2008 in consultation with the social partners, the speaker informed the Committee that to date, only two cases concerning sexual harassment had been brought before the Employment Relations Tribunal and four cases had been settled with the Mediation Service in 2011. With an increase in awareness of the Policy on Sexual Harassment, it was expected that complaints would increase. With regard to the numerous measures proposed in the People’s Charter to promote equal access to education and training, the speaker indicated that his Government intended to introduce extensive reforms to the education system over the next two years. This would include a review of all subsidiary laws including the Education (Establishment and Registration of Schools) Regulations, 1966, which still allowed for preference to be given to pupils of a particular race or creed. The Ministry of Education had implemented a range of educational programmes under social justice and affirmative action programmes to improve access and retention, promote national and cultural identity and citizenship, implement curriculum guidelines and strengthen assessment of learning to improve student performance, enhance rural education programmes and improve the quality of technical and vocational education and training programmes.

With regard to vocational education and training, the speaker indicated that in 2010, a total of 69 vocational

centres had received grant assistance from the Government with a student roll of 2,712, representing an increase from 2,302 in 2009. There had also been an increase in the enrolment of students with special needs in 2010. The total number of students enrolled in all school levels, from early childhood intervention to tertiary level, had increased from 1,144 in 2009 to 1,182 in 2010. The Ministry of Education had abolished in 2011 all external examinations in primary schools including form 4 (year 10) which would significantly reduce the drop-out rate of pupils and promote full primary and secondary education for the first time in Fiji. Together with free tuition and a free transport and textbook scheme introduced by the Government in 2011, it was anticipated that this reform would significantly boost access for both boys and girls in the school system. Complementing these initiatives, Fiji had recently implemented the ILO TACKLE child labour project and was responsible for, among other things, the elimination of child labour in all workplaces. This was complemented with the Ministry of Education’s project to promote child education, as well as an active project to prevent the sexual exploitation of children within the community at large. There was also ongoing consultation on the upgrading and improvement of vocational training programmes offered in special schools. The number of pupils enrolled in vocational training had increased from 201 in 2008 to 262 in 2010. Finally, an Inclusive Education Policy had been approved by the Government in order to ensure and strengthen quality education for students with disabilities and address the needs of pupils with special needs in schools throughout Fiji. Implementation of the new Inclusive Policy would begin this year through the following measures identified by the Ministry of Education: improving the provision of re-education and vocational training services so as to meet the needs of people with disabilities; providing incentives to employers to employ people with disabilities; implementing a national five-year plan of action for people with disabilities; and developing and implementing a policy for persons with disabilities, including regulations to require appropriate access to all public buildings and places.

**The Worker members** recalled that the Government had ratified the Convention in 2002 and that it was the first time that the Government had been required to explain to the Committee the manner in which it was applying the Convention. It was a case in which the Committee of Experts had noted progress, in particular, with regard to: (i) the adoption, on 15 December 2008, by the NCBFB of the People’s Charter, the aim of which was to build a society based on equality of opportunity and peace for all the citizens of Fiji; and (ii) the establishment of the National Policy on Sexual Harassment in the Workplace prepared in consultation with the social partners. The Committee of Experts also referred to the issue of equal access to education and vocational training, which was covered by the definition of employment and occupation contained in Article 1(3) of the Convention. The Committee of Experts had expressed doubts concerning the implementation of the principles contained in the People’s Charter, which did not seem to have resulted in the reform of the education system called for in the SNE Report. No changes had yet been made to the education system which had been established by the Education Regulations, 1966, so it was likely that priority continued to be given to pupils of a particular race or creed in the admission process. Noting that, to judge by the report of the Committee of Experts, the situation described seemed reassuring on the whole, the Worker members wished to emphasize that the reality was very different. Even though the People’s Charter existed, in many ways it was just window dressing, aimed chiefly at promoting the country’s image in the eyes of the international community. The situation de-

scribed in the report contrasted with the action taken since 2006 by the ruling military regime, which had systematically removed all its opponents. The country was currently under a state of emergency in which all power was vested in the hands of the President, who had assumed total power on the pretext of maintaining public order. The presidential decrees which were reviewed on a monthly basis were therefore not subjected to any judicial control regarding their legality or constitutionality.

The Worker members indicated that the public sector trade unions had been deprived of the possibility of representing or defending their members in situations of discrimination since they were now excluded from the scope of the Employment Relations Promulgation. There was therefore no possible recourse against cases of discrimination or sexual harassment or any means of seeking maternity protection. Such an exclusion came within the scope of Article 1(1)(b) of the Convention inasmuch as public sector workers were deprived of the right to equality of treatment in employment and occupation. Moreover, they had also been stripped of their right to be defended and hence there was an indirect violation of trade union rights in the country. The Worker members denounced the adoption of Decree No. 21 of 16 May 2011 revising the Employment Relations Promulgation, 2007. Decree No. 21 applied generally to employers and workers, including workers employed by the local authorities, central authorities and the sugar industry, but excluded the Government and certain categories of workers, such as the police and the army, from its scope. But in general it was a decree of exclusion since one of its effects was to exclude 15,000 public service workers from the scope of labour law. Indeed, following the introduction of the new section 266 in the Promulgation of 2007, the aforementioned workers no longer had any legal basis for claiming their rights. In addition, the Government's action had also had the effect of withdrawing certain areas from the courts' sphere of competence. Protection against discrimination was a fundamental human right which was now being denied to public sector workers. The Worker members recalled that, according to the ILO, "discrimination results in and reinforces inequalities. The freedom of human beings to develop their capabilities and to choose and pursue their professional and personal aspirations is restricted, without regard for ability. Skills and competencies cannot be developed, rewards to work are denied and a sense of humiliation, frustration and powerlessness takes over". The Worker members expected the Government to seek a consensus solution in order to bring practice into line with the requirements of the Convention, since the situation clearly no longer corresponded to the one described in the Committee of Experts' report.

The Employer members recalled that this was the first time this case was being discussed before the Committee, even though the Committee of Experts had formulated observations regarding Fiji's compliance with the Convention in 2007, 2010 and 2011, welcoming the adoption in December 2008 of the People's Charter, which aimed to build a society based on equality of opportunity for all Fijian citizens. Noting the information provided by the Government on the content of the Charter, the Employer members welcomed its adoption and encouraged the Government to provide the ILO with information on the implementation of the measures it envisaged in order to prohibit discrimination and to promote equal opportunity for all in relation to access to education, vocational training and employment, as well as on the impact of such measures in practice. The Employer members noted with interest the adoption by the Government of the 2008 National Policy on Sexual Harassment in the Workplace. Welcoming the information provided by the Government to the Committee on the implementation of this Policy in

practice, the Employer members looked forward to the provision by the Government of additional information on this issue. With regard to the measures proposed in the People's Charter to ensure access to education for all, the Employer members noted that, while the Government had indicated that race-based schools had been eliminated, the Education (Establishment and Registration of Schools) Regulations, 1966, still provided in law that the admission process in the educational system allowed for preference to be given to students of a particular race or creed. The Government had stated that this did not happen in practice. The Employer members encouraged the Government to ensure, in connection with the proposed educational reform, that equal access to education and vocational training be granted to both men and women of all ethnic origins and that such regulations be repealed as a result. They also encouraged the Government to provide the ILO with information in this regard.

The Employer members also considered it unfortunate that, as noted by the Committee of Experts, based on a 2007 census, the participation of men in the labour force was notably higher than the participation of women and that the unemployment rate of women was double the rate of men. It was also unfortunate that the Government had apparently not replied to the requests of the Committee of Experts for information on the concrete measures taken by the Government to promote gender equality in employment and occupation. Noting, moreover, that the Government representative had not addressed this issue before this Committee, the Employer members encouraged the Government to provide a reply in this regard to the Committee of Experts. The Employer members welcomed the enactment, in April 2007, of the Employment Relations Promulgation, which prohibited direct and indirect discrimination in employment and occupation, as well as the information provided by the Government on training and awareness-raising initiatives in respect of the implementation of the Promulgation in 2008 and 2009, and expressed the hope that the Government would continue to provide information about the implementation and enforcement of this legislation so that the situation – both in law and in practice – could continue to be reviewed in order to ensure compliance with the Convention. Noting with respect to employment in the public sector that the Government had not provided any additional information to the Committee, apart that all Fiji nationals were afforded equal opportunity to enter the public sector and that selection was based on merit, the Employer members encouraged the Government to provide information on the measures taken to address equality of opportunity and treatment of men and women of all ethnic groups in the public sector so as to allow for a better understanding of compliance with the Convention in this respect.

The Worker member of the United Kingdom noted that there had been a significant deterioration in the situation in Fiji since the last examination of this case by the Committee of Experts. She emphasized that no measures had been taken to remove discrimination in access to education and training on grounds of race, creed or gender, as requested by the Committee of Experts. On the contrary, equality of access had become less likely, as the rise in school fees meant that schooling was out of reach for many, and a large number of children, in particular those from ethnic minorities, were forced to drop out and engage in child labour. In addition to discrimination in access to education, there was also a deplorable lack of legal protection of workers in Fiji. Claims stemming from discrimination and harassment, together with other employment issues, could no longer be brought to court by any civil service worker and access to the independent forums of the Employment Relations Tribunal and Court was

denied to public service workers. This was due to Decree No. 21 of 2011 which simply outlawed claims which challenged Government or civil service decisions and annulled existing Court or Tribunal Orders against state bodies. In one stroke, public servants had been prevented from complaining about discrimination or other abuses in their working conditions, and those who had already proved their case were immediately deprived of their remedy. Furthermore, the work of the Human Rights Commission was in a state of “government-induced coma” and kept barely alive. The speaker regretted that the Government had not taken any steps to implement the key measures proposed in the People’s Charter. The promulgation of an anti-discrimination act had not taken place and there had been no progressive development of education and vocational training, nor any elimination of racial or other inappropriate categorization and profiling. Instead, fundamental freedoms of workers had been curtailed. The speaker expressed her concern over the fact that, along with other trade unionists, her colleagues in the two teachers’ unions suffered continuous discrimination and harassment in their attempts to work within an education system built on the principles of equality and human rights, with dignity and fairness for all. This was illustrated by the suspension and dismissal of Mr Tevita Koroi, President of the Fijian Teachers’ Association, who had no hope of legal redress under Decree No. 21. He had been arrested and threatened with violence and the required permits for union meetings had been refused or issued late, with union officials prevented from travelling to attend meetings. The speaker emphasized that there was widespread interference in the organization of workers in other sectors, such as the sugar industry, often through military intervention, intimidation and violence.

With regard to the adoption of the 2008 National Policy on Sexual Harassment, the speaker stated that the Fijian Trade Union Congress was unaware of one single case of sexual harassment being pursued as a result of the Policy. This was an indication of a complete failure to implement measures to allow complaints to come forward. Furthermore, pay discrimination continued and, in the case of teachers, the existing wage discrimination had deepened as a result of the failure to implement the agreement reached after the 2003 job evaluation exercise which had prevented the adjustment of allowances in rural areas. In conclusion, the speaker emphasized that equality in the workplace could only begin to flourish in conditions of dignity and guaranteed freedoms, and that without respect for the rights of workers to complain about their treatment at work, or to organize around the issues that concerned them, Fiji could not take real steps towards the development of measures to combat discrimination.

**An observer representing Public Services International (PSI)** referred to Decree No. 21 which excluded the 15,000 civil servants working in the Fiji government ministries from the benefits and rights contained in the Employment Relations Promulgation, 2007 and thus, by extension, from the rights and benefits envisaged in the People’s Charter. Under Decree No. 21, civil servants would no longer enjoy the right to equal employment opportunities, the right to freedom of association or the right to collective bargaining. The Promulgation of 2007, aiming at eliminating discrimination on grounds of ethnic origin, sex, religion, age, disability, HIV and AIDS or sexual orientation, as well as prohibiting sexual harassment, promoting equal pay, assuring maternity protection and minimum wages, would no longer apply to civil servants. This group had, through their unions, played a key role in the development of the 2008 National Policy on Sexual Harassment and it was, in this regard, ironic that they should now be excluded from it. In addition, Decree No. 21 excluded the civil servants and their unions from

taking action, or filing claims, disputes or grievances of any form against the Government, denying them access to the Employment Relations Tribunal, the Employment Relations Court and any other adjudication body. Any claims or awards which were under way at the time of the promulgation of Decree No. 21 would, additionally, be terminated. Public service employees were thereby denied any mechanism to resolve their grievances against decisions of public authorities, as the Public Service Disciplinary Tribunal could not be said to provide such a mechanism since its role was confined to reviewing disciplinary measures taken against employees. The State, which should be setting the equality standard for all other employers, had hence effectively decided to discriminate against its own employees. The adoption of Decree No. 21 contradicted the essential role that trade unions played in promoting equality. In the absence of legislation, it was trade unions, through social dialogue and collective bargaining, that had advanced the cause of equality. Through collective bargaining they had achieved equality outcomes over and above those contained in the legislation and stood as the enforcers of legislation and agreements aimed at achieving equality. Furthermore, the speaker recalled that the Fiji National Provident Fund was the only social security fund for workers. Under current proposals the fund’s annuity rate of 15 per cent would be reduced to 9 per cent. This drastic reduction would represent a gross injustice to the workers who had contributed to the fund over the years in the expectation that they would receive an adequate pension on retirement and live in dignity in their old age. The proposal had also to be seen in the context of section 15 of Decree No. 6 of 2009, which introduced a compulsory retirement age of 55 for civil servants. These two measures combined would serve to ensure that the majority of pensioners would retire in poverty. It was regrettable to note that 65 per cent of workers in full-time employment were earning wages below the poverty line and that 15 per cent of the population lived in squatter settlements. In conclusion, while the ILO had long recognized the principles of freedom of association and collective bargaining as being fundamental for the development of all other labour rights, the amendments to the Promulgation of 2007, introduced by Decree No. 21, stood in marked contrast to these principles.

**The Worker member of Australia** associated herself with the concerns expressed by the Worker members over the failure of the authorities to comply with the Convention. Referring to the issues raised by the Committee of Experts in relation to the adoption of the People’s Charter, the speaker noted that little had been done to implement it in law and practice. The same was also the case with the 2008 National Policy on Sexual Harassment. Both the Committee of Experts and the United Nations Committee on the Elimination of Discrimination against Women had expressed concern at the absence of specific legal provisions giving effect to this Policy, as well as the associated absence of any concrete measures to address sexual harassment at the workplace. In the context of the need to ensure access to complaint mechanisms with respect to sexual harassment, she recalled that the Fijian Human Rights Commission had been established under the 1997 Constitution to oversee and protect human rights within the country. Since the Constitution’s abrogation in 2009, and despite the revival of the Commission by a presidential decree, this Commission no longer had the legitimacy or authority through which to promote or protect human rights in the country, including the right to be free from discrimination in employment and occupation. Furthermore, the speaker regretted the existence of anti-union discrimination and discrimination on the basis of political opinion, which were often interwoven, pervasive and in-

tensifying. Workers were often compelled to choose between their job and their role in the trade union and any trade unionist who publicly criticized the regime risked being suspended from their job, preventing them from practicing their profession or earning a decent income with which to support themselves or their families. With these developments in mind, it was very difficult to see how the Fijian authorities could effectively formulate and implement measures to address discrimination in employment and occupation, in particular with regard to their capacity to engage in social dialogue with respect to any proposed laws and policies relevant to the Convention. Consultations could hardly be considered to be genuine in a country where interference with union structures and activities was increasingly common and where those who sought to represent workers were intimidated and feared for their safety and that of their families. In this regard, the speaker questioned to what extent it was possible to effectively recognize and protect the rights of workers in accordance with the Convention in a country where the rule of law was fragile at best; where the interim Government had suspended the Constitution and ruled by decree; where the courts were prevented from exercising jurisdiction over a wide range of matters; where confidence in the independence and integrity of the judiciary was declining daily; where there was no freedom of the media; and where the rights of workers to access effective and impartial dispute resolution mechanisms, including those with respect to complaints concerning discrimination, and to be represented by organizations of their own choosing, were being significantly curtailed. In conclusion, while recognizing the Government's initiative, through the adoption of the People's Charter and the National Policy on Sexual Harassment, to take steps to bring national law closer to compliance with the Convention, the speaker doubted, in light of the prevailing political climate, that the authorities had the capacity to address discrimination in employment and occupation on any of the seven grounds identified in the Convention.

**An observer representing the International Trade Union Confederation (ITUC)** focused on the realities on the ground and the limitations faced by trade unions in dealing effectively with discrimination and unfair treatment of workers. While the social partners had been in the process of reviewing various provisions of the Employment Relations Promulgation, 2007, as requested by the Committee of Experts, the Government had imposed Decree No. 21, which excluded public sector workers from the provisions of the Employment Relations Promulgation, thus denying them any rights under this instrument, including the right to equal remuneration and equal employment opportunities and protection from any form of discrimination. Workers or their unions in the public sector no longer had the right to challenge any decision of the Government in any court, even when they might have suffered discrimination or unfair treatment. Tripartite consultations had been undermined and were almost non-existent, while the Government unilaterally issued and imposed decrees which did not comply with core labour standards or fundamental human rights. Similarly, Decrees Nos 6, 9, 10 and 25 of 2009 did not allow any union or workers in the public sector, including Government-owned entities and the sugar industry, to challenge any management decision where any action was taken in the guise of restructuring. This again included cases of discrimination, unequal or unfair employment opportunities, redundancies and denial of equal remuneration. All these decrees summarily terminated any pending cases before the arbitration tribunal or the Labour Court. The Public Emergency Regulations, which had been in existence for the last 27 months, restricted and, in some cases, denied the rights of workers and their unions to convene meetings to discuss and ad-

dress these issues. They also denied workers the right to freedom of speech, assembly and any form of industrial action. The media were also denied freedom of expression. Any breach of the Public Emergency Regulations would render the union and its officials liable to prosecution and persecution. With regard to the comments of the Committee of Experts on sexual harassment and the implementation of the provisions of the Employment Relations Promulgation, he indicated that the Government had totally excluded all public sector workers from these provisions through the abovementioned decrees. As a result, the question of implementation raised by the Committee was redundant. Workers no longer enjoyed this protection in the public sector. In the private sector, these rights continued to exist for the time being in the statutes but, in practice, there were very few isolated cases, if any, where any sexual harassment rulings had been handed down, and the implementation of the policies remained a far-fetched dream. The fact of the matter was that workers faced insecurity of employment because their fundamental rights had been abrogated and were, therefore, unlikely to raise any complaints with their employers or their unions for fear of reprisals, including intimidation and termination of employment. It was impossible to talk about non-discrimination and equality in this environment. The noble principles proclaimed in the People's Charter were just beautiful words designed to mislead the international community. The speaker asserted that many citizens who had dared to air criticisms of government policies, including himself, had faced summary arrests by the military, torture and beatings in military camps. People lived in fear and could not speak out against such atrocities or against any form of discrimination or unfair or unequal opportunity. Finally, he stated that public sector posts were often filled on the basis of political criteria rather than merit, and this explained the large number of military officers holding senior government positions.

**The Government representative** indicated that it was obvious from the discussion that the motivation of certain speakers was related to regional politics rather than the steps taken by the Government in conformity with the Convention. He would therefore provide replies only on selected points. The statements made regarding the state of emergency in the country had not been accurate. A public emergency regulation remained in force for 30 days at a time, after which the President was being advised on whether the state of emergency should continue, depending on the evolution of the security situation. At this moment, the state of emergency was in force and therefore some rights, such as freedom of association, were being restricted. With regard to the Education (Establishment and Registration of Schools) Regulations, 1966, which provided that, in the admission process, preference might be given to pupils of a particular race or creed, his Government appreciated that this instrument needed to be reformed in the framework of the wider reform of the education system. The Government was committed to preventing discrimination on any grounds whatsoever. The Ministry of Education had a firm policy that no school should apply the policy contained in the regulations and made sure that no school did so. With regard to the provisions of Decree No. 21, he specified that this amendment had not affected the functioning of the public service disciplinary tribunals set up in 2008 to deal with matters concerning public sector workers and maintained avenues of redress, such as the Court of Appeal and the High Court. The amendment did prevent, however, aggrieved parties from starting the process all over again before the Employment Relations Tribunal, in order to avoid a duplication of procedures. The problem of poverty raised by some speakers was not specific to Fiji, which was a developing country, and was working to

eliminate poverty through, for instance, free textbooks distributed to pupils, especially in rural areas so as to promote equal access to education. With regard to the case of Mr Tevita Koroi, his Government had already responded in writing to the Committee on Freedom of Association in relation to this case (No. 2723) and would not go into detail on this issue. With regard to the comments made on the independence of the judiciary, he emphasized that these allegations were unfounded and irrelevant to the discussion. Even though such allegations were being made with monotonous regularity, they were never accompanied by concrete examples.

The Employer members emphasized that, while the adoption of the People's Charter in 2008 had been welcomed, the Government was now called upon to provide information on the implementation of the measures required by the Charter, such as the adoption of an anti-discrimination act, so that the Committee of Experts could review the Government's compliance with the Convention. While the Government had provided some information to the Committee about the impact of Decree No. 21, the Employer members urged the Government to take measures to promote both equality in employment and occupation for persons of all ethnic origins and gender equality. The Employer members remained concerned about the impact of Decree No. 21 on the protection included in the Employment Relations Promulgation and encouraged the Government to provide the ILO with additional information regarding Decree No. 21 and its impact on equality of opportunity and treatment in public sector employment so that compliance with the Convention could be assessed.

The Worker members recalled that the case under discussion showed how the situation in a country, as described in a report, could change completely within just a few months on account of the authoritarian regime in power. Yet, in the interests of the workers, a commonly agreed solution should be found to the reform of the country's legislation, including the possibility of reverting to the original wording of the Employment Relations Promulgation, 2007. As noted in the report of the Committee of Experts, the People's Charter, which aimed to build a society based on equality of opportunity and peace for all Fijian citizens, offered a suitable working basis. It remained to apply the principles embodied in the Charter to the reality of workers' everyday lives. The Government should agree to enter into a tripartite dialogue with ILO assistance, and repeal, not just the presidential decrees so as to ensure compliance with the Convention, but also the laws on freedom of association and on collective bargaining. The Government should guarantee access to justice for all public and private sector workers so that they could assert their rights retroactively and thus neutralize the impact of Decree No. 21. Finally, the Worker members called on the Government to provide all the information requested by the Committee of Experts for its next session in November–December 2011. That information should cover the way the national policy on sexual harassment was being enforced at workplaces, and the implementation of the reform of the educational system, especially the measures designed to guarantee equal access to education and vocational training for boys and girls, men and women, of all ethnic groups, as well as the effect of those measures in practice.

### **Conclusions**

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

The Committee noted that the Committee of Experts had noted with interest the adoption in 2008 of the Peoples' Charter for Change, Peace and Progress and the National

Policy on Sexual Harassment in the Workplace. The Committee had also noted the proposed measures to ensure access to education for all and that the education system would undergo an extensive reform. In this context, the Committee of Experts had requested clarification regarding whether the system established under the Education (Establishment and Registration of Schools) Regulations, 1966, providing that in the admission process preference may be given to pupils of a particular race or creed, was still in force.

The Committee noted the information provided by the Government outlining the strategies and the concrete steps taken or envisaged such as removing racial and inappropriate categorization and profiling in government records and registers. In this regard, the Committee took note of the Government's indication that the forms that required persons of Indian descent to indicate their father's name had been removed. The Committee further noted the Government's statement that the reform of the education system would include a review of all subsidiary laws including the Education (Establishment and Registration of Schools) Regulations, 1966. The Government stated that it was carrying out a range of programmes to improve the educational system, including for persons with disabilities, and the quality of technical and vocational education, including with a view to increasing the enrolment of boys and girls in the school system. Regarding the implementation of the National Policy on Sexual Harassment in the Workplace, the Committee noted the information regarding two cases concerning sexual harassment that had been brought before the Employment Relations Tribunal and four cases settled through the Mediation Service in 2011.

While noting that the Peoples' Charter provided a good basis for further action to promote equality of opportunity and treatment in employment and occupation, the Committee urged the Government to ensure that the principles contained therein were translated into concrete action. In this regard, it called on the Government to amend or repeal all racially discriminatory laws and regulations, including the Education (Establishment and Registration of Schools) Regulations, 1966; to effectively address discriminatory practices; and to ensure equality in employment, training and education for all persons of all ethnic groups.

