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

Report of the Committee on the Application of Standards

Troisième question à l'ordre du jour: Informations et rapports sur l'application des conventions et recommandations

Rapport de la Commission de l'application des normes

Tercer punto del orden del día: Informaciones y memorias sobre la aplicación de convenios y recomendaciones

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A. Discussion of cases of serious failure by member States to respect their reporting, submission or other standards-related obligations, including submission to the competent authorities of the instruments adopted by the international Labour Conference

A. Discussion sur les cas de manquements graves des Etats Membres à leurs obligations de faire rapport et à d'autres obligations liées aux normes, y compris la soumission aux autorités compétentes des instruments adoptés par la Conférence internationale du Travail

A. Discusión sobre los casos de incumplimiento grave por los Estados Miembros de su obligación de envío de memorias y de otras obligaciones relacionadas con las normas incluyendo la sumisión a las autoridades competentes de los instrumentos adoptados por la Conferencia Internacional del Trabajo

Les membres travailleurs ont souligné que cette séance concernait les obligations constitutionnelles, fondement du système de contrôle. La gouvernance de ce dernier repose sur l'imposition faite aux Etats Membres de respecter notamment les articles 22 et 35 de la Constitution. Les cas de manquements graves doivent être examinés avec attention, notamment en ce qui concerne les conventions ratifiées. Grâce à l'assistance technique du BIT, 11 pays ont fait des progrès importants mais beaucoup reste à faire: 43 pays n'ont pas répondu aux observations formulées par la commission d'experts, le nombre de commentaires sans réponse est très élevé, 17 pays n'ont pas fourni de rapport depuis deux ans, 12 pays n'ont pas fourni de premier rapport depuis plus de deux ans. Cette année, 2 239 demandes de rapports ont été formulées, 2 303 au titre de l'article 22 et 236 au titre de l'article 35. De ce nombre, 39,9 pour cent des rapports ont été reçus. L'année dernière, plusieurs Etats s'étaient engagés à faire mieux mais, cette année encore, un nombre important de rapports sont arrivés après la date limite du 1^{er} septembre. Non seulement il faut s'acquitter de l'obligation de faire rapport, mais il faut également le faire dans le délai requis. Un total de 1 805 rapports ont été communiqués au Bureau cette année, ce qui représente environ 71,1 pour cent des demandes, alors que l'an dernier 1 628 rapports avaient été envoyés ce qui représentait 69,7 pour cent. Dans les années quatre-vingt, le pourcentage des rapports reçus s'élevait à environ 90 pour cent, ce qui démontre une diminution importante du respect de l'obligation d'envoi des rapports. Les manquements susmentionnés dissimulent souvent des situations inquiétantes, et la commission d'experts a mentionné dans son rapport que cela était préoccupant. Le dialogue entre les organes de contrôle de l'OIT et les Etats Membres est essentiel pour l'application effective des conventions ratifiées. Pour ce qui est de l'obligation de soumission des instruments adoptés aux autorités compétentes, il y a un manque de volonté notoire de respecter cette obligation. Il est important de souligner que le défaut de communication des rapports et informations aux organisations d'employeurs et de travailleurs au titre de l'article 23, paragraphe 2, de la Constitution ne permet pas aux acteurs sociaux de participer à l'application effective des normes internationales du travail. Le bon fonctionnement du système de contrôle dépend du respect de ces obligations constitutionnelles. Le Bureau doit veiller à ce que les pays qui ont des difficultés bénéficient de la coopération technique afin de leur permettre de respecter leurs obligations. L'initiative prise par le Bureau, suite à la 105^e session de la Conférence de 2016, d'envoyer des lettres aux Etats Membres concernés par le manquement des obligations constitutionnelles, doit être saluée.

The Employer members recalled that the functioning of the ILO supervisory system was based primarily on the information provided by governments in their reports. Compliance with reporting obligations was crucial for an appropriate and effective supervision of ILO standards. Employer and Worker members were in line on this point. Member States had an obligation to supply copies of their reports to the representative employers' and workers' organizations. Compliance with this obligation was also key for the implementation of tripartism at the national level. Reference was made to information contained in the report of the Committee of Experts on the number of reports requested, received by 1 September, as well as first reports not received. In this regard, reference was made to the fact that 39.9 per cent of reports were received on time, by 1 September, which remained low. The Employer members also noted with concern that 17 countries had not provided reports for the past two years or more. There were also cases where member States had not reported for over ten years. Moreover, the number of serious cases of serious failure to report had increased from last year. This situation was not satisfactory and showed that reporting failures had to be addressed in a more suitable way. The ILO supervisory system could not function without such reports being submitted regularly. The Employer members asked the Committee and the Office to provide information on the concrete measures taken to assist these countries with their reporting obligations. It was suggested to add this question and to explore more effective measures at the next informal tripartite consultations on the working methods of the Committee. The Employer members proposed, as a pilot test, a unified report form for Conventions covering related subjects. Moreover, despite the efforts made in providing technical assistance, there should be some preventive measures to be adopted. The Office should better assist member States in the pre-ratification process. This should involve advising member States of the related reporting obligations and the need to make available the necessary resources. As evidenced in the report of the Committee of Experts, the Office was confronted by a heavy workload. The Employer members therefore asked how many reports were not brought to the attention of the Committee of Experts because of a lack of time and/or resources, and what concrete measures were the Committee of Experts and the Office considering to avoid examining reports with outdated information. It was necessary to focus reporting on essential regulatory issues in ILO Conventions and to consider concentration, consolidation and simplification of the standards system and its supervision as a sustainable way forward. The work of the Standards Review Mechanism was an opportunity to identify standards that were no longer relevant, and would at the same time identify needs for standard setting, and give more visibility to up-to-date standards. With respect to the participation of the social partners in the supervisory system, unfortunately, there were still cases where governments failed to share their reports with the social partners. The Employer members encouraged the Office to do more to encourage governments to respect this obligation. They also trusted the Office would continue to provide technical assistance and capacity building to social partners which was key to make a better use of the supervisory system.

A representative of the Office provided information to the Committee on tailored technical assistance which had been delivered in the Pacific region in February 2017 on reporting obligations in relation to the MLC, 2006. The technical assistance provided resulted in the submission of the Governments of Fiji, Kiribati, Samoa and Tuvalu's first reports on the application of the MLC, 2006.

Un représentant gouvernemental de l'Angola a indiqué que, concernant le défaut de soumission des instruments aux autorités compétentes en vertu de l'article 19, paragraphes 5, 6 et 7, de la Constitution de l'OIT, des efforts sont faits pour traduire les instruments en langue portugaise afin de faciliter les débats au sein de l'organe législatif national habilité à décider de l'approbation des normes internationales du travail. L'assistance technique du BIT est demandée car elle est nécessaire afin de rattraper le retard qui est indépendant de la volonté des autorités nationales.

A Government representative of Barbados recalled that the Maritime Labour Convention, 2006 (MLC, 2006), was ratified in 2013. The shipping legislation was being reviewed in order to provide workers with decent work conditions. The report on the application of the MLC, 2006, was to be considered by the Standing Tripartite Committee. The report would be submitted to the ILO before 1 September 2017.

Un représentant gouvernemental du Burundi a indiqué que la priorité du gouvernement est le processus de révision du Code du travail et du Code de protection sociale qui a débuté en 2016. L'application des conventions et recommandations doit s'appuyer sur ces deux textes législatifs. Selon l'avancement actuel des travaux, les premiers projets seront disponibles avant la fin du troisième trimestre de 2017. Afin de s'assurer que la période transitoire ne présente pas de problème de bonne gouvernance du travail, des organes tripartites ont été mis en place pour échanger sur toutes les questions. L'assistance technique du BIT est nécessaire à la finalisation du processus de révision, en particulier pour les chapitres pour lesquels le pays n'a pas d'expertise: la sécurité et santé au travail et la formation professionnelle.

Un représentant gouvernemental du Congo a relevé que, concernant le manquement à l'envoi d'informations en réponse aux commentaires de la commission d'experts, les rapports communiqués au BIT

contenaient certaines réponses. Il faut tout de même faire remarquer que certaines des réponses ne relèvent pas seulement de la compétence du ministère du Travail, mais également d'autres départements ministériels techniques, et que des efforts sont réalisés pour être à jour. Les réponses qui nécessitent davantage de clarté et de détails font l'objet d'un travail minutieux qui est en cours. S'agissant du manquement à l'envoi des rapports depuis les cinq dernières années sur des conventions non ratifiées et des recommandations, les commentaires de la commission d'experts sont exacts et tout est mis en œuvre pour que le pays remplisse normalement cette obligation constitutionnelle. Le Congo élaborera, en collaboration avec les partenaires sociaux, tous les rapports dus, lesquels seront sûrement transmis avant septembre 2017 à la commission d'experts.

A Government representative of Croatia indicated that her Government took its standards-related obligations very seriously. She thanked the Office for the technical assistance provided in 2016. Some reports on ratified Conventions had already been provided and the remaining reports would be provided in the near future.

Un représentant gouvernemental de la République démocratique du Congo a mentionné que, s'agissant des manquements pour lesquels le pays est invité à la discussion, les commentaires de la commission d'experts avaient été examinés avant l'arrivée de la délégation à la Conférence et que les informations seront transmises avant la fin de cette dernière.

Una representante gubernamental de El Salvador manifestó el compromiso de su país en lo que respecta a la sumisión de convenios y recomendaciones con el apoyo y cooperación técnica de la OIT. Se ha iniciado la formulación de un protocolo de procedimientos institucionales para someter a proceso de sumisión convenios y recomendaciones emanadas por este órgano. Para ello, se ha realizado un primer documento que se encuentra en proceso de estudio por las instituciones competentes, siendo estas el Ministerio de Trabajo y Previsión Social, el Ministerio de Relaciones Exteriores, la Secretaría Jurídica de la presidencia y la Asamblea Legislativa.

A Government representative of the United Arab Emirates indicated that his Government would fully cooperate with the Committee. With respect to reports on unratified Conventions and Recommendations, he said that it was a correspondence issue that had been resolved.

A Government representative of Greece said that her Government deeply regretted the failure to submit the total number of reports on ratified Conventions due for 2016, especially since it was the first time in its history as an ILO Member. Ten out of 17 reports due for 2016 had been submitted and the remaining reports would be submitted together with the reports due in 2017 on time for consideration at the next session of the Committee of Experts. She recalled that the Ministry of Labour was currently in a capacity-building process with the support of the ILO, and has recently launched a roadmap to combat undeclared work – an excellent example of tripartite consensus.

Un représentant gouvernemental de la Guinée a informé que le manquement à l'envoi d'informations en réponse aux commentaires de la commission d'experts est dû au retard de réception des documents par le ministère des Affaires extérieures. Le gouvernement s'engage à remédier à la situation dans les prochains jours.

A Government representative of the Islamic Republic of Iran reiterated his Government's commitment to fully cooperate with the Committee. Reports submitted to the Office had all been prepared in consultation with the most representative organizations of employers and workers of the country. Reports had also been communicated to those organizations. He added that the first report on the application of the Maritime Labour Convention, 2006 (MLC, 2006), would be sent to the Office before the deadline.

A Government representative of Jamaica was pleased to inform the Committee that the instruments adopted at the 92nd, 94th, 95th, 96th, 99th, 100th, 101st and 103rd Sessions of the Conference had been submitted to Parliament on 14 September 2016. Additionally, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), had been submitted to Parliament on 24 January 2017. In accordance with established practice, the ILO Director-General would be informed of the actions taken by Parliament in this regard.

A Government representative of Kazakhstan indicated that his Government was fully committed to complying with its ILO constitutional obligations, particularly in relation to the submission of instruments adopted by the Conference to the competent national authority. His Government would work with the ILO to provide the necessary information as soon as possible.

A Government representative of Kuwait indicated that fulfilling the ILO's constitutional obligations was a priority for his Government. The submission process would be reviewed and the Office would be informed of the steps taken in the near future.

A Government representative of Libya indicated that his Government was committed to cooperating with the Committee and complying with its constitutional obligations. The Ministry of Labour and the social partners would participate in this process. The situation in his country was responsible for the failure to respect standards-related obligations. Reports would be communicated to the ILO in the near future.

A Government representative of the Republic of Maldives indicated that reports on ratified Conventions had been prepared and would soon be provided to the Office.

A Government representative of Mozambique indicated that the instruments adopted by the Conference in 2015 and 2016, in particular the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), had been submitted to the Assembly of the Republic on 12 April 2017. Moreover, her Government had also submitted to the Assembly of the Republic, for ratification, the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Safety and Health in Mines Convention, 1995 (No. 176), and the Protocol of 2014 to the Forced Labour Convention, 1930.

A Government representative of Nigeria indicated that her Government was committed to complying with its constitutional obligations. With respect to its first report on the Maritime Labour Convention, 2006 (MLC, 2006), the competent national authorities had prepared the report and this report would be discussed with the social partners. The report would be provided to the ILO before 1 September 2017. With respect to reports on unratified Conventions and Recommendations, a total of nine reports had been submitted and the remaining reports would be submitted before 1 September 2017. Technical assistance was requested on standards-related obligations.

A Government representative of the Netherlands indicated that her Government was in contact with the Government of Netherlands – Aruba, which was committed to complying with the constitutional obligations of the ILO.

A Government representative of Pakistan recalled that provincial governments had to submit the instruments adopted by the Conference to their respective competent authorities. Technical assistance was requested in this regard. Her Government was committed, with ILO technical assistance, to submit all instruments pending submission to the national competent authorities.

A Government representative of the United Kingdom indicated that her Government and the Government of United Kingdom – Bermuda sincerely apologised for not submitting the first report on the Maritime Labour Convention, 2006 (MLC, 2006). The report would be provided by the end of the session of the Conference. Her Government attached great importance to the ILO supervisory system and would ensure that this failure to supply a report did not happen again.

Un représentant gouvernemental du Rwanda a tenu à redire que le gouvernement est prêt à répondre aux observations et commentaires de la commission d'experts ainsi que son engagement à honorer ses obligations relatives aux instruments de l'OIT. S'agissant des observations du paragraphe 29 du rapport général, un rapport a été transmis en mai 2017, après la réunion de la commission d'experts et la publication de son rapport. Il convient cependant de préciser que, au cours des trois dernières années, toutes les actions de mise en œuvre des conventions et recommandations de l'OIT ont été réalisées avec la collaboration et la participation des organisations représentatives d'employeurs et de travailleurs, et ce de manière consensuelle. Concernant les observations du paragraphe 80 du rapport général, il faut rappeler que la délégation du Rwanda avait informé qu'un bon nombre de conventions et recommandations avaient été soumises aux autorités compétentes. La ratification de six conventions a été approuvée par le Parlement à sa séance plénière du 15 mai 2017. Ces instruments sont: la convention (n° 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976, la convention (n° 150) sur l'administration du travail, 1978, la convention (n° 154) sur la négociation collective, 1981, la convention (n° 155) sur la sécurité et la santé des travailleurs, 1981, la convention (n° 181) sur les agences d'emploi privées, 1997, et la convention (n° 187) sur le cadre promotionnel pour la sécurité et la santé au travail, 2006. Il ne reste que les procédures législatives de publication officielle des instruments de ratifications qui seront transmises d'ici à septembre.

A Government representative of Samoa indicated that his Government would initiate the submission process before the Committee's experts' next meeting. Information had been received from the International Labour Standards Department concerning the submission of instruments adopted by the Conference to the competent national authority. Technical assistance was requested from the ILO Office in Fiji.

A Government representative of Seychelles referred to the serious challenges and constraints that caused non-compliance with the submission obligations, such as limited human resources, technical expertise, the lack of

disaggregated data and statistics, gap analysis and research on employment issues in relation to international labour Conventions and Recommendations. Her Government was up to date with the reporting obligations under article 22 of the ILO Constitution. With respect to submission, a Cabinet Memorandum was presented in 2014 on the instrument pending submission to the National Assembly. Consequently, inter-ministerial consultations had been ongoing with the social partners. Consultations would be completed before the end of this year. Submission of all pending Recommendations would be submitted to the National Assembly by the end of 2017 and the pending Conventions and Protocols would be submitted by the end of July 2018. Moreover, her Government intended to ratify the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189). She thanked the ILO for its continued technical support.

A Government representative of Singapore indicated that her Government would respond appropriately to the reporting requests of the Committee of Experts.

A Government representative of Somalia indicated that her Government recognized the failure to submit instruments adopted by the Conference to the national competent authority. A prolonged period of civil war and insecurity in the country had played a role in non-compliance. The situation in the country was improving. The domestic legal framework would be reviewed to ensure compliance with international labour conventions. Technical assistance was requested to help with reporting obligations. She was optimistic that her Government would meet its constitutional obligations in the very near future.

A Government representative of Thailand said that the Ministry of Labour had been dealing with issues relating to understaffing and inter-ministerial staff movements in recent years. Those issues were being addressed by a special working group on ILO reporting obligations. Responses to the observations and direct requests of the Committee of Experts and reports were being prepared and would be submitted to the ILO by September 2017. Technical assistance on reporting obligations was requested.

A Government representative of Zambia indicated that reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, would be submitted in the future. Technical assistance was requested in this regard.

The Employer members thanked the Office for the technical assistance provided and expressed appreciation for the comments provided by the government representatives which had indicated steps taken to comply with their obligations in the near future.

Les membres travailleurs ont conclu en prenant note des informations communiquées et des explications fournies par les membres gouvernementaux présents, ainsi que des difficultés spécifiques rencontrées afin de respecter l'obligation de soumettre les instruments adoptés. Des 65 pays qui ont été invités à la discussion, 21 étaient absents, 13 ne sont pas accrédités et 5 ne sont pas enregistrés, ce qui prive la commission d'un dialogue. Il est profondément préoccupant de noter le non-respect de l'obligation de soumission des conventions, recommandations et protocoles aux autorités compétentes, laquelle est importante pour l'efficacité de l'activité normative. L'envoi des rapports sur l'application des conventions ratifiées constitue une obligation constitutionnelle fondamentale pour le fonctionnement du système de contrôle. L'envoi des premiers rapports est essentiel, et le respect des délais prescrits pour l'envoi des rapports est également important. En outre, l'envoi des rapports sur les conventions non ratifiées est également important afin de faire une évaluation dans le cadre de l'étude d'ensemble. Les membres travailleurs ont félicité le Bureau pour le travail accompli.

Conclusions

The Committee took note of the information provided and the explanations given by the Government representatives who had taken the floor. The Committee noted in particular the specific difficulties referred to by certain Governments in complying with their constitutional obligations to transmit reports and to submit to the competent authorities the instruments adopted by the International Labour Conference. The Committee has periodically recalled that the ILO is able to provide technical assistance to contribute to compliance in this respect. In that regard, the Committee noted the positive results of the technical assistance provided by the Office in relation to reporting obligations, including the tripartite regional workshop held in the Pacific region in February 2017 on reporting obligations in relation to the MLC, 2006.

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

The Committee recalls that the submission of reports on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the system of supervision. The Committee also stresses the importance of respecting the deadlines for such submission.

The Committee expresses the firm hope that the Governments of Belize, Comoros, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Guyana, Haiti, Republic of Maldives, Saint Lucia, Somalia, Timor-Leste and Yemen will supply the reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply first reports
on the application of ratified Conventions

The Committee recalls the particular importance of supplying first reports on the application of ratified Conventions.

The Committee expresses the firm hope that the Governments of Barbados, Equatorial Guinea, Guyana, Republic of Maldives, Nicaragua, Nigeria, Saint Vincent and the Grenadines and United Kingdom – Bermuda will supply the first reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

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

The Committee underlines the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the Governments concerned.