The Committee also noted the recent amendment of the Employment Relations Promulgation No. 37 of 2007 by the Employment Relations (Amendment) Decree 2011 (Decree No. 21 of 2011), a copy of which was provided by the Government, excluding government employees, including teachers, from the scope of the Employment Relations Promulgation and thus from its non-discrimination provisions (section 2). The Committee was concerned that this exclusion could have a negative impact on the right to non-discrimination and equality of opportunity and treatment of government employees, especially in the context of the present difficulties in exercising the right to freedom of association. The Committee noted further that section 3 of Decree No. 21 prohibited any action, proceeding, claim or grievance "which purports to or purported to challenge or involves the Government ..., any Minister or the Public Service Commission ... which has been brought by virtue of or under [the Employment Relations Promulgation]", and took due note of the Government's explanation in this regard. The Committee urged the Government to ensure that government employees had the same rights to non-discrimination and equality in employment and occupation as other workers covered by the Employment Relations Promulgation, and had access to competent judicial bodies to claim their rights and to adequate remedies. The Committee asked in particular that the impact of Decree No. 21 be reviewed in this context.

Noting the low labour force participation of women and their high unemployment levels, the Committee asked the

Government to take concrete measures to promote gender equality in the public and private sectors.

The Committee urged the Government to provide detailed information on the concrete action taken to implement the People's Charter and the National Sexual Harassment Policy, and the results secured by such action, in the public and private sectors. The Committee urged the Government to take such measures in consultation with the social partners. Noting the Government's indication that an anti-discrimination law was to be adopted, it asked the Government to provide information regarding this law so that the Committee of Experts could review its compliance with the Convention. The Committee also noted concerns regarding the difficulty in exercising the right to freedom of association in the country, and called on the Government to establish the conditions necessary for genuine tripartite dialogue, with ILO assistance, with a view to addressing the issues related to the implementation of the Convention.

The Committee requested the Government to include in its report to the Committee of Experts due in 2011, complete information regarding all issues raised by this Committee and the Committee of Experts, so that this Committee could assess at its next meeting in 2012 whether any progress had been made.

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Employment Policy Convention, 1964 (No. 122)

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HONDURAS (ratification: 1980)

The Government provided the following written information.

*Articles 1 and 2 of Convention No. 122. Active policy designed to promote full, productive and freely chosen employment.* The Committee of Experts requested the Government to provide information on the results achieved in the creation of productive employment in the context of the Decent Work Country Programme. The Committee of Experts requested up-to-date information be included on the size and distribution of the workforce and on the nature and extent of unemployment, as an essential component of the implementation of an active employment policy within the meaning of the Convention. The Government informs the Committee on the Application of Standards that consultations are being held with the ILO and the social partners with a view to the revision of the Decent Work Country Programme, which was approved in May 2007. At the present time, the authorities are engaged in the implementation of the Country Vision 2010–2038 and the National Plan 2010–2022, as long-term planning instruments setting out the objective of generating opportunities and decent employment in accordance with Convention No. 122. The Multi-purpose Continuous Household Survey carried out by the National Institute for Statistics allows analysis of trends in the principal labour market variables by economic activity for the years 2009 and 2010. Up-to-date data on employment for 2010 will be supplied in the near future to the Committee of Experts in time for its session in November–December 2010. The statistical table contained in Appendix IV of the present report shows the trends in the various labour market variables. Invisible underemployment fell by 5.9 per cent in 2010. The effects of the national and international crisis had an impact on the employment generated by the various economic activities, resulting from low levels of investment among other factors. Emphasis should also be placed on the clear recovery in activities such as agriculture, trade and services, as the principal employment-generating activities, in addition to construction.

*Article 3 of Convention No. 122. Participation of the social partners. Measures for alleviating the impact of the crisis.* The Committee of Experts requested the Govern-

ment to supply information on the consultations held with a view to formulating and implementing an active employment policy enabling the negative impact of the global crisis to be overcome. The Committee of Experts also requested the Government to supply information on the consultations held with representatives “of the persons affected by the measures to be taken” from other sectors of the economically active population, such as those working in the rural sector and the informal economy. The Government informs the Committee on the Application of Standards that the tripartite consultations held in the framework of the formulation of active employment policies take place in special commissions which include delegations of the National Congress. These dialogue and socialization bodies dispel doubts and analyse the opinions, recommendations and divergent views put forward by the representatives of workers and of employers. In the case of the National Programme on Hourly Employment, within the framework of the National Programme for the Generation of Anti-crisis Employment, the document prepared by the International Labour Standards Department of the ILO on the impact of the emergency programme in relation to labour rights was presented to all the parties involved. All the sectors involved agreed on the need to generate decent employment at times of crisis through active employment policies, in accordance with the Constitution of the Republic, the Labour Code and other labour laws, as well as ratified Conventions. With regard to the consultations held with the various sectors of the economically active population, such as rural workers and those in the informal economy, the National Congress establishes commissions for the social analysis of laws with the representatives of productive associations, coordinating councils of associations from the towns and departments of the country, as well as with representatives of rural workers, manual workers, employers, dynamic sectors and development organizations. An illustration of consultations with representatives of the agricultural sector and the informal economy was provided by the approval of the Act on Rural And Urban Marginal Employment, which was supported by the Coordinating Council of Rural Organizations of Honduras (COCOCH) and the Association of Municipal Authorities of Honduras (AHMON), among other social bodies.

The Committee of Experts requested the Government to indicate the manner in which account has been taken of the opinions and experience of the representatives of employers' and workers' organizations in the formulation and implementation of the National Solidarity Plan for Anti-crisis Employment. The Committee of Experts requested information on the supervision and monitoring of the Programme, the extent to which the beneficiaries have succeeded in obtaining productive employment and details of the age, sex, place of residence, training received and any other data enabling a quantitative and qualitative examination to be made of the employment created. For discussion with the various organized social sectors in the country of the National Solidarity Plan for Anti-crisis Employment, the National Congress established a special commission to hear the various points of view and recommendations on the draft legislative text. The representative of the National Congress was accompanied by the leaders of the five political parties to discuss the draft legislation with the representatives of the social and economic sectors (rural workers, manual workers, employers, religious groups, employers' leaders, dynamic sectors and representatives of development organizations) in the main cities of the country. The observations made by the ILO and the parties concerned, principally related to the guarantees set out in legal and international provisions respecting freedom of association and other relevant legal standards, were taken into consideration. The Committee

on the Application of Standards may also note that the Economic and Social Council (CES), a tripartite dialogue body, in June 2010 discussed the contents of the National Programme for Hourly Employment, bringing together tripartite representatives so that they could indicate their opinions and their proposals for employment creation could be taken into account. In this context, it is emphasized that the President of the National Congress and the Ministry of Labour and Social Security concluded a framework inter-institutional cooperation agreement with a view to facilitating the recruitment of hourly workers through the employment generation legislation approved by the Chamber of Deputies (the text of the agreement was sent to the ILO in May 2010). Among the agreements concluded between the Government and the legislature, it was decided to strengthen the Labour Market Observatory (OML) as a necessary body for the generation of information on the labour market with a view to the implementation of new employment policies, as well as the prompt implementation of the National Employment Service as an instrument for the application and coordination of all employment programmes in the country.

To resume the situation as of April 2011, the following progress has been made in collaboration with the General Directorate of Employment and the General Labour Inspectorate:

- the Regulations of the National Programme for Hourly Employment were approved and published in the *Gaceta* on 7 February 2011 (a copy of the Regulations was forwarded directly to the ILO);
- 72 enterprises indicate that they have made use of the National Programme for Hourly Employment, of which 35 enterprises are registered;
- 193 labour contracts have been registered, covering 73 women and 120 men;
- the registered enterprises are located in Tegucigalpa, San Pedro Sula, Comayagua, Choluteca and Intibucá and are engaged in the following economic activities: financial establishments, insurance and property, services, agriculture, trade, manufacturing and construction;
- the workers are engaged in the cities of Tegucigalpa, San Pedro Sula, Comayagua, Choluteca and La Esperanza, most of them under two-month contracts with working days of four hours: the duration of the contracts varies between five days and 30 months;
- the largest number of workers are engaged in communal and social services;
- the STSS has provided guidance to 2,223 enterprises on the Programme, of which 71 have individually visited the General Directorate of Employment to obtain more in-depth knowledge.

*Policy coordination.* The Committee of Experts requested the Government to provide information on the steps taken to coordinate occupational education and training policies with prospective employment opportunities and to improve the competitiveness of the economy. In 2009, with the support of the five legally registered political parties and their Presidential candidates, and through processes of consultation which took into account the visions and expectations of representative associations, individuals, regions, municipal authorities and communities in the country, the basis was created for the development of long-term planning instruments: the Country Vision 2010–2038, a planning framework for seven periods of governments, which sets out four national objectives and 22 national priority goals; a National Plan 2010–2022, covering the first phase of the Country Vision, and a matrix of 58 indicators. Objective 1 indi-

cates that by 2038, Honduras will have reduced levels of inequality in income and created the means for equal access to quality services in education and vocational training. Objective 3 provides for a Honduras which is productive, generating opportunities and decent employment, consolidating regional development plans as its model of management for economic and social growth. In accordance with Executive Decree No. PCM–008–97 under the Regulations on the organization, functioning and competences of the executive authorities, it is the responsibility of the Secretariat for Education, among other functions, to formulate, coordinate, execute and evaluate policies relating to the various levels of the formal education system, with emphasis on basic education. Institutions have been created which coordinate and implement education and vocational training policies: the National Centre for Labour Education (CENET), of which objective 1 is to implement educational programmes for labour which integrate adult education with vocational training in support of the medium and long-term development of the three sectors of the national economy, all in close coordination with the branch institutions; the National Vocational Training Institute (INFOP), with the objective of: “Contributing to increasing national productivity and the economic and social development of the country, through the establishment of a rational system of vocational training for all sectors of the economy and for all levels of employment, in accordance with national economic and social development plans and the real needs of the country. Accordingly, it is the responsibility of INFOP to direct, monitor, supervise and evaluate activities intended for vocational training at the national level”.

*Impact of trade agreements.* In view of the importance of exports for sustaining productive employment in the country’s economy, the Committee of Experts requested the Government to provide information on the impact of trade agreements on the generation of productive employment. The principal destination of exports from Honduras is the United States, which in 2009 accounted for 39.8 per cent of total exports, followed by the Central American region and Europe. The countries of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR), including Honduras, benefit in the United States from preferential treatment in trade and from zero tariffs for certain products, such as fresh fruit and vegetables, cheese and other dairy products, and the agricultural sector is the largest provider of employment at the national level, in addition to the textile sector. In the context of the CAFTA–DR trade agreement between Central America, the Dominican Republic and the United States, upon its entry into force in 2006, the United States accounted for 36.8 per cent in terms of investment according to the source of capital in the industrial activity of goods for transformation and related activities, with a total of 110 enterprises. According to studies undertaken in the sector, the emergence of the *maquila* industry in Honduras has contributed to standards of efficiency and quality in the production of manufacturing goods in the country. This has undeniably added prestige the work of individuals and, moreover, the national geographical situation has allowed astute exploitation of the development of trade. The *maquila* sector as a source of employment has contributed to reducing pressure on the labour market without investment in this respect. In addition, the concentration of the population in the major cities generates various trends related to demand for products and services. The greater availability of income has given rise to rapid growth of the informal economy in such areas as the sale of food, snacks, street traders of articles for individual use, etc. For example, a number of *maquila* enterprises provide training programmes in various areas on productivity and continuous improvement,

occupational safety and health, administration and human resources, legislation and social obligations, through the Programme for Integrated Training for the Textile Industry (PROCINCO).

*Export processing zones.* The Committee of Experts requested the Government to continue to supply information on the contribution of the export processing zones to the creation of lasting, high-quality employment. The largest number of workers engaged in export processing zones are concentrated in the textile industry, clothing and leather-working, followed by other activities, including the processing and conservation of fruit, plastic products, paper and cardboard, other manufacturing, etc., and finally electronic components and motor vehicle parts. According to data gathered by the Central Bank of Honduras, in 2008 a total of 122,881 persons were employed in the *maquila* sector, composed of 66,279 women (53.9 per cent) and 56,602 men (46.1 per cent). The figures for 2009 were a total of 106,695 workers, of whom 55,428 were women (52 per cent) and 51,267 men (48 per cent). The estimated number of workers employed in the *maquila* sector in 2010 was 117,898.

*Micro-, small and medium-sized enterprises (MSMEs).* The Committee of Experts requested the Government to supply information on the impact of the new legal framework relating to MSMEs on the creation of employment and the reduction of poverty. The Act for the promotion and development of competitiveness in micro-, small and medium-sized enterprises was published in January 2009. Action was commenced for the establishment of an initial fund for the promotion of MSMEs. Nevertheless, progress was interrupted by the political events of June 2009, which halted the process. Efforts are currently continuing to develop regulations under the Act and to train entrepreneurs in MSMEs to address their financial needs. Progress has been made in the training of MSMEs so that they can have access to purchases by the State for up to 30 per cent of total purchases. MSMEs receive support for participating in national and international exhibitions.

*Migrant workers.* The Committee of Experts requested the Government to supply information on the manner in which programmes for the sound investment of remittances sent by migrant workers have contributed to the creation of productive employment. Remittances are an important source of currency for the economy of Honduras. In 2010, they represented approximately 16.4 per cent of the Gross Domestic Product (GDP) in current dollars. Of the Central American countries, Honduras is the third largest receiving country of family remittances, which amounted to US\$2,525.7 million in 2010, representing a rise of 5.1 per cent in relation to 2009. According to a study by the Central Bank of Honduras, the remittances sent by migrant workers have become, in the same way as at the global level, an important source of financial resources which are used to fund economic development, and have become a subject of great interest, not only for analysts and policy-makers, but also for high-level political decision-makers. The Six-monthly Survey Report "Family remittances sent by Honduran nationals resident abroad and expenditure in the country during their visits", of January 2011, produced by the Central Bank of Honduras, indicates that, in accordance with the views of those consulted, the majority (69.1 per cent) of income from family remittances is used for the consumption of subsistence goods and services. School expenses are the item that comes second, with 11.3 per cent, followed by medical expenses at 9.6 per cent. Remittances have a positive macroeconomic effect by promoting economic growth. An analysis undertaken by the Central Bank of Honduras emphasizes the importance of remittances on various macroeconomic factors, which contribute to promoting initiatives for employment generation.

*Youth employment.* The Committee of Experts urged the Government to continue to focus on the need to integrate young persons in the labour market. The Committee of Experts requested the Government to provide information on the results achieved by the National Youth Policy and the Plan of Action for Youth Employment 2009–2011. Following processes of consultation with various sectors, including organizations of young persons at the national level, the National Youth Policy, for which the National Youth Institute (INJ) is responsible, was approved in 2010, and was subsequently launched in the Presidential Palace, when the position of Executive Secretary was raised in rank to Secretary of State in the Youth Office. The Secretariat of Labour and Social Security (STSS), through the General Directorate of Employment, Institutions and Bodies, is currently in the process of refining the Plan of Action for Youth Employment (PAEJ), which will then be submitted to the Economic and Social Council (CES) for further consultation with the various sectors before its approval. The PAEJ contains strategies and orientations addressing fundamental areas of youth problems on the labour market. Issue 2 of the PAEJ addresses social dialogue and its impact, proposing to stimulate and promote mechanisms for effective and proactive participation so that young persons can give voice to their demands and aspirations in relation to employability and employment, set out their needs, propose alternative solutions and conclude concerted agreements providing for tangible and feasible solutions, in the context of institutional dialogue with all the actors involved. In accordance with its constant practice, in light of the contributions from the tripartite examination in the Committee on the Application of Standards, the Government of Honduras expresses its readiness to provide a report to the Committee of Experts containing updated information on labour market trends and information on the progress achieved in the application of the Convention.

In addition, before the Committee a **Government representative** indicated that the Government Plan 2010–14 was designed to create active employment strategies and was promoting the establishment of a National Employment Service, which demonstrated the Government's commitment towards the Convention. He recalled that Honduras had one of the weakest economies in Latin America and growth in GDP for 2011 had been estimated at 3 to 4 per cent, thereby maintaining the upward trend in relation to the previous year. He indicated that owing to the country's efforts regarding fiscal consolidation and stabilization of the economy, Honduras had concluded an agreement with the International Monetary Fund (IMF) which gave it greater access to international financial markets, while also creating a better climate for trade. He stressed his Government's commitment to the creation of productive employment, in the context of an economic and social policy that promoted national development, improving levels of productivity and general living conditions. He recalled that those commitments formed part of the Country Vision 2010–38, the National Plan 2010–22 and the Government Plan 2010–14. He indicated that the biggest challenge for the Honduran economy was not open unemployment, which stood at about 3.9 per cent, but underemployment, which affected 40.3 per cent of the economically active population. His Government considered it a priority to boost competitiveness and formulate and implement programmes for dissemination of technological innovation, worker training, new management practices, company organization and development of an enterprise culture. He asserted that comprehensive educational reform was needed as soon as possible so that intermediate and higher education would meet labour market needs. At present, only 40 per cent of those enrolled completed basic education, of whom only 34 per cent went on to

secondary education. Of the 34 per cent only 5 per cent went on to university. He explained that the Government was creating aggressive investment programmes and passing laws based on novel concepts of implementation. In its next report it would submit information to the Committee of Experts on the new legislation promoting active employment policies, which included the following: the National Plan and Country Vision Act, the National Programme on Hourly Employment, the Public–Private Partnership Act, the Investment Promotion and Protection Act, the Special Development Region Act, the Marginal Rural and Urban Employment Act, and the Foreign Employment Act. He concluded by recalling that the Government had a “roadmap” for achieving positive results leading to an improved standard of living for the population and that it was receptive towards making adjustments to find solutions together with the social partners. He was interested in the social partners being actively and positively involved in the process within the Economic and Social Council and also in the initiatives taken to promote a frank and open discussion of the challenges faced by the country in achieving decent and productive employment.

**The Employer members** recalled that this case was last discussed in 1997, at a time when Honduras was facing numerous challenges: significant problems of foreign debt, budgetary deficits and a rapidly growing population. Unemployment was high, but the Government had recognized that the essential solution was higher economic growth. Since then, the world had increasingly globalized, which made it harder for smaller nations to be in a position to control their own employment policies. Additional challenges included rapid technological change and increasingly cheap transportation costs. The written submission provided by the Government contained a large amount of information. However, the Government needed to provide a supplementary report in a timely manner explaining its policies and the legislation that it intended to put in place, since it was presently impossible for this Committee to evaluate the information provided. 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 within a framework of a coordinated economic and social policy with tripartite consensus on its impact. Based on the written information, this Committee could at best determine what the Government intended to do, but the details were lacking. The Government had not provided details regarding the consultations with workers’ and employers’ organizations and other organizations that were affected. The Convention established a framework in which those who sought work should be able to find work which was as productive as possible. The information presented did not indicate what economic and employment policies were in place to ensure that work was available. The unemployment figures that were communicated seemed relatively good in the current economic crisis, but it was unclear how such figures were calculated. In the Employer members’ view, employment policies should generate productive and sustainable employment, raise standards of living with policies leading to better jobs, improve income distribution in a better economy, provide appropriate employment incentives, and focus on private investment and international assistance in the most productive areas. They hoped that the Government would provide additional information in its next report in time to allow for a proper assessment of employment promotion policies.

**The Worker members** recalled the enormous challenges facing Honduras: poverty, with 59.2 per cent of poor households in 2009 and 36 per cent of households in extreme poverty; underemployment affecting 30 per cent of the population; a large young active population, only

5 per cent of whom were unemployed, but 82 per cent of whom did not benefit from social protection, while many young persons with qualifications had difficulties in finding employment; and a large number of migrant workers estimated at 5 per cent of the population. That was compounded by an unfavourable economic and financial context, and a sustained debt reduction programme, the effects of the global financial crisis, in the form of a fall in growth, investment and employment, including in export processing zones, where 12,000 jobs had been lost since 2008. To address such problems, according to the observation made by the Committee of Experts, the country seemed to have adopted ambitious measures, in the form of anti-crisis plans, programmes and measures, accompanied by a national competitiveness strategy which aimed to promote productive work in the *maquila*, agri-food, forestry and tourism sectors. It was impossible to assess the results obtained through the adoption of such measures, as the Government had not provided any information in this regard. It was only in May 2011 that the Government had provided a first reply to the ILO, and then at the present session of the Conference, it provided written information. The Worker members regretted such late replies which made it impossible to undertake a serious evaluation of the situation.

**The Employer member of Honduras** recalled that Honduras had suffered one of the most serious socio-political problems in its history which, added to the international financial crisis, had had a negative impact on economic and social development. The Government had fostered a public–private partnership in developing investment and had promoted various policies and adopted acts encouraging investment as an essential contribution to poverty eradication. He mentioned several initiatives that the Government had taken, including the National Plan and Country Vision, Legislative Decree No. 230/2010, the National Solidarity Plan for Anti-Crisis employment, the Public–Private Partnership Act, the Investment Promotion and Protection Act and the Marginal Rural and Urban Employment Act, and reaffirmed the employers’ support for the Government’s policies. In their view, the measures taken violated neither Conventions nor the rights of workers and employers. He said that the various legislative reforms were awaiting approval from Congress formed an integral part of policies to ensure judicial certainty and generate employment. He said that, from the employers’ perspective, the new legislation aimed to guarantee employment for citizens throughout the country, and that Honduras had not failed to comply with its obligations under the Convention. Public policies were being formulated that would promote a climate favourable to investment, thereby facilitating growth and economic development.

**A Worker member of Honduras** expressed concern at the socio-economic situation in Honduras and the informal and precarious nature of employment. He pointed out that the systematic violation of rights in the country hampered the creation of favourable conditions for the generation of decent employment. He indicated that the Decent Work Country Programme had not had a significant impact on the population and recalled the statistics relating to poverty and extreme poverty included in the comments of the Committee of Experts. He also emphasized the impossibility of maintaining social dialogue in a climate of fear and mistrust with restrictions on public freedoms, dismissals of trade union executive committees, limits on collective bargaining and murders of trade union leaders. He underlined the importance of creating high quality, stable and decent employment. He indicated that both the Decent Work Country Programme and the National Solidarity Plan for Anti-Crisis Employment were ineffective in terms of the jobs created. He asserted that ILO techni-

cal assistance was needed to create policies on a tripartite basis for full employment with decent wages.

**Another Worker member of Honduras** stated that it was necessary to create jobs, but they should be decent jobs with fair wages. He did not support the National Solidarity Plan for Anti-Crisis Employment because it created temporary, precarious work and promoted flexibility in employment. The unstable nature of temporary work had negative consequences in various spheres and also posed problems for freedom of association and collective bargaining. He said that the Congress had adopted the Plan against the wishes of the trade unions. He recalled the difficult situation that the country had experienced and said that poverty and corruption had increased following the coup d'état, which had undermined social peace and made it difficult to create decent jobs.

**The Government member of Brazil**, speaking on behalf of the Government members of the Committee, which were members of the Group of Latin American and Caribbean countries (GRULAC), emphasized that the Government's participation demonstrated the efforts it was making to apply the Convention. The measures taken by the Government would necessitate the continued involvement of the social partners, the international community, the ILO and the Conference Committee. The ILO should support Honduras in its efforts to meet its commitments arising from ratification, and his Government encouraged the Government of Honduras to continue to work towards full application of the Convention.

**The Worker member of Germany** expressed the serious concern of the German Confederation of Trade Unions (DGB) for the trade union situation in Honduras. She regretted that the Government spent most of the time reading out statistical figures instead of presenting concrete measures aimed at reducing unemployment. Sound employment policy presupposed a real dialogue with the social partners being treated as equals. When poverty remained at nearly 60 per cent, absolute poverty at 36 per cent and unemployment and underemployment approximately 35 per cent, real dialogue was urgently needed. In a climate of violence, trade unions and unionists received little assistance from the State or the judiciary, and there was little possibility of actively becoming involved in issues of collective bargaining and trade negotiation. As shown in the Committee of Experts' report, there were 250 companies operating in export processing zones employing about 119,000 workers. Trade unions existed only to a limited degree and tripartite negotiations were largely impossible. Honduras needed genuine trade union activity and real dialogue in order to obtain an effective employment policy. While reference had been made to the need to deal with the economic crisis, it was necessary to put an end to violence against trade unions and impunity. She hoped that the Government would take advantage of the technical assistance that the ILO offered.

**The Worker member of the Bolivarian Republic of Venezuela** stated that democratic instability resulting from the coup d'état against the democratically elected Government had been detrimental to employment. He drew attention to the figures included in the observation by the Committee of Experts on the state of poverty in the country. ILO technical assistance was fundamental to improving the situation in the country. He highlighted the connection between the right to employment and respect for physical, psychological and moral integrity. It was vital to end repression, acts of violence and murder and to re-establish the rights of the Honduran people, which had been trampled, so that cases like those of Roger Vallejo and Ervin Acobo Euceda, who were assassinated, could not occur in the future.

**The Worker member of Spain** indicated that although the information supplied by the Government gave details of

different policy documents and legislative instruments relating to employment creation, it did not include statistical data that would enable the real impact on employment to be measured. He pointed out that the Decent Work Country Programme had ended in 2009 and therefore it would be possible to communicate the results achieved through its implementation; failure to supply them would suggest a lack of political will to do so. He declared that decent work called for a serious ongoing dialogue with workers' and employers' organizations, and proposals from the social partners needed to be taken into account in the formulation of employment policies. He indicated that the National Solidarity Plan for Anti-Crisis Employment was a further step in the deregulation and deterioration of conditions of work and the trade union federations had rejected it. He asked the Government to ensure that its next report included fewer intentions and more statistics.

**The Government representative** stated that the Government hoped to consolidate constructive, inclusive and commitment-based dialogue under a government of national unity and reconciliation, founded on respect for and promotion of labour rights and consolidating democracy and internal stability, so as to achieve sustainable social and economic development. He recalled that written information had been submitted to the Committee on the tripartite consultations held within the framework of formulating active policies on employment and on the functioning of special committees, which included delegations from the National Congress. He stressed that all parties involved had had access to information on the impact of the National Programme on Hourly Employment. He recalled that a national tripartite commission on follow-up and monitoring had been established within the Economic and Social Council. It had met on 6 June 2011, chaired by the Minister of Labour, and had considered concerns raised by employers and workers. Furthermore, a technical team from the social security institution would submit guidelines with the basic aim of ensuring that workers employed under the National Programme on Hourly Employment would enjoy social security coverage. The Government representative said that awareness-raising days had been held to avoid possible infringements of the law, and that additional funds had been requested to strengthen labour inspection. He reiterated that the Government would provide detailed statistics in its next report on the labour market situation and on the various initiatives taken. He welcomed the declaration of support made by GRULAC and reaffirmed the Government's will to achieve full employment with social justice and decent work.

**The Worker members** underlined that faced with poverty, informal work and youth unemployment, Honduras needed an energetic and coherent employment policy supported by workers' and employers' organizations and by the population as a whole. In the absence of statistical data, it was impossible to assess the scope and extent of the various plans and programmes adopted, the results obtained, or the way in which the social partners had been involved. Before the next session of the Committee of Experts, therefore, the Government should provide detailed information on those issues and on the economically active population, employment and unemployment, and the various forms of employment that existed. The Worker members concluded by stressing the importance of a frank and serious social dialogue.

**The Employer members** observed that Honduras seemed to be in a better condition than it had been in 1997. Globalization and the economic crisis presented significant challenges to the country, but it did so for all countries. They needed a more transparent picture of Honduras' economic and employment policies, the day-to-day prac-

## Minimum Age Convention, 1973 (No. 138)

Azerbaijan (ratification: 1992)

tice and the consequences of those practices on productive and sustainable employment. The only way this could occur was if the Government communicated a timely report to the Committee of Experts for its next session.

### Conclusions

The Committee took note of the written detailed information provided by the Government on the issues raised by the Committee of Experts in its most recent observation on the application of the Convention, as well as the oral statements made by the Government representative and the discussion that followed.

The Committee noted that the Government reiterated its commitment to the generation of productive employment in the framework of its plans and programmes designed to overcome the difficult situation of underemployment which represents over 40 per cent of the economically active population. The Government also expressed its intention to reform its education and training system to ensure decent job opportunities for young people. It referred to the consultations held with the social partners in the Economic and Social Council and the National Congress to enlist their support with regard to the implementation of the National Solidarity Plan for Anti-crisis Employment.

The Committee noted the serious concerns expressed on the possibility for the National Solidarity Plan to create productive job opportunities and decent working conditions in view of the apparent instability of employment. It also noted that the Government was faced with a significant problem of foreign debt, budgetary deficits, a rapidly growing population and the need to pursue an active employment policy, as a major goal, in the framework of a coordinated economic and social policy.

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 urged the Government to intensify its efforts to engage in genuine tripartite consultation on the points raised by the Committee of Experts in its observation.

The Committee invited the Government to report in detail for the next session of the Committee of Experts with an update of the information provided on new measures and their objectives and on the size and distribution of the workforce, as well as specific information on the effectiveness of the measures implemented in reducing underemployment and achieving the objectives of the Convention. The Committee also requested the Government to provide detailed information on how tripartite mechanisms had contributed to the formulation of employment programmes and to the monitoring and implementation of active labour market measures in order to overcome the current crisis and to ensure a sustainable recovery.

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## Minimum Age Convention, 1973 (No. 138)

### AZERBAIJAN (ratification: 1992)

The Government provided the following written information.

*Scope of application:* Articles 17(4) and (5) of the Constitution stipulate that it is prohibited to engage children in activities endangering their life, health or morality. Children under the age of 15 may not be employed. Under section 1 of the Labour Code, labour legislation consists of the Labour Code and international agreements on labour or socio-economic issues which the Republic of Azerbaijan has concluded or to which it is party. Convention No. 138, which Azerbaijan has ratified, is therefore part of the labour legislation and the provisions of Article 2(1) of the Convention must be respected by all employ-

ers that are physical persons and that use child labour, irrespective of the form it takes (in recruitment, under civil law or even illegally). Under article 151 of the Constitution if contradictions are identified between the normative texts that form the legislative system of Azerbaijan (including the Constitution and laws adopted by referendum) and international agreements to which the Republic of Azerbaijan is party, the international agreements shall take precedence. Accordingly, if discrepancies are identified between the Constitution and Convention No. 138, the Convention shall prevail.

*Minimum age:* The Committee of Experts considers that the Republic of Azerbaijan, which ratified Convention No. 138 in 1992, has set the minimum age for employment at 16 years, not 15. However, in our view, the Committee of Experts has not explained its approach in sufficient detail, referring only to Article 2(1) of the Convention in specifying a minimum age of 16 for Azerbaijan. The Republic of Azerbaijan considers that, under Article 2(3) of Convention No. 138, it is entitled to set the minimum age at 15 years. In Article 2(3), it is stated that the minimum age specified in pursuance of paragraph 1 of the Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. In accordance with the Education Act, general education consists of primary, general secondary and full secondary education. The State ensures the exercise of the right of every citizen to receive general secondary education (section 5(4)), which goes up to ninth grade inclusive. Under this Act, children go to school at the age of 6. The requirements of Article 2(3) of the Convention are thereby fulfilled in the Republic of Azerbaijan. On what grounds does the Committee of Experts consider that the Republic of Azerbaijan has undertaken to set the minimum age at 16? Is Azerbaijan perhaps required, under Article 2(1) of the Convention, to make an official statement that the minimum age is 15? We request clarification as to how Azerbaijan may establish a minimum age of 15. What is required for this purpose? Given that the Labour Code does not apply to those employed under a civil law agreement, it is not possible to create provisions widening the application of Article 2(1) of the Convention within the Labour Code. An age limit for the employment of children could be set in the Civil Code, in which regard it would be useful to receive recommendations from the Committee of Experts, supplemented by international experience.

*Types of hazardous work prohibited to children under 18 years (Article 3(2) of Convention No. 138):* The "List of arduous and hazardous industries or occupations, including underground work, where the employment of persons under 18 years of age is prohibited" was approved by Decision No. 58 of the Cabinet of Ministers on 24 March 2000. This list includes around 2,000 such jobs. The Government will make efforts to have this list translated into Russian and provide it to the Committee of Experts.

*Article 7 of the Convention:* In response to the Committee's questions, we wish to inform you that, as of 1 July 1999, Act No. 618-IQ of 1 February 1999 "On the resolution of legal questions connected with the approval and entry into force of the Labour Code of the Republic of Azerbaijan" annulled the Act "On individual labour agreements (contracts)", section 12(2) of which permitted children over 14 years to work. Currently, the Labour Code does not specify 14 years as the minimum age for concluding a contract of employment. Act No. 924-QD of 4 December 2009 amended section 249(1) of the Labour Code to read as follows: "Individuals under 15 years shall not be recruited to work". The second part of section 249 was deleted.

*Fines:* The following sections of the Administrative Procedure Code provide for fines in connection with child labour:

- 53.9 – Recruitment by an employer of a child under 15: individuals responsible are liable to a fine of between 1,000 and 1,500 manat; legal persons are liable to a fine of between 3,000 and 5,000 manat.
- 53.10 – Recruitment of children to activities endangering their life, health or morality by an employer: individuals responsible are liable to a fine of between 3,000 and 5,000 manat; legal persons are liable to a fine of between 10,000 and 13,000 manat.

*Monitoring working conditions at workplaces: practical application of the Convention:* The Government refers to the Rights of the Child Act (No. 439-IQ of 19 May 1998) and the Education for Individuals with Limited Abilities (Special Education) Act. In the Republic of Azerbaijan, there are no official statistics on the activities of children between the ages of 15 and 18 in terms of concluding contracts of employment with employers. It can be said that the use of child labour by employers on the basis of a contract has not been noted. In 2005, with ILO assistance, the State Statistical Committee carried out the first statistical sampling survey to cover all regions of the country. It revealed instances of the use of child labour in Azerbaijan and the forms it takes. According to official statistics for 2005, 13,500 under-age children were employed in various economic spheres, making up a very small percentage (0.35 per cent) of all those employed in the economy. In rural areas, children are involved in domestic and agricultural tasks in particular circumstances in order to help their parents. The analyses carried out show that, in 2005, 7.4 per cent (2.0+5.4) of children of school age (6 to 17 years) were not attending school. Based on information from the State Labour Inspectorate on eliminating violations of women's labour rights and the exploitation or improper use of child labour by employers, penalties were issued in 36 such cases in 2004, 62 in 2008, and 23 in 2010. According to data from the State Statistical Committee, the economically active population included 25,890 individuals between 15 and 17 years of age, as at 1 January 2011. Of those, 11,582 live in towns and 14,308 in rural areas. The number of people between the ages of 15 and 17 who are employed is 19,262, of whom 7,065 live in urban districts and 12,197 in rural areas. Of the total, 69 per cent (13,267 persons) are employed in domestic agriculture, 3.4 per cent (650 persons) are physical persons engaged in business activities, and 27.7 per cent (5,345 persons) pursue individual labour activities. An analysis of employment by economic sector reveals that 81.6 per cent of children between 15 and 17 (15,716 persons) are mainly employed in agriculture, forestry and fisheries, 4.3 per cent (833 persons) in construction, 5 per cent (960 persons) in wholesale and retail trade, and 2.6 per cent (499 persons) in financial and insurance activities or other spheres.

In addition, before the Committee a **Government representative** stated that the Committee of Experts had noted that the national legislation restricted the application of Article 2 of the Convention. By virtue of section 1 of the Labour Code, labour legislation consisted of the Labour Code and international agreements on labour or socio-economic issues ratified by the Republic of Azerbaijan. Therefore, Convention No. 138 formed part of the labour laws of Azerbaijan. The provisions of Article 2 of the Convention must, therefore, be respected by all employers who employed children, whatever the form of work, and it was prohibited to recruit persons under 15 years of age. Regarding the minimum age, the speaker noted that the

Committee of Experts considered that Azerbaijan had set the minimum age at 16 rather than 15 years, under Article 2(1) of the Convention. The explanations provided by the Committee of Experts in that regard were not sufficiently substantiated, in that they referred only to Article 2(1) of the Convention. Paragraph 3 of the same Article allowed for the minimum age specified to be not less than the age of completion of compulsory schooling and, in any case, not less than 15 years. Therefore Azerbaijan was entitled to specify a minimum age of 15 years. The speaker therefore asked the Committee of Experts to indicate why it considered that Azerbaijan had decided to set the minimum age at 16 and requested clarification on how it could establish a minimum age of 15 years.

Differences between legislative texts could be explained by the fact that a referendum had been held on national education. In accordance with section 5(4) of the Act on General Education, general education comprised primary education, general secondary education and full secondary education. The State guaranteed the right of every citizen to receive a general secondary education that extended to ninth grade, and therefore the provisions of the Convention were met. Concerning the minimum age for the admission to employment, the speaker considered that the Committee of Experts had incorrectly stated that the Individual Contracts of Employment Act specified 14 years as the minimum age at which one could sign a contract of employment. In fact this provision had been repealed in 2009. Section 249 of the Labour Code now read as follows: "Individuals under 15 years shall not be recruited to work". Regarding penalties, the Code of Administrative Procedure provided for sanctions against persons who employed children under 15 years of age. With regard to the determination of types of hazardous work, Decision No. 58 of the Cabinet of Ministers of 24 March 2000, set out a list of arduous and hazardous work, including underground work, where the employment of young persons under 18 years of age was prohibited. The list included around 2,000 such jobs, and the Government was making efforts to translate the list into Russian before submitting a copy to the Committee of Experts. Regarding the practical application of the Convention, the speaker stated that no official statistics existed on the employment of children aged between 15 and 18 years. However, with the ILO's assistance, the State Statistical Committee of Azerbaijan had conducted a first survey in 2005 on child labour throughout the country. In January 2011, 20,000 children were working in agriculture, of whom 5,000 were self-employed.

**The Worker members** had noted the written information communicated by the Government, but considered that a number of issues still merited discussion. They recalled that the case primarily concerned the scope of the Convention. Indeed, the Labour Code applied solely to employment relationships governed by a "work agreement", which would mean that the legal provisions concerning the minimum age for admission to work would not apply to children working on their own account or without a wage. According to certain figures, it appeared that only 10 per cent of working children were wage workers. The situation of all other children was therefore a source of great concern since the number of working children between 5 and 17 years of age was very high. A survey conducted by the State Statistical Committee in cooperation with the ILO-IPEC programme quoted the figure of 156,000 children concerned, with 84 per cent working in agriculture and 68 per cent employed in hazardous work. The provisions of the Convention had to be transposed into national law and the Labour Code therefore had to be amended in that respect. The second aspect of the case concerned the minimum age itself. The Convention left Governments a certain margin for determining the mini-

## Minimum Age Convention, 1973 (No. 138)

*Azerbaijan (ratification: 1992)*

minimum age for admission to employment. Even though Azerbaijan had decided at the time of ratification to opt for the age of 16 years, the national legislation was not in conformity with that age since several sections of the Labour Code mentioned the ages of 14 and 15 years. The third aspect of the case concerned the monitoring of the legal provisions through the labour inspectorate and an adequate system of prosecution and penalties. The Worker members had noted in this respect that the absence of complete official statistics made it very difficult to monitor the situation of child labour in the country. Finally, they asked the Government to amend the Labour Code with regard to the scope of the Convention and also to the minimum age for admission to employment, to send any list of types of light work which had been adopted in the country and finally to take immediate steps to strengthen the labour inspectorate.

**The Employer members** observed that, despite the case being of long standing, Azerbaijan had still not provided the information required, nor had it taken the necessary measures to comply with the Convention. Faced with the Government's lack of response, the Committee of Experts had been forced to repeat its observations on several occasions. The written information provided by the Government did not supply the information required and gave rise to new doubts. According to statistics from ILO-IPEC, 156,000 children aged between 5 and 17 worked in Azerbaijan, accounting for 65 per cent of the country's children. The Government should strengthen its labour inspection activities. The Labour Code stipulated that contracts of employment should be concluded in writing, but self-employment and unpaid work were excluded from that requirement. The Government had still not taken the necessary steps to eliminate such exceptions. The Labour Code allowed a person aged 15 to sign a contract of employment, which was contrary to Article 2 of the Convention, which set the minimum age for entry to work at 16 years of age. The Government had yet to send the list of hazardous occupations in which it was prohibited to employ children under the age of 18, as approved by the Cabinet of Ministers in 2000. The Employer members urged the Government to provide information on the types of light work that children who had reached the age of 14 were permitted to carry out. They observed that the Labour Code only included fines for employers who contracted minors or endangered their life, health or morality. They expressed concern that the United Nations Committee on the Rights of the Child, in its concluding observations of 2006, had concluded that regulations protecting children from hazardous work were not being applied correctly in Azerbaijan. Finally, the Employer members expressed profound concern at the present case and stressed that it was not a matter of technicalities in the Convention's implementation, but rather of a situation which jeopardized the full force and application of a fundamental Convention.

**The Government member of Uzbekistan** pointed out that Azerbaijan's laws were drafted so as to comply with the Convention. The Labour Code no longer stipulated a minimum age for entering into an employment contract of 14 years, and for training that combined work and education 14-year-olds could be employed only with parental consent. A list of hazardous types of work had been adopted referencing some 2,000 jobs, which people under the age of 18 were prohibited from undertaking, and the Code of Administrative Procedure provided for penalties in cases of infringement. According to available statistics, only 3.3 per cent of workers were under 18 years of age. When the Committee adopted its conclusions on this case, it would have to bear in mind that the country was making numerous efforts to apply the Convention.

**The Worker member of Azerbaijan** noted that his country was paying special attention to civil cooperation and international business relations in this era of rapid economic globalization and tried to achieve full implementation of ILO Conventions. In the case of Convention No. 138, national legislation had been reviewed in order to meet the commitments taken. He cited amendments to fix the minimum age at 15 years and to ban hazardous work for children, amendments to the Constitution adopted by referendum which would have a bearing on the Labour Code, and amendments to the Code of Administrative Procedure to set out penalties in case of employment of children under the age of 15. He emphasized the role of the trade unions in the determination of the minimum age, indicating that, in their view, it should be 16 years. The Azerbaijan Trade Unions Confederation paid special attention to the elimination of child labour and actively took part in various programmes. He recognized however that, despite the legislative changes, the Republic of Azerbaijan was faced with child labour issues. The trade unions called on all the social partners to work together for the elimination of the worst forms of child labour. In 2008, the executive committee of the Azerbaijan Trade Unions Confederation had adopted a resolution on "Azerbaijan trade unions policy and activities on child labour" which had been widely circulated among trade unions. Recalling that, according to national legislation, trade unions were the defenders of children's rights, and that the Azerbaijan Trade Unions Confederation took part in tripartite negotiations on the subject of the worst forms of child labour, he indicated that these joint actions had been taken into account in the General Agreement 2010-11 which had been signed by the social partners.

**The Government representative** said that the report submitted on the application of the Convention stated that the age of 14 was no longer included in the Labour Code, nor in any other legislation. Furthermore, in 2009, penalties had been introduced. The labour inspection services had made considerable efforts to monitor child labour, to ensure that enterprises respected legislation, and to give instructions to employers. The Government would send information on the penalties and fines imposed by labour inspectors in the future without fail. Significant efforts had been made in collaboration with the ILO to bring legislation into line with other Conventions, such as the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183), with a view to their ratification. The speaker inquired as to the reason why, according to the Committee of Experts, Azerbaijan had undertaken to set the minimum age for admission to employment at 16, and suggested that the Republic of Azerbaijan could issue an official declaration, stating that the minimum age for employment was set at 15. Azerbaijan was not opposed to the application of the Convention and had demonstrated that it was possible to eradicate child labour completely. Although children worked in agriculture during their holidays to help their parents, one could not conclude in this context that the use of child labour was widespread. In that regard, the Ministry of Labour had requested the labour inspection services to re-enforce their efforts and to report in detail on their activities. Recalling that Azerbaijan had ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and that legislation had been amended, the speaker reaffirmed his Government's intention to continue to take measures to implement Convention No. 138 fully.

**The Worker members** stated that the violations of the Convention were numerous and that the list of legal provisions, which was not in conformity with the Convention, was long but that there was no information whatsoever on the concrete situation and the effective control of

the implementation of the legislation on child labour. In view of the serious nature of the situation, and in order to demonstrate its goodwill, the Government needed to amend the Labour Code so that it would also cover children working without an employment contract, who worked on their own account or without being remunerated. It was also required to put an end, in collaboration with the ILO, to the discrepancies between its commitment to set a minimum age of 16, and the Code's provisions setting a lower age. The Government should also communicate the list of light work which according to the Government had been adopted but had not yet been sent to the ILO. Finally, the Government should take immediate measures to strengthen labour inspection and improve the collection of relevant statistics. It could request the technical assistance of the ILO so as to bring its legislation into conformity with the Convention, and collaborate with ILO-IPEC.

The Employer members reiterated their concern at the sheer number scale of the alleged violations of the Convention and suggested that the Government should request specific technical assistance from ILO-IPEC, so that it could prepare reliable statistics on a permanent basis. They agreed with the Committee of Experts that the Convention was still not being sufficiently applied in practice. The Employer members encouraged the Government to examine the possibility of amending its labour legislation in order to bring it into line with the Convention, particularly with regard to the minimum age, and emphasized the need for more effective monitoring of the provisions of the Convention and the labour legislation. They observed that it was necessary to strengthen labour inspection capacity and broaden the scope of inspection to include more sectors and the entire geographical area of the country, as requested by the Committee of Experts.

The representative of the Secretary-General wished to provide some clarifications in reply to the Government's queries. Each member State ratifying the Convention needed to specify, in a declaration appended to its ratification, a minimum age for admission to employment or work in its territory. Azerbaijan had become an independent State in 1991 and had joined the ILO in 1992 taking over all obligations of the former Union of Soviet Socialist Republics (USSR). This included the declaration by the USSR of a minimum age for admission to employment or work of 16 years. She emphasized that the Government could avail itself of further ILO technical assistance.

### 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 contained in the report of the Committee of Experts relating to discrepancies between national legislation and Convention No. 138 in respect of the minimum age for admission to employment or work, regulation of light work, absence of information on the list of hazardous types of work, the weak enforcement of the Convention and the large number of children engaged in economic activity, including hazardous work, the majority of whom were found to be working in the agricultural sector.

The Committee noted the Government's indication that sufficient legislative protection was afforded to children working outside of an employment relationship. Moreover, the Government considered that it was entitled to set a minimum age of admission to employment or work of 15 years. The Government further indicated that the list of hazardous types of work included approximately 2,000 occupations and would be provided in due course to the Committee of Experts. Furthermore, the Government representative pointed out that children were not allowed to under-

take light work, since the legislation only entitled them to work from the age of 15 years. Lastly, the Committee noted the Government's statement on amendments introduced in 2009 to the Code of Administrative Procedure establishing fines for violations of the Convention, as well as statistical information on the practical application of the Convention.

While noting the Government's indication regarding the protection afforded to children working outside an employment relationship, the Committee observed an absence of information on the practical measures taken to apply the Convention to this category of children, which constituted the majority of working children. Considering that labour inspection played an important role in the application of national legislation, the Committee called on the Government to take concrete measures, including through strengthening the capacity and expanding the reach of the labour inspection services so as to ensure that the protection envisaged by the Convention was provided to children who work on their own account or in the informal economy.

With regard to the minimum age for admission to employment or work, the Committee recalled that a minimum age of 16 years for admission to employment or work had been assumed by the Government upon its ratification and continued acceptance of the application of the Convention in 1992. Recalling that the fundamental objective of the Convention consisted of progressively raising the minimum age for admission to employment and did not permit the lowering thereof, the Committee urged the Government to take immediate measures to ensure that national legislation was amended to establish a minimum age of 16 years, for admission to employment or work in all sectors, and to ensure that this minimum age was effectively applied in practice. Moreover, recalling that the list of hazardous types of work had been adopted in 2000, the Committee urged the Government to provide this list along with its next report to the Committee of Experts.

The Committee took due note of the information provided by the Government that the Code of Administrative Procedure, which had been amended in 2009, established new penalties for violations of the prohibition on the employment of children below the minimum age, as well as the prohibition on hazardous work. However, the Committee recalled that penalties could only be effective if they were in fact applied. It therefore urged the Government to provide concrete information on the number and nature of violations detected in respect of the prohibitions on minimum age and hazardous work and the penalties applied.

Turning to the application of the Convention in practice, the Committee noted that the statistical information provided by the Government was in contradiction with the statistical information contained in the report of the Committee of Experts. It therefore requested the Government to provide, in its next report to the Committee of Experts, more detailed and accurate statistical information, disaggregated by age, gender and sectors of activity concerning the nature, extent and trends of children and young persons who were engaged in work below the minimum age of 16. In this regard, the Committee strongly encouraged the Government to seek the technical assistance of ILO-IPEC in this matter.