The Committee expresses the firm hope that the Governments of Belize, Cabo Verde, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eritrea, Gambia, Greece, Guinea, Guinea-Bissau, Guyana, Haiti, Libya, Netherlands – Aruba, Nicaragua, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Syrian Arab Republic, Thailand, Timor-Leste, Vanuatu, Viet Nam and Yemen will supply the requested information in the future, and decides to note these cases in the corresponding paragraph of its General Report.

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

The Committee stresses the importance it attaches to the constitutional obligation to supply reports on non-ratified Conventions and Recommendations.

The Committee expresses the firm hope that the Governments of Armenia, Belize, Comoros, Congo, Democratic Republic of the Congo, Dominica, Fiji, Grenada, Guinea-Bissau, Guyana, Haiti, Kiribati, Liberia, Libya, Marshall Islands, Nigeria, Saint Kitts and Nevis, Saint Lucia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu, United Arab Emirates, Vanuatu, Yemen and Zambia will comply with their obligation to supply reports on non-ratified Conventions and Recommendations in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to submit instruments adopted by the Conference to the competent authorities

The Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to national competent authorities is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities.

The Committee expresses the firm hope that the Governments of Angola, Azerbaijan, Bahamas, Bahrain, Belize, Burundi, Comoros, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Fiji, Gabon, Guinea-Bissau, Haiti, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Liberia, Libya, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic and Vanuatu will comply with their obligation to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure for the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies have been communicated of the reports and information supplied to the Office under articles 19 and 22

The Committee recalled that compliance with the obligation of Governments to communicate reports and information, as provided in article 23, paragraph 2, of the Constitution, is a fundamental requirement in order to ensure the participation of employers' and workers' organizations in the ILO supervisory machinery.

The Committee recalled that the contribution of employers' and workers' organizations is essential for the assessment of the application of Conventions in national law and practice.

The Committee expressed the firm hope that the Governments of the Islamic Republic of Iran and Rwanda would comply with this obligation in future. The Committee decided to note these cases in the corresponding paragraph of the General Report.

Overall, the Committee expresses its *deep concern* at the large number of cases of failure by member States to respect their reporting and other standards-related obligations. The Committee recalls that Governments could request technical assistance from the Office to overcome their difficulties in this respect.

Conclusions

La commission prend note des informations et explications fournies par les représentants gouvernementaux qui se sont exprimés. Elle prend en particulier note des difficultés spécifiques de certains gouvernements pour s'acquitter de leurs obligations constitutionnelles concernant la présentation des rapports et la soumission des instruments adoptés par la Conférence internationale du Travail aux autorités compétentes. Elle rappelle régulièrement que l'OIT peut apporter une assistance technique afin de permettre aux gouvernements de s'acquitter de cette obligation. A cet égard, elle prend note des résultats positifs que l'assistance technique fournie par le Bureau a permis d'obtenir en matière de présentation de rapports, par exemple la tenue, dans la région Pacifique en février 2017, de l'atelier régional tripartite consacré à la présentation de rapports relatifs à l'application de la MLC, 2006.

Concernant le manquement à l'envoi de rapports depuis deux ans ou plus sur l'application des conventions ratifiées

La commission rappelle que l'envoi de rapports sur l'application des conventions ratifiées constitue une obligation constitutionnelle fondamentale pour le système de contrôle. La commission souligne en outre l'importance de respecter les délais prescrits pour cet envoi.

La commission exprime le ferme espoir que les gouvernements du Belize, des Comores, de la Dominique, de la Gambie, de la Guinée-Bissau, de la Guinée équatoriale, du Guyana, d'Haïti, de la République des Maldives, de la République démocratique du Congo, de Sainte-Lucie, de la Somalie, du Timor-Leste et du Yémen enverront dès que possible les rapports dus, et décide de mentionner ces cas au paragraphe prévu à cet effet de son rapport général.

Concernant le manquement à l'envoi de premiers rapports sur l'application des conventions ratifiées

La commission rappelle l'importance toute particulière des premiers rapports sur l'application des conventions ratifiées.

La commission exprime le ferme espoir que les gouvernements de la Barbade, de la Guinée équatoriale, du Guyana, de la République des Maldives, du Nicaragua, du Nigéria, de Saint-Vincent-et-les Grenadines et du Royaume-Uni (Bermudes) enverront dès que possible les premiers rapports dus, et décide de mentionner ces cas au paragraphe prévu à cet effet de son rapport général.

Concernant le manquement à l'envoi d'informations en réponse aux commentaires de la commission d'experts

La commission souligne l'importance fondamentale que revêt l'envoi d'informations claires et complètes en réponse aux commentaires de la commission d'experts, de manière à permettre un dialogue continu avec les gouvernements concernés.

La commission exprime le ferme espoir que les gouvernements du Belize, de Cabo Verde, des Comores, du Congo, de la Croatie, de la Dominique, de l'Erythrée, de la Gambie, de la Grèce, de la Guinée, de la Guinée-Bissau, de la Guinée équatoriale, du Guyana, d'Haïti, des Iles Salomon, de la Libye, du Nicaragua, des Pays-Bas (Aruba), de la République démocratique du Congo, de Saint-Kitts-et-Nevis, de Sainte-Lucie, de Saint-Marin, de Saint-Vincent-et-les Grenadines, de la Sierra Leone, de Singapour, de Sri Lanka, du Swaziland, de la République arabe syrienne, de la Thaïlande, du Timor-Leste, de Vanuatu, du Viet Nam et du Yémen enverront à l'avenir les informations demandées, et décide de mentionner ces cas au paragraphe prévu à cet effet de son rapport général.

Concernant le manquement à l'envoi des rapports depuis les cinq dernières années sur des conventions non ratifiées et des recommandations

La commission souligne l'importance qu'elle attache à l'obligation constitutionnelle d'envoyer des rapports sur des conventions non ratifiées et des recommandations.

La commission exprime le ferme espoir que les gouvernements de l'Arménie, du Belize, des Comores, du Congo, de la Dominique, des Emirats arabes unis, des Fidji, de la Grenade, de la Guinée-Bissau, du Guyana, d'Haïti, des Iles Marshall, des Iles Salomon, de Kiribati, du Libéria, de la Libye, du Nigéria, de la République démocratique du Congo, de Saint-Kitts-et-Nevis, de Sainte-Lucie, de Saint-Marin, de Sao Tomé-et-Principe, de la Sierra Leone, de la Somalie, de Tuvalu, de Vanuatu, du Yémen et de la Zambie s'acquitteront à l'avenir de leur obligation d'envoyer des rapports sur des conventions non ratifiées et des recommandations. La commission décide de mentionner ces cas au paragraphe prévu à cet effet de son rapport général.

Concernant le défaut de soumission des instruments adoptés par la Conférence aux autorités compétentes

La commission rappelle que le respect de l'obligation de soumettre les conventions, recommandations et protocoles aux autorités nationales compétentes représente une exigence de la plus haute importance afin d'assurer l'efficacité des activités normatives de l'Organisation.

La commission exprime le ferme espoir que les gouvernements de l'Angola, de l'Azerbaïdjan, des Bahamas, de Bahreïn, du Belize, du Burundi, des Comores, de la Croatie, de la Dominique, d'El Salvador, des Fidji, du Gabon, de la Guinée-Bissau, de la Guinée équatoriale, d'Haïti, des Iles Salomon, de la Jamaïque, du Kazakhstan, du Kirghizistan, de Kiribati, du Koweït, du Libéria, de la Libye, du Pakistan, de la

Papouasie-Nouvelle-Guinée, de la République démocratique du Congo, du Rwanda, de Saint-Kitts-et-Nevis, de Sainte-Lucie, de Saint-Vincent-et-les Grenadines, du Samoa, des Seychelles, de la Sierra Leone, de la Somalie, de la République arabe syrienne et de Vanuatu s'acquitteront à l'avenir de leur obligation de soumettre les conventions, recommandations et protocoles aux autorités compétentes. La commission décide de mentionner ces cas au paragraphe prévu à cet effet de son rapport général.

Concernant le défaut de mention, durant les trois dernières années, du nom des organisations représentatives d'employeurs et de travailleurs auxquelles, conformément à l'article 23, paragraphe 2, de la Constitution, ont été communiquées copies des informations et rapports transmis au Bureau en vertu des articles 19 et 22

La commission rappelle que le respect de l'obligation des gouvernements de communiquer les rapports et informations est prévu à l'article 23, paragraphe 2, de la Constitution et qu'il s'agit d'une exigence de la plus haute importance pour garantir la participation des organisations d'employeurs et de travailleurs aux mécanismes de contrôle de l'OIT.

La commission rappelle que la contribution des organisations d'employeurs et de travailleurs est fondamentale pour évaluer l'application des conventions dans la législation et la pratique nationales.

La commission exprime le ferme espoir que les gouvernements de la République islamique d'Iran et du Rwanda s'acquitteront à l'avenir de cette obligation. La commission décide de mentionner ces cas au paragraphe correspondant de son rapport général.

Dans l'ensemble, la commission est *profondément préoccupée* par le grand nombre de cas de manquements des Etats Membres de respecter leurs obligations de faire rapport et autres obligations liées aux normes. La commission rappelle que les gouvernements peuvent solliciter l'assistance technique du Bureau en vue de surmonter leurs difficultés à cet égard.

Conclusiones

La Comisión toma nota de la información y las explicaciones proporcionadas por los representantes del Gobierno que hicieron uso de la palabra. La Comisión toma nota en particular de las dificultades específicas mencionadas por algunos gobiernos para cumplir sus obligaciones constitucionales relacionadas con la presentación de memorias y la sumisión a las autoridades competentes de los instrumentos adoptados por la Conferencia Internacional del Trabajo. La Comisión viene recordando periódicamente que la OIT puede prestar asistencia técnica para contribuir al cumplimiento a este respecto. En relación con ello, la Comisión toma nota de los resultados positivos de la asistencia técnica prestada por la Oficina para hacer frente a temas de presentación de memorias, por ejemplo el Taller regional tripartito organizado en la región del Pacífico en febrero de 2017 sobre la presentación de memorias en relación con la aplicación del MLC, 2006.

Omisión de envío de memorias sobre la aplicación de convenios ratificados desde hace dos años o más

La Comisión recuerda que la presentación de memorias sobre la aplicación de los convenios ratificados es una obligación constitucional fundamental y la base del sistema de control. La Comisión también destaca la importancia de que se respeten los plazos para tal presentación.

La Comisión expresa la firme esperanza de que los Gobiernos de Belice, Comoras, República Democrática del Congo, Dominica, Gambia, Guinea-Bissau, Guinea Ecuatorial, Guyana, Haití, República de Maldivas, Santa Lucía, Somalia, Timor-Leste y Yemen envíen las memorias debidas lo antes posible, y decide mencionar estos casos en el párrafo correspondiente de su Informe General.

Omisión de envío de primeras memorias sobre la aplicación de los convenios ratificados

La Comisión recuerda la especial importancia de la presentación de las primeras memorias sobre la aplicación de los convenios ratificados.

La Comisión expresa la firme esperanza de que los Gobiernos de Barbados, Guinea Ecuatorial, Guyana, República de Maldivas, Nicaragua, Nigeria, Reino Unido – Bermudas y San Vicente y las Granadinas envíen las primeras memorias debidas lo antes posible, y decide mencionar estos casos en el párrafo correspondiente de su Informe General.

Omisión de envío de información en respuesta
a los comentarios de la Comisión de Expertos

La Comisión subraya la importancia fundamental de una información clara y completa en respuesta a los comentarios de la Comisión de Expertos, para permitir un diálogo continuado con los Gobiernos interesados.

La Comisión expresa la firme esperanza de que los Gobiernos de Belice, Cabo Verde, Comoras, Congo, Croacia, República Democrática del Congo, Dominica, Eritrea, Gambia, Grecia, Guinea, Guinea-Bissau, Guinea Ecuatorial, Guyana, Haití, Islas Salomón, Libia, Países Bajos: Aruba, Nicaragua, Saint Kitts y Nevis, San Marino, Santa Lucía, San Vicente y las Granadinas, Sierra Leona, Singapur, República Árabe Siria, Sri Lanka, Swazilandia, Tailandia, Timor-Leste, Vanuatu, Viet Nam y Yemen, envíen en el futuro la información solicitada, y decide mencionar estos casos en el párrafo correspondiente de su Informe General.

Omisión de envío de memorias sobre convenios no ratificados
y recomendaciones durante los últimos cinco años

La Comisión destaca la importancia que concede a la obligación constitucional de envío de memorias sobre los convenios no ratificados y las recomendaciones.

La Comisión expresa la firme esperanza de que los Gobiernos de Armenia, Belice, Comoras, Congo, República Democrática del Congo, Dominica, Emiratos Árabes Unidos, Fiji, Granada, Guinea-Bissau, Guyana, Haití, Islas Marshall, Islas Salomón, Kiribati, Liberia, Libia, Nigeria, Saint Kitts y Nevis, San Marino, Santa Lucía, Santo Tomé y Príncipe, Sierra Leona, Somalia, Tuvalu, Vanuatu, Yemen y Zambia, cumplan en el futuro con su obligación de envío de memorias sobre los convenios no ratificados y las recomendaciones. La Comisión decide mencionar estos casos en el párrafo correspondiente de su Informe General.

Falta de sumisión de los instrumentos adoptados
por la Conferencia Internacional del Trabajo
a las autoridades competentes

La Comisión recuerda que el cumplimiento de la obligación de sumisión de los convenios, las recomendaciones y los protocolos a las autoridades nacionales competentes es un requisito de la mayor importancia para garantizar la eficacia de las actividades normativas de la Organización.

La Comisión expresa la firme esperanza de que los Gobiernos de Angola, Azerbaiyán, Bahamas, Bahrein, Belice, Burundi, Comoras, República Democrática del Congo, Croacia, Dominica, El Salvador, Guinea Ecuatorial, Fiji, Gabón, Guinea-Bissau, Haití, Islas Salomón, Jamaica, Kazajstán, Kiribati, Kirguistán, Kuwait, Liberia, Libia, Pakistán, Papua Nueva Guinea, Rwanda, Samoa, Saint Kitts y Nevis, Santa Lucía, San Vicente y las Granadinas, Seychelles, Sierra Leona, República Árabe Siria, Somalia y Vanuatu, cumplan en el futuro con su obligación de sumisión de los convenios, las recomendaciones y los protocolos a las autoridades competentes. La Comisión decide mencionar estos casos en el párrafo correspondiente de su Informe General.

Falta de indicación, durante los tres últimos años, de las organizaciones representativas de empleadores y de trabajadores a las cuales, de conformidad con el artículo 23, párrafo 2, de la Constitución, se han comunicado copias de las memorias e informaciones proporcionadas a la Oficina en virtud de los artículos 19 y 22

La Comisión recuerda que el cumplimiento de la obligación de los gobiernos de comunicar memorias e informaciones está previsto en el artículo 23, párrafo 2, de la Constitución y es un requisito de la mayor importancia para garantizar la participación de las organizaciones de empleadores y de trabajadores en los mecanismos de control de la OIT.

La Comisión recuerda que la contribución de las organizaciones de empleadores y de trabajadores resulta fundamental para que se pueda evaluar la aplicación de los convenios en la legislación y la práctica nacionales.

La Comisión expresa la firme esperanza de que los Gobiernos de la República Islámica del Irán y de Rwanda cumplan en el futuro con esta obligación. La Comisión decide mencionar estos casos en el párrafo correspondiente de su Informe General.

En general, la Comisión expresa su *profunda preocupación* ante el gran número de casos de incumplimiento por los Estados Miembros de su obligación de envío de memorias y de otras obligaciones normativas. La Comisión recuerda a los gobiernos que pueden solicitar la asistencia técnica de la Oficina para superar sus dificultades en este sentido.

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- B. Information and discussion on the application of ratified Conventions (individual cases)**
 - B. Informations et discussion sur l'application des conventions ratifiées (cas individuels)**
 - B. Informaciones y discusión sobre la aplicación de convenios ratificados (casos individuales)**

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

Convention (n° 19) sur l'égalité de traitement (accidents du travail), 1925

Convenio sobre la igualdad de trato (accidentes del trabajo), 1925 (núm. 19)

Malaysia – Malaysia Peninsular (ratification: 1958)

Sarawak (ratification: 1964)

Malaisie – Malaisie péninsulaire (ratification: 1958)

Sarawak (ratification: 1964)

Malasia – Malasia Peninsular (ratificación: 1958)

Sarawak (ratificación: 1964)

A **Government representative** recalled that, currently, foreign workers were covered under the Workers' Compensation Scheme (WCS) regulated by the Workmen's Compensation Act (WCA) of 1952. The WCS was aimed at providing compensation for work injuries involving temporary disability, total and permanent disability as well as occupational diseases to foreign workers during working hours. In the event of death, the compensation would be extended to the dependants. Constant attendance allowance was also payable to the insured foreign workers who had succumbed to total and permanent disability. Further, ex-gratia payment for fatal accidents was also provided under the WCS during working and outside of working hours. The reason of introducing such ex-gratia payment was to provide additional monetary benefits to the foreign workers as well as their dependants. Over the years, Malaysia had taken proactive efforts to strengthen WCS. In this regard, few internal studies and a series of discussions with relevant agencies had been carried out in order to enhance the benefits provided under the WCS. This was time-consuming as it involved extensive deliberations on national laws, present policies and economic situation. Insurance panellists appointed under the WCS had been tasked by the Government to revise the current compensation package in terms of quantum and premium chargeable and deliberated several proposals in this respect. The proposals aimed at enhancing the level of compensation were submitted to the Ministry of Human Resources for further analysis and an internal task force was formed to further review those proposals. Upon careful review, the Ministry concluded that the majority of the insurance panellists agreed with the quantum increase on work-related injuries compensation involving temporary disability, total and permanent disability, death and occupational diseases to foreign workers. The Government had also engaged a technical consultation with the ILO Senior Specialist on Social Protection from the Decent Work Technical Support Team in 2016 to seek guidance in improving the social protection of foreign workers, particularly looking into WCS. Foreign workers needed to be covered for both employment and non-employment injuries. No foreign worker should be deprived of such rights. Furthermore, it is the responsibility of every State to protect foreign workers' rights and prevent all forms of discrimination. In this regard, the speaker concluded by observing that Malaysia would comply with the call of the Committee in ensuring the foreign worker's accident compensation guaranteed by the Convention and that the Ministry will hold discussions on the WCS with tripartite partners for their further consideration on the revised quantum prior to submitting to the Government for approval. The speaker concluded by indicating that such efforts could help the Government to implement the Convention in a fair manner.