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### Occupational Safety and Health Convention, 1981 (No. 155)

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#### MEXICO (ratification: 1984)

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A Government representative stressed the importance of this issue for the Government. He described the Government's efforts to locate the workplaces known as coal pits (*pozos*). It was very difficult to identify these pits, as those who exploited them had no legal obligation to report them and because they were scattered over large areas. Despite these difficulties, in 2011, the Government had implemented a system using satellites to identify the

pits in operation. A total of 2.5 million acres had been examined and 563 coal pits had been discovered, of which 297 were identified as active. In a second phase, it was expected that inspections would be carried out in the active pits. He indicated that the number of cases in which measures had not been verified in the operation of underground coalmines at the end of 2010, was 219 and not 899. The discrepancy had arisen because the report submitted by the Government in which that figure appeared corresponded to action taken until June 2010 when many of the verification inspections still had to be carried out. Likewise, the 219 measures which had not been verified related to cases in which workplaces were closed because of weather conditions. With regard to the compensation of the families of the victims of the Pasta de Conchos mine, he reported that the compensation payments had been made, which exceeded the amounts provided for by the labour law. In 2010 the number of miners had increased, while the rate of accidents had decreased, which demonstrated an improvement. He also provided information on the various measures being undertaken by the Government, including the establishment of a subcommittee to develop the National Information System on Occupational Hazards, the electronic register of occupational accidents and diseases, and the multimedia courses on safety in underground coalmining. The labour and mining authorities had also implemented a new system which, when a mine was found not to be in compliance with labour regulations, notified the authorities for the suspension of mining activities. Under this new strategy, 14 cases of mines that posed a risk for workers had already been notified to the mining authorities. Moreover, the federal Government had recently agreed with the Government of the State of Coahuila to undertake various actions, including a joint inspection programme of underground coalmines and a programme for the purchase of clean coal, through which the Federal Electricity Commission (CFE) would only purchase coal from companies that met safety standards.

**The Employer members** thanked the Government for the information provided. The case had already been discussed twice by the Committee and had been subject to a representation made under article 24 of the ILO Constitution in 2009. Last year's discussion of the case had resulted in significant progress as regards the entry into force of a new act on worker and health protection in the coalmining industry and measures taken by the Government in cooperation with the social partners. The Employer members asked the Government to reply to the allegations presented, inter alia, by the National Union of Federal Roads and Bridges Access and Related Services of Mexico (SNTCPF), in particular as regards the measures taken to follow up on the recommendations made by the Tripartite Committee. The Employer members referred to a number of specific follow-up measures already undertaken by the Government in this respect. As a result of all the measures reported by the Government, they considered this to be a case of progress. However, the Committee of Experts seemed to have expressed certain doubts as to the effectiveness of the measures taken, which was nourished by the allegations of the unions. The Government was yet to reply with detailed information. In the view of the Employer members, the doubts of the Committee of Experts had gone too far in respect of certain points. For example, the recently adopted Official Mexican Standard NOM-032-STPS-2008 was being used to urge the Government to ratify the Safety and Health in Mines Convention, 1995 (No. 176). The Government noted that its national legislation was not in conformity with Article 13 of Convention No. 176, constituting an obstacle to ratification. The discussion on the General Survey in 2009 had already pointed out the difficulty of the question to what extent workers could withdraw in the

event of imminent danger. The Employer members affirmed that the right to cease work could not be a general right. The size and internal organization of the enterprise and the capacity of the workers had to be taken into account. In companies with complex activities, only technical experts could establish whether this right was appropriately exercised. The principle of good faith had to play an important role in this context and the abuse of this right, which could lead to significant damage for the enterprise and other workers, should be prevented. The Employer members welcomed the entry into force of NOM-032-STPS-2008 and, while appreciating the fact that it achieved compliance with numerous provisions of Convention No. 176, it was not the role of the Committee of Experts to urge the ratification of Convention No. 176 when discussing the application of Convention No. 155. They encouraged the continuation of the Government's progress on the different measures to improve the protection of workers and their health in consultation with the social partners. The Government was asked to reply to the numerous questions of the Committee of Experts and continue its cooperation with the ILO in this regard.

**The Worker members** recalled that the Committee, once again, had before it the consequences of the serious accident in 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 following a representation concerning the violation of several occupational safety and health Conventions. The Governing Body had made a series of recommendations and entrusted their follow-up to the Committee of Experts and the Conference Committee. Among the recommendations, the Government was called upon to take measures in consultation with the social partners, including the formulation of new safety and health regulations in the coalmining industry in accordance with ILO standards. A new Official Standard was adopted in 2008 with this objective. However, they emphasized that the Standard had not changed anything in the coalmining region of Coahuila. Indeed, mortality had increased by 200 per cent in 2009. There was no register of mines in the region and the new Standard was not respected by employers, and inspections were inadequate. The Worker members noted that a periodic examination had been undertaken of the health situation targeting coalmining. For that purpose, advisory commissions were operating and the National Advisory Committee on Occupational Safety and Health was endeavouring to identify new projects. Other series of measures would be needed for the effective supervision of the effect given to the regulations through adequate and effective inspection. They recalled that the accident at Pasta de Conchos had not been a sudden and unforeseeable tragedy. It had been the consequence of negligence in complying with the safety and health standards. The Mexican labour inspection services had identified failings in relation to safety and health, but no solution had been proposed to resolve the problems. They observed that, according to the Government, measures had been taken in the context of the sectoral objective of promoting and supervising compliance with labour standards, but that the objective only concerned large- and medium-sized mines. The figures provided by the Government could not be used to gain an idea of the extent to which effect was given to the legislation, as 60 per cent of miners were engaged in the informal economy, and the figures did not include undeclared workers. Finally, the Worker members emphasized that the Governing Body had called for appropriate compensation for the 65 families affected and appropriate penalties for those responsible for the accident.

**The Employer member of Mexico** considered that the present case had its origins in a problem relating to the leader of the miners' union, who had for some time been

involved in a court case, which had resulted in him seeking the support of various persons and organizations. It was for that reason that the union presenting the representation was from a branch not involved in mining. The tragic events at the Pasta de Conchos mine were fortunately an isolated case that had not been repeated. He considered that the case had already been examined in-depth and resolved by the ILO Governing Body in May 2009. In 2010, the Committee of Experts had noted with satisfaction the elaboration, in consultation with the social partners, of Standard NOM-032-STPS-2008 concerning safety in underground coalmines. The report of the Committee of Experts also indicated that the reports requested from the Government had been submitted in full and in due time. Information had been provided on the payment of compensation to the family members of the victims of the Pasta de Conchos mine, which was a matter that did not fall within the scope of the Convention. He added that Mexican legislation not only established mechanisms through which work could be interrupted in areas of imminent danger (sections 14, 23 and 24 of the General Regulations on inspection and the application of sanctions for violations of the labour legislation), but also that failure to adopt safety measures at the workplace constituted grounds for workers to terminate their employment contract for reasons attributable to the employer. He considered that occupational safety was a matter that required constant review, and for that reason it was important to maintain dialogue with the social partners through the National Advisory Committee on Occupational Safety and Health.

A **Worker member of Mexico** indicated that, since 2006, there had been 124 deaths in the mining sector and that since the previous Conference in June 2010 until today, another 32 miners had died. In Pasta de Conchos, the remains of 63 workers were still trapped in the mine. The Government had opposed the rescue of the remains of the miners, and did not know the number of deaths or of active mining centres in Mexico. In 2010 there were 13 fatalities and as concerns 2011, 22. There were insufficient inspectors and they lacked training and adequate salaries. Labour inspection carried out by the Government itself indicated a worsening of the situation from 2009 to 2010, especially in the prevention of methane gas explosions. Only the employers and the Government had access to labour inspections of the labour authority without the participation of workers. The speaker requested that inspection records be made public and carried out with the participation of workers. According to the Government's inspections, the situation deteriorated from 2009 to 2010. The speaker condemned the Government's authorization of the operation of the small mines (*pocitos*), which had no emergency exits and where 80 per cent of deaths of miners occurred. Most workers in the *pocitos* had no social security. Pensions for widows of dead miners were very low because they represented only a third of the wages paid to miners. Miners were still not allowed to cease work in the event of danger. Of 25 mines, only one had a collective agreement. Unions were almost non-existent and those existing were manipulated by employers. Mining concessions were granted without control and intermediaries in the mining sector caused fraud and the evasion of social security contributions. In May 2011, an additional 14 miners died. He requested that the ILO should call upon the Government to rescue the bodies of the miners and urgently undertake a direct contacts mission.

Another **Worker member of Mexico** referring to the Pasta de Conchos mine disaster, stated that 35 of the 65 miners who died had been subcontracted through another company and were therefore not covered by the collective agreement with Industrial Minera México. Their wages

and benefits were far below those provided for in the collective agreement and their rights to occupational safety and health and to social security were gravely violated. Such was the situation that had come to light when the disaster had occurred, thereby illustrating the perverse effects of outsourcing. Under another fraudulent scheme of "under-registered" employees (*sub-registrados*), the subcontracted workers were affiliated to the Mexican Social Security Institute (IMSS), with a daily wage of 110 Mexican pesos (MXN), much lower than the MXN300 earned by unionized workers. As a result, the pensions that the families of the subcontracted workers received were derisory, between MXN2,600 and MXN3,200 per family. According to the Pasta de Conchos families association, there were 277 mining concessions in the state of Coahuila, of which only 24 were registered with the IMSS prior to the third quarter of 2010. That meant that the companies holding the concessions contracted out the work; most of the mines being rented out and exploited or over-exploited as boreholes (*pocitos*). Many more deaths had resulted from the disaster because of the illegal and systemic outsourcing which was prevalent in Mexico's mining industry. The speaker urged that the necessary steps be taken to come to the aid of the victims of the Pasta de Conchos disaster and requested that there be an ILO direct contacts mission.

An **observer representing the International Trade Union Confederation (ITUC)** considered that industrial accidents were avoidable. In Mexico, according to the National Chamber of Transformation Industries (CANACINTRA), one of the country's enterprise organizations, only three out of ten enterprises provided their workers with appropriate safety equipment. The IMSS recorded approximately 1,400 fatalities nationally as a result of occupational hazards, of which an average of 1,200 were the result of industrial accidents, without taking account of deaths in the informal sector for which no reliable statistics existed. In the last five years, the Pasta de Conchos families association had recorded 124 deaths among miners. The number had increased by more than 100 per cent between 2010 and 2011. The Government recognized, in its fourth report of the Department of Labour and Social Security, that both the number of labour inspections at federal level and the number of joint safety and health committees had fallen. In a country like Mexico, with 112 million inhabitants and an economically active population of 44 million, only one mine exploitation had been closed in the last five years. He recalled that the Governing Body, in the context of the representation on Mexico, had requested the Government to consider ratifying Convention No. 176, but that had not yet occurred. He requested a direct contacts mission to identify and remedy the violations of Convention No. 155.

The **Worker member of the United States** indicated that, while health and safety conditions were poor in the mining sector in general, the situation in Mexico was far worse in its numerous small mines or "*pocitos*", a type of mine exploitation which had long been prohibited elsewhere; they were highly risky, contaminating and inefficient. Though they did not comply with NOM-032-STPS-2008 as they lacked basic safety features, the authorities continued to permit in practice so-called "artisanal mining" in these *pocitos*, based on an argument that these mines generated employment needed in the region. This kind of employment, however, was highly unsafe, unhealthy and insecure. He indicated that workers in these mines rarely had employment contracts, received little training and were not regularly provided with basic safety equipment. Their working hours could be excessive with little rest. The workforce of these mines was frequently not accurately registered in the IMSS, and the IMSS did little to audit these mines. As a result, in some cases, less

than half of the workers were registered and, as a result, workers did not have access to urgent and necessary care in case of accidents. These mines were rarely inspected. He referred in this connection to the 2011 report of the National Human Rights Commission which dealt with the situation of the Lulú mine, at which workers had died in 2009. He was of the view that much remained to be done and that an ILO direct contacts mission would be the appropriate measure at this time to assist the Government in order to enhance health and safety.

**The Government member of Argentina**, speaking on behalf of the Government members of the Committee, and members of the Group of Latin American and Caribbean countries (GRULAC), emphasized that the Government had duly met its obligation to submit the reports requested for 2010. He stressed that the report of the Committee of Experts showed that the Government had followed up, and provided information on the application of the Convention and had supplied plenty of detailed information on the accident which had occurred at the Pasta de Conchos mine. GRULAC appreciated that the Committee of Experts had reported on what the Government had done and was not particularly concerned as regards compliance with the Convention. GRULAC considered that the progress referred to in the Committee of Experts' report should be taken into consideration and hoped that the conclusions would take account of the new data and information presented by the Government.

**The Government representative** acknowledged that the Government had problems with registration in the mining sector, for which reason labour inspections were being carried out in conjunction with other government departments. The Government undertook to provide copies of records of inspections carried out with its next reports, so that they could be analysed by the Committee of Experts. He underlined the effectiveness of the strategy being implemented jointly with the mining authority and the CFE. In the case of subcontracting, the subcontractor would suffer the consequences, as, if the enterprise did not confirm that it was complying with labour standards, it would not be able to sell coal. He stated that, since 2007, the number of inspections at mines had been on the increase. With regard to fatalities, the situation must be seen in context. According to figures from IMSS, in one decade there had been 340 deaths in the mining sector, and 216 in the construction sector in just one year. The speaker expressed the Government's full readiness to continue submitting information.

**The Employer members** underlined the importance of reducing and preventing occupational accidents and diseases. Employers had the overall responsibility for occupational safety and health. An approach which encouraged Governments and workers to work together with employers and support their efforts to create a culture of safety and health was the key to success. They encouraged the Government to provide detailed information in order to evaluate the conflicting data presented today. An increase in the number of deaths due to occupational accidents did not necessarily mean a worsening of the situation, but could also indicate increased transparency and improved data collection. The numerous efforts of the Government to improve occupational safety and health had to be continued in cooperation with the social partners. Follow-up measures had to be reported in order to assist the Committee of Experts to provide an even more accurate picture of the situation in practice.

**The Worker members** recalled that the Government needed to provide information on the number and nature of accidents in the mining sector, both formal and informal, the methods of evaluating risks in the sector, the compensation actually provided, and which ought to have been paid to survivors and to the families of victims, and

on the benefits offered to the families of miners without social protection. They emphasized that the issue of compensation was a specific request made by the Governing Body. They considered that the information provided by the Government in the context of the present discussion was inadequate. The following points required answers from the Government: in the case of the Lulú mine and the Ferber mine, a special report needed to be ordered to determine responsibility for the deaths of the miners; the Government had to pay all the workers exposed in those mines the compensation set out in law; all payments to miners for which there were no social security contributions needed to be included in the base for the calculation of contributions for the pensions due to the deceased miners; the Government needed to provide information on the number of under-age workers in coalmines and on the health programme for children; it also needed to provide information on the penalties adopted and the policy concerning fines in the event of the violation of safety rules; it needed to provide a report on the capacity of the IMSS to respond to health problems in coalmines, including the reason for the absence of hospitals specializing in respiratory diseases in the region; and, finally, the Government needed to explain the use that was made of the funds resulting from the payment of fines and how they benefited the population in the coalmining region.

### **Conclusions**

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

**The Committee indicated that the observation of the Committee of Experts essentially dealt with the follow-up to the recommendations made by the Governing Body in March 2009 concerning the representation made under article 24 in relation to the accident which occurred at the Pasta de Conchos mine in 2006. In that context, the Committee of Experts referred to the conclusions of the Conference Committee which had examined the case in 2010.**

**The Committee specifically noted the information provided by the Government on new measures adopted concerning an increase in the Government's capacity to monitor all types of mines through the introduction of a satellite identification system. This had enabled the identification of 563 pozos (pits), 297 of which were operational and would be inspected. It also noted the information provided concerning the increase in the powers of the labour inspectorate including its ability to order a definitive suspension of activities if the measures ordered in the event of imminent danger were not complied with. In this regard, the Government stated that a reform of the Federal Labour Act (LFT) was pending, which envisaged: compulsory verification of measures ordered by the labour inspectorate for high-risk activities; an increase in the amount of financial penalties; and the designation as a crime the employment of young persons under 14 years of age. The Government also indicated that the labour inspectorate undertook follow-up measures throughout 2010. It also referred to an agreement of 9 May 2011 between the Federal Government and the Government of the State of Coahuila to only buy "clean coal", i.e. from enterprises which complied with NOM-032-STPS-2008. Acknowledging monitoring problems related to unregistered mines and miners, the Government referred to improved coordination through joint inspections and to the adoption in 2010 of a computerized and coordinated system as part of the National Information System on Occupational Hazards. The Government stated that the number of occupational accidents and diseases had decreased between 2001 and 2010. With regard to the compensation to the families of the victims of the accident in Pasta de Conchos, the Government stated that it was calculated on the basis of fixed parameters and that a sum greater than the one provided for under the**

LFT had been given as humanitarian assistance to 42 families. The Government indicated that the Director of the Labour Inspectorate had also met the families of the victims and that it would give support to the families until all the cases had been settled.

While noting the steps taken by the Government, the Committee observed that certain problems appeared to persist with regard to the effective implementation of the occupational safety and health legislation, including in small-scale mines (*pocitos*) and unregistered mines. The Committee requested the Government to provide information on the circumstances in which workers can remove themselves from work in the event of imminent and serious danger to their lives. It noted the discrepancy in the data provided concerning the number of occupational accidents and diseases and in particular the allegation that the mortality rate had significantly increased in 2009. The Committee expressed its concern that occupational safety and health conditions in small-scale and unregistered mines, where the highest rates of fatalities appeared to occur, continued to be below the required standards.

The Committee requested the Government to provide further information on measures taken with a view to addressing all the issues raised in the discussion. This information should include: the number and type of mines in the coal-producing region of Coahuila; the number and nature of accidents in the mining industry, covering the registered and unregistered mines; as well as information on the other issues raised by the Committee of Experts in its latest comments. The Committee again requested the Government to take all possible steps to ensure that the families of the victims of the Pasta de Conchos accident – including families of miners without social protection – received all compensation and benefits due and that their personal safety and dignity be respected. The Committee urged the Government to ensure that all relevant actions and measures would be implemented in close collaboration with the social partners. The Committee asked the Government to send full details to the Committee of Experts for its examination at its next session in November–December 2011. The Committee asked the Government to continue the close cooperation with the ILO and invites it to avail itself of the ILO technical assistance.

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Asbestos Convention, 1986 (No. 162)

CANADA (ratification: 1988)

A Government representative recalled that the Committee of Experts had asked the Government to provide up-to-date information on measures taken to give effect to Articles 3(1), 3(2) and 10(b) of the Convention. Canada had been providing detailed reports on the implementation of the Convention since its ratification in 1988. Implementation of the Convention was the responsibility of the federal Government and of Canada's ten provincial and three territorial governments. Each of these jurisdictions had adopted and enforced laws and regulations prescribing the measures to be taken for the prevention and control of, and the protection of workers against, health hazards due to occupational exposure to asbestos, as required by Article 3(1) of the Convention. Relevant laws and regulations were periodically reviewed in accordance with Article 3(2) of the Convention. For example, a review of the federal Hazardous Substances Regulations was ongoing and reviews had been concluded in Manitoba, Newfoundland, and Labrador and Ontario. Since Canada's last report to the Committee, Alberta had revised its asbestos abatement guide which described the principles to be followed when selecting the most appropriate techniques for the safe abatement of asbestos-containing materials. Newfoundland and Labrador had revised its Occupational Safety and Health Regulations to

allow the Minister to designate a workplace or classes of workplaces that required an occupational health surveillance programme. With regard to Article 10(b) of the Convention, manufactured products containing asbestos used in construction were very limited and were governed by the Hazardous Products Act, as well as by provincial building code regulations. Article 14 of the Convention was implemented by the Workplace Hazardous Materials Information System (WHMIS), which was a national system that provided information on hazardous materials used in the workplace. In response to the comments of the Canadian Labour Congress (CLC) concerning application of Articles 4 and 22(1), which required consultations with organizations of employers and workers, the speaker indicated that there was a strong commitment to tripartite consultation and involvement of the social partners in all aspects of occupational safety and health in Canada. There were training requirements specific to asbestos. The speaker provided such examples in the provinces of Alberta and Saskatchewan. Finally, the Committee of Experts had asked for further information on measures to ensure application of Article 17(2) which provided that the employer or contractor shall be required before starting demolition work to draw up a work plan specifying the measures to be taken, including providing necessary protection to the workers, limiting the release of asbestos dust in the air and providing for the disposal of waste containing asbestos. In this regard, renovations or demolition involving possible asbestos-containing material were highly regulated, as was the use of products containing asbestos. In many jurisdictions, work involving asbestos-containing material had to be conducted by a registered contractor who had been certified as a valid asbestos abatement contractor. This required demonstration that the workers had received the required training and the company had the specialized equipment necessary for asbestos abatement. In conclusion, the speaker recognized the dangers of exposure to asbestos in the workplace and recalled that the Government was committed to fully implementing the requirements of the Convention through measures for the prevention, control of, and protection of workers against health hazards due to occupational exposure to asbestos developed in consultation with workers' and employers' organizations and technical and professional experts.

The Worker members wished to make a number of preliminary remarks concerning the Convention, the application of which was not frequently examined by the Conference Committee. Even though knowledge of the harmful effects of asbestos, and particularly as to whether or not there was an exposure threshold, had evolved, the dangers of asbestos to human health have been known for a very long time. It was now known that prevention measures made it possible to avoid certain harmful effects, and particularly asbestosis. However, they were not able to eliminate other diseases, which were among the most harmful, such as cancer of the larynx and of the lungs, and mesothelioma, which have a long latency period, even following low levels of exposure, and could affect both workers and those close to them. Acceptable alternatives to asbestos now appeared to have been developed and mentalities had changed. It had to be recognized that the Convention reflected the state of knowledge, technical solutions and sensitivities which prevailed when it had been adopted, particularly in its distinction between two types of asbestos: blue asbestos, which was prohibited by Article 11, with exceptions; and white asbestos, which was not prohibited. The Worker members recalled the general obligations contained in Articles 3(1) and (2) and 10 of the Convention respecting the adoption of measures of prevention and control and of national legislation for the protection of workers' health. They referred to the

observations of the CLC on the application of the Convention, according to which technical progress and the development of scientific knowledge should lead to the revision of the legislation with a view to a total prohibition of asbestos, which was the sole measure that could prevent and control health risks (Article 3(1)), and its replacement by other materials (Article 10). According to the CLC, the legislation in force had not been the subject of consultation with the social partners, as envisaged in Articles 4 and 22 of the Convention. Canadian trade unions considered that taking into account the development of medical knowledge and technical progress, the only solution was the total prohibition of the use of all varieties of asbestos. Finally, the Worker members indicated that, in certain European countries, the use of asbestos was prohibited. They emphasized that in Europe, over recent years, the number of cases of diseases related to asbestos, such as mesothelioma, had been rising. With reference to Articles 3(3), 4 and 10 of the Convention, they strongly encouraged the Government to embark on dialogue with the social partners in view of the evolution of knowledge, techniques and sensitivities since the development of the Convention, in collaboration with the ILO, the World Health Organization (WHO) and the International Agency for Research on Cancer (IARC).

**The Employer members** stated that the Conference Committee examined the application of the Convention by Canada for the first time. This Convention was a very comprehensive and technical instrument, aimed at securing the safety and health of workers working or having worked in the production of asbestos or related products. The Committee of Experts had taken note of numerous positive developments in terms of improvement of the relevant legislation in various Canadian provinces and territories. The remaining comments of the Committee of Experts related to the observations of the CLC, which, with reference to Article 3(1) and (2) and Article 10(b) of the Convention, called for the prohibition of asbestos and the discontinuation of asbestos exports. On the basis of this plea of the CLC, the Committee of Experts requested the Government to provide further detailed and up-to-date information on measures taken to give effect to Articles 3(1) and (2) and 10(b), taking into account, in particular, technological progress and advances in scientific knowledge. The Employer members observed that it remained unclear whether the Committee of Experts shared the view of the CLC that there was an obligation to prohibit asbestos and products containing asbestos. They stressed that the general prohibition of chrysotile asbestos (also called white asbestos) could not be construed from the relevant provisions of the Convention, which distinguished between the various types of asbestos and required in its Article 11(1) only the general prohibition of crocidolite asbestos (also called blue asbestos). The Employer members concluded that chrysotile asbestos and its processing should only be prohibited if the necessary health protection could not be guaranteed, which had not been asserted by the CLC. The Government could therefore merely be requested to provide information regarding the manner in which health protection was guaranteed on the basis of the existing legislative provisions and the current technological progress, and to supply statistics concerning, for example, asbestos-related occupational diseases, the occurrence of which had not been mentioned by the Committee of Experts. As regards the alleged recent lack of consultation with the most representative organizations of employers and workers in accordance with Articles 4 and 22(1) of the Convention, this observation contravened the statement made by the Government representative according to which the social partners participated in the work of the Federal Regulatory Review Committee on the revision of Part X (Hazardous Sub-

stances) Regulations. Finally, the CLC stated, with reference to Article 17(2) of the Convention, that asbestos should not be used in construction materials because of the impossibility of protecting construction workers. Again, the wording of the Convention did not allow such a conclusion. In the Employer members' view, no direct breach of the Convention could be inferred from the comments of the Committee of Experts.