The Worker members indicated that the Committee had discussed the application of the Convention in Malaysia on numerous occasions, most recently in 2011, recommending that the Government should consider inviting a high-level advisory mission of the ILO and avail itself of the technical assistance of the Office. A technical consultation was held in 2016 in order to discuss options to address the persistent situation so as to guarantee equal treatment to migrant workers who suffer personal injury due to industrial accidents, or in case of death – to their dependants. There were more than 2 million registered migrant workers and more than 1 million unregistered migrant workers, mostly from Indonesia, Nepal and Bangladesh. Migrant workers constituted around 20–30 per cent of the Malaysian labour force. The demand for migrant labour in Malaysia was increasing steadily. In 2016, Malaysia signed a Memorandum of Understanding to bring 1.5 million Bangladeshi workers into the country. Migrant workers were concentrated in the agricultural sector (70 per cent of the workforce), the construction sector (45 per cent) and the manufacturing sector (30 per cent). Official data from the Department of Occupational Safety and Health compiled in 2014 demonstrated that these were also the sectors with the highest incidences of workplace accidents. The Embassy of Nepal provided records showing that its workers died at a rate of nine per week in Malaysia during the second half of 2014. Given that the official figures only took into account investigated accidents, it was estimated that the real number was even higher. The types of work migrants are usually engaged in were hazardous and, due to the lack of protective equipment and unequal treatment, the risk of accidents was aggravated. While the demand for migrant labour had been increasing, the reverse was true in terms of the protection provided for these workers. Since 1993, the transfer of migrant workers to the Workmen's Compensation Scheme

had put them at a serious disadvantage as the Employees' Social Security (ESS) Scheme offers a higher level of protection. Under the ESS Scheme, a permanently injured worker was entitled to a periodical cash benefit of 90 per cent of the "assumed average daily wage" whereas under the Workmen's Compensation Act, the permanently injured worker was entitled to a lump-sum payment of only 62 months' salary or 23,000 ringgits (around €4,800), whichever was less. In the case of an injury, Malaysian workers were entitled to free treatment at any government hospital or clinic and the medical bill was settled by the social security fund. Under the Workmen's Compensation Scheme, the employers of migrant workers were required to pay for the workers' medical expenses. This exposed migrant workers to possible abuse, as employers could not pay for the required treatment. Migrant workers could only claim refunds for medical costs after they fully recovered and even then, it took several months for them to be refunded leaving them with no means of survival in the meantime. Undocumented migrant workers had no guarantees of safety from arrest while attempting to access medical treatment in the case of workplace accidents. In addition, a local injured worker who had been certified as unfit for work for at least four days was entitled to temporary disablement benefit equivalent to 80 per cent of his/her wages. Migrant workers suffering temporary disablement are only entitled to half-monthly payments of a third of their monthly wages. National laws establishing a differing treatment between foreigners and nationals are not consistent with the Convention. Ratifying States undertook to adopt special arrangements in relation to payments they would have to make abroad and the Government had provided no information as to what special arrangements it had undertaken with other member States in relation to the payment of accident compensation for returning migrants. The Government had confirmed that it had been signing memoranda of understanding (MoUs) with eight countries of origin (Bangladesh, China, India, Indonesia, Pakistan, Sri Lanka, Thailand and Viet Nam) in order to regulate the recruitment of foreign workers. However, to our knowledge, none of these agreements addressed the equal treatment of migrants or social protection. Discriminatory treatment in relation to accident compensation is not the only area where the Government has failed to recognize the massive contribution of migrant workers to the country's economic performance. Migrant workers are subject to multiple forms of discrimination and inequalities. The Industrial Court had ruled that migrant workers working under a fixed-term contract could not benefit from the conditions agreed in collective agreements. Migrant domestic workers are in an even worse situation. Though critical to filling the increasing demand for household and caregiving services, domestic workers are excluded from most basic labour protections, including social security coverage. Malaysia had benefited greatly from the employment of migrant workers in several economically important sectors. During the last two decades, those workers had helped to provide the labour that fuelled the country's emergence into an upper middle-income country. However, the Government had failed to protect the rights of migrant workers and to treat them equally, specifically in relation to accident compensation. The Government is therefore clearly not fully respecting its obligation under the Convention.

The Employer members recalled that this case dated back to 1993 when foreign workers employed in Malaysia for up to five years were transferred from the ESS Scheme to the WCS. Ever since, benefits provided under the WCS had been lower than those provided under the ESS Scheme and there had therefore been a clear divergence with the provisions of the Convention which established the principle of equality of treatment between foreign workers and national workers without conditions of residence. Importantly, the Convention required foreign workers to be treated the same way as national workers and not the other way around. Since 1996, the Committee on the Application of Standards had been continuously requesting that foreign workers be transferred back to the ESS Scheme. The Government had indicated in 2011 that it was considering various options within a technical committee of the Ministry of Human Resources with the involvement of all stakeholders. In its last report, the Government informed of its intention to extend the coverage of the ESS Scheme to documented foreign workers subject to certain modifications aimed at ensuring administrative practicability of the new arrangements. In 2016, the Government had contacts with ILO social security specialists to evaluate the conformity of the modified scheme with the Convention. Extending the ESS Scheme to foreigners would require overcoming difficulties, notably as regards the difficulties that led to the introduction of separate treatment between foreign workers and national workers. Referring to the 24-month contributory period for access to employment injury benefits under the ESS Scheme, which does not exist under the WCS, the speaker observed that foreign workers were not suited for the ESS Scheme since they had generally been contracted for up to two years, in other words, less than the qualifying period.

Taking into account the large number of migrant workers concerned and the high incidence of accidents experienced by this group, three main factors needed to be reconciled with a view to achieving the objective of equity. Firstly, the administrative and practical difficulties to ensuring equality of treatment were related to the fact that migrant workers were generally undertaking project work for less than two years and were being repatriated if they had become incapacitated following an industrial accident, which had made compensation an administrative and logistical challenge. Secondly, the question of whether the Convention provided for absolute equality needed to be answered in the light of the requirement of the Convention that migrant workers must receive the same treatment as national workers or whether treatment of equal value would also be acceptable under the terms of the

Convention. Finally, there was a need to also determine the actuarial equivalence of the lump sum paid under the WCS to migrant workers and the value of the periodical payments granted under the ESS Scheme to Malaysian workers. The comparison between the value of periodic benefits and that of lump-sum payments was a particularly technical and delicate question. Depending on the answer, the WCS could have been viewed as a suitable and practicable solution for managing employment injury and invalidity benefits for foreign workers in Malaysia; if necessary with certain adjustments to the value of the lump-sum payments. If absolute equality was required, then means must be found to make it operational under separate levels of jurisdiction of the Malaysian Federation. Such problems were faced by other federal States and a lasting solution required taking into account the practicalities mentioned above. The speaker concluded by requesting the Government to indicate the reasons for which the actuarial equivalence of the lump sum paid under the WCS to migrant workers with the periodical payments granted under the ESS Scheme to Malaysian workers had not been robustly established by the Government since it had been requested three years ago; how compensation had been paid and what compensation had been paid, in the event of an occupational accident or diseases of migrant workers; 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 country of residence; progress made towards reconciling the different treatment of workers covered by the ESS Scheme and foreign workers covered by the WCS; the future plans to align the treatment of foreign workers with that of Malaysian nationals in the event of accidents; and complementary information as to any special arrangements concluded with countries of origin in this respect.

The Employer member of Malaysia pointed out that the previous recommendations made by the Committee could not be implemented as quickly as expected. The Malaysian Employers Federation believed that the Government's decision to place foreign workers under the WCA in 1993 was based on valid and practical reasons. Firstly, he explained, foreign workers were contracted to work in Malaysia for an initial period of two years, with a possible extension of up to five years. If such workers were placed under the Social Security Act, they would be required to make contributions for a minimum period of 24 months before they could be eligible for payment under the invalidity pension scheme; whereas under the WCA, such workers were eligible for compensation from the day of commencement of employment, without having to make any contributions. Secondly, under the WCA, the premiums for the insurance were fully paid by the employer and foreign workers were not required to make any payment for the insurance coverage. This was not the case under the Social Security Act where employers and employees were required to make monthly contributions to the Scheme. Thirdly, when foreign workers were contracted to work in Malaysia and in the event such workers received workplace injury or declared invalid, periodical payments would need to be remitted on a monthly basis to the country of origin and this would pose an administrative burden on the administrator. Under the WCA, a lump sum was paid, which was also more practical for foreign workers. The speaker concluded by requesting the Committee to look at the practical aspects of insurance coverage for foreign workers so that, ultimately, it was in the interest and for the benefit of the foreign workers themselves.

The Worker member of Malaysia stated that the Malaysian Trade Union Congress considered that migrant workers in Malaysia should be transferred from the WCS back to the ESS Scheme, as per the Government's promise in 2011. The 2016 ILO Review of Labour Migration Policy in Malaysia noted the Government's indication that it would consult with the relevant stakeholders regarding three options for providing accident compensation to migrant workers. However, no steps were taken to that end. Migrant workers in Malaysia were often employed in dangerous jobs without sufficient protective equipment or training. High incidence of workplace accidents had been documented, with the largest number of injuries and deaths at work occurring in the manufacturing, construction, and agricultural sectors, all of which were major sectors of employment for migrant workers. It must be noted, however, that under the 11th Malaysia Plan (2016–20), the Government averred to develop and implement a comprehensive immigration and employment policy for migrant workers, with the Ministry of Human Resources assuming the lead role in policy-making. The Government's engagement with the various stakeholders, including the ILO, was also appreciated. Nevertheless, merely an increase in the amount of compensation paid to foreign workers for work-related injuries involving temporary or total and permanent disability, death and occupational diseases would not suffice to place the migrant workers on equal footing with workers under the ESS Scheme. In 2016, a total of 483 complaints of denial of access to medical treatment, uncompensated accidents, hazardous work places, deaths, poor living conditions, deprivation of food, difficulty in seeking health care and long working hours had been reported and investigated by the authorities. It is believed, however, that many cases went unreported by employers to avoid legal and financial liability, in particular, if irregular workers were involved. The speaker called on the Government to take immediate steps to develop and implement a comprehensive Foreign Employment Policy with realistic and workable occupational safety and health provisions. The Policy must regulate recruitment through the ESS Scheme, thereby ensuring that all migrant workers had a legitimate employer and knew who they were and further assisting the Government to document all migrant workers. The policy should also be in compliance with the ILO Fair Migration Agenda and must ensure that in cases of accidents and deaths, the victims or the next of kin

receive adequate compensation, as provided under the ESS Scheme. These cases must be published and made publically available to create awareness. In addition, the policy must be consistent with the provisions of the ESS Scheme to ensure the migrant worker's right to paid medical leave and other rights not enjoyed by migrant workers under the WCS. It must put in place a process which would prevent employers from deducting the salaries to reclaim the cost of medical treatment and impose a duty on the employer to report an accident or fatality at the workplace immediately so as to engage employer's liability and pay the compensation to the migrant worker or his or her family in accordance with the ESS Scheme. Employers who terminated work permits of migrant workers on prolonged sick leave must be reprimanded and obliged to reinstate work permits so as to ensure that the worker concerned could proceed with the litigation for compensation and enforce the liability of the employer. Finally, the policy must incorporate training of migrant workers on their rights, access to justice, and safety and health. The speaker concluded by stating that the Government should avail itself of ILO technical assistance and accept an ILO Direct Contacts Mission to materialize the Government's objective to develop a comprehensive immigration and employment policy for migrant workers and put it into immediate effect.

The Government member of Malta, speaking on behalf of the European Union (EU), and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Bosnia and Herzegovina, Norway and Georgia, welcomed the initialling in 2016 of the Partnership and Cooperation Agreement (PCA) between the EU and the Government. The PCA further strengthened the bilateral cooperation and encompassed a wide range of areas, including sectorial cooperation on labour and employment. Both parties had signalled that they wished to sign the PCA by the end of 2017. Foreign workers provided much needed skills and made invaluable contributions to Malaysia's social and economic development. They often filled jobs that were considered undesirable by nationals. Yet, their contribution was often not fully recognized, and they remained vulnerable to precarious conditions, abusive practices or unequal treatment, and to increased risks of accidents and health problems. The speaker expressed deep concerns regarding the discriminatory treatment of foreign workers that were not receiving equal treatment as compared with national workers in respect of employment injuries compensation. This long-standing issue persisted since 1993, despite the recurrent calls from the Committee to put an end to this practice. In its last report, the Government had expressed its willingness to extend the social security scheme applicable for national workers to foreign workers. The Government had also held consultations with the Office with a view to initiating internal discussions on the way forward. It was hoped that as a follow-up to these consultations, the Government would take the necessary measures in order to put an end to this discriminatory practice and ensure equal treatment of foreign workers with regard to accident compensation. The EU was available to provide further assistance in that area in the context of the recent meeting between the EU and the Association of Southeast Asian Nations (ASEAN) Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), in which representatives of the Government had participated actively. The EU remained committed to constructive engagement and partnership with the Government.

The Government member of Thailand, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), indicated that the Government had made efforts to address the issues pertaining to the application of the Convention and encouraged the Government to expedite the conclusion of internal studies and the discussions with relevant national agencies. The Government had engaged with the ILO technical specialists to assist in improving the social protection of foreign workers under the WCS. The speaker supported the positive actions taken by the Government, in particular with regard to engaging with the insurance panellists appointed under the WCS to revise and improve the accident compensation scheme. The Committee should consider the foregoing significant efforts of the Government and the progress already achieved.

The Worker member of Singapore recalled that work injury or accident compensation was an important safeguard for workers to make claims for work-related injuries or diseases, without the need for costly legal action. It was often a quick and effective way to provide social security and protection to workers in times of need. It was thus regrettable that this fundamental protection was subject to discriminatory practices. Despite numerous examinations by the Committee of Experts and the Conference Committee, there had been no practical response from the Government in addressing the disparities between nationals and foreign workers since 1993. As of September 2016, there were 1.85 million foreigners with valid Temporary Employment Passes in the country. The majority of foreign workers came from Indonesia (close to 750,000 workers), followed by Nepal (410,000 workers), Bangladesh (238,000 workers), Myanmar (140,000 workers), India (121,430 workers) and others (194,000 workers). These numbers did not include the vast number of unrecorded foreign workers. Most foreign workers were employed in places with high accident risks, such as construction, manufacturing and plantations. She recalled that the Committee of Experts had previously concluded that the Government had "undermined the system of automatic reciprocity in granting equality of treatment to nationals of ratifying States" and that parties to the Convention must implement the principle of equal treatment in respect of workmen's compensation between their own nationals and foreign workers. According to the 2015 World Bank's report, Malaysia had the fourth largest

number of migrants and seventh highest ratio of migrants to total population in East Asia Pacific. Immigrant labour played a crucial role in Malaysia's development towards the Government's articulated Vision 2020. As nationals had become more educated, immigrant labour helped to fill in the gaps in the low- and mid-skilled jobs, which represented three quarters of all jobs in Malaysia. She called on the Government to consider the humane aspect of the issue as injured foreign workers may be unable to work when they were repatriated to their home countries, and many were the sole breadwinners in their respective families. The Government needed to recognize that these workers contributed directly to the country's economic growth and thus should be treated without discrimination. She called upon the Government to urgently resolve the differences between the ESS Scheme for nationals and the WCS for foreign workers so as to ensure equitable and adequate protection for every worker.

The Worker member of Australia drew attention to the situation of Nepalese Migrant Workers working in Malaysia who were subject to lower accident compensation protection compared to Malaysian workers. Since 1993, only Malaysian citizens and permanent residents were eligible to contribute to the Social Security System and benefit from financial assistance in the event of an industrial accident. Nepalese migrant workers were only eligible for coverage under the WCA for employment injury compensation. Many employers of Nepalese workers however made no contribution under this scheme. Moreover, the protection offered under the WCA was much lower than that available to Malaysian workers. For example, the claim process under the WCA was convoluted and a health assessment of the injured worker could take over three months. Under the claims process, an employer could also reclaim expenses incurred for an injured worker's treatment. The fact that most of the Nepalese workers work long hours in dangerous occupations in plantations, factories and in the mining industry without safety equipment also increased the risk of injury which in turn amplified the effect of the discrimination. In the case of undocumented workers, no accident compensation was provided under any scheme. Moreover, there were no guarantees of safety from arrest while attempting to access medical treatment for undocumented workers, which had a chilling effect on reporting injuries. It was common practice to repatriate injured workers back to Nepal. The Nepalese embassy reported that, in the last three years, the number of workplace fatalities of Nepalese workers in Malaysia was 348 in 2014, 461 in 2015 and 386 in 2016, i.e. an average of nine deaths per week. In most cases, the official cause of death was cardiac arrest and no post-mortem examination was carried out. The breaches of the Convention had persisted for many years and the ILO had offered technical assistance to the Malaysian Government for a number of years. The speaker urged the Committee to make strong recommendations which escalated the degree of ILO supervision to continue the engagement of the Government and the technical assistance involving all stakeholders. This should ensure further and urgent steps to strengthen compliance with this Convention to secure equal treatment of Malaysian and foreign workers as regards accident compensation.

The Worker member of Indonesia emphasized that Malaysia had benefited greatly from the employment of migrant workers in several economically important sectors, while migrant workers had not received fair treatment. Particularly, in respect of the employment injury compensation, migrant workers were provided with a lump sum under the WCS rather than a periodical payment under the social security system. Moreover, this protection did not extend to domestic workers. As a result, they were not provided with any guarantee of compensation in the event of workplace-related injury. In 2006, Malaysia and Indonesia signed an MoU on the employment of domestic workers. However, existing gaps allowed widespread abuse by employers. Due to the high number of complaints received, Indonesia suspended the deployment of domestic workers to Malaysia in 2009, pending a revised agreement. Referring to the case of a Filipino domestic worker who was denied access to proper medical assistance when injured, the speaker stated that the Government had failed its obligation under the Convention regarding the provision of basic labour protection to migrant workers. In this regard, comprehensive measures were needed along with the extension of social protection.

The Government representative reaffirmed that managing the welfare of foreign workers had always been a priority to the Government, as evidenced by the 11th Malaysia Plan (2016–20). In order to achieve the aspirations laid out in that Plan, the Government had undertaken numerous initiatives, including a review of labour laws and regulations, the introduction of the employers' responsibility for workers from their arrival until their return to their countries of origin and the introduction of a guideline on foreign workers' accommodation with basic amenities. The contributions to the WCS were payable only by employers and covered compensation for accidents that occurred not only during working hours but also outside of working hours. In addition, the scheme did not impose any qualifying period to receive the compensation. Thus, foreign workers received the compensation immediately after the incident had taken place. Contribution to the WCS was one of the pre-conditions to be authorized to hire foreign workers. In relation to the statement made on procedural elements pertaining to paid sick leave, reporting of accidents, payment of compensation and the importance of the safety and health of workers, these elements were already embedded under existing labour laws and regulations. The Government made progressive efforts in order to enhance the benefits available under the WCS. The Government had engaged with insurance panellists to revise the quantum and the benefits of the WCS and would conduct further deliberation with the social partners in due

course. He pledged the full and undivided commitment of the Government to the efforts that lied ahead, to ensure that the WCS would be in conformity with the requirements of the Convention.

The Worker members, noting the information provided by the Government representative, considered that there remained no doubt that national laws and practices were completely out of line with the Convention and that migrant workers suffered unequal treatment with respect to employment injury protection. This was not a recent problem. However, with the growing number of migrant workers, the consequences of this discriminatory behaviour were escalating. The WCS was less favourable than the ESS Scheme with respect to the duration, level and types of benefits workers received in the case of workplace injury. The Committee on the Application of Standards had recommended on several occasions that the Government take the necessary steps in order to bring its legislation in line with the Convention and had benefited from ILO technical assistance on this matter. The speaker expressed the hope that the discussion would finally make a difference in ensuring that the Government took urgent steps to remedy the key areas of concerns, in consultation with the country's social partners. Migrant workers were to be reintegrated in the ESS Scheme and were entitled to the same level of accident compensation as Malaysian nationals. Moreover, the Government needed to make sure that special arrangements with other ratifying states where migrant workers come from were negotiated so that migrant workers could benefit from the same level of protection after they return to their country of origin. The necessary measures needed to be taken in order to ensure that undocumented migrant workers did not have to fear arrest and retaliation when they seek medical assistance following workplace accidents. Discrimination in relation to accident compensation was sadly not the only area where migrant workers lacked protection. Even though, a substantive part of the labour force was constituted of migrant workers, Malaysia had failed in providing workers with the necessary protections of their fundamental rights guaranteed under ILO standards. The speaker expressed the sincere hope that there would be a change of attitude in relation to this category of workers, especially if the Government continued recruiting more migrant workers.

The Employer members thanked the Government for the efforts made in overcoming the difficulties faced in the implementation of the Convention. Equality of treatment was required by the Convention but not ensured. At the same time, strict equality of treatment should not result in dismantling the protection currently enjoyed by migrant workers under the WCS by subjecting them to qualifying conditions required by the ESS Scheme. Practical solutions were therefore to be explored and the Government needed to provide more information in this respect and a clear statement as to the current development policy for the employment of migrant workers. The speaker concluded by referring to the Government's indication that it would hold tripartite consultations on these issues in due course, urging it to undertake these consultations soon.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Malaysia to take immediate, pragmatic and effective steps to ensure that the Convention's requirement for equal treatment of migrant workers and national workers is met.

The Committee nevertheless called upon the Government to expedite its efforts to address this long-standing issue, as the need for real progress is becoming increasingly urgent. Specifically, the Committee calls upon the Government of Malaysia to, without delay:

- **take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers;**
- **take immediate steps to conclude its work on means of reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the Employees' Social Security Scheme to migrant workers in a form that is effective;**
- **work with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury;**

- adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad;
- take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury without fear of arrest and retaliation;
- avail itself of the technical assistance of the ILO with a view to implementing these recommendations and to develop mechanisms for overcoming the practical issues affecting implementation of the domestic social security scheme to migrant workers.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a appelé le gouvernement de la Malaisie à prendre des mesures immédiates, pragmatiques et efficaces afin de garantir le respect de la convention qui requiert l'égalité de traitement entre les travailleurs migrants et les travailleurs nationaux.

Néanmoins, la commission a appelé le gouvernement à accélérer ses efforts pour résoudre cette question soulevée de longue date, dans la mesure où le besoin de réels progrès en la matière devenait urgent. En particulier, la commission a demandé au gouvernement de la Malaisie de prendre sans tarder les mesures suivantes:

- faire le nécessaire afin de développer et communiquer sa politique en matière de recrutement et de traitement des travailleurs migrants;
- prendre des mesures immédiates pour conclure ses travaux sur les moyens de rétablir l'égalité de traitement des travailleurs migrants, en particulier en étendant la couverture du régime de sécurité sociale des employés (ESS) aux travailleurs migrants, sous une forme qui soit efficace;
- collaborer avec les organisations d'employeurs et de travailleurs pour mettre au point une législation qui garantisse l'abandon de pratiques discriminatoires entre les travailleurs migrants et les travailleurs nationaux, en particulier en matière d'accidents du travail;
- adopter des accords spéciaux avec d'autres Etats Membres ayant ratifié la convention afin de résoudre les difficultés administratives que pose le contrôle du paiement des indemnités à l'étranger;
- prendre des mesures juridiques et pratiques assurant que les travailleurs migrants aient accès aux soins médicaux en cas d'accident du travail, sans crainte d'une arrestation ou de représailles; et
- faire appel à l'assistance technique du BIT dans le cadre de l'application de ces recommandations et mettre au point des mécanismes qui permettent de résoudre les questions pratiques que pose l'application pour les travailleurs migrants du système national de sécurité sociale.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

Teniendo en cuenta la discusión, la Comisión pidió al Gobierno de Malasia que adopte medidas inmediatas, prácticas y efectivas para asegurar que se cumpla el requisito de la igualdad de trato de los trabajadores migrantes y de los trabajadores nacionales previsto en el Convenio.

No obstante, la Comisión hizo un llamado al Gobierno a fin de que acelere sus esfuerzos para abordar esta cuestión de larga data, ya que la necesidad de lograr avances reales es cada vez más apremiante. En concreto, la Comisión pidió al Gobierno de Malasia que, sin demora:

- tome medidas para formular y comunicar su política encaminada a regular la contratación y el trato de los trabajadores migrantes;
- adopte de inmediato medidas para finalizar su labor en lo que respecta a los medios para restablecer la igualdad de trato de los trabajadores migrantes, en particular ampliando la cobertura del Régimen de Seguridad Social de los Empleados a los trabajadores migrantes de una manera que sea efectiva;
- colabore con las organizaciones de empleadores y de trabajadores con miras a elaborar una legislación que asegure la eliminación de las prácticas discriminatorias entre los trabajadores migrantes y los trabajadores nacionales, especialmente en relación con los accidentes del trabajo;
- concluya acuerdos especiales con otros Estados Miembros que han ratificado el Convenio con el fin de superar las dificultades administrativas que conlleva controlar el pago de la indemnización en el extranjero;
- adopte las medidas legales y prácticas necesarias para velar por que los trabajadores migrantes tengan acceso a la atención médica en caso de accidentes del trabajo, sin temor a ser detenidos o a ser objeto de represalias, y
- recurra a la asistencia técnica de la OIT con miras a aplicar estas recomendaciones y a establecer mecanismos para superar las cuestiones prácticas que afectan a la aplicación del Régimen de Seguridad Social Nacional a los trabajadores migrantes.

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

Forced Labour Convention, 1930 (No. 29)

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

Mauritanie (ratification: 1961)

Mauritania (ratification: 1961)

Mauritania (ratificación: 1961)

Un représentant gouvernemental a souligné que la Mauritanie apparaît pour la deuxième année consécutive devant la commission, offrant par conséquent au gouvernement l'opportunité de partager des informations sur les efforts déployés et les projets mis en œuvre pour donner effet aux recommandations formulées lors de la précédente session de la Conférence. Ainsi, le gouvernement s'est prévalu de l'appui technique du BIT, et il y a lieu de se féliciter de la mise en place d'un projet d'appui à l'application la loi n° 2015-031 du 10 septembre 2015 portant incrimination de l'esclavage et réprimant les pratiques esclavagistes (ci-après loi de 2015). Ce projet, d'une durée de 4 ans, permet de renforcer les efforts entrepris par le gouvernement pour mettre fin aux séquelles de l'esclavage. Il couvre les volets de la prise de conscience publique et de la connaissance de la problématique du travail forcé; de l'amélioration des politiques nationales et des législations sur le travail forcé, leur application et leur évaluation; et de l'accès aux programmes de subsistance en faveur des victimes de travail forcé. Au terme d'une large concertation impliquant toutes les parties prenantes et avec le soutien de la communauté internationale, la Mauritanie a adopté, en 2014, une feuille de route pour la lutte contre les séquelles de l'esclavage. Cette feuille de route comprend 29 recommandations réparties en trois volets: révision du cadre légal et institutionnel; sensibilisation; et programmes économiques et sociaux. La responsabilité de la mise en œuvre des recommandations a été confiée à un comité interministériel, présidé par le Premier ministre, qui s'appuie sur une commission technique de suivi composée des représentants des différents départements et institutions concernés et d'autres organismes. En ce qui concerne le volet légal, il convient de rappeler l'adoption de la loi de 2015 et l'installation de trois cours criminelles spéciales compétentes en matière d'esclavage (à Nouakchott, Nouadhibou et Nema); l'actualisation de la réglementation sur l'assistance judiciaire et la mise en place de bureaux d'aides juridictionnelles; la révision du cadre légal relatif à l'accès à la propriété foncière et domaniale; l'adoption de mesures spécifiques de suivi de la politique pénale en matière d'exécution des décisions de justice relatives au recouvrement des dommages-intérêts alloués aux victimes; l'adoption d'une stratégie nationale d'institutionnalisation du genre et la formation des ONG dans ce domaine; l'élaboration du Code de l'enfant; la généralisation de tables rondes régionales de protection de l'enfance; l'élaboration d'une loi-cadre sur les violences basées sur le genre; la mise en place d'un mécanisme de concertation pour faciliter l'accès à l'établissement des personnes sans filiation; la mise en œuvre du plan d'action national de lutte contre le travail des enfants; le renforcement des capacités de l'administration du travail; l'adoption

d'un guide de bonne conduite au profit des sociétés étrangères opérant en Mauritanie et l'instauration de contrôles réguliers dans ces entreprises; et la révision de la loi portant statut de la magistrature.

Dans le domaine de la sensibilisation, il convient de citer les campagnes de sensibilisation menées au profit des personnes cibles au sujet de leurs droits ainsi que celles destinées aux acteurs de la société civile et des médias et celles menées au profit des leaders religieux et des notables traditionnels; la mise en œuvre d'une stratégie nationale de communication pour la lutte contre les séquelles de l'esclavage; la formation de réseaux et d'associations de presse sur la lutte contre les séquelles de l'esclavage; l'adoption d'une Fatwa délégitimant l'esclavage; la vulgarisation d'un guide de bonne conduite au profit des entreprises; l'intégration d'un module de formation sur les droits de l'homme et la lutte contre les séquelles de l'esclavage en faveur des Imams et dans les programmes d'alphabétisation; la diffusion à la radio et à la télévision d'émissions débats sur l'illégitimité des pratiques esclavagistes; la formation et la sensibilisation des juges et agents d'application de la loi de 2015; la commémoration d'une journée nationale de lutte contre les séquelles de l'esclavage. S'agissant du dernier volet de la feuille de route qui est consacré au domaine socio-économique, les acquis les plus concrets concernent les domaines de l'éducation, la mise en place des lignes de crédits pour faciliter le financement des activités génératrices de revenus, les formations professionnelles ciblées au profit des jeunes issus des Adwabas, l'appui aux ONG nationales pour assurer la réalisation de projets de développement au profit des personnes affectées par les séquelles de l'esclavage. Des progrès ont également été réalisés en ce qui concerne la mise en œuvre des recommandations formulées par la mission de contacts directs en octobre 2016. S'agissant de l'étude qualitative et/ou quantitative qui devait permettre de poser en des termes concrets et objectifs les discussions, contribuant ainsi à apaiser le débat et le démystifier, tant au niveau national qu'international, ses termes de référence sont en cours de validation. Il a été également donné suite à la recommandation visant à doter les trois cours spéciales du personnel nécessaire et des ressources matérielles et logistiques adéquates puisque des équipements ont été installés et le personnel a reçu plusieurs formations. Quant à la nécessité de mettre en place un mécanisme de prise en charge des victimes dès que celles-ci portent plainte ou sont identifiées, cette mission est assurée par l'Agence Tadamoun pour l'insertion et la lutte contre les séquelles de l'esclavage ou par les organisations de la société civile qui reçoivent, à ce titre, des subventions de l'Etat. En ce qui concerne les domaines socio-économiques, les programmes de l'Agence Tadamoun se poursuivent, et son budget a été augmenté pour renforcer la cadence des réalisations dans ce domaine. La mission a également recommandé au gouvernement de procéder à une évaluation de la mise en œuvre de la feuille de route. Cette évaluation a eu lieu en avril 2017 et les progrès identifiés sont répertoriés ci-dessus. La dernière recommandation de la mission se réfère à la nécessité d'impliquer les partenaires sociaux dans les dispositifs de suivi des actions de lutte contre les séquelles de l'esclavage. Cela est désormais effectif pour le Comité de suivi de la feuille de route qui s'est élargi pour tenir compte de cet impératif. Quant à la présence des partenaires sociaux au sein de l'organe délibérant de l'Agence Tadamoun, le décret portant nomination de ses membres sera révisé pour tenir compte de la nécessité d'aller vers plus d'inclusivité. L'orateur a conclu en rappelant que la mission de contacts directs a souligné que de notables progrès ont été accomplis. Toutes les informations fournies démontrent les efforts entrepris par la Mauritanie pour mettre un terme aux séquelles de l'esclavage et de toutes les formes d'exclusion ou de marginalisation. Les efforts se poursuivent pour achever ce travail et garantir la dignité à tous les Mauritaniens et leur offrir des opportunités d'épanouissement et de développement.

Les membres travailleurs ont rappelé leur profonde préoccupation quant à la situation de la Mauritanie en matière de lutte contre l'esclavage, forme la plus grave de travail forcé. La récurrence de l'examen de ce cas témoigne de cette préoccupation. Une des tâches essentielles de la commission est d'évaluer le degré d'application des normes internationales du travail et leur mise en œuvre concrète sur le terrain. Dans le cas de la Mauritanie, le fossé entre les déclarations d'intentions et leur concrétisation est gigantesque. L'organisation de la mission de contacts directs en octobre 2016 n'a pas mis un terme aux préoccupations des travailleurs. Pour faire suite aux conclusions adoptées par la commission en 2016, le gouvernement aurait dû mettre en place, à l'échelle nationale, une enquête statistique sur le travail en servitude afin de disposer des données objectives qui permettent aux autorités de saisir l'ampleur du phénomène et de définir les actions spécifiques à entreprendre. Ces données statistiques permettraient de mener un débat sur la base de données détaillées et objectives. L'adoption de la loi de 2015 témoigne de la volonté affichée par le gouvernement de s'atteler au problème des pratiques esclavagistes. Les premiers retours concernant la mise en œuvre concrète de cette nouvelle législation ne sont malheureusement pas rassurants. La mise en place des trois cours spéciales constitue un progrès sérieux. Mais, comme l'indique la commission d'experts, au-delà de ces cours spéciales, c'est toute la chaîne pénale qui doit être renforcée, formée et dotée de tous les moyens nécessaires afin de ne laisser aucun cas d'esclavage impuni. La création d'un parquet et d'un corps de police spécialisés en matière d'esclavage pourraient également être une piste utile. La première décision rendue par la Cour spéciale de Nema, qui a condamné deux personnes à une peine de cinq ans de prison, dont quatre ans avec sursis, ne paraît pas conforme aux exigences de l'article 25 de la convention qui impose au gouvernement de s'assurer que les sanctions imposées par la loi sont réellement efficaces. Une peine d'un an de prison ferme ne peut pas raisonnablement constituer une sanction réellement dissuasive et n'est en rien proportionnelle à la gravité du crime d'esclavage. Cette sanction ne contribuera pas à éradiquer les pratiques

esclavagistes. Cette même cour a par ailleurs entériné un règlement amiable entre un auteur de pratiques esclavagistes et sa victime, cette dernière retirant sa plainte. Il s'agit d'un très mauvais signal, indiquant à tout auteur de ce type de pratiques qu'il pourrait échapper aux poursuites pénales moyennant un règlement amiable avec sa victime. Le gouvernement devra également fournir des données statistiques relatives aux poursuites et à leurs résultats afin de pouvoir évaluer les progrès réalisés en matière de lutte contre les pratiques esclavagistes. Le gouvernement doit s'engager à pleinement mettre en œuvre dans la pratique les mesures adoptées en matière de lutte contre l'esclavage et à saisir l'opportunité que représente le projet Bridge, dont la mise en œuvre prévue jusqu'en septembre 2019 constitue un soutien décisif pour mettre un terme aux pratiques esclavagistes.

Le protocole de 2014 relatif à la convention sur le travail forcé, 1930 (protocole de 2014), prévoit l'obligation d'assurer aux victimes de travail forcé une protection et un accès à des mécanismes de recours et de réparation appropriés et efficaces, tels que l'indemnisation. Pour respecter cette obligation, le gouvernement doit pouvoir identifier les victimes. Cette tâche est particulièrement difficile tant les situations de dépendance peuvent varier. Il est à craindre qu'un grand nombre de personnes en situation d'esclavage n'en ont même pas conscience et ne dénoncent donc pas la situation dans laquelle elles se trouvent. Les campagnes de sensibilisation qui atteignent toutes les victimes de pratiques esclavagistes sont donc essentielles. Une fois ces victimes identifiées, le gouvernement doit pouvoir leur garantir une protection qui leur permettra de poursuivre les démarches en vue de dénoncer les pratiques esclavagistes dont elles sont victimes, sans crainte de représailles ni d'exclusion sociale. La loi de 2015 répond en partie à cette obligation de protection, et il serait utile que le gouvernement fournisse des informations relatives à l'application en pratique de ces mesures de protection et aux résultats qu'elles ont permis d'obtenir. Le gouvernement affirme, s'agissant de la feuille de route adoptée en 2014, que 70 pour cent des recommandations ont été mises en œuvre. Cependant, l'absence d'indicateurs clairs et qualitatifs permettant de mesurer objectivement les changements intervenus en pratique est une grande source d'inquiétude. De nombreux acteurs de terrain s'accordent à dire que la pauvreté et l'éducation entretiennent un lien très étroit avec la survivance de pratiques esclavagistes. Les actions de l'Agence Tadamoun sont donc indispensables en vue d'assurer un soutien aux victimes et leur permettre de sortir de leur situation de dépendance. Le gouvernement doit donc continuer à doter l'agence des moyens nécessaires afin qu'elle puisse réaliser sa mission et que ses actions bénéficient prioritairement aux anciens esclaves. Il conviendrait en outre que les organisations représentatives des travailleurs et de la société civile puissent prendre part aux discussions relatives aux politiques de lutte contre l'esclavage et ses séquelles. Les organisations représentatives des travailleurs ne sont pas représentées au sein du comité interministériel chargé de la mise en œuvre de la feuille de route ni au sein de l'Agence Tadamoun. Les membres travailleurs ont exprimé leur profonde inquiétude face aux arrestations de militants de l'Initiative de résurgence du mouvement abolitionniste (IRA), qui ont par ailleurs été condamnés à de lourdes peines de prison. Ainsi, MM. Moussa Ould Bilal Biram et Abdallahi Matala Salek, militants abolitionnistes, ont été initialement condamnés à quinze ans de prison, avant que les tribunaux ne ramènent ces sentences à trois ans. Il est choquant que les peines de prison infligées aux militants abolitionnistes soient donc plus lourdes que celles infligées par les cours spéciales aux auteurs de pratiques esclavagistes. Les dernières arrestations de membres dirigeants de l'IRA datent du 2 mai 2017. L'OIT ne peut tolérer ces pratiques. Il doit être exigé du gouvernement qu'il cesse la répression à l'égard des organisations de lutte contre l'esclavage, qu'il annule les arrestations et condamnations de militants de ces organisations et qu'il ordonne la libération dans les plus brefs délais des militants encore en détention. Le gouvernement doit travailler en étroite collaboration avec les organisations de lutte contre l'esclavage plutôt que de réprimer leurs activités.

Les membres employeurs ont souligné que l'éradication du travail forcé est une obligation de droit international, fondée sur un devoir moral fondamental de tous les mandants de l'Organisation. La Mauritanie apparaît pour la neuvième fois devant cette commission pour la question de l'esclavage et de ses séquelles. Il s'agit cette année d'examiner le suivi qui a été donné aux précédentes conclusions de la commission, à savoir les actions effectivement menées par la Mauritanie pour éradiquer définitivement le travail forcé et l'esclavage, ainsi que pour sanctionner les auteurs et soutenir les victimes. Comme l'a souligné la commission d'experts, des mesures ont été prises: la création de l'Agence Tadamoun; l'adoption d'une «feuille de route» dont la mise en œuvre relève d'un comité technique interministériel; l'adoption en 2015 d'une loi incriminant l'esclavage et prévoyant la possibilité pour les associations de défense des droits de l'homme d'ester en justice, ainsi que d'une loi instaurant un système d'aide judiciaire; l'établissement des trois cours spéciales. En plus de ces efforts qui doivent être encouragés et soutenus, deux événements récents revêtent également une importance particulière: la ratification par la Mauritanie, en mars 2017, du protocole de 2014 qui démontre l'engagement ferme du gouvernement à éradiquer dans la pratique toutes les formes de travail forcé. Le gouvernement a par ailleurs accueilli la mission de contacts directs du BIT qui a pu constater les efforts mis en œuvre ainsi que les progrès accomplis dans l'éradication du travail forcé et dans la protection des victimes. Les efforts pour faire évoluer les mentalités sur la question de l'esclavage – phénomène lié à des facteurs historiques, culturels et religieux – nécessitent du temps avant de porter leurs fruits. Les autorités mauritaniennes ne peuvent cependant pas relâcher leur vigilance, et elles doivent persévérer sur la voie poursuivie, avec le soutien de la communauté internationale.