**The Worker member of Canada** stated that Canada had failed to review national laws and regulations governing exposure to asbestos and to take into account the advances in technology and scientific knowledge as called for in Article 3 of the Convention. By failing to consult the social partners on the impact of new information and technology, on the elimination of asbestos and on education and dissemination of information regarding asbestos-related hazards, and by pursuing a policy which ignored the findings of the world's most competent authorities on cancer, the Government had not fully applied Articles 2, 3 and 22 of the Convention. It ignored the advice of the WHO, the IARC and the International Programme on Chemical Safety (IPCS), a joint programme of WHO, ILO and the United Nations Environment Programme, all of which echoed the same findings that chrysotile asbestos was a cause of mesothelioma, lung cancer and asbestosis. Making reference to a WHO publication and to a resolution adopted by the International Labour Conference in 2006, both calling for the elimination of the use of asbestos, he recalled that 50 countries had taken that decision. The Canadian Government continued to base itself on unreliable data despite the fact that a ban of the production of asbestos was supported by leading medical and public health agencies in the country. The speaker denounced the long history of manipulation of scientific data by the Canadian asbestos mining industry to generate convenient results, with the effect of corrupting the medical literature on which the Government relied. He condemned the attitude of the Government, which had practically banned the use of asbestos within its territory but continued to export it to developing countries. An asbestos-related epidemic was to be feared in the years to come. The Government should engage in proper consultations with the social partners in order to promote the use of replacement products and alternative technology substitutes and adopt a national programme based on the ILO-WHO National Programme for the Elimination of Asbestos-Related Diseases (NPEAD), and the ILO should assist it in moving towards a total prohibition of the production and use of asbestos. The reply to the Committee of Experts' comments later this year would be an opportunity to delineate a positive way forward, through a tripartite process based on reliable knowledge and technology.

**The Worker member of Australia**, speaking also on behalf of the Worker members of Argentina, Austria, Belgium, Denmark, El Salvador, Finland, France, Germany, Greece, Honduras, Hungary, Italy, Japan, Netherlands, Norway, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, United Kingdom and Uruguay – all countries where asbestos was currently banned, stated that unions in these countries would welcome any effort by Canada to move towards the complete banning of asbestos and reiterated a call by the International Trade Union Confederation (ITUC) in 2005 for a global ban of asbestos, including chrysotile asbestos. The abovementioned countries had all banned asbestos because it was a dangerous substance that killed and injured workers and family members and affected entire communities. These countries were currently engaged in different degrees of transition towards an asbestos-free environment knowing that a just transition for jobs and social impact was both necessary and achievable. Countries having banned asbestos should encourage all ILO member States to work to-

wards a complete and global banning of asbestos. As far as Australia was concerned, the Worker member stated that for several decades his country had had the highest per capita use of asbestos in the world. Asbestos had had devastating effects on Australian workers (miners, carpenters, construction workers, etc.) and their families, with many losses of life due to exposure to asbestos in the workplace or exposure to asbestos brought home from the workplace. The expected peak of asbestos-related deaths was between 2020 and 2030, and up to 18,000 Australians were expected to die of mesothelioma. Despite the previously high usage rate, the 2003 ban on importation, production and use of asbestos had not had any adverse effects on employment and industry. There had been no net job losses due to transitional measures, strict regulation governing the removal and disposal of asbestos and the use of alternative materials. In light of the above, the speaker believed that his country had the responsibility of warning others of the danger and sharing its experiences. He stressed the need to move quickly towards an asbestos-free world.

**The Worker member of Argentina**, speaking also on behalf of Building and Wood Workers' International, referred to the growing number of deaths from mesothelioma and asbestos-related diseases in Canada, the increase in recognized cases of occupational diseases resulting from exposure to asbestos, the deaths from mesothelioma and the growing number of new cases affecting construction workers, and concluded that prevention and protection measures had been inadequate. She inquired about the measures that had been implemented by Canada, in view of the hazards connected with its status as a large-scale producer and exporter of the substance. The INSPQ (national public health institute of Quebec) had published a report concerning the excessive number of deaths in the mining village of Thetford Mines, with risk levels 17 times higher than in the rest of Canada and concentrations of asbestos fibres between four and 232 times higher than comparable measurements in the United States. The data indicated a failure in terms of prevention and control of serious exposure risks. Canada did not meet the requirements of the Convention with regard to risk prevention. The Government of Canada funded the Chrysotile Institute, a body that disseminated propaganda in favour of the supposedly controlled use of asbestos. The speaker cited the intervention of the National Director of Public Health with regard to the need to control asbestos risks, both in Quebec and in countries that purchased Canadian chrysotile asbestos. Finally, the Government did not label asbestos containers properly, since it did not use international terminology or symbols indicating the risk of cancer and prevention measures.

**The Worker member of the United States** shared the experience of workers in his country as regards asbestos. He stated that the use of asbestos had caused the greatest occupational health epidemic in the world's history. Even strict standards were not sufficient to protect workers. But it was not only workers who were at risk: spouses and children had been affected by mesothelioma and other asbestos-related diseases due to asbestos brought home on workers' clothes and the public had had to face community and environmental exposures. He stated that asbestos could not be used safely: once introduced into commerce, it posed a risk for decades. The only way to limit asbestos exposure was to ban its use.

**The Worker member of Colombia**, speaking also on behalf of the Worker member of Brazil, recalled the content of Article 10 of the Convention respecting the adoption of the necessary measures for the replacement or the total or partial prohibition of the use of asbestos. He reaffirmed that the State's obligation was to progressively achieve the total prohibition of the use of asbestos. In that regard,

the economic benefits could not be used as a justification for endangering the life and health of workers and of the population. All forms of asbestos, including chrysotile asbestos, had been classified by the IARC and the IPSC as human carcinogens. It had been demonstrated that the use and exposure to asbestos, even in minimal quantities, generated a high probability of causing many lethal diseases, such as lung cancer and mesothelioma. At the global level, over 100,000 workers had already died as a result of their exposure to asbestos, and it had been scientifically proven that there was no controlled use of asbestos that was absolutely safe for workers or the population in general. In that regard, the reduction of the authorized level of fibres per cubic centimetre announced by the Canadian Government was still insufficient. Indeed, Canada was increasing its investment in enterprises in Colombia and Brazil which extracted and used asbestos, without any intervention by the Federal Regulatory Review Committee. Nevertheless, even in developing economies such as those of Brazil and Colombia, there existed examples that demonstrated the possibility of the total replacement of asbestos. He emphasized that the Government of Canada had not replied to the observations of the CLC examined by the Committee of Experts, which demonstrated the violation of a crucial element of the Convention, i.e. the obligation of consultation. In conclusion, he stressed that it was essential for the Government of Canada to accept ILO technical assistance with a view to taking immediate measures leading to the definitive prohibition of the use of asbestos.

**The Worker member of Brazil**, with reference to the statement made by the CLC before the Conference Committee, indicated that other Canadian trade union confederations did not share these views, as they supported the safe use of chrysotile asbestos. She asked whether that information had been brought to the attention of the Conference Committee and whether the position of the CLC had been duly discussed with the other workers directly linked to the sector in Canada.

**The Government representative** reiterated that all Canadian provincial and territorial governments strictly regulated and strictly enforced high standards aimed at protecting workers from health hazards due to occupational exposure to asbestos and that there had been extensive consultations with employers, workers and experts in developing and applying the legislation. She noted that some presentations made had gone beyond the application of the provisions of the Convention. The speaker recalled that there were divergent views on the issue among Canadian trade unions. The Canadian Worker member attending the International Labour Conference in 2006 had not supported the resolution adopted that year on asbestos, and the trade unions representing asbestos workers in the province of Quebec not only supported the continuation of mining but an increase in investments in this industry. She assured the Conference Committee that Canada would continue to provide the Committee of Experts with complete and detailed reports on its implementation of the Convention.

**The Employer members** took due note of the information provided by the Government representative concerning the diverging positions of Canadian trade unions on the subject. While acknowledging that countries having banned asbestos might have had good reasons to do so, no violation by Canada of the requirements of the Convention could be deduced from the wording of this instrument. The Conference Committee was not a law-making body and could not call for a prohibition if the relevant Convention did not foresee one. In the Employer members' view, the Committee of Experts could therefore only request the Government to report on the manner in which health protection was guaranteed, and to supply statistical

information concerning asbestos-related occupational diseases.

The Worker members recalled that the Canadian trade union organizations considered that the only solution was the total prohibition of the use of all types of asbestos, in view of the evolution of medical knowledge and technical progress. While they were aware of the limits of the Convention, they called on the Conference Committee to ask the Government to begin consultations with the most representative employers' and workers' organizations, in accordance with Articles 3(3), 4 and 10 of the Convention. These consultations, which could be held in collaboration with the ILO and with other international bodies such as the WHO or the IARC, needed to take into account the evolution of knowledge, techniques and sensitivities since the adoption of the Convention. The Government needed to provide information on the concrete measures taken for the holding of these consultations and statistics on the cases of occupational diseases, for their examination by the Committee of Experts at its next session.

### **Conclusions**

The Committee took note of the oral information supplied by the Government representative and of the discussions that followed.

The Committee noted that the issues raised in this case concerned the need for information on: the periodical review of legislative measures in the light of technical progress and advances in scientific knowledge; the total or partial prohibition of the use of asbestos or of certain types of asbestos; and the nature of consultations undertaken as required by the Convention.

The Committee noted the detailed and comprehensive information provided by the Government representative concerning the ongoing reviews of federal, provincial and territorial legislation concerning the matters covered by the Convention with concrete examples from various jurisdictions. She referred to the sharing of good practices between jurisdictions, the ongoing tripartite consultation process in place and the reliance by all jurisdictions in Canada on the most up-to-date scientific data and technical knowledge. The Government representative referred to the ongoing review of the federal Hazardous Products Act and the Asbestos Products Regulations, as well as to the Workplace Hazardous Materials Information System (WHMIS), a national system that provides information on hazardous materials in the workplace. Information was also provided on training requirements specific to asbestos and on information and awareness-raising efforts with the ultimate objective of better management of asbestos-containing materials in establishments and in construction sites. The Government representative indicated that her country recognized the dangers of exposure to asbestos in the workplace and that it was committed to fully implement the requirements of the Convention in consultation with the workers' and employers' organizations and technical and professional experts.

While noting the commitment of the Government to fully implement the provisions of the Convention, the Committee highlighted the importance of adopting the strictest standards limits for the protection of workers' health as regards exposure to asbestos. In this regard, the Committee noted that the Convention placed an obligation on governments to keep abreast of technical progress and scientific knowledge, which was particularly important for a country like Canada which is one of the main producers of asbestos.

The Committee requested the Government to continue to provide all relevant information to the Committee of Experts for its review, including statistical data on health protection measures and cases of occupational diseases caused by exposure to asbestos. It invites the Government to continue to engage in consultations with the employers' and

workers' organizations on the application of Articles 3(3), 4 and 10 of the Convention, in particular, taking into account the evolution of scientific studies, knowledge and technology since the adoption of the Convention, as well as the findings of the World Health Organization, the ILO and other recognized organizations concerning the dangers of exposure to asbestos.

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### **Worst Forms of Child Labour Convention, 1999 (No. 182)**

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#### **PARAGUAY (ratification: 2001)**

A Government representative referred to some of the issues raised in the Committee of Experts' comments and noted that the Government had taken, and was continuing to take, the following action: approval of a national policy to combat trafficking of persons; drafting of a bill for the Inter-institutional Roundtable on the Prevention and Elimination of Human Trafficking covering all forms of crimes related to human trafficking; creation of a Specialized Unit in Human Trafficking and the Sexual Exploitation of Children and Adolescents attached to the Office of the Attorney General; creation of the Directorate for the Prevention and Treatment of Victims of Human Trafficking within the Women's Secretariat of the President's Office, to devise preventive strategies, deal with complaints concerning victims of trafficking and provide every form of assistance (between 2005 and 2010, the Directorate assisted 206 adult women and young people under the age of 18); creation of a Unit for the Prevention of Trafficking as part of the National Secretariat for Children and Adolescents, to provide assistance to child victims of trafficking for their social rehabilitation; national consultations for the design of a Second National Plan for the Prevention of the Commercial Sexual Exploitation of Children and Young Persons; training of officials of the Ministry of the Interior in the detection of cases of commercial sexual exploitation of children, the identification of those responsible and the provision of proper care for its victims; implementation of the second phase of the project "Ciudades gemelas" (twinning cities), under which a regional strategy was to be developed to eliminate trafficking between border cities in Argentina, Brazil, Paraguay and Uruguay; provision of support for the South-South cooperation project for the installation of the DISQUE 100 system using the FONO AYUDA telephone complaints system for tracking cases of trafficking in children, with a view to instituting a unique regional telephone number to make it easier to lodge complaints from one country to another; and the preparation of a study on the situation of human trafficking at the national level carried out by Luna Nueva, an NGO, with financing by the European Union, whose findings would shortly be available. With regard to measures adopted to prevent hazardous child labour, the National Committee on the Prevention of Child Labour and the Protection of Young Workers (CONAETI) was continuing its collaboration, notably with the Horizontal Cooperation project of the United States Department of Labor (USDOL) and the South-South project funded by the Brazilian Cooperation Agency (ABC). In addition, several public institutions were working on a pilot plan to coordinate social programmes involving conditional cash transfers, such as ABRAZO and TEKOPORÁ, with a view to extending the ABRAZO programme to all vulnerable children and adolescents. These programmes were currently functioning in the artisanal brickworks of the city of Tobatí and in the garbage dumps of the city of Encarnación, with the assistance of ILO-IPEC and government financing.

Government policies had three major achievements in 2010: the approval of the new National Strategy for the Prevention and Elimination of Child Labour and the Pro-

tection of Working Adolescents in Paraguay, adopted by Resolution No. 03/2010 of the National Council for Children and Adolescents, which was prepared on a quadripartite basis involving the consultation of representatives of the trade unions, of the employers and of the Government as well as civil society organizations, including 119 children and adolescents; the approval of two coordination manuals for dealing with cases involving people under the age of 18 years (one for the internal use of officials of the Ministry of Justice and Labour and the other for various institutions including the judiciary, the Office of the Attorney General, the Ministry of Public Defence, the Ministry of Justice and Labour, the National Secretariat for Children and Adolescents and the Municipal Councils for the Rights of Children and Adolescents); in conjunction with the National Directorate for Public Contracts, the promotion and utilization (as a pioneering initiative in the region) of a sworn statement, whereby an entity tendering for a government public works contract gave assurances that it was not involved in any activities that were in violation of the child labour provisions and tenderers could be disqualified during the bidding process and/or a contract cancelled in the event of failure to comply with the statement. As to monitoring, a training programme for labour, transport and occupational safety and health services, attached to the Office of the Vice-Minister of Labour and Social Security and due to begin in July 2011, was being developed to deal with instances of child labour. Regarding domestic child labour, following a process of participatory consultation, a Domestic Service Bill had been drafted in line with Decree No. 4951/05, which contained a list of hazardous forms of child labour. With regard to indigenous peoples, the drafting of a programme of action among the Mbyá communities of the department of Caaguazú, to tackle the problem of indigenous street children, was almost complete. In terms of coordinated activities with the social partners and with the support of ILO-IPEC, CONAETI was promoting an exchange of experience between the Single Authentic Workers' Confederation (CUT-A) and the Multi-Ethnic Association of the Chaco Region, with a view to devising a plan of action to combat child labour. Employers' organizations, for their part, were supporting the possible development of action plans that would involve the Industrial Union of Paraguay (UIP) and the Rural Association of Paraguay (ARP) in child labour issues and labour issues affecting indigenous peoples. Specifically, the UIP was collaborating in activities that were being carried out in the artisanal brickworks in Tolatí in order to identify any forms of dangerous work in the industry and in the brick and ceramics production chain. In order to provide the Committee of Experts with exact dates and precise answers, a special survey of child labour in Paraguay focusing specifically on hazardous types of work would be conducted in August 2011 with the support of IPEC-SIMPOC. He thanked the ILO for its assistance to the Government through ILO-IPEC and welcomed the recent signing of a Memorandum of Understanding between ILO-IPEC and the Government. Before the end of 2011 the Government would send the ILO a detailed report in answer to the questions raised by the Committee of Experts in its comments. In conclusion, he asked the Office to continue its collaboration with the Government in the deployment of child labour prevention activities, especially concerning the worst forms of child labour.

**The Worker members** observed that it was the first occasion on which the case had been discussed by the Committee and that it involved unacceptable situations, such as the sale and trafficking of children, child prostitution from the age of 13 years, the sexual exploitation of children and child domestic work. All of those were considered by the Convention as constituting the worst forms

of child labour, against which States were under the obligation to take immediate and effective measures on an urgent basis. Child labour existed in different forms in Paraguay. As a country of origin and of destination of trafficking, children were taken to Argentina, Brazil and other countries, as well as within the country. New provisions punishing the trafficking of children for prostitution, slavery and forced labour had been introduced into the Penal Code following the organization of the Inter-institutional Roundtable on the Prevention and Suppression of Trafficking, and a bill was reported to be in the process of being adopted on action to combat trafficking, which focused on prevention, investigation, sanctions, assistance and the social rehabilitation of victims. It was nevertheless strongly to be hoped that the Government would establish a system of monitoring, surveillance and penalties for the effective implementation of the existing legislative provisions. With regard to the use, procuring or offering of children for prostitution, the Worker members emphasized that the gravity of the problem of the prostitution of young girls and boys was evident, as two-thirds of workers in the sex industry were under age. The studies undertaken by the Government on that phenomenon needed to result in tangible measures for the eradication of the scourge without delay. Furthermore, with regard to the monitoring mechanisms provided for in Article 5 of the Convention, the International Trade Union Confederation (ITUC) and the International Organisation for Migration had reported the difficulties encountered in monitoring trafficking in border areas in view of the fact that the Department of Migration and Identification and the Department of Immigration considered that they were not competent to intervene in cases of trafficking and the crime of trafficking could only be committed in the country of destination of victims. As a result, cases of trafficking were rarely reported and prosecuted. The Government had reported the establishment of a special police unit to combat trafficking, as well as the creation of other specialized units. Such measures, if they were to have a positive effect, needed to ensure that the authorities responsible for enforcing the law, and particularly the police, the judiciary and the customs services, were allocated adequate human and material resources. With regard to the supervision of the effect given to the Convention, including penalties for violations, it should be noted that the number of the cases taken to court, and the penalties imposed in cases of child trafficking, was very low. That was a matter of concern, particularly taking into account the information provided by the United Nations High Commissioner for Refugees reporting corrupt elected officers and public employees, particularly in the police and the frontier guard units, who were accomplices in the trafficking of children. A neutral, objective and credible mechanism for monitoring and sanctions with sufficient resources was therefore necessary to supplement the legislation against the worst forms of child labour. It was accordingly urgent for the Government to renew its efforts by strengthening the capacities of enforcement agencies so as to ensure that those who engaged in the trafficking of children were effectively prosecuted and liable to sufficiently effective and dissuasive sanctions. The prevention of the worst forms of child labour also required the establishment of programmes for the rehabilitation and social integration of child victims of trafficking and commercial sexual exploitation. The Government needed to provide more information on the number of children who had been removed from situations of trafficking and commercial sexual exploitation and who had benefited from social rehabilitation and reintegration measures, as requested by the Committee of Experts. Special emphasis needed to be given to the phenomenon of children engaged in domestic work in the context of the *criadazgo*

system, which concerned thousands of children between the ages of 5 and 17 who lived and worked at the home of a third person in exchange for accommodation, food and basic education, but who were not reflected in any statistics. The Government had recognized that it was hazardous work without, however, providing data on the numbers of children concerned or on the measures taken for their protection. In conclusion, the Worker members emphasized that the application of the Convention was still not ensured, despite the fact that it had been ratified in 2001, and they urged the Government to bring its law and practice into conformity with all the provisions of the Convention.

**The Employer members** thanked the Government representative for the detailed information he had provided. According to the Committee of Experts, while the national legislation was in compliance with the Convention, the use, procuring and offering of children under the age of 18 for prostitution occurred in practice. According to a study completed by ILO-IPEC in June 2002, two of three sex workers were minors. In this respect, the Government had explained that it had reactivated the Inter-institutional Roundtable for the Elimination of the Commercial Sexual Exploitation of Children and had indicated that it was engaged in the Niño Sur initiative to defend the rights of children in the region and exchange best practices to deal with issues of victim protection and assistance. While considering that these were clearly positive measures, the Employer members shared the Worker members' concern regarding use of children for prostitution and sexual exploitation. They urged the Government to continue its efforts to eradicate such practices and requested it to supply further information on the initiatives undertaken to eradicate the use of children for prostitution and sexual exploitation in practice, including detailed information regarding the results and impact achieved. While welcoming the national policies that the Government was putting in place to address the problem of trafficking of children for the purpose of sexual exploitation, the Employer members observed that the Committee of Experts had noted reports that the trafficking of children had increased and, in this respect, had concluded that there appeared to be shortcomings in the applicable legislation. Noting that the Legislative Committee of the Inter-institutional Roundtable on Trafficking was reviewing a bill to combat all facets of human trafficking, the Employer members encouraged the Government to ensure that the trafficking of children in all of its forms was prohibited in law and eradicated in practice. Noting with concern the Committee of Experts' observation that some government officials had reportedly facilitated the trafficking of children, without prosecution or penalty by the Government, they encouraged the Government to ensure that all persons who trafficked children for sexual or labour exploitation were prosecuted. They further encouraged the Government to strengthen the capacity of law enforcement officials to combat the trafficking and commercial sexual exploitation of children, to raise the awareness of law enforcement agencies regarding these issues, and to provide information on all measures taken to the ILO. The Employer members welcomed the Government's involvement in various regional projects aimed at combating the trafficking of children for sexual exploitation, such as "*Ciudades gemelas*" in MERCOSUR and the South-South cooperation project, and encouraged it to continue providing information regarding these efforts in the region. They recalled that, according to an ILO-IPEC study conducted in 2005, almost 11 per cent of children between 10 and 17 years of age worked as domestic workers in exchange for accommodation, food and basic education and they encouraged the Government to take measures to protect children working as domestic workers

from the worst forms of child labour. They urged the Government to provide information on the enforcement of Decree No. 4951 of March 2005, which prohibited children under 18 years of age from performing domestic work, and its implementation in practice, as well as on the draft new legislation discussed by the Government and the work of the national Committee for the Protection of Children. The Employer members encouraged the Government to take the necessary measures to enforce the national legislation which prohibited children from being forcefully recruited into the armed forces. Furthermore, noting a recent judgment regarding the constitutionality of the recruitment of minors into the armed forces, which appeared to create some uncertainty regarding the national legislation, they encouraged the Government to comply with the Committee of Experts' request for information on the current measures taken to enforce the national legislation prohibiting the forced recruitment of young persons into the armed forces. They encouraged the Government to sustain the current measures in order to achieve full compliance with the Convention.

**The Employer member of Paraguay** emphasized that the social problems afflicting the country which were the result of 50 years of dictatorship. There had been a succession of democratic governments since 1989 and, since the previous Government, measures had been taken to solve the problems of the most vulnerable sections of the population in the country and to start up economic growth. While recognizing the shortcomings of the present Government, particularly the way it related to the employers, he recognized the efforts made to solve the social problems, especially the lack of employment. The 14 per cent growth rate the previous year had resulted in the creation of jobs. Employers, workers and the Government were currently working in a coordinated manner on training and compliance with standards by enterprises, placing the emphasis on vigilance and prevention of the use of minors in any form of work. Thus, the Federation of Production, Industry and Commerce (FEPRINCO) and five trade unions had formed a multi-sectoral board for the purpose of conducting a tripartite dialogue enabling measures aimed at job creation to be proposed to the Government. However, he recognized that, although progress had been made, much remained to be done.