Les membres employeurs se sont référés aux quatre thèmes traités par la commission d'experts dans son observation sur la base des informations réunies par la mission de contacts directs. S'agissant tout d'abord de la question de l'application effective de la législation nationale, il est essentiel que les ressources et les moyens matériels soient alloués aux trois cours spéciales. A cet égard, des chiffres devraient être fournis par le gouvernement sur le nombre d'affaires traitées, l'indemnisation des victimes et les sanctions prononcées. Il est également encourageant de constater que le gouvernement collabore avec les autorités locales et religieuses pour sensibiliser sur les nouveaux mécanismes de protection légale. Le gouvernement bénéficie également d'une assistance technique, notamment à travers le projet Bridge, pour renforcer les capacités de toute la chaîne des intervenants dans ce domaine. En ce qui concerne l'état des lieux de la réalité de l'esclavage, il est important d'encourager le gouvernement à solliciter l'assistance technique du BIT pour, comme l'a souligné la mission de contacts directs, disposer d'une étude qualitative et/ou quantitative permettant de connaître l'ampleur du phénomène en 2017 et les activités et les populations concernées. S'agissant des actions inclusives et coordonnées, le gouvernement a indiqué qu'il menait un dialogue inclusif et ouvert sur l'éradication de l'esclavage et que ses efforts portaient sur l'éducation, la sensibilisation de l'opinion publique et le développement de programmes de lutte contre la pauvreté. Les membres employeurs ont encouragé vivement le gouvernement à intensifier les efforts en la matière, considérant que la pauvreté et l'ignorance font le lit des pratiques abusives. Les partenaires sociaux sont conscients qu'ils doivent jouer leur rôle d'information et de formation envers leurs membres afin que ceux-ci exercent leurs activités dans le respect de la loi. A cet égard, les organisations d'employeurs nationales souhaitent être partie prenante de tout processus mis en place pour lutter contre le travail forcé et l'esclavage. Seule une stratégie d'union nationale basée sur des constats objectifs aura une chance de porter ses fruits sur le terrain. Enfin, s'agissant de l'identification et de la protection des victimes, la mission de contacts directs a relevé que la relation existant entre les victimes et leur maître est multidimensionnelle et que la dépendance économique, sociale et psychologique dans laquelle se trouvent les victimes revêt des degrés divers et entraîne un large éventail de situations qui appellent un ensemble de mesures complémentaires. Le programme global et transversal à développer par le gouvernement doit viser à déconstruire le schéma de dépendance dans lequel ces victimes se trouvent. La mission a recommandé au gouvernement de prendre en charge les victimes dès qu'elles portent plainte afin de les protéger de toute pression sociale, traditionnelle ou familiale. En conclusion, les membres employeurs ont rappelé que sous aucun prétexte le travail forcé ne peut être organisé à l'initiative d'un gouvernement, d'une autorité publique ou d'une entreprise quelle qu'elle soit. Si des pratiques de travail forcé ou d'esclavage sont découvertes, les victimes de ces pratiques doivent être identifiées et protégées. En outre, les bénéficiaires de ces pratiques illégales doivent être identifiés et, après un procès équitable, faire l'objet de sanctions efficaces, proportionnelles à la gravité des faits commis.

Un membre travailleur de la Mauritanie s'est référé aux différentes mesures prises par le gouvernement, et notamment à l'adoption de la loi de 2015, en soulignant que l'esclavage est désormais considéré comme un crime contre l'humanité et est passible de peines de dix à vingt ans de prison; la création des trois cours spécialisées; l'adoption de la feuille de route; la création de l'Agence Tadamoun; et la ratification du protocole de 2014. Toutefois, des pratiques liées à l'esclavage, ancrées dans des mœurs anciennes, persistent, et leurs manifestations constituent des cas troublants qui soulignent la nécessité de poursuivre et d'approfondir la lutte. Cette lutte sera de longue haleine, et des associations comprenant des représentants des anciennes victimes et des anciens esclavagistes doivent mener des campagnes soutenues dans tous les milieux sociaux afin d'ancrer l'égalité de tous dans toutes les consciences. L'indifférence des autorités administratives, judiciaires et policières devant ces manifestations doit être combattue et l'Etat doit impliquer les citoyens dans cette lutte. L'éducation des jeunes générations doit faire cas de ce fléau et enraciner une conscience citoyenne nouvelle faite d'égalité, de justice sociale, de liberté et de responsabilité. Les programmes décentralisés de développement local doivent être déployés dans les zones rurales, urbaines et semi-urbaines du pays et menés avec l'implication effective des citoyens de toutes les couches sociales. Des émissions de radio et de télévision sur les séquelles de l'esclavage donnant la parole à tous ceux impliqués, victimes comme esclavagistes, permettront à la population de former ses propres convictions. Au XXI^e siècle, il est inadmissible que l'esclavage persiste en Mauritanie et que les pouvoirs publics pratiquent la politique de l'autruche pour ne pas entreprendre des stratégies radicales pour éradiquer ces pratiques. Il est également nécessaire que les partenaires au développement soutiennent la Mauritanie dans la réalisation de programmes participatifs visant l'exécution d'ouvrages destinés aux populations extrêmement pauvres afin de permettre aux anciennes victimes de l'esclavage de se soustraire de l'assistance des anciens maîtres pour devenir autonomes. La mobilisation de la société civile, des syndicats et des forces économiques et politiques dans un élan national en faveur de l'éradication des séquelles de l'esclavage constitue une priorité essentielle. L'orateur a considéré que le comité technique interministériel ne relevait pas suffisamment ce défi qui nécessite l'engagement de tous.

Une autre membre travailleuse de la Mauritanie, s'exprimant au nom de l'Union des travailleurs de Mauritanie (UTM) et de l'intersyndicale composée de 20 centrales syndicales sur les 28 que compte la Mauritanie, a rappelé les énormes progrès enregistrés qui témoignent de la volonté du gouvernement à éradiquer définitivement les séquelles de l'esclavage. Parmi ces progrès, on peut citer l'adoption de la loi de 2015 et de ses textes d'application. Il s'agit d'un arsenal juridique complet qui prend en compte les spécificités de la société

mauritanienne et a été élaboré de manière inclusive. Pour l'application de cette loi, saluée par l'ensemble de la société civile et des partenaires étrangers, les autorités ont mis en place trois cours spéciales couvrant l'ensemble du territoire national et dont le personnel a bénéficié d'une formation appropriée. Les séquelles de l'esclavage sont essentiellement liées à la pauvreté et à un déficit d'éducation. Pour cette raison, les autorités ont créé l'Agence Tadamoun, dont les programmes sont orientés vers la construction d'écoles, les formations sanitaires, la fourniture des services de base, y compris l'eau, l'éclairage et les routes, et le financement d'activités génératrices de revenus dans les zones adwaba, habitées en majorité par d'anciens esclaves. L'organisation conjointe avec la Confédération syndicale internationale (CSI) d'un atelier sous-régional sur les formes contemporaines de l'esclavage a permis de mettre en place un plan d'action national de lutte contre les séquelles de l'esclavage. La liberté d'expression, tout comme la liberté syndicale et le libre accès à l'information, est une réalité en Mauritanie. Ces faits indéniables attestent de la volonté politique réelle et des progrès réalisés, qui doivent continuer avec l'appui du BIT, de la CSI, et avec une implication plus grande des syndicats dans toutes les structures et programmes concernés, y compris l'Agence Tadamoun. L'oratrice a souhaité que ce cas soit cité en tant que cas de progrès par la commission, ce qui serait un encouragement apprécié pour aller de l'avant.

Le membre employeur de la Mauritanie a rappelé que, depuis 2015, la Mauritanie s'est expliquée devant la commission à trois reprises. L'inclusion de la Mauritanie dans la liste des cas est d'autant plus paradoxale qu'elle ne semble pas tenir compte des efforts entrepris pour mettre en œuvre les recommandations de la commission. Le gouvernement a pourtant entrepris un ensemble de mesures parmi lesquelles figurent la criminalisation de l'esclavage, la création des cours spéciales, la création de l'Agence Tadamoun qui réalise de nombreux projets d'infrastructures, scolaires et autres au profit des populations concernées. Ces actions s'inscrivent dans le cadre de la feuille de route et se concrétisent également à travers le projet Bridge coordonné par le BIT. L'orateur a estimé que, dans un esprit de bon sens, de logique et d'équité, la Mauritanie aurait dû être félicitée ou tout au moins encouragée et appuyée en vue de renforcer et pérenniser les importants efforts qu'elle déploie pour éradiquer les séquelles de l'esclavage.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Bosnia and Herzegovina, Montenegro, Norway and Serbia, reiterated commitment to universal ratification and implementation of the core ILO Conventions and called on all countries to protect and promote all human rights and freedoms. Compliance with the Convention is essential to Mauritania's commitment under the Cotonou Agreement to respect democracy, rule of law and human rights. The direct contacts mission had acknowledged positive developments, in particular, efforts made to enforce the 2015 Act, as well as the establishment of courts in Nema, Nouakchott and Nouadhibou, which were now operational. He welcomed the close cooperation with the ILO, and the strengthening of actors, including police and judicial authorities to identify slave-like practices. In order to fight impunity and eradicate slavery throughout the country, perpetrators must be effectively prosecuted and sanctions must be sufficiently dissuasive and properly enforced. A precise picture of the slavery situation in the country is essential for the targeting of public interventions. The Government should conduct a study to provide qualitative and quantitative data and analysis on slavery practices. It was also very important that the Government worked with civil society, especially social partners and religious authorities, in the fight against slavery and continues to raise public awareness. He called on the Government to ensure protection and assistance for victims so they could assert their rights and encouraged implementation of the 29 recommendations of the 2014 Roadmap to combat the vestiges of slavery. The Tadamoun Agency also needed to have the necessary means to fulfil its mandate. Its work in targeting zones prone to slavery practices, where there is little state presence, was noted. He expressed continued readiness to cooperate with the Government to promote development and the full enjoyment of human rights.

La membre gouvernementale de la Suisse a regretté que ce cas soit à nouveau soumis à la commission. Cet état de fait montre l'urgence de lutter efficacement et rapidement contre toute forme d'esclavage. Alors que des étapes ont été franchies grâce à l'établissement de trois cours spéciales et au travail effectué par l'Agence Tadamoun, les efforts doivent continuer en collaboration avec le BIT. L'efficacité de la mise en œuvre des lois et leur application stricte sont des éléments indispensables à une lutte pleine et entière contre le travail forcé. Il y a lieu d'encourager le gouvernement à continuer ses actions de prévention et de communication et le dialogue avec les partenaires sociaux pour un engagement de tous les acteurs. Enfin, l'oratrice a exprimé l'espoir que le gouvernement puisse mettre en place des mesures de protection des victimes.

The Worker member of Nigeria, also speaking on behalf of the Worker member of Ghana, welcomed progress made thanks to the work of the Committee and support of the ILO over the years. An inter-ministerial technical committee, headed by the Prime Minister, had been established and the courts had prosecuted some cases of slavery. The Government also intended to conduct research to ascertain the depth of the issue and to measure progress. However, much remained to be done. Slavery was deeply rooted in the social fabric of the country and was complex. The history of Nigeria and Ghana in relation with slavery demonstrates that tackling such a deep-

rooted and socially complex phenomenon required all state and social actors to confront the existence of slavery, delegitimize it and commit to eradicating it together. Given the extent of the social legitimacy of slavery in Mauritania, it could not be dealt with as an ordinary criminal matter or social ill. It was possibly unrealistic to expect that slavery would be investigated, prosecuted and remedied with speed and alacrity by institutions rooted in its traditions. Victims of slavery as well as anti-slavery activists were reasonably expected to lack confidence in these institutions. Efforts being made by the Government, as the primary duty bearer, should continue, but it was time to call for an independent and inclusive anti-slavery commission with special investigative, prosecutorial and policy advocacy powers to supervise the eradication of slavery and its vestiges in Mauritania. He urged the Government to involve trade unions and to continue to seek ILO technical assistance to improve the situation.

The Government member of the United States recalled that, in recent years, the Government had taken some initial steps to address the issue of slavery. In this regard, the 2014 Roadmap, the 2015 Act and the ratification of the 2014 Protocol were noted. In addition, the Government had accepted the direct contacts mission in follow-up to the conclusions of the Committee in 2016. These actions were welcome indicators of the Government's acknowledgement of the persistent issue and its role in combating slavery and its vestiges, but efforts to eliminate the practice and prosecute individuals under the law remained inadequate. While three special courts had been established, there had to date been only two convictions of perpetrators of slavery. These courts remained significantly underfunded and understaffed. Reports indicated that police and judicial authorities had been resistant to investigating or initiating prosecutions. The Government had to ensure that the competent authorities had the necessary resources to eliminate the vestiges of slavery, while also heightening public awareness raising. Specifically, the Government needed to fully fund and appropriately staff the three anti-slavery courts, effectively investigate and prosecute slavery cases, ensure that all members of Mauritania's civil society are able to peacefully express their support or dissent, particularly anti-slavery activists, desist from launching politically motivated prosecutions of abolitionists, such as the recent trial of 13 IRA members, and enable the Tadamoun Agency to pursue its mandate to identify and refer slave owners for prosecution, and provide assistance and rehabilitation programmes to victims of slavery. He urged the Government to take full advantage of the technical assistance provided by the ILO and to make serious strides towards the full eradication of slavery, including its vestiges and modern forms.

Un observateur, représentant la Confédération syndicale internationale (CSI), a constaté que, bien que le phénomène odieux de l'esclavage constitue un affront pour la communauté internationale, une insulte à l'humanité et une violation grave des droits de l'homme, il persiste en Mauritanie. Le gouvernement mauritanien continue à fustiger, occulter et étouffer la réalité de toute une population assujettie et condamnée à vivre dans la pauvreté extrême et l'exclusion. Cette situation préoccupante détruit chez les victimes tout espoir de changer de statut et de s'insérer dans la vie active. Les anciens esclaves sont confrontés à l'absence de mesures complètes de réadaptation et de réinsertion. Le harcèlement, les intimidations, l'expropriation des terres ainsi que la discrimination dans l'emploi et l'absence d'opportunités les fragilisent et les maintiennent dans la dépendance de leurs maîtres. La commission d'experts fait référence à l'Agence Tadamoun prétendument créée pour le développement économique et social de la population harratine. Cette agence a trois missions, dont la lutte contre les séquelles de l'esclavage. Cependant, l'Etat n'a pas l'intention d'entreprendre des actions concrètes, préférant prendre des mesures pour satisfaire l'opinion internationale. Il en est ainsi de la loi foncière qui devait permettre aux anciens esclaves d'accéder à la terre ou des cours spéciales qui, dans la pratique ne sont pas opérationnelles, faute de textes d'application. Malgré des difficultés évidentes – absence de structures d'accueil, d'assistance matérielle ou d'indemnisations pour préjudice qui permettraient aux victimes d'avoir une autonomie économique, et absence de volonté gouvernementale d'endiguer le phénomène –, les esclaves continuent à manifester leur désir de quitter leur maître. Les affaires sont multiples, qu'il s'agisse du cas des travailleuses domestiques, victimes de traite vers l'Arabie saoudite, dont les plaintes n'ont pas été reçues, ou du témoignage de 10 anciens esclaves qui ont quitté leur maître en 2016. L'orateur a estimé que les mesures prises évoquées par le gouvernement ainsi que les données qu'il a communiquées ne sont ni fiables ni justes. Il est à espérer que les recommandations de la commission d'experts par rapport à la mise en œuvre de la feuille de route soient effectivement mises en œuvre par le gouvernement, en coopération avec toutes les parties concernées.

El miembro gubernamental de la República Bolivariana de Venezuela valoró las informaciones proporcionadas por el representante gubernamental y resaltó la buena disposición del Gobierno al haber aceptado la visita de una misión de contactos directos en octubre de 2016. Se refirió en particular a las cortes especiales competentes en materia de esclavitud — tribunales que están operativos, dotados del personal necesario y de los recursos adecuados —, expresando la esperanza de que pronuncien condenas justas y ejemplares. También cabe destacar la cooperación técnica que la Oficina está llevando a cabo en Mauritania para la aplicación de la legislación y la erradicación de las secuelas de la esclavitud, así como el nivel de cumplimiento de las recomendaciones que figuran en la Hoja de ruta contra las secuelas de la esclavitud. Habida cuenta de la buena disposición y del compromiso del Gobierno de Mauritania, consideró que la Comisión debería tener presente los aspectos positivos

del caso, adoptando conclusiones objetivas y equilibradas, y seguir alentando y apoyando al Gobierno en sus esfuerzos para erradicar el trabajo forzoso y sus secuelas.

La miembro trabajadora de España destacó que en muchos centros oficiales se niega la existencia de la esclavitud, lo cual perjudica e inhibe la lucha para poner fin a la misma. El Gobierno debería trabajar de manera seria con las organizaciones antiesclavistas, en vez de criminalizar y perseguir a dichas organizaciones y a sus miembros. En efecto, en lugar de centrarse en abordar las reclamaciones de los mauritanos, entre éstos, descendientes de esclavos o de antiguos esclavos, quienes siguen protestando por su falta de oportunidades, el Gobierno ha señalado a los activistas antiesclavistas como responsables de las manifestaciones. Existe un gran número de casos de malos tratos y de persecución contra estas organizaciones y sus miembros. El Sr. Biram Dah Abeid, un activista destacado, fue liberado recientemente gracias a los grandes esfuerzos de grupos de defensores de los derechos humanos que consiguieron una victoria en la Corte Suprema de Justicia. Sin embargo, se teme que vuelva a ser detenido. Además, el Sr. Amadou Tidjane Diop fue arrestado en junio de 2016, junto con otros 12 miembros de la Iniciativa para la Recuperación del Movimiento Abolicionista (IRA). Su arresto estaba relacionado con una manifestación espontánea entre los habitantes de Bouamtou, barrio donde viven una gran mayoría de los harratines, descendientes de los esclavos que habían sido amenazados con ser desalojados en julio de 2016. A pesar de los registros y allanamientos arbitrarios, la policía fue incapaz de establecer la conexión entre los activistas de la IRA y la manifestación en el barrio de Boumatou. Durante su detención, los activistas arrestados fueron víctimas de torturas, maltratos, y amenazas de muerte. En el 2008, la IRA solicitó que se le reconociera su personalidad jurídica, hasta la fecha no ha sido ni reconocida ni autorizada por las autoridades. Por lo tanto, cada activista de la IRA corre el riesgo de ser condenado por «pertenencia a una organización no reconocida» en cualquier momento. Las organizaciones de la sociedad civil y sus activistas han demostrado su capacidad y determinación por ser parte de la solución. Deberían ser apoyados y no perseguidos.

The Government member of Egypt thanked the Government for providing information on the actions of its authorities to tackle the problem of slavery, including the laws that had been enacted, the establishment of special courts, and the organization of awareness-raising campaigns and training sessions. The Government had developed a strategy to combat the issue. He hoped that the technical assistance requested by the Government would be provided.

Le membre employeur de l'Algérie a constaté avec satisfaction que la question de l'esclavage est bien prise en charge au niveau de la loi fondamentale du pays, qui constitue la référence et l'ancrage juridique des textes législatifs et réglementaires subséquents qui incriminent toutes les formes de travail forcé. L'orateur s'est félicité de cette grande avancée et des efforts déployés par le gouvernement pour la mise en conformité de sa législation avec la convention, efforts qui méritent tout le soutien et l'accompagnement de cette commission.