**The Worker member of Paraguay**, endorsing the statement by the Worker members, expressed concern at the violation of the Convention. Paraguayan children of mestizo or indigenous origin were often exploited in lime factories (*caleras*) in the north of the country. The problem of *criaditas* affected girls taken from the country's interior to the capital, Asunción, and other cities, in many cases sent by their parents because of the poverty they lived in and the promise of going to school. However, the families who took charge of the girls did not always keep their promise, and the girls suffered exploitation and every kind of abuse. Many children were exploited as a result of the poverty in which their families lived, and were excluded and without opportunities. The situation of indigenous peoples in Paraguay was also regrettable. Forced migration was still a serious problem: mothers seeking work migrated, abandoning their children. Many indigenous children found themselves in the country's main cities, forced into prostitution and falling victim to drug addiction. Dropping out of school, corruption, drug trafficking, child prostitution and human trafficking forced children to look for ways to survive and were causes of their exploitation. Many children were taken to other countries, taken in by stories of being able to study or work, but fell into the hands of unscrupulous people who subjected them to the worst forms of human exploitation. For example, in the area around Ciudad del Este in the region of Alto Paraná, some girls had been deceived

and taken to the city of La Plata in Argentina, where they were made to take part in prostitution. Such cases also occurred in Brazil and Chile. Paraguay's executive authorities were making great efforts to apply the Convention in practice. However, although the CONAETI was supported by the Government, the ILO and other institutions, it had little opportunity for action because its resources were limited, and in many cases there was no collaboration from other state authorities. He reaffirmed his commitment to continue fighting for ILO Conventions to be respected, expressed support for all efforts to combat child labour, and called for policies and resources be strengthened towards that end. He requested an ILO direct contacts mission and stressed that the fight against child labour should be reinforced at national and international level, including through ILO-IPEC.

**The Government member of Argentina**, speaking on behalf of the Government members of the Committee who are members of the Group of Latin American and Caribbean countries (GRULAC), highlighted the achievements of the Government and the social partners to date and encouraged them to continue pursuing their current activities. Lastly, he requested the ILO to support the efforts made by the Government.

**The Worker member of Argentina** indicated that, in Paraguay, more than half of the children aged between 5 and 17 years worked. Seven out of every ten working children were engaged in domestic work, either in their own houses, in paid domestic work in the houses of others, or in unpaid domestic work in the houses of others. Some 6.1 per cent of those children carried out paid work for the entire week and practically for the entire day, which caused their total exclusion from the educational system and rendered them extremely vulnerable. Such an exclusion from education was felt more acutely in rural areas than in cities, and increased with the age of the children. With respect to unpaid domestic work in the houses of others, the *criadazgo* system caused abuse and harm to children, both moral and physical. In view of the isolation of children, who were defenceless, that type of work was considered hazardous. Some 60,298 children were found to be in that situation, which represented 9.3 per cent of the total number of children aged between 5 and 17 years old.

**The Worker member of Brazil** noted the efforts made by the Government to give effect to the Convention and observed that the reasons for discussing the case should be considered. Since 2000, children under 15 accounted for 39.5 per cent of the population, and 42 per cent of those under 14 lived in poverty. The figures must not have changed significantly in recent years. According to UNICEF data, one third of children in the country aged between 7 and 17 were engaged in work, totalling more than 500,000 children; 42 per cent of them began work at the age of 8, often in the informal sector and in hazardous and unhealthy working conditions. That worrying situation was aggravated by the information available on the trafficking in children, sexual exploitation of children, and instances of forced labour. Although the Government had taken some measures, the Committee of Experts had indicated that much remained to be done to raise public awareness of the gravity of the situation and to combat trafficking, forced labour and prostitution of children and young persons. To that end, the Government should strengthen the legislative and judicial authorities so that those responsible could be punished effectively. According to ILO-IPEC, two-thirds of sex workers were minors, and the majority of child victims of trafficking were destined for neighbouring countries, such as Brazil. Referring to Article 8 of the Convention, he emphasized the role of cooperation between States, especially Brazil, Argentina and Chile, in eradicating trafficking in children. The

Committee of Experts had referred to intergovernmental cooperation within MERCOSUR, but there was nothing to stop it from urging the countries in question to broaden their cooperation to include judicial bodies and ministries of labour in action to combat odious practice.

**The Worker member of Colombia** expressed concern at the failure of the Government of Paraguay to comply with the Convention, and said that a civilized society should condemn all forms of child labour, because better and worse forms of child labour could not be distinguished. The Government seemed to be aware of the importance of combating child labour, but that was not enough; a broader commitment was needed from society as a whole. The scale of the problem should not be overlooked: boys worked in lime mines and girls were subject to unacceptable exploitation from an early age in the *criadazgo* system. Children in the informal economy were also exposed to the dangers of the street. The situation affected the whole of Latin America. A society that did not guarantee absolute respect for childhood was not viable.

**The Worker member of Spain** expressed dismay at the phenomena of child labour and sexual exploitation, which were not confined to Paraguay but extended across borders. Coordination was therefore needed between the national policies of different countries. However, that did not mean that the Government could avoid its responsibilities, particularly in terms of public servants complicit in such exploitation and the impunity of those who facilitated it. Although round tables had been established, they had not produced results. No measure was sufficient without the political will to put it into practice. He emphasized that the issue of trade and the exploitation of people were intimately linked to situations of poverty. An internal movement must be created to fight exploitation, with the full participation of the Government. The various forms of child labour were in violation of the Convention and went hand-in-hand with exploitation. He called on the Government to take the necessary steps to bring an end to the situation.

**The Government representative** shared the concern expressed by the members of the Committee at the situation of child labour in the country and indicated that information would be sent this year on progress in the application of the Convention in practice. The statistical data requested by the Worker and Employer members would be provided with the next report, especially when the results were available of the first National Child Labour Survey, which were expected in 2012. He indicated that various measures would be taken in 2011, including: training for the correct use of the two guides prepared on dealing with cases of child labour; carrying out inspections (by inspectors trained with the support of ILO-IPEC) in places where workers under 18 years of age would be expected to be found; implementing action for the eradication of child labour in collaboration with the principal organizations of employers and workers (in that respect, a high-level meeting was being organized with representatives of the Paraguayan Chamber of Construction with a view to drawing up an agenda for joint work that took into account the proposals of the actors involved); adopting practical measures in the CONAETI, a quadripartite body chaired by the Ministry of Justice and Labour, with a view to reducing the numbers of boys and girls working and protecting young persons engaged in work for others; continuing collaboration with IPEC, with the ABC and the USDOL in programmes for the exchange of experience in dealing with cases of child labour and in the implementation of social programmes for conditional cash transfers, such as ABRAZO and TEKOPORÁ; maintaining close relations with the other State authorities with a view to harmonizing the criteria for the application of the law and providing precise replies to the questions of the

Committee of Experts; continuing collaboration with the State bodies of the executive and municipal authorities with a view to training public officials directly involved in dealing with boys, girls and young persons; pursuing the provision of replies to children in their educational institutions through continued collaboration with the ILO Supporting Children's Rights through Education, the Arts and the Media (SCREAM) programme, which had been introduced in Paraguay in 2005 and had gradually been extended to various departments; giving effect to tangible policy measures, such as the sworn declaration drawn up by the National Directorate of Public Contracts to ensure that state enterprises did not use child labour; implementing, in collaboration with Argentina, Brazil and Uruguay, the Regional Plan for the Eradication of Child Labour in MERCOSUR countries, the objectives of which included carrying out an awareness-raising campaign on agricultural and domestic work and sexual exploitation in border areas, the inclusion of the subject of the trafficking and smuggling of boys, girls and young persons for their sexual and labour exploitation, and the formulation of draft reforms of national legislation and strategies for addressing domestic child labour.

**The Employer members** noted that the Government shared their serious concerns about the existence of the worst forms of child labour in Paraguay. They hoped that those concerns would be reflected in the measures envisaged by the Government in its efforts to eradicate the worst forms of child labour in both law and practice. They encouraged the Government's efforts to eradicate the worst forms of child labour and to come into full compliance with the Convention. However, more work was needed to eradicate the use and trafficking of children for commercial sexual exploitation. The Government should take measures that were efficient, effective and targeted, and it should also ensure their effective monitoring and evaluation. Moreover, the Government should protect children working as domestic workers from the worst forms of child labour. They emphasized that Convention No. 182 was a fundamental Convention that required immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. They therefore looked forward to receiving information on any progress made in this respect.

**The Worker members** emphasized that it emerged from the discussion that the Government recognized the seriousness of certain situations which affected children, but minimized other situations. They reaffirmed that there was a link between poverty and the worst forms of child labour, and consequently, the description of the socio-economic situation of the country was relevant. The Government needed to make every effort to bring national law and practice into conformity with the Convention and for that purpose needed to: adopt the bill to combat trafficking, which encompassed the aspects of the prevention, repression and assistance to victims and their reintegration; strengthen action to combat the use, procuring or offering of children for prostitution; reinforce the capacities of the law enforcement agencies, such as the police and the judicial system, so as to ensure they could function correctly and efficiently with a view to prosecuting and penalizing persons responsible for child trafficking for sexual exploitation and the exploitation of their labour; prevent children from being engaged in the worst forms of child labour, ensure their removal from such types of labour and their social reintegration; give special attention to children employed as domestic workers, especially under the *criadazgo* system, and gather data on that system, which involved hazardous work so as to provide a solid basis for combating it; and continue the existing collaboration within MERCOSUR to combat child trafficking. In conclusion, they considered that, in view of the

diversity of the problems of application of the Convention, the Government needed to have recourse to ILO technical assistance so as to bring its law and practice into conformity with the Convention and establish special training for law enforcement officials.

## **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 allegations from the International Trade Union Confederation (ITUC) relating to the sale and trafficking of children, children in commercial sexual exploitation and children working in domestic service ("*criadazgo*" system).

**The Committee** duly noted the information provided by the Government representative outlining laws and policies put in place to combat the sale, trafficking and commercial sexual exploitation of children, as well as the comprehensive action programmes that were being undertaken in collaboration with ILO-IPEC to remove children from such situations. The Committee observed that the Government had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO. The Committee further noted the Government's indication that it was carrying out initiatives to raise awareness and to combat the trafficking and commercial sexual exploitation of children in Paraguay jointly with the States members and associate member States of MERCOSUR, and within the framework of the regional South-South cooperation.

Moreover, the Committee noted the Government representative's statement that the Inter-institutional Roundtable for the Prevention and Combating of Trafficking in Persons, coordinated by the Ministry of External Affairs and created in 2005, was reviewing a bill on combating trafficking of persons, which would cover all aspects of trafficking, including prevention, investigation, sanctions, assistance and social rehabilitation of victims. Furthermore, the Committee noted the Government representative's statement that a national plan against trafficking of persons was in the process of being approved. The Committee encouraged the Government to take immediate measures to ensure that the bill on combating trafficking of persons, as well as the national plan against trafficking of persons, were adopted in the very near future.

**The Committee** shared the concern expressed by several speakers that, although the national legislation on the use, procuring or offering of children for prostitution was in conformity with the Convention, a large number of children under 18 years of age were the victims of commercial sexual exploitation and trafficking for that purpose. The Committee therefore requested the Government to redouble its efforts to combat the commercial sexual exploitation of children, and to provide information on the results achieved.

While noting that a special unit on trafficking in persons had been created within the Office of the Attorney General, the Committee expressed its deep concern at the weak enforcement of the national legislation on trafficking and commercial sexual exploitation, as well as at allegations of complicity of government officials with human traffickers. The Committee accordingly urged the Government to take immediate and effective measures to strengthen the capacity of law enforcement agencies, particularly the police, the judiciary and customs officers, in order to ensure that the perpetrators, including government accomplices, were, in practice, prosecuted, and that sufficiently effective and dissuasive penalties were imposed. The Committee also requested the Government to provide statistical information in its forthcoming report to the Committee of Experts on infringements

reported, investigations, prosecutions, convictions and penal sanctions applied.

While domestic work by children was considered to be a hazardous type of work under the national legislation of Paraguay, the Committee noted with serious concern the persistence of the engagement of children aged 5 to 17 years in the “*criadazgo*” system. The Committee observed that in so far as these children did not control their conditions of employment, the majority of them worked under conditions of forced labour. The Committee emphasized the seriousness of such violations of the Convention, and urged the Government to redouble its efforts, as a matter of urgency, to eradicate the use of children in forced domestic labour and hazardous domestic work. The Committee requested the Government to provide information on the manner in which the prohibition to engage children in hazardous domestic work, such as in the “*criadazgo*” system, was enforced in practice, and on the results achieved. It further requested the Government to provide statistical data on the number of children under 18 who were engaged in these worst forms of child labour.

The Committee requested the Government to take effective and time-bound measures to prevent children from being engaged in the worst forms of child labour as mentioned above, as well as to remove them from these worst forms and to provide for their rehabilitation and social integration, and to communicate information on the results achieved. Noting that a national survey on child labour would be conducted as of August 2011 in the entirety of the territory of Paraguay, the Committee requested the Government to provide the results of this survey as soon as they became available.

Finally, noting the information highlighted by several speakers that the worst forms of child labour were the result of poverty and underdevelopment in Paraguay, the Committee strongly encouraged the Government to continue availing itself of ILO technical assistance and cooperation with a view to bringing its law and practice into conformity with the Convention as a matter of urgency. This technical assistance and cooperation should include training to be provided to strengthen the capacity of officials of the law enforcement agencies who were responsible for ensuring the effective application of national legislation.

#### UZBEKISTAN (ratification: 2008)

A Government representative pointed out that the legal basis for the prohibition of the worst forms of child labour had been established and was being continually improved. He recalled that protection against unacceptable forms of child labour was based on the following legislation: the Constitution, which prohibited the use of any form of forced labour; the Act on Guarantees of the Rights of the Child, which regulated the work of persons under 18 years of age, allowing them to combine work and study; the Labour Code which set the minimum age for admission to employment at 16 years (in exceptional cases at 15 years with the authorization of the child’s parents or guardians); the Administrative Responsibility Code, which provided for substantial fines for employers who committed violations of labour legislation on the use of child labour; the Act to supplement the Administrative Responsibility Code, which was adopted to punish those who bought or sold, or carried out any other transaction with regard to a minor, as well as those who exploited, recruited, transferred, delivered, concealed or carried out any other act for the purpose of exploiting a child and involving a child in any form of illegal activity; and the Act on the prevention of child neglect and juvenile delinquency, which was adopted on 29 September 2010. He recalled that, in order to implement the Committee of Experts’ recommendations, an Inter-ministerial Working Group was established by Cabinet of Ministers decision of 25 March 2011, which was chaired by the First Deputy

Minister of Labour and Social Protection, and included senior officials of the Council of the Federation of Trade Unions of Uzbekistan, the Chamber of Commerce and Industry, as well as the Ministries of Foreign Affairs, Justice, Internal Affairs, Education, Higher and Secondary Specialized Education and Health, the National Human Rights Centre, the Women’s Committee, the non-governmental youth organization “Kamolot” and farmers’ associations. The main tasks and objectives of the Inter-ministerial Working Group were the following: coordinating the activity of the relevant ministries, departments and organizations concerned with regard to the implementation of the measures, programmes and plans adopted pursuant to ILO Conventions; developing programmes and action aimed at complying with obligations under ILO Conventions; carrying out the necessary awareness-raising activities on the content and meaning of the ILO Conventions applied in Uzbekistan; liaising with international organizations on matters relating to education, health care, labour, employment, social protection and social and labour legislation. In April and May 2011, the Inter-ministerial Working Group decided on the development of measures aimed at fulfilling Uzbekistan’s obligations under ILO Conventions and updating the measures under the National Plan of Action, and approved updated reports on the application of the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and Convention No. 182, as well as the information on non-ratified ILO Conventions. He further recalled that Uzbekistan was implementing a single National Programme for Training Managers, and that since 2009 it had introduced compulsory schooling for 12 years, this being a crucial factor in preventing child labour and eradicating its worst forms. Referring to recent data on, amongst others, the literacy rate, economic growth, job creation, average wages and state expenditure on social protection in Uzbekistan, he stressed that, as ILO experts had noted, the economic reforms undertaken in Uzbekistan had ensured stable economic growth, improved the level of employment, and improved incomes for families. These constituted an important precondition for reducing child labour in the country. As regards strengthening monitoring of compliance with ratified ILO Conventions, he stated that the practice of parliamentary monitoring was being introduced; an integrated policy document for the development and improvement of national monitoring of the rights of the child was being implemented with the assistance of the United Nations Children’s Fund (UNICEF); the Government Order of 19 February 2010, extended the powers of the labour inspectorate, which was authorized to suspend the activities of undertakings not found to be in conformity with labour legislation and to initiate administrative proceedings against persons responsible for contraventions. He added that concrete measures were being taken to prosecute people for violations of labour legislation: the labour inspectorate in 2010 had recorded around 10,000 contraventions of labour laws and regulations during hiring and employment; some 829 compliance orders (orders to rectify contraventions) were issued, and administrative action was taken against 782 managers and officials, with fines totalling 75 million Sumy (UZS). He further pointed out that Uzbekistan was collaborating with the ILO and the social partners in implementing the Decent Work Country Programme.

The Employer members stressed that the worst forms of child labour was a chronic problem in agriculture. The Conference Committee conclusions last year highlighted the systematic and persistent use of forced 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 chil-

dren obliged to participate in the cotton harvest. In particular, although various legal statutes prohibited forced labour and hazardous types of work for children, the legislation did not prevent child labour in the cotton harvest from occurring. It was not sufficient to have laws: such laws and the Constitution should be effective and enforced as required by Article 7(1) of Convention No. 182. As noted by the Committee of Experts in its 2010 observation, there was a convergence of allegations and broad consensus among the United Nations bodies, the representative organizations of employers and workers and non-governmental organizations, regarding the continued practice of mobilizing schoolchildren for work in the cotton harvest. Not all of these organizations' assessment of the situation could be wrong. According to the Government's report of 7 June 2010, an interdepartmental working group was established, and a programme approved, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. This seemed to be an implicit and tacit admission that child labour occurred. Since the last meeting with the Government last year, there had been numerous credible reports of child labour in the cotton harvest from September to October 2010. Contrary to the Government's statements, these children were supervised by their teachers, not their parents. Police and security patrolled the cotton fields in an effort to prevent observation by human rights groups and journalists, and at least one human rights activist was expelled from the country for observing the cotton harvest. The Employer members questioned the transparency of the Government: while last year the Conference Committee had 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 the cotton fields, the Government by inaction appeared to have rejected this conclusion. The Employer members suggested that the Government reconsider this option.

**The Worker members** recalled that the Convention had been adopted in 1999 with the aim of combating those inhumane and unacceptable situations, and as such constituted a relatively new instrument. The case under examination concerned the use of (often very young) children for work which, by its nature or the circumstances in which it was carried out, was hazardous. The examination of the case this year, after an examination by this Committee in 2010, had been requested by the Committee of Experts on the "double footnote" basis. The Committee of Experts had initially examined the issues related to the forced or compulsory labour of children in cotton production and in hazardous work governed by Articles 3 and 7(1) of the Convention. Denunciation of the systematic and persistent use of the forced labour of children in the cotton fields was widespread and well documented. It involved the confederation of trade unions of Uzbekistan, the International Organisation of Employers (IOE) and other non-governmental and media organizations. Since the ratification of the Convention in 2008 and the communication of the Government's first report, the Committee of Experts had noted serious problems relating to compliance with the Convention. Every year between 0.5 and 1.5 million schoolchildren were forced by the Government to work in the national cotton harvest for periods of up to three months. The latest figures available concerned the 2009 harvest; it had not been possible to obtain accurate and reliable data on the current situation. The situation involved hazardous work prohibited by the Convention which prevented the children from attending school during the harvest period. It also gave rise to serious health problems resulting from the harsh climatic conditions and the carrying of heavy loads, such as intestinal and respiratory infections and cases of meningitis

and hepatitis. Neutral and credible international bodies such as UNICEF, the Committee on the Elimination of Discrimination Against Women and the UN Human Rights Committee had also expressed their concern regarding the seasonal mobilization of vast numbers of children for the cotton harvest. At the same time, it was worrying to observe that the Government seemed unwilling to recognize the gravity of the situation, stating that it was traditional practice for the oldest children to help with the family business. In practice, the situation in question affected very young children (9, 10, 11 years of age and older), who worked under harsh conditions which posed a threat to their life and health, conditions that were covered by the Convention. It was therefore to be hoped that the Government would understand that it had an obligation, as established by the Convention, to take immediate and effective measures to ensure the elimination, as a matter of urgency, of the worst forms of child labour, and ensure the effective application of the Convention through monitoring and penal sanctions. The Committee of Experts had also examined the surveillance mechanisms and the programmes of action aimed at eliminating the worst forms of child labour covered by Articles 5 and 6 of the Convention. It observed that the Government had adopted a National Plan of Action for the application of the Minimum Age Convention, 1973 (No. 138) and Convention No. 182 comprising measures to combat the forced labour of children and also a resolution concerning measures for the application of these Conventions in the education system. The Government had taken initiatives to inform and raise the awareness of farmers and to collaborate with the UNICEF Child Protection Programme. Nevertheless, it still lacked specific, detailed information on the impact of the national plan of action and the measures taken in that context. Without such data and the effective involvement of the labour inspectorate, the objective of reducing the number of children working in the cotton harvest was impossible to achieve since the phenomenon could not be evaluated. The inspectorate needed not only human and financial resources but also the means of monitoring the use of school-age children in the cotton harvest. The Committee of Experts had underlined the lack of communicated data required in the report form on the autumn 2010 harvest. However, having recourse to changes to the law was no guarantee that the law was effectively applied and monitored and that penalties were imposed in relation to it, or that the application thereof would be the subject of consultations with the local social partners and other representatives of civil society recognized by the latter. The Worker members recalled that they had wanted to show confidence in the Government the previous year by inviting it to demonstrate its total political will without delay by agreeing to receive a high-level ILO tripartite observer mission having full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields. To date, the Government had yet to agree to the mission. To show its serious intent, therefore, the Government would have to undertake to report regularly by supplying recent, concrete and complete data. It would also have to accept the observer mission called for by the Committee the previous year and agree to or, better still, propose technical assistance. Finally, the Government should enter into a partnership with the ILO's International Programme on the Elimination of Child Labour (IPEC).

**The Worker member of Uzbekistan** stated that the Government representative had objectively evaluated the Government's effort in combating child labour. Child labour could be eliminated only by eliminating its causes – informal employment, unemployment, economic and family-related problems. Trade unions were among the first to bring the issue of child labour to public attention.

In 2005, it called for the ratification of Conventions Nos 138 and 182. Following the ratification of these Conventions, trade unions had participated in the development of a national plan of action for their implementation. Out of 37 measures envisaged by this plan, 13 had been adopted upon trade unions' initiative. These measures included a review of the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age", review of regulations on lifting and carrying heavy loads, and awareness-raising among farmers. On 2 May 2011, the Federation of Trade Unions of Uzbekistan, the Association of Farmers, and the Ministry of Labour and Social Protection made a joint statement on the prohibition of child labour in the agricultural sector. The Administrative Responsibility Code had been amended so as to provide for the legal responsibility of officials and other persons for violating labour legislation concerning minors; for employing minors to perform work which could harm their health, safety or morals; as well as for forcing minors to perform work. Currently, a review of collective agreements was being undertaken with the aim of including provisions concerning protection of children's rights, obliging employers to respect the minimum age for employment and prohibiting worst forms of child labour. In 2010, the monitoring of compliance with the Labour Code carried out by trade unions revealed 6,271 cases of violations, 197 of which concerned children under 18 years. The Federation of Trade Unions of Uzbekistan conducted information sessions and seminars for trade union activists throughout the country and, together with the Farmers' Association, among farmers, to raise awareness regarding child labour. The source of child labour lay in the informal economy and family, where trade unions had no influence. In the formal sector, the problem of the worst forms of child labour did not exist. Some parents thought that it was better for their children to work than do nothing. There was nothing wrong with children helping their parents and making some pocket money. However, children were often being employed without a proper employment contract and without respecting requirements set forth by the legislation for children and adolescents concerning working hours and rest. Today, employers, parents and children should clearly understand the difference between child labour and vocational training. The Federation of Trade Unions of Uzbekistan would continue making the necessary efforts to ensure the full application of the Convention in the country.

**The Government member of Hungary**, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the candidate countries (Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland) and potential candidate countries (Bosnia and Herzegovina and Serbia), Norway and the Republic of Moldova, reiterated serious concern about the systematic and persistent use of forced labour, including child labour during the cotton harvest in Uzbekistan. While taking note of the adoption of the Act on Guarantees of the Rights of the Child, of the relevant amendment to the Administrative Responsibility Code and of the *Aide-memoire* on the Application of the Convention sent by the Government, she noted with deep regret the recent conclusions of the Committee of Experts. This concern was supported by well-documented allegations and broad consensus among the United Nations bodies, UNICEF, the representative organizations of employers and workers and non-governmental organizations stating that, despite the legal commitments made by the Government to eradicate forced child labour, in practice, year after year an estimated number of 0.5 to 1.5 million school-aged children were still forced to take part in the hazardous work in the cotton harvest for up to three

months each year. Whereas the Government had stated in its report that the allegations concerning widespread forced labour in agriculture were an unfounded attempt by foreign actors to undermine the reputation of Uzbek cotton in the global market, and that children were not involved in the cotton harvest as various legal provisions prohibit forced labour, she urged the Government to grant unrestricted access to independent monitors to document the cotton harvest and provide a clear picture of the situation in the country. A monitoring mission was one of the issues recently discussed by José Manuel Barroso, President of the European Commission at his meeting with President Islam Karimov in January 2010. While expressing concern that the Government did not invite the previously recommended high-level ILO tripartite observer mission despite the detailed discussions in the Conference Committee last year and the explicit request of the Committee, she strongly urged the Government to invite such a mission in good time for the 2011 harvest and provide it full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the actual implementation of the Convention. She further urged the Government of Uzbekistan to strengthen its efforts on this serious issue, to take immediate and effective measures to ensure the implementation of all aspects of the Convention, to carry out thorough investigations into allegations of such practices and to take robust action with regard to the prosecution of offenders.

**The Government member of Switzerland** stated that her Government associated itself with the statement made by the Government member of Hungary on behalf of the Member States of the European Union.

**The Government member of Azerbaijan** noted the positive measures taken by the Government of Uzbekistan, for instance the adoption of legislation in 2010 to prevent the exploitation of children, the establishment of the Inter-ministerial Working Group to monitor the implementation of ILO Conventions, and the 2011 decision to set up a specific programme for the eradication of child labour. He also recalled that new legislation was adopted in 2009 on compulsory education and his Government was of the view that all those measures would ultimately produce positive results for the elimination of the worst forms of child labour.

**The Government member of the United States** stated that her Government remained concerned that, notwithstanding the constitutional and legislative prohibitions against forced labour and child labour in Uzbekistan, there was reason to believe that many thousands of rural schoolchildren continued to be mobilized forcibly each autumn to harvest cotton under hazardous conditions. She echoed the concerns of UN bodies, employers' and workers' organizations, and non-governmental organizations, regarding this deeply rooted practice. Her Government urged the Government of Uzbekistan to implement its existing prohibitions on forced and child labour. She recalled that ILO high-level tripartite technical assistance could be instrumental in helping governments to develop and implement solutions for the effective and sustained application of ratified Conventions, and it was regrettable that last year's recommendation for an ILO mission was not accepted by the Government. Her Government joined the other members in calling for the Government to invite an ILO observer mission that would have full freedom of movement and timely access to all information and relevant parties to assess the implementation of the Convention during the next cotton harvest.

**The Government member of Canada** stated that her Government welcomed the adoption of various legal provisions prohibiting forced labour and the engagement of children in hazardous work, but shared the concerns

raised by the Committee of Experts that forced child labour continued to be practised in the cotton industry. This situation, and its negative impacts on the health and safety and education of children, had been raised by international workers' and employers' organizations and commented on by a number of UN bodies. Her Government was encouraged by the measures for implementation of Conventions Nos 138 and 182, undertaken by the Government under the National Programme of Action approved in 2008, and the joint resolution adopted in 2009, but expected more detailed information on the practical results of these initiatives. Her Government therefore urged the Government of Uzbekistan to accept a high-level tripartite observer mission and to work with the ILO to strengthen enforcement of forced labour and child labour laws to fully meet its obligations under the Convention.

**The Worker member of the United States** recalled that the 2010 cotton harvest had involved the use of child labour on a massive scale: more than 2 million schoolchildren aged between 10 and 16 years. He recalled that, by the time the 2010 harvest had ended, two months of schooling, mainly in rural areas, were effectively lost. The mobilization of this involuntary labour originated from the top and was transmitted through governors to school administrators. The harvest mobilization was overseen by government officials and police, while parents who refused to send their children to work reportedly faced economic sanctions such as the removal of welfare subsidies or the cutting off of gas and electricity. According to some accounts, children who failed to meet quotas, ranging previously from 15–75 kilos per day based on age, were beaten or humiliated. Security was employed throughout the region to prevent eyewitnesses from reporting abuses, while children and parents were instructed to deny that they were picking cotton. Children were reported to suffer from exhaustion and malnutrition. The speaker questioned the Government's denial of the existence of state-sponsored forced child labour and its statement that national programmes, commissions and other measures proposed or previously established were serious efforts to combat child labour in the cotton industry. He noted the broad consensus among all social partners, including the employers and workers, and governments, which were supported by reports from international and inter-governmental organizations, universities and human rights organizations, that state sponsored forced child labour in the cotton industry continued on a massive scale. He called for an ILO high-level tripartite mission with unrestricted and unsupervised access during the harvest season and expressed the view that if this mission were rejected by the Government, other measures should be considered to bring about quickly and completely the end of forced child labour.

**The Government member of Turkmenistan** stated that his Government welcomed the adoption of the National Action Plan for the implementation of ILO Conventions. The National Action Plan on Convention No. 182 set out specific measures to prevent child labour, monitor compliance and raise awareness, and provided training for employment agencies, media, trade unions and local administrations. The Government consistently carried out nationwide programmes for the protection of social and economic rights of children. National monitoring mechanisms had been incorporated into the Government administration from the highest to local government levels. The Government's attention to child development was evidenced by the fact that 99 per cent of the population was literate. Uzbekistan had one of the strongest social systems, especially with respect to vulnerable families, large families and children in need. He therefore con-

cluded that the examination of this case should be discontinued.

**The Government member of Singapore** noted the concrete steps taken by the Government of Uzbekistan to eliminate child labour, including efforts made in strengthening the legislative framework and enhancing the monitoring mechanism to prevent illegal child labour, increasing the penalties for violations of labour legislation and compulsory labour of persons under 18 years of age, and implementing targeted programmes including educational activities to raise awareness on the rights of the child. The Government had demonstrated its commitment to tackle the problems and to cooperate with international agencies, such as translating and publishing educational material on the elimination of child labour, in partnership with ILO-IPEC; and developing and implementing a concept of development and improvement of national monitoring of children's rights in partnership with the UNICEF office in Uzbekistan, which contained the basic principles, goals, mechanisms and tools for monitoring children's rights, including the right to work. However, her Government was of the view that there was still room for improvement, and encouraged Uzbekistan to continue its efforts to strengthen the effective implementation and enforcement of the various provisions prohibiting forced labour and the engagement of children in hazardous work. She stressed that the social partners and stakeholders had an important role to play in addressing these challenges in a comprehensive manner, and supported their involvement to collectively formulate effective implementation plans. Her Government considered that the Government of Uzbekistan had taken proactive and resolute steps to address the challenges of the elimination of child labour and concluded by stating that the Committee should offer further assistance to the Government to fulfil its obligations under the Convention.

**The Government member of Cuba** drew attention to the National Plan of Action that the Government had introduced to implement Conventions Nos 138 and 182, which contained 37 measures covering four fundamental areas: improving legislation, monitoring and follow-up, raising awareness of the Conventions, and implementing international cooperation projects. She emphasized that the Government was making great efforts to prevent child labour, including holding seminars and awareness-raising campaigns aimed at employment agencies, workers' organizations and local authorities. Since 2008, there had been a telephone line for children and their relatives to report violations of their rights. She highlighted the constitutional prohibition of child labour, criminal legislation which laid down tough penalties for those who involved minors in illegal activities, and the list of prohibited occupations for children below 18 years of age. She stressed the Government's willingness to engage in dialogue and cooperate with all interested parties in order to take steps with a view to strengthening the system of preventing child labour.

**The Government member of Belarus** emphasized that the Government had taken practical measures for the eradication of the worst forms of child labour, such as the adoption of a National Plan of Action and a monitoring system, the inclusion of the prohibition of forced labour in the Constitution and the adoption of legal provisions penalizing persons who exacted the worst forms of child labour. All of these measures demonstrated the will of the Government to honour the obligations deriving from the ratification of the Convention and the Committee should make a positive assessment of them.

**The Worker member of Germany** stated that there was no doubt that children aged 11 to 17 years were taken out of school and were forced to spend several months in the cotton harvest under physical, economic and social pres-

sure. Experts and independent sources had provided reliable information that the parents did not have any possibility to escape the system of forced labour, and that the particular form of labour was dangerous for the children's health. The situation could not be feasible without the active role of the Government. While some progress had been made at the legislative level, the situation remained unchanged on the ground. Forced child labour persisted in clear violation of Conventions Nos 138 and 182. It was unacceptable that school children were losing the precious opportunity to have an education, and their health was being threatened. The ILO should be given full access to the children and parents concerned. He therefore fully supported the suggestion for a high-level tripartite observer mission during the harvest season.

**The Government member of the Russian Federation** stated that the Constitution of Uzbekistan contained two articles that expressly prohibited child labour, and that new legislation had been adopted that raised the minimum working age, prohibited trafficking in children and included other provisions consistent with the Convention. His Government welcomed both the tripartite declaration stating that child labour was unacceptable and criminal sanctions for contracting under-age workers. He said that the National Plan of Action, which was supported by employers' and workers' organizations, made provision for updating legislation, conducting awareness-raising campaigns and carrying out specific projects. The Government's actions should be welcomed, and cooperation between the ILO and the Government should be strengthened.

**The Government member of the Bolivarian Republic of Venezuela** stated that his Government welcomed the measures taken by the Government which had led to progress since discussions in the Committee the previous year. His Government also welcomed the fact that the Government of Uzbekistan had demonstrated its desire to work in cooperation with the Office. The Government should continue allocating 10 per cent of its gross domestic product to guaranteeing that the country's children could enjoy education and health, and there was no doubt that it would continue to enhance its activities to ensure implementation of the Convention. The Government was continuing to make progress in applying the Convention, which the Committee should emphasize in its conclusions.

**The Government member of Pakistan** stated that his Government welcomed the measures taken by the Government of Uzbekistan, which represented elements of progress and should be noted with interest. The Government had shown cooperation by adopting legislation and administrative measures towards eradicating the worst forms of child labour. If needed, technical assistance should be provided by the ILO to help the Government overcome this problem and comply with its international obligations.

**The Government member of China** highlighted the Government's positive attitude towards implementing Conventions Nos 138 and 182. He observed that proper measures were being taken, including the creation of labour systems and frameworks, and expressed support for the Government in its efforts to eradicate child labour from the country.

**The Government representative** thanked the Committee members for the positive assessment of the action taken by his Government to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children. He indicated that the improvement of the legislative framework was a key element and that the Government would continue its efforts on matters such as the minimum age, compulsory education for 12 years or an adequate system of sanctions. He

also stressed that the inspection services would be reinforced and that the Government was considering several measures for the elimination of all forms of child labour, including human trafficking, drug addiction and prostitution. He further stated that a special law on social partnership would be adopted shortly which would contain specific measures to address the situation of child labour.

**Another Government representative** recalled that only three years after the Convention had been ratified, significant progress had been made as regards the protection of children from hazardous work. His Government recognized that legislative conformity in itself was not enough and that practical implementation and effective monitoring were also needed. He also admitted past delays in reporting but pointed out that all available information had now been communicated to the Conference Committee. He felt that there was some mistrust regarding the information provided by the Government and strongly opposed the view that his Government was not concerned about the problem of child labour. This could not be true in a country where 40 per cent of the population was under 18 years of age. The ratification of the Convention alone proved the Government's commitment to the protection of children and the enhancement of their personal and social development. He concluded by reaffirming that the fight against the worst forms of child labour remained high on the agenda of his Government, that collaboration with international organizations would continue and that building a constructive partnership was the best approach to address this issue.

**The Employer members** recalled that up to 2 million children worked in the cotton harvest each year, which made the situation acute because it involved children and their development during a crucial stage of their lives. They noted the positive closing statement made by the Government representative with respect to the harmonization of the national legislation with the Convention, the efforts to deal with all aspects of the worst forms of child labour, and the setting up of a system of monitoring. However, recalling that Committee members had frequently heard expressions of goodwill, only to find decades later that the issues were not resolved, the Employer members considered that the Government needed to be more transparent in these circumstances; this was why an observer mission had been proposed last year to assess the situation during the cotton harvest. They expressed support for all the steps proposed by the Worker members, including the need for timely reporting to the ILO, accepting an observer mission, accepting ILO technical assistance and collaborating with ILO-IPEC. Finally, the Employer members noted that this was a serious situation and asked that the conclusions of the Committee be included in a special paragraph of the Committee's report.

**The Worker members** emphasized that, as could be seen from the information supplied, the Government had realized the necessity of acting to combat child labour and had taken measures in the areas of education and protecting childhood, as well as increasing criminal liability for those who flouted the prohibition of child labour. However, the Government did not seem disposed to recognize the gravity of the situation of thousands of children engaged in dangerous work harvesting cotton. It must therefore demonstrate its political will in that regard, without delay, and provide evidence that legislation adopted was being applied effectively. The Government should also demonstrate that the effect given to legislation would be the subject of consultations with the social partners and, where appropriate, with relevant non-governmental organizations that they recognized. The Worker members considered that taking the following measures would provide proof of the Government's serious commitment: submitting reports containing recent and complete infor-

mation; accepting a high-level tripartite observer mission, which would visit the country during the cotton harvest and would have complete freedom of movement, as proposed by the Committee the previous year; and accepting technical assistance and partnership with ILO-IPEC. To conclude, the Worker members accepted the proposal made by the Employer members to include this case in a special paragraph of the Committee's report.

### **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 allegations from the International Organisation of Employers (IOE), the International Trade Union Confederation (ITUC), and a significant number of other international workers' organizations relating to the systematic 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 further noted the concerns expressed by the UN Human Rights Committee, the UN Committee for the Elimination of Discrimination Against Women, as well as information in two UNICEF publications with regard to this practice.

The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. The Committee also noted the Government's statement that it had established a tripartite inter-ministerial working group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan's obligations under ILO Conventions, as well as to update 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. Furthermore, the Committee noted the detailed information provided by the Government on economic reforms undertaken in Uzbekistan, which had improved the level of employment, raised incomes for families and strengthened the banking and financial system. Moreover, the Committee noted the Government's statement that concrete measures were being taken by the labour inspectorate officials to prosecute persons for violations of labour legislation, and that a number of administrative and disciplinary proceedings had been undertaken and fines imposed. 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, once again, that, although legal provisions prohibited forced labour and the engagement of children in hazardous work, there was broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, regarding the continued practice of mobilizing school children for work during the cotton harvest. In this regard, this Committee was obliged to echo the deep concern expressed by these bodies, as well as several speakers in this Committee, about the systemic and persistent recourse to forced child labour in cotton production, involving an estimated 1 million children. The Committee emphasized the seriousness of such violations of the Convention. Moreover, the Committee noted with regret that, despite the Government's indications that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest, despite previous requests by this

Committee and the Committee of Experts for this information.

While noting the establishment of a tripartite inter-ministerial working group on 25 March 2011, the Committee observed that the Committee of Experts had already noted the establishment of an earlier interdepartmental working group on 7 June 2010, for on-the-ground monitoring to prevent the use of forced labour by school children during the cotton harvest. It noted with regret the absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by this interdepartmental working group (or any other national monitoring mechanism) engaged to work during the cotton harvest. In this regard, the Committee regretted to note that the significant progress that had been made regarding economic reform and growth had not been accompanied by corresponding progress with regard to combating the use of children for cotton harvesting.

The Committee expressed its serious concern at the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It reminded the Government that the forced labour of, or hazardous work by, children, constituted the worst forms of child labour and 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 below the age of 18.

The Committee once again called on 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 the Convention. Observing that the Government had yet to respond positively to such a request, the Committee strongly urged the Government to receive such a mission in time to report back to the forthcoming session of the Committee of Experts. The Committee 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.

The Committee also strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with the ILO International Programme on the Elimination of Child Labour.

Finally, the Committee invited the Government to provide comprehensive information in its next report to the Committee of Experts on the manner in which the Convention was applied in practice, including, in particular, enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied.

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

The Government representative expressed his gratitude for the constructive proposals and assessment of the situation in Uzbekistan during the discussion of the case. He regretted, however, that the conclusions did not reflect concrete proposals voiced by representatives of various member States. He further regretted that the discussion of this case revolved around the use of child labour in the cotton harvest, without reflecting the efforts of the Government to combat poverty, prostitution and drug abuse, and the absence in the country of forced child labour or cases of the use of children in armed conflicts. The conclusions should have reflected the multi-faceted nature of the issue. He confirmed the Government's intention to further cooperate with the ILO.

**II. SUBMISSION TO THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND RECOMMENDATIONS**  
**ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE**  
(ARTICLE 19 OF THE CONSTITUTION)

**Observations and information**

*(a) Failure to submit instruments to the competent authorities*

A **Government representative of Bahrain** stated that all measures would be taken for the submission of the instruments to the responsible legislative authority. This would thereby help the Government to take all the necessary measures with respect to such instruments.

A **Government representative of Cape Verde** emphasized that the ratification of the international labour Conventions had an impact which went beyond the adaptation of legislation to the obligations arising from ratification. It required a strengthening of human, material and technical capacities, which in the majority of cases were translated in resorting to international technical assistance. Labour administration was not fully consolidated and required the support of the international community. The speaker also referred to the recent ratification of the Minimum Age Convention, 1973 (No. 138), and to the fact that the issue of ratifying more Conventions would be analysed within the framework of a revision of labour legislation. In conclusion, he reaffirmed his Government's commitment to submit, as quickly as possible, to the National Assembly the instruments adopted by the International Labour Conference between 1995 and 2010.

A **Government representative of Cambodia** stated that, owing to technical assistance provided by the ILO, the instruments adopted by the Conference had been translated and submitted to the Cabinet of the Council of Ministers for consideration and preparation for submission to the National Assembly.

A **Government representative of the Congo** had reiterated once again the will of his Government to compensate for the delay observed with respect to the obligation of submission. The Committee of Experts had noted the efforts deployed by the Government following a mission made by the Office in May 2010. From that date on, every three months, three instruments had been submitted to the competent authorities. In the second quarter of 2011, the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Termination of Employment Convention, 1982 (No. 158), and the Labour Statistics Convention, 1985 (No. 160) had been submitted.

A **Government representative of Uzbekistan** underlined the fact that, between 1995 and 2008, his country had not sent a delegation to participate in the work of the Conference. The interministerial group responsible for preparing and submitting information on the application of ratified Conventions was currently examining issues relating to Conventions that had not been ratified and to relevant Recommendations.

A **Government representative of Papua New Guinea** apologized for the long delay in the submission of the instruments for ratification purposes, since 2000, which he attributed to administrative and procedural difficulties, some of which had been clarified. Thanks to the advice provided by the Office in 2010, the procedural aspects of the submission of reports had been clarified, and therefore the Department of Labour and Industrial Relations had begun putting together reports on some of the urgent ratifications, including the Maritime Labour Convention, 2006, which was now before the Cabinet for endorsement prior to ratification.

A **Government representative of Seychelles** regretted her Government's failure to submit the instruments adopted

by the International Labour Conference during its sessions from 2001 to 2010, but indicated that following recent ILO trainings on international labour standards, the Employment Department was now better equipped to comply with its submission obligation. She indicated that the Department had engaged in consultative meetings with other ministerial institutions, and that these initial consultations demonstrated encouraging signs that the Government would submit the instruments to the competent authority, ratify some of the Conventions, and take guidance from the Recommendations. Recommended action would be brought to the attention of the Tripartite National Consultation Committee on Employment before endorsement by the competent authority, i.e. the Council of Ministers and the National Assembly.

**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. Some speakers also referred to the assistance received by the Office in this regard.**

**The Committee pointed out that a particularly high number of governments had been invited to provide explanations on the important delay in meeting their constitutional obligation of submission. As have 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 meant the submission of the instruments adopted by the Conference to national parliaments and was a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities. The Committee recalled in this regard that the Office could provide technical assistance to contribute to compliance with this obligation.**

**The Committee expressed the firm hope that the 34 countries mentioned, namely Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Guinea, Haiti, Ireland, Kiribati, Libyan Arab Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan, 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*

**Central African Republic.** The Government submitted information indicating that the instruments adopted by the Conference between 1993 and 2007 were submitted, on 20 May 2009, to the National Assembly.

**Chile.** Since the meeting of the Committee of Experts, the ratification of Convention No. 187 was registered on 27 April 2011.

**Ghana.** Since the meeting of the Committee of Experts, the ratification of Convention No. 187 was registered on 27 April 2011.

### III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

#### *(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations*

A **Government representative of Luxembourg** said that his Government would do everything necessary to ensure that the report reached the Committee of Experts as soon as possible.

A **Government representative of Cambodia** acknowledged that reports on unratified Conventions had not been submitted for the past five years because the newly appointed working group responsible for ILO affairs within the Ministry of Labour was not yet familiar with these matters, and requested technical assistance from the Office in this regard.

A **Government representative of Malta** expressed his Government's deepest apologies for such an occurrence and assured that all necessary steps would be taken so as to submit the reports due as soon as possible.

A **Government representative of Uzbekistan** stated that his Government had provided at the present session of the Conference information concerning 13 ratified Conventions. As regards non-ratified Conventions, according to a comparative study, the national legislation was in conformity with more than 100 international labour Conventions. In addition, more than 70 non-ratified Conventions were not applicable to Uzbekistan.