Le membre gouvernemental de l'Algérie a souligné qu'il ressort des informations fournies par le représentant gouvernemental que les mesures prises pour combattre le travail forcé revêtent un caractère pratique et efficace et qu'elles s'inscrivent dans la mise en œuvre de la feuille de route pour la lutte contre les séquelles de l'esclavage. Au-delà des mesures visant à renforcer le cadre législatif et institutionnel, des mesures de sensibilisation et de formation des acteurs concernés ont également été adoptées avec, en parallèle, la mise en place d'un mécanisme de suivi dans lequel toutes les parties prenantes et la société civile sont associées. Il apparaît donc que beaucoup de résultats positifs ont été enregistrés et qu'il existe une mobilisation collective pour mettre en œuvre les mesures visant à combattre le travail forcé. Par conséquent, il y a lieu de saluer les efforts déployés par la Mauritanie et de continuer à l'appuyer pour qu'elle poursuive sur cette voie.

La membre travailleuse de la France s'est référée au rapport de la commission d'experts soulignant que «les victimes de l'esclavage se trouvent dans une situation de grande vulnérabilité qui requiert une action spécifique de l'Etat» et qu'elles «ne connaissent pas leurs droits et une pression sociale peut s'exercer sur elles si elles dénoncent leur situation». A cet égard, le gouvernement a ratifié le protocole de 2014 qui affirme que la suppression effective et durable du travail forcé implique des mesures afin d'assurer aux victimes une protection et un accès à des mécanismes de recours et de réparation appropriés et efficaces, tels que l'indemnisation, et la nécessité d'identifier et de protéger les victimes afin de permettre leur réadaptation et de leur prêter assistance et soutien. Il y a lieu de se féliciter de cette ratification et des efforts déployés en matière législative, mais il est maintenant essentiel de mettre en œuvre l'ensemble de ces dispositions afin d'éradiquer les pratiques esclavagistes en Mauritanie. Un nombre très important de personnes sont réduites en esclavage en Mauritanie. Ceux qui osent franchir le pas de la dénonciation auprès des autorités font face au mieux à la banalisation de leur situation, au pire à la répression policière et au renvoi chez leur maître. En 2009, la Rapporteuse spéciale des Nations Unies sur les formes contemporaines d'esclavage a effectué une visite en Mauritanie et a noté que l'absence d'autres moyens de subsistance, l'analphabétisme et le manque d'informations ainsi que le recours à la religion contribuaient à maintenir la domination des maîtres. Des organisations antiesclavagistes offrent différents types d'aide aux victimes, tels que

des abris, des programmes de formation et d’alphabétisation et des informations concernant leurs droits. Leurs activités sont sévèrement entravées et leurs membres actifs poursuivis en justice. Rappelant que le protocole de 2014 affirme la nécessité d’associer et de consulter les organisations de travailleurs et d’employeurs, l’oratrice a appelé le gouvernement à faire preuve d’engagement et à coopérer avec les partenaires sociaux et la société civile afin de mettre en œuvre la loi de 2015 dans le but d’éradiquer l’esclavage et de mettre fin à l’impunité.

Le représentant gouvernemental a remercié les délégués étant intervenus au cours de la discussion, et en particulier ceux qui ont fait l’effort de comprendre la situation et qui ont salué les progrès tangibles réalisés par la Mauritanie dans la lutte contre les séquelles de l’esclavage, l’encourageant à persévérer sur cette voie. Le gouvernement coopère avec les instances internationales, notamment le Conseil des Droits de l’Homme, et donne effet aux recommandations qu’elles émettent. Cet esprit d’ouverture et de coopération participe de la volonté du gouvernement d’associer tous les acteurs concernés par cette question qui est liée aux vestiges légués par l’Histoire. Le gouvernement agit par devoir et conviction et non pas sous la pression de quiconque. Il tiendra compte des préoccupations émises par certains intervenants, et notamment ceux représentant les travailleurs. A cet égard, les programmes actuellement mis en œuvre répondent d’ailleurs déjà à certaines de ces préoccupations. Il est toutefois regrettable de constater que certaines allégations relèvent de la surenchère et ignorent les évolutions positives. Un tel esprit de négation ne sert pas les victimes. Il faut en effet déployer et conjuguer tous les efforts pour répondre à l’impératif qui consiste à bien comprendre la situation des victimes. L’orateur a conclu en réaffirmant que le gouvernement agissait et qu’il tiendrait compte des préoccupations exprimées, notamment en ce qui concerne l’étude qui est déjà programmée dans le cadre du projet Bridge.

Les membres employeurs ont déclaré avoir pris bonne note des multiples initiatives prises pour prévenir toute forme de travail forcé en Mauritanie, identifier et protéger les victimes de l’esclavage et sanctionner les abus constatés en la matière. Dans ce contexte, il convient de rappeler qu’il est de la responsabilité collective des mandants de l’OIT de garantir que, au XXI^e siècle, les droits sociaux fondamentaux soient respectés dans l’ensemble des Etats Membres. Toute plainte dans ce domaine doit être sérieusement examinée par les autorités nationales, en particulier par des fonctionnaires et des magistrats compétents et indépendants. Il en est ainsi du travail forcé qui doit sans attendre être éradiqué de manière permanente. Il y a lieu de se réjouir des efforts déployés par le gouvernement; cependant, l’éradication de l’esclavage et ses séquelles requiert un arsenal de mesures préventives et curatives permanentes. Le gouvernement doit donc poursuivre ses efforts et notamment:

- renforcer l’efficacité et les capacités de tous les maillons du système administratif et judiciaire;
- récolter, analyser et fournir périodiquement des informations sur le nombre de cas d’esclavage dénoncés auprès des autorités, le nombre de ceux qui ont abouti à une action en justice, les indemnisations accordées aux victimes, et les sanctions infligées;
- continuer de mettre en œuvre les 29 recommandations de la feuille de route, en particulier celles concernant l’assistance apportée aux victimes et leur indemnisation ainsi que la lutte contre la pauvreté;
- s’assurer que le Comité technique interministériel évalue l’impact des mesures prises dans le cadre de la feuille de route, en impliquant activement tous les acteurs de la société civile, les autorités religieuses et les partenaires sociaux, y compris les syndicats représentatifs;
- sensibiliser de manière encore plus efficace la société civile, compte tenu des racines culturelles de l’esclavage, qui sont profondément ancrées dans les mentalités et qui opposent encore des forces contraires aux efforts du gouvernement.

Les membres travailleurs ont salué la volonté politique affichée par le gouvernement de faire de la lutte contre l’esclavage et ses séquelles une de ses priorités. Le gouvernement doit néanmoins assurer la concordance entre ses déclarations et les résultats de ses actions. A cette fin, il convient de mettre en place en Mauritanie une collecte permanente et systématique de données statistiques relatives à l’esclavage dans l’ensemble du pays. Le BIT bénéficie à cet égard d’une expertise dont la Mauritanie pourrait bénéficier. L’application stricte de la loi de 2015 est nécessaire afin de s’assurer que des enquêtes sont effectivement diligentées à l’égard des auteurs responsables de pratiques d’esclavage. Ces derniers doivent être poursuivis et condamnés à des peines proportionnelles à la gravité du crime commis, afin de garantir l’effet dissuasif du dispositif répressif. Toute possibilité de règlement amiable dans une affaire d’esclavage doit être exclue. Le gouvernement est également invité à mettre en place un parquet et un corps de police spécialisés en matière de lutte contre l’esclavage. La justice doit être dotée de moyens suffisants afin d’assurer que les poursuites initiées devant les trois cours spéciales sont traitées dans un délai raisonnable. Les autorités chargées de ces poursuites doivent être formées et le public doit être sensibilisé aux infractions en lien avec l’esclavage afin de mettre un terme aux réticences de la police et des autorités judiciaires

constatées dans le traitement de plaintes. L'efficacité et la réussite des poursuites en matière d'esclavage passeront par le développement et la mise en œuvre de campagnes de sensibilisation à l'adresse du grand public, des victimes de l'esclavage, de la police, des autorités administratives, judiciaires et religieuses. Elles exigeront également qu'il soit accordé aux victimes une protection et des moyens de subsistance, et ce dès leur identification ou dès l'introduction d'une plainte. A cet égard, il est demandé au gouvernement de fournir des informations statistiques relatives aux poursuites entamées ainsi que des informations relatives à l'application pratique des mesures de protection prévues dans la loi de 2015. Le gouvernement devra développer des indicateurs clairs, qualitatifs et objectifs permettant de mesurer les résultats obtenus dans la lutte contre les pratiques esclavagistes. Ce point est particulièrement important pour l'analyse des résultats obtenus dans le cadre de la feuille de route. En outre, l'Agence Tadamoun devra bénéficier de tous les moyens nécessaires à la réalisation des objectifs importants qui lui sont assignés, en vue de soutenir et d'autonomiser les communautés ou les personnes affectées par l'esclavage. Le gouvernement doit pleinement saisir l'opportunité du soutien que lui apporte le projet Bridge pour la réalisation de ces recommandations. De plus, l'implication des partenaires sociaux et la société civile dans toutes les initiatives de lutte contre l'esclavage, en permettant notamment à ces acteurs de participer aux travaux de l'Agence Tadamoun et du comité interministériel chargé de la mise en œuvre de la feuille de route, est une nécessité impérieuse. Enfin, le gouvernement doit libérer dans les plus brefs délais les membres de l'IRA encore emprisonnés et cesser à l'avenir d'entraver le travail des organisations de lutte contre l'esclavage. Le gouvernement doit au contraire coopérer avec ces organisations afin d'augmenter les chances de succès de l'éradication de l'esclavage dans le pays. Pour réaliser toutes ces recommandations, qui rejoignent pour une grande partie celles formulées par les membres employeurs, il est demandé au gouvernement de solliciter l'assistance technique du BIT.

Conclusions

La commission a pris note de la déclaration orale du représentant gouvernemental et de la discussion qui a suivi.

La commission a pris note des efforts déclarés du gouvernement pour lutter contre l'esclavage et ses séquelles et a prié instamment le gouvernement de poursuivre ces efforts. Toutefois, la commission s'est déclarée vivement préoccupée par la persistance de l'esclavage à grande échelle en dépit de nombreuses discussions au sein de la commission. La commission est déçue que le gouvernement n'ait engagé que très peu de poursuites à l'égard des auteurs du crime d'esclavage depuis le dernier examen de ce cas devant la commission.

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

- **appliquer strictement la loi de 2015 contre l'esclavage pour garantir que les responsables de pratiques esclavagistes font effectivement l'objet d'enquêtes, qu'ils sont poursuivis, sanctionnés et purgent une peine à la mesure de la gravité du crime;**
- **fournir des informations sur le nombre de cas d'esclavage dénoncés auprès des autorités, le nombre de ceux qui ont abouti à une action en justice, et le nombre et la nature des condamnations prononcées;**
- **fournir des informations sur les mesures de réparation prises en faveur des victimes;**
- **renforcer l'inspection du travail et autres mécanismes d'application de la loi pertinents afin de combattre l'imposition du travail forcé;**
- **constituer des unités spécialisées au sein du ministère public et des forces de l'ordre pour rassembler les preuves et diligenter les procédures judiciaires correspondantes;**
- **veiller à ce que les poursuites engagées devant les tribunaux spéciaux pour les crimes d'esclavage soient facilitées et traitées dans un délai raisonnable, des campagnes d'information étant menées sur les condamnations encourues;**
- **établir des indicateurs clairs et objectifs pour évaluer si la feuille de route pour la lutte contre les séquelles de l'esclavage est pleinement mise en œuvre;**
- **réaliser une analyse complète sur la nature et l'incidence de l'esclavage pour permettre d'affiner les actions visées pour éradiquer ce fléau;**

- accroître la visibilité des campagnes de sensibilisation en direction du public, des victimes, de la police, des autorités administratives, judiciaires et religieuses;
- faciliter l'intégration sociale et économique des victimes en assurant l'accès aux services et ressources leur permettant de reconstruire leur vie et de ne pas retomber dans l'esclavage;
- fournir des informations détaillées sur les opérations, programmes et ressources dont disposent l'Agence nationale pour la lutte contre les séquelles de l'esclavage, l'insertion et la lutte contre la pauvreté, «Tadamoun»;
- veiller à ce que les victimes ayant dénoncé leur situation soient protégées contre des mesures de représailles et toutes pressions sociales, et libérer sans condition les personnes ayant dénoncé publiquement des situations d'esclavage.

A cet égard, la commission demande au gouvernement de continuer à solliciter activement l'assistance technique du BIT pour mettre en œuvre les recommandations et d'accepter une mission de haut niveau. La commission demande également au gouvernement de communiquer, à la prochaine réunion de la commission d'experts en novembre 2017, des informations détaillées sur les mesures prises pour mettre en œuvre ces recommandations.

Conclusions

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

The Committee took note of the Governments stated efforts in the fight against slavery and vestiges of slavery and urged the Government to continue these efforts. However, the Committee expressed deep concern over the persistence of slavery on a widespread scale despite numerous discussions in the Committee. The Committee was disappointed that the Government has prosecuted very few of those responsible for the crime of slavery since the last discussion of this case in the Committee.

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

- strictly enforce the 2015 anti-slavery law to ensure that those responsible for the practice of slavery be effectively investigated, prosecuted and receive and serve sentences that are commensurate with the crime;
- provide information on the number of cases of slavery reported to the authorities, the number of those cases which resulted in judicial action, and the number and nature of the convictions;
- provide information regarding the remedial action taken in respect of victims;
- strengthen the labour inspectorate and other relevant enforcement mechanisms to combat the exaction of forced labour;
- establish specialized units in the Office of the Public Prosecutor and the forces of order with the capacity to gather evidence and initiate the corresponding judicial procedures;
- ensure that prosecutions at the special courts for slavery crimes are supported and processed in a timely manner, and with public awareness-raising campaigns around the convictions;
- develop clear and objective indicators to assess the full implementation of the Roadmap to Combat the Vestiges of Slavery;
- conduct a complete analysis in relation to the nature and incidence of slavery as a basis for improving targeted actions to eradicate slavery;
- increase the visibility of awareness-raising campaigns for the general public, victims, the police, administrative and judicial authorities and religious authorities;

- ensure the social and economic integrations of victims of slavery by providing access to services and resources enabling them to reconstruct their lives and to prevent a return to slavery;
- provide detailed information on the operations, programmes and resources provided to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun”;
- ensure that victims who identified their situation are protected from retaliatory measures and social pressures, including by unconditionally releasing those who have publicly denounced slavery.

In this regard, the Committee calls on the Government to effectively pursue ILO technical assistance to address the recommendations and to accept a high-level mission. The Committee also asked the Government to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

Conclusiones

La Comisión tomó nota de la declaración oral realizada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión también tomó nota de los esfuerzos que el Gobierno indica que ha realizado en la lucha contra la esclavitud y las secuelas de la esclavitud e instó al Gobierno a proseguir estos esfuerzos. Sin embargo, la Comisión expresó su profunda preocupación por el hecho de que, a pesar de las numerosas discusiones que se han realizado en la Comisión, la esclavitud siga estando muy extendida. Además, la Comisión lamentó que el Gobierno sólo haya procesado a un número reducido de responsables del delito de esclavitud desde que este caso se discutió por última vez en la Comisión.

Teniendo en cuenta la discusión del caso, la Comisión urgó al Gobierno de Mauritania a que:

- haga cumplir estrictamente la ley contra la esclavitud de 2015 a fin de que los responsables de imponer la esclavitud sean efectivamente investigados y procesados y se les impongan y tengan que cumplir condenas que sean proporcionales al delito cometido;
- proporcione información sobre el número de casos de esclavitud denunciados ante las autoridades, y especifique en cuántos de estos casos se han interpuesto acciones judiciales, así como el número y la naturaleza de las condenas pronunciadas;
- transmita información sobre las medidas correctivas adoptadas en relación con las víctimas;
- refuerce la inspección del trabajo y otros mecanismos de aplicación pertinentes para combatir la imposición de trabajo forzoso;
- cree unidades especializadas en el Ministerio Público y las fuerzas del orden con capacidad para reunir pruebas e iniciar los procesos judiciales correspondientes;
- vele por que los procesos judiciales ante los tribunales especiales por delitos de esclavitud se sustancien y tramiten en el debido plazo, y se realicen campañas de sensibilización pública en relación con las condenas;
- desarrolle indicadores claros y objetivos para evaluar la plena aplicación de la Hoja de ruta para combatir las secuelas de la esclavitud;
- realice un análisis completo sobre la naturaleza y la incidencia de la esclavitud como base para tomar mejores medidas para erradicarla;
- aumente la visibilidad de las campañas de sensibilización destinadas a la población en general, las víctimas, la policía, las autoridades administrativas y judiciales y las autoridades religiosas;
- vele por la integración social y económica de las víctimas de esclavitud proporcionando acceso a los servicios y recursos que les permitan reconstruir sus vidas y evitar volver a ser esclavos;

- proporcione información detallada sobre las operaciones y los programas de la Agencia nacional para la lucha contra las secuelas de la esclavitud, la inserción social y la lucha contra la pobreza, o «Tadamoun», así como sobre los recursos destinados a esta agencia, y
- vele por que las víctimas que han denunciado su situación reciban protección frente a las represalias y la presión social y libere sin condiciones a quienes han denunciado públicamente la esclavitud.

A este respecto, la Comisión pidió al Gobierno que continúe aceptando efectivamente la asistencia técnica de la OIT a fin de cumplir las recomendaciones y que también acepte una misión de alto nivel. Asimismo, la Comisión pidió al Gobierno que informe detalladamente en la próxima reunión de la Comisión de Expertos, que se celebrará en noviembre de 2017, sobre las medidas adoptadas para aplicar estas recomendaciones.

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

Forced Labour Convention, 1930 (No. 29)

Convention (nº 29) sur le travail forcé, 1930

Paraguay (ratificación: 1967)

Paraguay (ratification: 1967)

Paraguay (ratification: 1967)

Un representante gubernamental indicó que la Autoridad Administrativa del Trabajo en el país ha conocido, desde el año 2013, un importante desarrollo institucional, con la creación del Ministerio de Trabajo, Empleo y Seguridad Social, una entidad con objetivos y misiones específicos a los temas sociolaborales. El nuevo Ministerio ha tenido que enfrentar desafíos cotidianos junto con la importante tarea de organizar una nueva dependencia a la altura de las altas exigencias encomendadas, ingresando en un proceso de modernización y crecimiento, ello a pesar de las limitaciones presupuestarias. El Ministerio ha llevado a cabo un desarrollo sustantivo en el cumplimiento de las normas vigentes. También ha propiciado modificaciones legales y reglamentarias en función de las recomendaciones de la Comisión de Expertos. Asimismo el diálogo social se ha potenciado en diferentes temas a través del Consejo Consultivo Tripartito, conforme a lo establecido en la Ley número. 5115/13 que crea el Ministerio de Trabajo, Empleo y Seguridad Social.

El orador subrayó la mayor participación del país en la OIT, incluido en relación con el pago de las contribuciones estatales, la presencia de gremios representativos en la Conferencia, la presentación de memorias relativas a los convenios y la asistencia técnica recibida por parte de la Oficina.