**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 Cambodia, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libyan Arab Jamahiriya, Luxembourg, Malta, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, 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.**

#### *(b) Information received*

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from the following countries: **Georgia, Kyrgyzstan, Russian Federation, The former Yugoslav Republic of Macedonia and Timor-Leste.**

#### *(c) Reports received on social security instruments*

In addition to the reports listed in Appendix VI in the addendum to the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: **Cyprus, Singapore, Slovakia, Timor-Leste and Trinidad and Tobago.**

## Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

### Reports received as of 17 June 2011

*The table published in the Report of the Committee of Experts, page 817, should be brought up to date in the following manner:*

*Note: First reports are indicated in parentheses.*

*Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.*

#### **Algeria** 18 reports requested

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*(Paragraph 45)*

· All reports received: Conventions Nos. 13, 29, 32, 42, 81, 88, 105, 111, 119, 120, 127, 138, 144, 150, 155, 167, 181, 182

#### **Angola** 8 reports requested

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*(Paragraph 45)*

· All reports received: Conventions Nos. 17, 29, 45, 81, 88, 105, 138, 182

#### **Armenia** 19 reports requested

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· All reports received: Conventions Nos. 29, 81, (87), (97), 98, 100, 105, 111, 122, 135, (138), (143), 144, 151, 154, (160), 174, 176, (182)

#### **Bahamas** 10 reports requested

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· 5 reports received: Conventions Nos. 12, 22, 29, 45, 81  
· 5 reports not received: Conventions Nos. 88, 105, 138, 182, (185)

#### **Barbados** 15 reports requested

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*(Paragraph 45)*

· 11 reports received: Conventions Nos. 22, 63, 74, 87, 98, 108, 111, 135, 138, 147, 182  
· 4 reports not received: Conventions Nos. 29, 81, 105, 115

#### **Botswana** 9 reports requested

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*(Paragraph 45)*

· All reports received: Conventions Nos. 19, 29, 87, 100, 105, 138, 151, 176, 182

#### **Brazil** 25 reports requested

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· 24 reports received: Conventions Nos. 29, 45, 81, 88, 94, 105, 115, 119, 120, 127, 136, 138, 139, 148, 155, 159, 161, 162, 167, 169, 170, 174, 176, 182  
· 1 report not received: Convention No. 140

#### **Brunei Darussalam** 1 report requested

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· All reports received: Convention No. (182)

#### **Bulgaria** 38 reports requested

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· 37 reports received: Conventions Nos. 8, 13, 16, 22, 23, 29, 45, 53, 55, 56, 62, 68, 69, 71, 73, 81, 87, 98, 100, 105, 108, 111, 120, (122), 127, 138, 144, 146, 147, 163, 164, 166, 178, 179, 180, 181, 182  
· 1 report not received: Convention No. (102)

**Cambodia** 11 reports requested

(Paragraph 45)

- 9 reports received: Conventions Nos. 13, 87, 98, 100, 105, 111, 122, 150, 182
- 2 reports not received: Conventions Nos. 29, 138

**Central African Republic** 14 reports requested

- All reports received: Conventions Nos. 13, 29, 62, 81, 88, 105, 119, 120, 122, 138, 142, 155, 158, 182

**Congo** 18 reports requested

(Paragraphs 36 and 45)

- 13 reports received: Conventions Nos. 14, 29, 81, 87, 89, 95, 98, 100, 111, 138, 144, 149, 150
- 5 reports not received: Conventions Nos. 13, 105, 119, 152, 182

**Cyprus** 11 reports requested

- All reports received: Conventions Nos. 29, 45, 81, 88, 105, 119, 138, 155, 159, 162, 182

**Democratic Republic of the Congo** 24 reports requested

(Paragraph 45)

- 19 reports received: Conventions Nos. 12, 19, 29, 62, 81, 87, 88, 89, 94, 98, 100, 102, 111, 117, 119, 121, 144, 158, 182
- 5 reports not received: Conventions Nos. 105, 120, 135, 138, 150

**Denmark** 20 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 27, 29, 81, 88, 105, 115, 119, 120, 129, 138, 139, 147, 148, 155, 159, 162, 167, 169, 180, 182

**Ethiopia** 13 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 2, 29, 88, 100, 105, 111, 138, 155, 156, 158, 159, 181, 182

**Fiji** 14 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 8, 29, 45, (81), 105, 138, (149), (155), 159, 169, (172), (178), 182, (184)

**France** 48 reports requested

- 47 reports received: Conventions Nos. 8, 13, 16, 22, 23, 27, 29, 53, 55, 56, 62, 68, 69, 71, 73, 74, 81, 88, 92, 96, 105, 106, 115, 120, 122, 127, 129, 133, 134, 136, 137, 138, 139, 145, 146, 147, 148, 149, 159, 163, 164, 166, 178, 179, 180, 182, (185)
- 1 report not received: Convention No. 97

**France - French Southern and Antarctic Territories** 18 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 108, 133, 134, 146, 147

**Greece** 12 reports requested

- All reports received: Conventions Nos. 13, 29, 45, 62, 81, 88, 105, 115, 136, 138, 159, 182

**Hungary** 20 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 13, 24, 29, 81, 88, 105, 115, 127, 129, 136, 138, 139, 148, 155, 159, 161, 167, 181, 182, (185)

**Islamic Republic of Iran** 8 reports requested

- All reports received: Conventions Nos. 29, 100, 105, 108, 111, 122, (142), 182

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**Italy** 22 reports requested

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- All reports received: Conventions Nos. 2, 13, 29, 81, 105, 115, 119, 120, 122, 127, 129, 136, 138, 139, 143, 148, 159, 164, 167, 170, 181, 182

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**Kazakhstan** 7 reports requested

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- 4 reports received: Conventions Nos. 87, 98, 111, 144
- 3 reports not received: Conventions Nos. 100, 122, (167)

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**Lao People's Democratic Republic** 4 reports requested

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- 2 reports received: Conventions Nos. (100), (111)
- 2 reports not received: Conventions Nos. 4, 6

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**Luxembourg** 50 reports requested

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- 28 reports received: Conventions Nos. 2, 13, 81, 87, 88, 96, 98, 100, (115), (119), (120), (127), (129), (136), (139), (148), 150, 155, 159, (161), (162), (167), (170), (171), (174), (176), (183), (184)
- 22 reports not received: Conventions Nos. 8, 9, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 92, 108, 111, 133, 146, 147, (149), 166, 178, 180

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**Malawi** 13 reports requested

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*(Paragraph 45)*

- All reports received: Conventions Nos. 29, 45, 87, 98, 100, 105, 111, 138, 144, 150, 158, 159, 182

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**Malta** 31 reports requested

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- All reports received: Conventions Nos. 2, 8, 13, 16, 22, 29, 32, 53, 62, 73, 74, 81, 87, 88, 96, 98, 100, 105, 108, 111, 119, 127, 129, 135, 136, 138, 147, 148, 159, 180, 182

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**Mongolia** 8 reports requested

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- 7 reports received: Conventions Nos. 87, 98, 100, 103, 122, 144, 155
- 1 report not received: Convention No. 111

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**Nigeria** 25 reports requested

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- 1 report received: Convention No. 87
- 24 reports not received: Conventions Nos. 8, 16, 19, 29, 32, 45, 81, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182, (185)

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**Pakistan** 17 reports requested

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- All reports received: Conventions Nos. 11, 16, 22, 29, 45, 81, 87, 96, 98, 100, 105, 111, 138, 144, 159, 182, (185)

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**Panama** 26 reports requested

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- All reports received: Conventions Nos. 3, 8, 9, 16, 17, 22, 23, 30, 53, 55, 56, 68, 69, 71, 73, 74, 87, 88, 92, 98, 100, 108, 111, 122, 160, (167)

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**Papua New Guinea** 14 reports requested

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*(Paragraph 45)*

- All reports received: Conventions Nos. 2, 8, 22, 29, 45, 85, 87, 98, 100, 105, 111, 122, 138, 182

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**Slovakia** 22 reports requested

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*(Paragraph 45)*

- 13 reports received: Conventions Nos. 13, 87, 98, 100, 111, 115, 136, 144, 148, 155, 160, 182, 184
- 9 reports not received: Conventions Nos. 120, 122, 139, 159, 161, 163, 164, 167, 176

## **Slovenia**

**22 reports requested**

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 97, 98, 100, 108, 111, 122, 143, 147, 180

## **Thailand**

**9 reports requested**

- 8 reports received: Conventions Nos. 19, 29, 88, 100, 105, 122, 138, 182
- 1 report not received: Convention No. (159)

## **Tunisia**

**17 reports requested**

*(Paragraph 45)*

- All reports received: Conventions Nos. 8, 16, 22, 23, 55, 73, 87, 88, 98, 100, 107, 108, 111, 118, 122, 127, 150

## **Turkey**

**34 reports requested**

- All reports received: Conventions Nos. 29, 45, 53, 55, 68, 69, 73, 81, 87, 88, 92, 98, 100, 105, 108, 111, 115, 119, 122, 127, 133, 134, 135, 138, 144, 146, 151, 155, 158, 159, 161, 164, 166, 182

## **Uganda**

**25 reports requested**

*(Paragraph 36)*

- 1 report received: Convention No. 162
- 24 reports not received: Conventions Nos. 11, 12, 19, 26, 29, 45, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 138, 143, 144, 154, 158, 159, 182

## **United Kingdom**

**23 reports requested**

- All reports received: Conventions Nos. 8, 16, 22, 23, 56, 68, 69, 74, 87, 92, 98, 100, 108, 111, 122, 133, 144, 147, 150, 160, 178, 180, (187)

## **United Kingdom - Bermuda**

**10 reports requested**

*(Paragraph 45)*

- All reports received: Conventions Nos. 16, 22, 23, 58, 82, 87, 98, 108, 133, 147

## **United Kingdom - Gibraltar**

**23 reports requested**

- All reports received: Conventions Nos. 2, 8, 16, 22, 23, 29, 45, 58, 59, 81, 82, 87, 98, 100, 105, 108, 133, 135, 142, 147, 150, 151, 160

## **United Kingdom - St Helena**

**21 reports requested**

*(Paragraph 36)*

- 17 reports received: Conventions Nos. 8, 10, 11, 12, 16, 17, 19, 29, 58, 59, 63, 82, 85, 87, 105, 150, 151
- 4 reports not received: Conventions Nos. 14, 98, 108, (182)

## **United States - Guam**

**6 reports requested**

- All reports received: Conventions Nos. 53, 55, 58, 74, 144, 147

## **United States - Northern Mariana Islands**

**2 reports requested**

- All reports received: Conventions Nos. 144, 147

## **Bolivarian Republic of Venezuela**

**14 reports requested**

- All reports received: Conventions Nos. 22, 87, 98, 100, 102, 111, 118, 121, 122, 128, 130, 142, 144, 150

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### **Grand Total**

A total of 2,745 reports (article 22) were requested,  
of which 2,122 reports (77.30 per cent) were received.

A total of 245 reports (article 35) were requested,  
of which 194 reports (79.18 per cent) were received.

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**APPENDIX II. STATISTICAL TABLE OF REPORTS RECEIVED ON RATIFIED CONVENTIONS**  
**AS OF 17 JUNE 2011**  
**(ARTICLE 22 OF THE CONSTITUTION)**

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

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

**APPENDIX III. STATISTICAL INFORMATION SUPPLIED BY THE GOVERNMENT OF SAUDI ARABIA  
ON THE APPLICATION OF THE LABOUR INSPECTION CONVENTION, 1947 (No. 81)**

**Measures taken by inspectors, for each office 1430 H-1431H (2009–10)**

| Office          | No infringement | Advice and guidance | Warning with a commitment | Written warning | Violations reported | Total         | 2008/2009<br>1429-1430 H | %         |
|-----------------|-----------------|---------------------|---------------------------|-----------------|---------------------|---------------|--------------------------|-----------|
| Riyadh          | 368             | 1 593               | 49                        | 8               | 283                 | 2 301         | 1 802                    | 27        |
| Al Kharj        | 192             | 47                  | 134                       | 12              | 5                   | 390           | 384                      | 1         |
| Bareeda         | 617             | 2 929               | 202                       | 44              | 79                  | 3 871         | 3 088                    | 25        |
| Dammam          | 1 367           | 4 917               | 1 238                     | 229             | 65                  | 7 816         | 5 576                    | 40        |
| Rass Tanoura    | 77              | 779                 | 0                         | 0               | 8                   | 864           | 884                      | -2        |
| Al Jubail       | 298             | 1 411               | 12                        | 161             | 185                 | 2 067         | 901                      | 129       |
| Beqiq           | 1 639           | 90                  | 8                         | 12              | 7                   | 1 756         | 1 229                    | 42        |
| Al Ehsaa        | 540             | 2 356               | 337                       | 178             | 162                 | 3 573         | 2 743                    | 30        |
| Jeddah          | 147             | 603                 | 10                        | 638             | 20                  | 1 418         | 1 340                    | 5         |
| Al Madinah      | 95              | 2 542               | 520                       | 831             | 140                 | 4 128         | 2 622                    | 57        |
| Abha            | 0               | 3 228               | 105                       | 476             | 306                 | 4 115         | 3 523                    | 16        |
| Al Taif         | 8               | 1 001               | 46                        | 9               | 34                  | 1 098         | 505                      | 117       |
| Mecca           | 11              | 2 923               | 33                        | 24              | 42                  | 3 033         | 2 574                    | 17        |
| Yanbaa          | 22              | 2 167               | 27                        | 259             | 1                   | 2 476         | 1 449                    | 70        |
| Al Khobar       | 20              | 2 061               | 63                        | 20              | 27                  | 2 191         | 1 341                    | 63        |
| Tabuk           | 1 559           | 148                 | 8                         | 64              | 124                 | 1 903         | 828                      | 129       |
| Hail            | 884             | 488                 | 27                        | 30              | 7                   | 1 436         | 706                      | 103       |
| Najran          | 20              | 1 714               | 3                         | 3               | 7                   | 1 747         | 825                      | 111       |
| Hafr Al Batten  | 17              | 843                 | 128                       | 67              | 1                   | 1 056         | 653                      | 61        |
| Al Baha         | 771             | 1 745               | 7                         | 707             | 13                  | 3 243         | 2 496                    | 29        |
| Baysh           | 1               | 1 222               | 41                        | 0               | 6                   | 1 270         | 837                      | 51        |
| Jizan           | 33              | 580                 | 15                        | 191             | 121                 | 940           | 492                      | 91        |
| Al Khafji       | 1 390           | 6                   | 0                         | 0               | 0                   | 1 396         | 1 093                    | 27        |
| Arar            | 436             | 84                  | 145                       | 8               | 6                   | 679           | 352                      | 92        |
| Sakaka          | 35              | 320                 | 13                        | 106             | 18                  | 492           | 145                      | 239       |
| Al Ras          | 322             | 815                 | 16                        | 335             | 1                   | 1 489         | 670                      | 122       |
| Onaizah         | 240             | 1 195               | 245                       | 78              | 1                   | 1 759         | 785                      | 124       |
| Al Mujamaa      | 160             | 813                 | 0                         | 52              | 0                   | 1 025         | 587                      | 74        |
| Al Douademi     | 84              | 534                 | 55                        | 186             | 5                   | 864           | 732                      | 18        |
| Al Qurayyat     | 4               | 1 177               | 42                        | 151             | 8                   | 1 382         | 771                      | 79        |
| Shaqraa         | 260             | 495                 | 3                         | 59              | 0                   | 817           | 561                      | 45        |
| Al Zalfi        | 289             | 226                 | 0                         | 0               | 0                   | 515           | 522                      | -1        |
| Al Ala          | 13              | 509                 | 19                        | 73              | 36                  | 650           | 307                      | 111       |
| Wadi Al Dawasir | 108             | 699                 | 104                       | 11              | 107                 | 1 029         | 871                      | 18        |
| Al Qunfeza      | 201             | 1 309               | 90                        | 37              | 26                  | 1 663         | 1 032                    | 61        |
| Al Wajh         | 129             | 627                 | 23                        | 1               | 1                   | 781           | 672                      | 16        |
| Tareef          | 36              | 428                 | 17                        | 23              | 7                   | 511           | 361                      | 41        |
| <b>Total</b>    | <b>12 393</b>   | <b>44 624</b>       | <b>3 785</b>              | <b>5 083</b>    | <b>1 859</b>        | <b>67 744</b> | <b>46 259</b>            | <b>46</b> |

## Comparative statistics

| Years     | Sums of fines |
|-----------|---------------|
| 1429/2008 | 1 990 000     |
| 1430/2009 | 8 321 494     |
| 1431/2010 | 7 359 300     |

| No. | Labour office               | No. of inspectors | Comprehensive visit | Special visit | Follow-up visit | Specialized visit | Total  | Year 1429/1430H | %   |
|-----|-----------------------------|-------------------|---------------------|---------------|-----------------|-------------------|--------|-----------------|-----|
| 1.  | Riyadh region               | 19                | 1 499               | 6 237         | 12              | 15                | 7 763  | 6 503           | 21  |
| 2.  | Al Kharj governorate        | 2                 | 775                 | 178           | 33              | 4                 | 990    | 839             | 17  |
| 3.  | Al Quseym region            | 9                 | 3 350               | 192           | 395             | 119               | 4 056  | 4 113           | -1  |
| 4.  | Al Sharqiyah region         | 24                | 3 068               | 7 448         | 614             | 46                | 11 176 | 8 195           | 36  |
| 5.  | Rass Tanoura governorate    | 2                 | 454                 | 503           | 204             | 0                 | 1 161  | 1 485           | -27 |
| 6.  | Al Jubail governorate       | 8                 | 1 751               | 101           | 383             | 32                | 2 267  | 965             | 134 |
| 7.  | Beqiq governorate           | 3                 | 855                 | 897           | 9               | 0                 | 1 761  | 1 270           | 38  |
| 8.  | Al Ehsaa governorate        | 8                 | 1 797               | 1 860         | 423             | 0                 | 4 080  | 3 450           | 18  |
| 9.  | Jeddah governorate          | 18                | 4 583               | 2 261         | 58              | 0                 | 6 902  | 4 413           | 56  |
| 10. | Al Madinah region           | 7                 | 3 167               | 200           | 838             | 1                 | 4 206  | 2 851           | 46  |
| 11. | Aseer region                | 9                 | 3 368               | 30            | 586             | 136               | 4 120  | 4 066           | 1   |
| 12. | Al Taif governorate         | 4                 | 440                 | 685           | 23              | 0                 | 1 148  | 540             | 112 |
| 13. | Mecca region                | 9                 | 2 540               | 87            | 351             | 63                | 3 041  | 2 806           | 8   |
| 14. | Yanbaa governorate          | 8                 | 2 081               | 49            | 383             | 1                 | 2 514  | 1 770           | 42  |
| 15. | Al Khobar governorate       | 5                 | 714                 | 1 904         | 61              | 103               | 2 782  | 1 587           | 75  |
| 16. | Tabuk region                | 8                 | 1 395               | 531           | 378             | 83                | 2 387  | 2 196           | 8   |
| 17. | Hail region                 | 3                 | 1 260               | 226           | 47              | 5                 | 1 538  | 896             | 71  |
| 18. | Najran region               | 3                 | 1 570               | 210           | 0               | 0                 | 1 780  | 897             | 98  |
| 19. | Hafr El Batten governorate  | 3                 | 1 118               | 0             | 0               | 0                 | 1 118  | 884             | 26  |
| 20. | Al Baha region              | 7                 | 1 764               | 736           | 750             | 0                 | 3 250  | 2 592           | 25  |
| 21. | Baysh governorate           | 3                 | 681                 | 424           | 206             | 0                 | 1 311  | 848             | 54  |
| 22. | Jizan region                | 4                 | 827                 | 103           | 116             | 69                | 1 115  | 486             | 129 |
| 23. | Al Khafgee governorate      | 4                 | 490                 | 915           | 0               | 0                 | 1 405  | 1 162           | 20  |
| 24. | Northern frontier region    | 2                 | 786                 | 145           | 23              | 0                 | 963    | 712             | 35  |
| 25. | Al Jouf region              | 2                 | 378                 | 0             | 114             | 0                 | 492    | 292             | 68  |
| 26. | Al Rass governorate         | 3                 | 913                 | 24            | 562             | 0                 | 1 499  | 727             | 106 |
| 27. | Onaizah region              | 3                 | 1 421               | 3             | 341             | 45                | 1 810  | 904             | 100 |
| 28. | Al Mujamaa region           | 4                 | 744                 | 222           | 72              | 2                 | 1 040  | 629             | 65  |
| 29. | Al Douademi governorate     | 2                 | 353                 | 0             | 334             | 0                 | 687    | 761             | -10 |
| 30. | Al Qurayyat governorate     | 4                 | 1 077               | 127           | 378             | 0                 | 1 582  | 980             | 61  |
| 31. | Shaqraa governorate         | 2                 | 530                 | 0             | 291             | 0                 | 821    | 580             | 41  |
| 32. | Al Zalfi governorate        | 2                 | 471                 | 0             | 46              | 0                 | 517    | 597             | -15 |
| 33. | Al Ala governorate          | 2                 | 479                 | 12            | 177             | 2                 | 670    | 481             | 39  |
| 34. | Wadi Al Dawasir governorate | 3                 | 899                 | 12            | 235             | 0                 | 1 146  | 1 062           | 7   |
| 35. | Al Qunfeza governorate      | 7                 | 1 950               | 285           | 219             | 26                | 2 480  | 1 720           | 44  |
| 36. | Al Wajh governorate         | 2                 | 466                 | 143           | 291             | 0                 | 900    | 769             | 17  |
| 37. | Tareef governorate          | 2                 | 514                 | 2             | 186             | 0                 | 702    | 374             | 87  |

| No.           | Labour office                                             | No. of inspectors | Comprehensive visit | Special visit | Follow-up visit | Specialized visit | Total         | Year 1429/1430H | %         |
|---------------|-----------------------------------------------------------|-------------------|---------------------|---------------|-----------------|-------------------|---------------|-----------------|-----------|
| Women's units | Women's unit in the labour office in the Riyadh region    |                   | 985                 | 36            | 136             | 0                 | 1 157         | 203             | 469       |
| Idem          | Women's unit in the labour office in the Sharqiyah region |                   | 325                 | 14            | 419             | 9                 | 767           | 477             | 60        |
| Idem          | Women's unit in Jeddah governorate                        |                   | 588                 | 143           | 99              | 87                | 917           | 592             | 54        |
| Idem          | Women's unit in the Aseer region                          |                   | 20                  | 0             | 7               | 0                 | 27            | 0               | 17        |
| <b>Total</b>  |                                                           | <b>210</b>        | <b>52 446</b>       | <b>26 954</b> | <b>9 800</b>    | <b>848</b>        | <b>90 048</b> | <b>66 674</b>   | <b>35</b> |

| Year               | Number of inspection visits | Number of inspectors |
|--------------------|-----------------------------|----------------------|
| 1425/1426 H (2005) | 46 449                      | 147                  |
| 1426/1427 H (2006) | 41 767                      | 135                  |
| 1427/1428 H (2007) | 47 349                      | 148                  |
| 1428/1429 H (2008) | 55 185                      | 204                  |
| 1429/1430 H (2009) | 66 674                      | 197                  |
| 1430/1431 H (2010) | 90 048                      | 210                  |

**APPENDIX IV. STATISTICAL TABLE SUPPLIED BY THE GOVERNMENT OF HONDURAS AS PART OF ITS WRITTEN  
INFORMATION ON THE APPLICATION OF THE EMPLOYMENT POLICY CONVENTION, 1964 (No. 122)**

**Trends in the principal labour market variables, by economic activity**

| Categories                                     | EAP              |                  | Employed         |                  | Unemployment   |                | Visible underemployment |                | Invisible under-employment |                  |
|------------------------------------------------|------------------|------------------|------------------|------------------|----------------|----------------|-------------------------|----------------|----------------------------|------------------|
|                                                | 2009             | 2010             | 2009             | 2010             | 2009           | 2010           | 2009                    | 2010           | 2009                       | 2010             |
| <b>National total</b>                          | <b>3 236 860</b> | <b>3 387 717</b> | <b>3 135 564</b> | <b>3 253 980</b> | <b>101 296</b> | <b>133 737</b> | <b>134 092</b>          | <b>249 509</b> | <b>1 127 936</b>           | <b>1 061 702</b> |
| <b>Branch of activity</b>                      |                  |                  |                  |                  |                |                |                         |                |                            |                  |
| Agriculture, forestry, hunting and fishing     | 1 167 996        | 1 231 932        | 1 161 821        | 1 221 866        | 6 175          | 10 066         | 40 301                  | 90 931         | 538 074                    | 499 166          |
| Mining and quarries                            | 8 200            | 7 051            | 8 136            | 6 820            | 64             | 231            | 325                     | 642            | 3 357                      | 2 742            |
| Manufacturing                                  | 433 026          | 429 120          | 411 533          | 410 957          | 21 493         | 18 163         | 18 658                  | 29 369         | 137 389                    | 125 282          |
| Electricity, gas and water                     | 11 903           | 17 074           | 11 778           | 16 784           | 125            | 290            | 250                     | 158            | 2 099                      | 2 056            |
| Construction                                   | 217 512          | 183 512          | 205 810          | 167 686          | 11 702         | 15 826         | 6 746                   | 11 878         | 95 298                     | 72 887           |
| Wholesale, retail, hotels and catering         | 714 361          | 769 804          | 692 817          | 743 388          | 21 544         | 26 416         | 31 393                  | 54 314         | 194 043                    | 197 594          |
| Transport, storage and communications          | 108 230          | 118 194          | 104 538          | 114 362          | 3 692          | 3 832          | 3 053                   | 7 128          | 25 714                     | 26 537           |
| Financial institutions, insurance and property | 100 761          | 111 901          | 95 443           | 106 976          | 5 318          | 4 925          | 2 034                   | 6 293          | 18 323                     | 16 068           |
| Municipal, social and personal services        | 453 594          | 461 629          | 441 984          | 442 683          | 11 610         | 18 946         | 31 332                  | 46 380         | 113 338                    | 111 191          |
| Do not know, no answer                         | 2 078            | 31 557           | 1 704            | 22 458           | 373            | 9 099          | –                       | 2 416          | 300                        | 8 180            |
| Seeking work for the first time                | 19 200           | 25 943           | –                | –                | 19 200         | 25 943         | –                       | –              | –                          | –                |

Source: National Institute of Statistics (INE). Continuous Multi-purpose Household Survey, May 2009 and 2010.

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Part Two: III (a)

### *Uganda*

Part One: General report, paras 152, 157, 158  
Part Two: I A (c)  
Part Two: II (a)

### *United Kingdom – British Virgin Islands*

Part One: General report, paras 154, 157, 158  
Part Two: I A (a), (c)

### *United Kingdom – Falkland Islands (Malvinas)*

Part One: General report, paras 154, 157, 158  
Part Two: I A (a), (c)

### *United Kingdom – St Helena*

Part One: General report, paras 157, 158  
Part Two: I A (c)

### *Uruguay*

Part Two: I B, No. 98

### *Uzbekistan*

Part One: General report, paras 152, 160, 179  
Part Two: I B, No. 182  
Part Two: II (a)  
Part Two: III (a)

### *Vanuatu*

Part One: General report, paras 154, 155, 160, 210, 211  
Part Two: I A (a), (b)  
Part Two: III (a)

### *Yemen*

Part One: General report, paras 157, 158  
Part Two: I A (c)

### *Zambia*

Part One: General report, paras 157, 158  
Part Two: I A (c)

### *Zimbabwe*

Part Two: I B, No. 87



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