En relación al informe de la Comisión de Expertos, destacó que distintos temas abordados este año por la Comisión de Expertos habían sido desarrollados por el Gobierno en las memorias remitidas en años anteriores, y que en las mismas se manifestaba una decidida voluntad estatal para avanzar en el proceso de lucha y prevención del trabajo forzoso. Refiriéndose a la adopción por decreto número. 6285 de 15 de noviembre de 2016 de la Estrategia Nacional de Prevención del Trabajo Forzoso 2016-2020 (Estrategia Nacional de Prevención del Trabajo Forzoso), señaló que éste ha sido el resultado de numerosas reuniones tripartitas con los actores sociales y de talleres sectoriales organizados en diversos puntos del país. En la motivación del decreto se establece que el Poder Ejecutivo adopta esta estrategia atendiendo a la existencia de un sector de la población que, por diversas razones, se encuentra en una situación de especial vulnerabilidad, y en virtud a las observaciones presentadas por la Comisión de Expertos sobre la presunta existencia de situación de servidumbre por deudas en la zona del Chaco paraguayo, para que, con la coordinación del Ministerio de Trabajo, se puedan delinear políticas de Estado con el objetivo principal de definir instrumentos y medidas que enfrenten la problemática. El primer objetivo a corto plazo es la creación de un protocolo de procedimiento para el sector público que defina los roles, funciones y responsabilidades de las dependencias públicas afectadas al cumplimiento de la estrategia. El objetivo último busca coordinar a los organismos claves intervinientes en los casos a presentarse, como son el Ministerio de Trabajo, Empleo y Seguridad Social (Ministerio de Trabajo) el Ministerio Público, la Policía Nacional, el Ministerio de la Defensa Pública y el Poder Judicial, entre otros. Informó al respecto que está actualmente en desarrollo un proyecto de asistencia técnica de la OIT con el fin de presentar a la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso un Protocolo Interinstitucional, para ser puesto a consideración de los actores sociales y del Gobierno. Se espera que dicho instrumento se apruebe e implemente en el presente año o inicios del año que viene. La OIT apoya también al país en la realización de un módulo de capacitación a inspectores del trabajo en materia de trabajo

forzoso, como en la Planificación de Actividades 2017-2018 en el marco de la Estrategia Nacional de Prevención del Trabajo Forzoso.

En cuanto a las medidas adoptadas para fortalecer la unidad técnica de prevención y erradicación del trabajo forzoso de la inspección del trabajo, informó que se han contratado nuevos inspectores laborales por medio de concursos públicos, con exigencia de perfil profesional universitario, y que éstos han recibido capacitación por parte de expertos de la OIT en las áreas de fiscalización e inspección laboral. Reconociendo que el número de inspectores sigue siendo insuficiente, indicó que, en la medida de las posibilidades presupuestarias, se pretende ir incrementándolos en número y en distribución geográfica.

En relación con la falta de infraestructura y menor presencia estatal en la región del Chaco, señaló que se trata de una región muy particular ya que representa más del 50 por ciento del territorio nacional, con una densidad demográfica escasa de 350 000 personas de los cuales 40 000 son indígenas. La única dependencia del Ministerio de Trabajo existente se ubica en la localidad Teniente Irala Fernández. El objetivo a corto plazo es de habilitar la Dirección de Trabajo, a fin de que la misma funcione en la localidad de Filadelfia, más cercana a núcleos poblacionales de pueblos originarios. Al respecto, el Gobierno está ultimando los detalles para la firma de un convenio con el gobierno departamental de Boquerón a fin de que facilite las instalaciones básicas. Una vez ubicada la dirección en tal localidad, el siguiente paso será de dotarla de mayores funcionarios, y de ser posible, de asesores de las etnias nativas, con carácter permanente.

En relación a la necesidad de resoluciones judiciales dictadas en el marco de procesos en el que hayan sido detectadas prácticas de trabajo forzoso, se refirió a las memorias relativas al Convenio núm. 29 y al Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105) en las que se han adjuntado informes de sentencias judiciales y actuaciones del Ministerio Público relativos a casos de trata de personas y de situaciones de trabajo forzoso. Indicó también que la OIT está dando capacitación a los jueces del Poder Judicial en relación a convenios ratificados por el país. Esta tarea llevará tiempo en dar frutos.

Sobre el nuevo Código de Ejecución Penal, indicó que incluye normas que reglamentan el trabajo de internos en las penitenciarías nacionales y sustituye a la Ley Penitenciaria núm. 210 de 1970 conforme a los criterios de interpretación jurídica de ley posterior y ley especial.

Concluyó que la lucha contra el trabajo forzoso representa un desafío que la República del Paraguay ha encarado con responsabilidad, pero condicionado por situaciones geográficas, demográficas y presupuestarias. Se confirmará en el futuro un avance sostenido y sin pausa, en favor de la plena vigencia de los derechos fundamentales que deben ser mejor protegidos para sectores vulnerables de la población, y en particular de pueblos nativos del Chaco paraguayo. En este camino, la OIT es un aliado de inestimable valor, de la cual el país recibe asistencia significativa, todo lo cual acrecienta la esperanza de seguir progresando en el fiel cumplimiento del Convenio núm. 29.

Los miembros trabajadores subrayaron que durante veinte años, la Comisión de Expertos ha venido tratando la cuestión de la servidumbre por deudas impuesta a trabajadores y trabajadoras procedentes de las comunidades indígenas en Paraguay. Estas prácticas han sido igualmente verificadas por diversas misiones oficiales del Foro Permanente de las Naciones Unidas para las Cuestiones Indígenas, el Relator Especial sobre los derechos de los pueblos indígenas, así como por diversas investigaciones realizadas por la Confederación Sindical Internacional (CSI) y varios sindicatos paraguayos. La OIT ha estimado que al menos 8 000 trabajadores y trabajadoras podrían ser víctimas de trabajo forzoso en la región del Chaco en Paraguay. Pero el número puede ser incluso mucho más elevado si se tienen en cuenta las serias deficiencias de la inspección del trabajo, la infraestructura precaria, la amplitud de la zona y la indiferencia de las autoridades. Puede asumirse que tienen lugar violaciones del Convenio, con pleno conocimiento de las autoridades, ya que el recurso a la servidumbre por deudas es una práctica habitual en las estancias ganaderas. Normalmente, los trabajadores indígenas reciben una paga muy inferior al salario mínimo y se ven obligados a contraer créditos con los propios patrones. Esas sumas son utilizadas generalmente para la construcción de viviendas, el pago de las matrículas escolares o simplemente para comprar comida o ropa. Pero en realidad, la mayor parte de sus salarios se destina a pagar las deudas pendientes, quedando atrapados en situaciones que configuran trabajo forzoso.

En el pasado, gran parte de las tierras indígenas fueron vendidas a especuladores extranjeros, forzando a muchas comunidades indígenas a trabajar para las grandes explotaciones. Actualmente, estas estancias son la única fuente de empleo en el Chaco. Los hombres suelen trabajar en el campo, ocupándose de la recolección de las cosechas o de cuidar el ganado. Las tareas de servicio doméstico generalmente son desempeñadas por mujeres indígenas o en algunos casos por sus hijos, al servicio de los propietarios del rancho. Las trabajadoras domésticas

indígenas sufren constantes abusos por parte de sus empleadores, y a menudo no reciben salario, trabajando únicamente a cambio de alojamiento y comida.

En el caso de los niños, la situación es aún peor. En el Paraguay es común la práctica del «*criadazgo*», según la cual los niños trabajan como criados a cambio de tener cubiertas sus necesidades básicas y que se les permita obtener una educación. Dado que estos niños no tienen control sobre sus condiciones de empleo, en realidad están sometidos a trabajo forzoso. Alrededor de 47 000 menores, en su mayoría niñas, están empleados en Paraguay en el servicio doméstico en base al sistema de «*criadazgo*». Esto representa, según estadísticas de un censo oficial, el 2,5 por ciento de la población infantil y adolescente del país.

Los miembros trabajadores tomaron nota del establecimiento de una oficina de la Dirección de Trabajo en la localidad de Teniente Irala Fernández, en el Chaco central. No obstante, dicha oficina se encuentra a 72 kilómetros de distancia de la ciudad de Filadelfia, capital del departamento de Boquerón. Dado que los trabajadores indígenas no disponen de medios de transporte, les resulta imposible cubrir a pie esa distancia para poder presentar sus denuncias. La oficina cuenta de momento con una única empleada, que no dispone de la formación adecuada y carece de suficiente presupuesto para cubrir sus propios traslados. Además, el Gobierno no ha facilitado información a los sindicatos respecto de las actividades de dicha oficina, ni sobre el número de reclamaciones recibidas y tratadas en relación con el trabajo forzoso, ni sobre cualquier otra violación de los derechos laborales.

En este contexto, las violaciones no se denuncian y la presentación de denuncias podría redundar en detrimento de los trabajadores. El establecimiento de listas negras es habitual entre los empleadores del Chaco, y la mayoría de los propietarios exigen referencias antes de asignar cualquier trabajo dentro de sus estancias. Los trabajadores indígenas afirman que la presentación de una denuncia laboral puede afectar negativamente a otros miembros de su grupo étnico, acabando con las perspectivas de empleo para toda la comunidad.

En cuanto a las inspecciones, el Gobierno ha anunciado la creación de la Dirección de Trabajo Indígena y la unidad técnica de prevención y erradicación del trabajo forzoso de la inspección del trabajo, supuestamente integradas por seis inspectores del trabajo. No obstante, según los sindicatos paraguayos, estos organismos apenas fueron creados dejaron de funcionar. Durante el breve período de tiempo en que estas instituciones estuvieron operativas, nunca informaron a los interlocutores sociales sobre las multas impuestas a los empleadores, las indemnizaciones acordadas a los trabajadores o el número de trabajadores que participaban en cursos de formación.

En virtud de lo dispuesto en el artículo 25 del Convenio, deben imponerse y aplicarse estrictamente sanciones penales a las personas consideradas culpables de haber impuesto o usado el trabajo forzoso. No obstante, la Comisión de Expertos ha solicitado reiteradamente al Gobierno que facilite información sobre el número de casos en que los servicios de inspección hayan constatado el incumplimiento del Código del Trabajo respecto a la protección del salario y el funcionamiento de los economatos. Hasta la fecha, dicha información no ha sido facilitada a la OIT.

En abril de 2015, en base a las conclusiones de esta Comisión, una delegación del Ministerio de Trabajo, encabezada por el Ministro, visitó la región del Chaco con el fin de examinar las condiciones de trabajo en las explotaciones agrícolas. La delegación apenas visitó algunos centros de trabajo y durante toda la visita estuvo acompañada por representantes de las principales agroempresas de la región.

Según la información publicada en la página web del Gobierno, el Ministro de Trabajo lanzó un llamamiento a los propietarios de las estancias y a los representantes de las empresas, durante una reunión mantenida en el marco de la visita, diciendo textualmente: «*No acompañamos aquellas denuncias interesadas que radicarón en la OIT en Ginebra, pero necesitamos demostrar que no existe trabajo forzoso y queremos que nos ayuden. Debemos probar que es así*». Se puede entender como al final de la visita el Ministro hizo declaraciones, ampliamente difundidas en la prensa nacional, afirmando que la misión no pudo verificar la existencia de trabajo forzoso en la región del Chaco.

La Comisión de Expertos, en su informe publicado en 2017, observó con profunda preocupación las dificultades de funcionamiento a las que se enfrentan las estructuras establecidas para que los trabajadores indígenas víctimas de trabajo forzoso puedan ejercer sus derechos, así como la falta de información sobre las actividades realizadas por dichas estructuras. Además, señaló que la legislación nacional no contiene aún disposiciones suficientemente precisas y adaptadas a las circunstancias nacionales, por lo que las autoridades competentes no puedan procesar a los autores de estas prácticas y sancionarlos debidamente. De hecho, no ha habido ninguna resolución judicial en relación con el trabajo forzoso en los últimos veinte años.

Los miembros trabajadores tomaron nota de la adopción en 2016, con la asistencia técnica de la OIT, de la Estrategia Nacional de Prevención del Trabajo Forzoso. No obstante, constataron con preocupación que las organizaciones sindicales no habían sido adecuadamente consultadas en la elaboración de dicha estrategia, ni tampoco informadas sobre los progresos realizados hasta la fecha. Además, la estrategia no contiene medidas específicas en lo que respecta a las comunidades indígenas del Chaco y de la región oriental. Un fallo significativo de la misma es que no contempla la represión y la sanción de los autores responsables del trabajo forzoso. Por otro lado, tampoco hace referencia al fortalecimiento institucional de la inspección del trabajo ni a la necesidad de coordinación entre la inspección y el Ministerio Público. Estos elementos constituyen una parte fundamental del Convenio, y han sido recomendados reiteradamente por la Comisión de Expertos.

Por último, en relación con el trabajo en prisión, a pesar de las múltiples solicitudes de la Comisión de Expertos, el Gobierno todavía no ha enmendado la Ley Penitenciaria, en virtud de la cual las personas sujetas a medidas de seguridad en un establecimiento penitenciario también están obligadas a trabajar en prisión. En base a la ley actual, las personas en prisión preventiva están sujetas a la obligación de trabajar en prisión, lo que constituye una clara violación de lo dispuesto en el artículo 2 del Convenio.

Los miembros trabajadores recordaron que los mecanismos de control de la OIT han venido examinando este caso desde hace veinte años. Observaron también que la OIT ya ha brindado asistencia técnica al Paraguay, pero que está claro que el Gobierno no tiene la voluntad política de adoptar los cambios requeridos en la ley y en la práctica para resolver las violaciones recurrentes del Convenio. Miles de trabajadoras y trabajadores, sobre todo indígenas, siguen siendo víctimas de abusos y estando sometidos a trabajo forzoso a manos de empleadores sin escrúpulos con el beneplácito del Gobierno. La asistencia técnica aportada no ha sido suficiente para superar la desconfianza existente entre la población del Chaco y el Gobierno. Finalmente, dada la seriedad del caso, los miembros trabajadores recomendaron que el Gobierno tomara medidas más contundentes, en cooperación con la OIT e involucrando a todos los implicados sobre el terreno.

Los miembros empleadores recordaron que el presente caso, que trata sobre el Convenio núm. 29, un Convenio fundamental, había sido ya examinado por esta Comisión en dos ocasiones. Siguiendo los comentarios de la Comisión de Expertos, el mismo abarca tres aspectos. El primer aspecto se refiere a la solicitud al Gobierno del Paraguay de que adopte las medidas necesarias, en el marco de una acción coordinada y sistemática, para responder a la explotación económica, particularmente la servidumbre por deudas, que afecta a determinados trabajadores indígenas, especialmente en la región del Chaco. Sobre este asunto, los comentarios de la Comisión de Expertos se refieren a una serie de medidas que dan cuenta de la voluntad política del Gobierno para dar cumplimiento a sus solicitudes, tales como la creación de la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso, el establecimiento de una subcomisión en la región del Chaco, la creación de una oficina de la Dirección de Trabajo en esa parte del país; y las actividades realizadas de forma conjunta con la OIT. Asimismo, se refieren a una serie de actividades, incluidas algunas específicas con comunidades indígenas, todas tendientes al desarrollo de una estrategia nacional de prevención del trabajo forzoso.

Los miembros empleadores comentaron que es necesario saber si dichas medidas han dado resultados. A este respecto, un dato que puede resultar alentador es la información proporcionada por el Gobierno según la cual los informes de la inspección realizadas en 2015 en el Chaco, si bien evidencian algunas violaciones a la normativa laboral, no comprueban ningún caso de trabajo forzoso. Por lo anterior, compartieron el reconocimiento de la Comisión de Expertos en cuanto al proceso participativo que ha permitido concluir con éxito la elaboración de la Estrategia Nacional de Prevención del Trabajo Forzoso y expresaron la esperanza de que ésta se aplique efectivamente en la práctica.

En segundo lugar, la Comisión de Expertos ha solicitado al Gobierno fortalecer las capacidades de los órganos encargados de hacer cumplir la ley y de completar el marco legislativo de lucha contra el trabajo forzoso, con el fin de que las víctimas puedan acceder a la justicia. Este punto trata a la vez dos materias: la primera se refiere al efectivo cumplimiento de ley y la segunda implica reformas al marco legislativo. Sobre la efectividad en la aplicación de sanciones, la Comisión de Expertos ha destacado el fortalecimiento de la inspección del trabajo por medio de la contratación de 30 inspectores de trabajo, que han sido capacitados sobre los asuntos en cuestión. De igual forma, se da cuenta de la creación de nuevos tribunales en la región del Chaco. Los miembros empleadores consideraron que ambas acciones muestran voluntad política del Gobierno para dar cumplimiento al objetivo apuntado al inicio, esto es, implementar una acción coordinada y sistemática, para responder a la explotación económica, particularmente la servidumbre por deudas, que afecta a determinados trabajadores indígenas, especialmente en la región del Chaco. Por tanto, aun compartiendo la apreciación de que existía falta de información sobre las actividades realizadas por las estructuras establecidas para que los trabajadores indígenas víctimas de explotación en el trabajo pudieran ejercer sus derechos, expresaron su desacuerdo con la Comisión de Expertos que concluye dificultades de funcionamiento de dichas estructuras, dado que tal conclusión se basa únicamente en la

información recibida de las organizaciones sindicales y debería ser corroborada con más información proporcionada por el Gobierno sobre el funcionamiento de tales instituciones.

En cuanto a la necesidad de completar el marco legislativo de lucha contra el trabajo forzoso, los miembros empleadores manifestaron que este tema no se vuelve a mencionar en el caso. Si así fuera, la recomendación sería la de iniciar un proceso de consultas tripartitas tendientes a lograr la reforma legal requerida.

En cuanto al tercer aspecto, relativo al trabajo impuesto a las personas en detención preventiva, compartieron la observación de la Comisión de Expertos que indica que la norma que permite el trabajo de personas sujetas a medidas de seguridad en un establecimiento penitenciario no es conforme al Convenio. No obstante, entendieron — de acuerdo con lo expresado por el Gobierno — que dicha norma ha sido derogada por una norma posterior por cuestión de incompatibilidad, no siendo necesaria su derogación expresa. A este respecto, pidieron al Gobierno que lo aclarara y que garantizara que el trabajo en esas condiciones esté prohibido en el Paraguay.

La miembro trabajadora de Paraguay indicó que, si bien reconocía los esfuerzos del Ministerio de Trabajo para la promoción de políticas públicas en materia laboral, éstos eran aún insuficientes y que su fortalecimiento era necesario tanto en personal como en recursos, para poder encarar una política más decidida de promoción de los derechos fundamentales, principalmente en el Chaco paraguayo. La aprobación de la Estrategia Nacional de Prevención del Trabajo Forzoso es un punto positivo. Las centrales sindicales han participado en su elaboración así como en las reuniones de la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso con el fin de seguir desarrollando la Estrategia. En su marco, se deben definir políticas y actividades que busquen combatir el trabajo forzoso.

Destacó la particular vulnerabilidad de la población indígena que requiere especial atención del Estado para su protección, aun más cuando las peculiaridades de la región del Chaco dificultan que las organizaciones gremiales puedan acceder a esta población. Observó que los miembros de pueblos indígenas presentan sus denuncias al Instituto Paraguayo del Indígena (INDI) sin recurrir a las dependencias del Ministerio de Trabajo. Reiteró el compromiso del sector sindical de seguir colaborando en la defensa de los derechos laborales y sindicales, sin discriminación. La mejor herramienta para enfrentar el trabajo forzoso es el diálogo social con los actores sociales en el marco de las comisiones tripartitas pertinentes. Se han realizado varias reuniones tripartitas sobre el tema, incluso con la presencia de la OIT, con el propósito de realizar una guía de atención para los casos de trabajo forzoso.

El miembro empleador del Paraguay, al tomar nota de los comentarios de la Comisión de Expertos en relación al caso, señaló que la Federación de la Producción, la Industria y el Comercio (FEPRINCO) participa en una mesa de diálogo tripartito e integra la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso (CONATRAFOR). Expresó el firme compromiso del sector empresarial paraguayo con el Convenio y con el diálogo tripartito e informó de la creación del Consejo Consultivo Tripartito (CCT), reglamentado por el decreto núm. 5159 del 2016. Se refirió al compromiso de la Unión Industrial Paraguaya (UIP), la Asociación Rural del Paraguay (ARP) y la Cámara Nacional de Comercio y Servicios de Paraguay (CNCSP) con la campaña nacional de formalización de la economía e indicó que son los principales aportadores del seguro social obligatorio al Instituto de Previsión Social (IPS). Informó que 19 representantes de la FEPRINCO habían participado en talleres para la elaboración de la Estrategia Nacional de Prevención del Trabajo forzoso. Expresó que eran conscientes de las dificultades de acceso a la región del Chaco. Las organizaciones de empleadores habían participado junto con el Gobierno y las comunidades indígenas en las visitas en la región con miras a exhortar la necesidad de adoptar medidas para evitar el trabajo forzoso contra los pueblos indígenas. Por último, el orador indicó que era anómalo que se hubiera traído este caso ante la Comisión, puesto que el Gobierno ha adoptado medidas para luchar contra el trabajo forzoso. Instó a la Comisión a adoptar una decisión acorde con la situación que el país está enfrentando en relación a este problema.

El miembro gubernamental de Panamá, hablando en nombre del Grupo de los Estados de América Latina y el Caribe (GRULAC), tomó nota de la información brindada por el Gobierno así como de los comentarios de la Comisión de Expertos que evidencian el compromiso del Gobierno y que está trabajando efectivamente para eliminar el trabajo forzoso. Resaltó la importancia de la adopción de la Estrategia Nacional de Prevención del Trabajo Forzoso, que constituye el marco para la elaboración de políticas y planes tanto nacionales como locales, como un paso importante en la lucha contra el trabajo forzoso. Destacó también que en los últimos años el país ha trabajado de cerca con la OIT. El Ministerio de Trabajo ha realizado continuas visitas e inspecciones en la región del Chaco paraguayo y no se han detectado casos de trabajo forzoso. Reiteró el compromiso del GRULAC con la erradicación del trabajo forzoso y valoró la función de la inspección del trabajo en este contexto. Confió en que el Gobierno seguirá avanzando en el cumplimiento del Convenio e instó a la OIT a seguir colaborando con el país en la prosecución de estos objetivos.

El miembro trabajador del Brasil expresó la solidaridad de las centrales sindicales brasileñas con los trabajadores paraguayos en su lucha contra el trabajo forzoso y recordó que la Comisión ya había instado enérgicamente al Gobierno paraguayo a adoptar medidas contra la forma en que están sometidos ciertos trabajadores indígenas, principalmente en la región del Chaco.

Lamentó que el Gobierno continuara ciego a la explotación del pueblo indígena, a pesar de haber ratificado el Convenio núm. 29 hace 59 años. Las violaciones de los derechos humanos por parte del Gobierno paraguayo continúan siendo practicadas como si los trabajadores fuesen una cosa y no gente. La deuda del trabajador con respecto a su empleador es la máscara usada para esconder hoy en día el trabajo forzoso. El trabajador se transforma en rehén del empleador que le proporciona alimento, vestuario, artículos de higiene y habitación. El trabajador no consigue cancelar su deuda al final de cada mes. Ésta, a menudo, incluso, se transmite a su viuda y a sus hijos que deben trabajar para eliminar la deuda.

Por todo ello, el orador solicitó a la OIT que adoptara medidas para asegurar que el Gobierno paraguayo evite que estas violaciones continuasen existiendo. Subrayó asimismo que si el Gobierno del Paraguay continuaba no cumpliendo con el Convenio núm. 29, se podían seguir otros caminos, por ejemplo denunciando ante la Organización de los Estados Americanos o la Comisión Interamericana de Derechos Humanos.

La miembro trabajadora de la República Bolivariana de Venezuela expresó la solidaridad de los sindicatos venezolanos con las centrales sindicales paraguayas en su lucha por lograr unas mejores condiciones de vida y de trabajo para la clase trabajadora en el país. Exhortó al Gobierno a que refuerce el diálogo tripartito con miras a poner fin al trabajo forzoso al que son sometidos los trabajadores indígenas, especialmente en la región del Chaco.

El miembro gubernamental de México se adhirió a la declaración del GRULAC. Tomó nota de que el caso descrito tiene un carácter aislado y sólo tiene lugar en la región del Chaco. Expresó su satisfacción con las medidas adoptadas por el Gobierno con miras a sancionar dichos hechos. Alentó al Gobierno a continuar con tales medidas así como con las acciones coordinadas con la OIT encaminadas al cumplimiento del Convenio.

El miembro trabajador de la Argentina señaló que los trabajadores argentinos consideran insuficientes tanto las explicaciones dadas por el Gobierno como las medidas que ha tomado. En efecto, los planes y las estrategias elaboradas por la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso y las estructuras creadas no han contado con los medios suficientes para erradicar esta forma de «esclavitud moderna». Además la lejanía de las dependencias de la administración de trabajo con las zonas donde se produce la explotación denunciada dificulta el acceso de las víctimas a las mismas. De ello da cuenta la escasez de denuncias existentes.

El orador, asimismo, hizo propias las recomendaciones de la Comisión de Expertos en cuanto a la necesidad de derogar la Ley Penitenciaria núm. 210 de 1970 y asegurar que las personas detenidas no estén obligadas a trabajar en prisión.

Lamentó además que el fenómeno de la esclavitud moderna no fuese un fenómeno aislado sino que por el contrario estuviese cada día más vinculado a las mafias y al crimen organizado. El hecho de que el trabajo forzoso y las conductas de explotación económica en todas sus formas constituyan una violación de los derechos humanos y atenten contra la dignidad de la humanidad está reconocido a nivel internacional. A este respecto subrayó que el Paraguay no ha ratificado el Protocolo de 2014 ni tampoco ha establecido penas severas a los responsables de estos crímenes o los ha sancionado de manera alguna.

Por todo ello, el orador consideró conveniente que la OIT tomara medidas para planear una misión extendida en el tiempo para erradicar dicha situación.

Un observador representando a la Confederación Sindical Internacional (CSI) lamentó que se tuviese que evaluar una vez más en la Comisión la aplicación del Convenio núm. 29 en el Paraguay y que las decisiones tomadas en 2013 no hubiesen sido suficientes para impedir que miles de trabajadoras y trabajadores hubiesen sido víctimas de trabajo forzoso. Efectivamente, según cálculos de los sindicatos del país y de la CSI, entre 30 y 35 000 personas residentes en los tres departamentos de la región del Chaco y también en otros departamentos de la zona oriental del Paraguay, en su mayoría indígenas, habrían sido víctimas de prácticas abusivas de trabajo forzoso u obligatorio, entendido éste conforme lo define el artículo 2, párrafo 1 del Convenio núm. 29. Tal ignominia y degradación humana se produce ante la inacción de las autoridades públicas paraguayas para combatir eficazmente la imposición del trabajo forzoso en provecho privado.

El orador recordó el informe de la Relatora Especial de las Naciones Unidas sobre los derechos de los pueblos indígenas de 13 de agosto de 2015, relativo a la situación de los pueblos indígenas en el Paraguay. Dicho informe confirma que existe en este país un marco constitucional de reconocimiento de los derechos de los pueblos indígenas, pero sin embargo, dicho marco normativo no se ha traducido en las medidas legislativas, administrativas y de otro tipo, necesarias para que los pueblos indígenas gocen de sus derechos humanos, incluidos los derechos laborales y el derecho a no ser compelidos al trabajo forzoso.

Por tanto, consideró, tal y como refleja el informe de la Comisión de Expertos sobre el caso, y pese a lo manifestado en esta Comisión por el Gobierno del Paraguay, que debían de entenderse como ciertas las consideraciones de la CSI y de los sindicatos paraguayos en cuanto a los incumplimientos mencionados.

Finalmente también recordó el requerimiento de la Comisión de Expertos de que deben imponerse y aplicarse estrictamente sanciones penales a las personas consideradas culpables de haber impuesto el trabajo forzoso, por lo cual solicitó al Gobierno que proporcionase información sobre las acciones judiciales emprendidas contra las personas que imponen el trabajo forzoso, tomando nota de la falta de resoluciones judiciales dictadas a este respecto.

El miembro trabajador de Uruguay respaldó la intervención de los miembros trabajadores así como aquellas intervenciones anteriores en las que se había manifestado que el Gobierno está lejos de cumplir el Convenio. Solicitó que se tuviera en cuenta, al analizar el caso, la Declaración Sociolaboral del MERCOSUR, bloque subregional del que el Paraguay es miembro. Señaló que el modelo económico del país basado en el agronegocio favorece los hechos denunciados. Consideró que la situación en el país había empeorado desde el último examen del caso en 2013. Por último, denunció la falta de diálogo social en el Paraguay.

El representante gubernamental indicó que el Gobierno estaba comprometido a trabajar con los actores sociales para avanzar en la lucha contra el trabajo forzoso. Tomó nota de las intervenciones hechas durante la discusión, no obstante rechazó ciertos comentarios por estar fuera de contexto o del orden del día. A través de la implementación de la Estrategia Nacional de Prevención del Trabajo Forzoso, se logrará una mejor protección de todos los trabajadores del país. También, es importante fortalecer la inspección del trabajo, así como la educación para prevenir delitos como la trata de personas. El Gobierno cuenta con el diálogo social para buscar soluciones, por ejemplo en el marco de la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso o de varias otras mesas de diálogo en materia de salario mínimo, educación o salud. Ha establecido debidas consultas para avanzar en estos temas. Señaló que algunas centrales sindicales no participaban en el diálogo social y les invitó a que lo hicieran. En relación con el tema del trabajo forzoso en la región del Chaco, reiteró que se trata de un territorio muy vasto con una población indígena de 40 000 personas. Recordó que este territorio no es solamente paraguayo, ya que cubre también parte de la Argentina, el Brasil y el Estado Plurinacional de Bolivia, razón por la cual las problemáticas de la región son abordadas entre estos países. Añadió que el Gobierno abordaba el tema de los pueblos indígenas de manera integral, involucrando a varias instituciones con coordinación del INDI. Con relación al *criadazgo*, en 2016 el Gobierno Nacional elaboró y presentó un anteproyecto de ley que tipifica esa práctica y las peores formas de trabajo infantil; este proyecto se encuentra actualmente en el Parlamento para su estudio. La legislación nacional cuenta con definiciones y sanciones sobre trabajo forzoso, servidumbre por deuda y matrimonio servil, por ejemplo en la Ley núm. 4788/12 Integral contra la Trata de Personas. El Ministerio Público ha procesado a responsables de estas prácticas y se cuenta ya con sentencias judiciales. Por último, afirmó que el Gobierno dará seguimiento a los comentarios de los órganos de control, aprovechando el apoyo continuo de la OIT en este contexto.

Los miembros empleadores tomaron nota con interés de la información proporcionada por el Gobierno del Paraguay con respecto a la institucionalización de sus acciones para responder de manera coordinada y sistemática a la situación de trabajo forzoso, particularmente con respecto a la servidumbre por deudas en la región del Chaco. Sin embargo, consideraron que quedaban dudas en relación con la eficacia de las medidas tomadas y expresaron la esperanza de que dichas medidas tuvieran resultados en la práctica. A este respecto, consideraron necesario que en su próxima memoria a la Comisión de Expertos, debida en 2017, el Gobierno proporcionara informaciones sobre: 1) el funcionamiento de la Comisión de Derechos Fundamentales en el Trabajo y Prevención del Trabajo Forzoso, y de la subcomisión en la región del Chaco; 2) las acciones especiales implementadas con las comunidades indígenas para prevenir situaciones de trabajo forzoso en aplicación de la Estrategia Nacional de Prevención del Trabajo Forzoso 2016-2020; 3) la capacitación de la inspección del trabajo, y 4) la vigencia de la Ley Penitenciaria núm. 210 de 1970.

Los miembros trabajadores lamentaron que pese a veinte años de recomendaciones por parte de los mecanismos de control de la OIT, y de la asistencia aportada, el Paraguay siguiera sin dar pleno cumplimiento a las disposiciones del Convenio. Las violaciones van desde la incapacidad por parte de las autoridades para recibir denuncias a graves deficiencias de la inspección del trabajo, pasando por la falta de sanciones penales y las lagunas

existentes en la legislación. Todos estos elementos combinados han dado lugar a una cultura donde la explotación de los trabajadores indígenas, hombres, mujeres y niños, es algo habitual. Señalaron que no se había recibido información sobre el Memorando de Entendimiento tripartito suscrito en 2014. Tomaron nota de la asistencia técnica aportada por la OIT y de la Estrategia Nacional de Prevención del Trabajo Forzoso. No obstante, dada la importancia de los desafíos y la continua falta de acción por parte del Gobierno, requirieron el envío de una misión de contactos directos de la OIT. Instaron además al Gobierno a: 1) asignar suficientes recursos humanos y materiales a las oficinas del Ministerio de Trabajo en la región del Chaco, para que puedan recibir las denuncias de los trabajadores e informes de trabajo forzoso, tomando las medidas apropiadas para asegurarse de que en la práctica las víctimas puedan recurrir a las autoridades judiciales competentes y estén protegidas; 2) proporcionar a la Comisión de Expertos información sobre las acciones judiciales emprendidas contra las personas que imponen el trabajo forzoso en forma de servidumbre por deudas; y asegurarse de que la legislación penal nacional contenga disposiciones suficientemente precisas y adaptadas a las circunstancias nacionales para que las autoridades competentes puedan iniciar acciones penales o encausar a los autores de estas prácticas y sancionarlos; 3) de manera prioritaria, reforzar la capacidad de la inspección del trabajo, para que pueda tratar de manera eficaz las denuncias presentadas, identificar a las víctimas y restaurar sus derechos a fin de prevenir que vuelvan a quedar atrapadas en situaciones de trabajo forzoso; 4) convocar a los interlocutores sociales, incluyendo las organizaciones más representativas, para que participen en el desarrollo de la Estrategia Nacional de Prevención del Trabajo Forzoso, garantizando, en línea con la aplicación del Convenio sobre pueblos indígenas y tribales, 1989 (núm. 169), que se consulte a los pueblos indígenas respecto a cualquier medida administrativa o legislativa que les afecte; el diálogo social tiene que ser efectivo y no solamente formal, y 5) respecto a la necesidad de enmendar la Ley Penitenciaria núm. 210 de 1970, para que guarde conformidad con el Convenio, tomar las medidas necesarias para garantizar que la legislación nacional esté conforme con lo dispuesto en el Convenio.

Conclusiones

La Comisión tomó nota de la declaración oral formulada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota de la ausencia de decisiones judiciales relativas al trabajo forzoso en forma de servidumbre por deudas o de otras maneras.

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

- **asigne recursos materiales y humanos suficientes a las oficinas del Ministerio de Trabajo de la región del Chaco para recibir las quejas de los trabajadores y las denuncias de trabajo forzoso, y adopte medidas apropiadas para que, en la práctica, las víctimas puedan acudir a las autoridades judiciales competentes;**
- **vele por que se emprendan acciones judiciales contra quienes imponen trabajo forzoso, en forma de servidumbre por deudas;**
- **siga fortaleciendo la capacidad de los inspectores del trabajo para que puedan atender efectivamente las quejas recibidas, identificar a las víctimas y restablecer sus derechos para impedir que vuelvan a verse atrapadas en situaciones de trabajo forzoso;**
- **siga incluyendo a los interlocutores sociales en el proceso de adopción de la Estrategia nacional de prevención del trabajo forzoso;**
- **elabore planes de acción regionales y defina medidas prioritarias para sensibilizar sobre el trabajo forzoso, con el fin de subsanar la situación de vulnerabilidad a la que se enfrentan los trabajadores indígenas y proteger a las víctimas que se hayan identificado;**
- **vele por que la legislación penal nacional contenga disposiciones suficientemente específicas para que las autoridades competentes puedan iniciar acciones penales contra los autores de estas prácticas.**

Conclusions

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

The Committee noted the absence of judicial decisions concerning forced labour in the form of debt bondage or otherwise.

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

- allocate sufficient material and human resources to the Ministry of Labour offices in the Chaco region for receiving workers' complaints and reports of forced labour, taking appropriate measures to ensure that in practice victims are in a position to turn to the competent judicial authorities;
- ensure that judicial proceedings are launched against persons exacting forced labour in the form of debt bondage;
- continue strengthening the capacity of labour inspectors, so as to enable them to deal effectively with the complaints received, to identify victims and restore their rights in order to prevent them from being trapped again in situations of forced labour;
- continue including social partners in the process of adoption of the National Strategy for the Prevention of Forced Labour;
- develop regional actions plans and priority actions to raise awareness on forced labour, to respond to the situation of vulnerability faced by indigenous workers, and to protect the victims identified;
- ensure that the national criminal law contains sufficiently specific provisions to enable the competent authorities to initiate criminal proceedings against the perpetrators of these practices.

Conclusions

La commission a pris note de la déclaration orale du représentant gouvernemental et de la discussion qui a suivi.

La commission a relevé qu'aucune décision de justice n'avait été rendue en matière de travail forcé sous forme notamment de servitude pour dettes.

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

- d'allouer suffisamment de ressources matérielles et humaines aux services du ministère du Travail dans la région du Chaco afin qu'ils puissent recevoir les plaintes et les dénonciations de travailleurs pour travail forcé et prendre des mesures adéquates pour garantir que, dans la pratique, les victimes sont en mesure de s'adresser aux autorités judiciaires compétentes;
- de faire en sorte que des poursuites judiciaires soient engagées à l'encontre des personnes imposant du travail forcé sous forme de servitude pour dettes;
- de continuer à renforcer les capacités des inspecteurs du travail afin de leur permettre de traiter correctement les plaintes reçues, de repérer les victimes et de restaurer leurs droits pour éviter qu'elles ne retombent dans des situations de travail forcé;
- de continuer à associer les partenaires sociaux au processus d'adoption de la Stratégie nationale de prévention du travail forcé;
- d'élaborer des plans d'action régionaux et de prévoir des actions à mener en priorité pour faire connaître le problème du travail forcé, apporter une solution à la vulnérabilité des travailleurs autochtones et protéger les victimes identifiées;

- de veiller à ce que le droit pénal national contienne suffisamment de dispositions spécifiques pour permettre aux autorités compétentes d'engager des poursuites pénales à l'encontre des auteurs de ces pratiques.

Forced Labour Convention, 1930 (No. 29)

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

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

Poland (ratification: 1958)

Pologne (ratification: 1958)

Polonia (ratificación: 1958)

A **Government representative** stated that ensuring conditions for decent and safe work for all employees in Poland was particularly important and that the national policy in that respect corresponded to the policy of the European Union (EU) and of the whole democratic international community.

She considered that migrant workers should be particularly protected and believed that regulations in Poland allowed for preventing and combating forced labour, including as a specific form of trafficking in persons. Many institutions were involved in fighting the phenomenon, including the ministry responsible for internal affairs, the police, the border guard, the Prosecution Office and the National Labour Inspection, and their activities were coordinated by the Inter-Ministerial Team for Combating and Preventing Human Trafficking (Inter-Ministerial Team).

Furthermore, the National Action Plan against Human Trafficking was regularly updated, especially its part on forced labour of migrants. In August 2016, the Council of Ministers had adopted the Plan for 2016–18, providing for the implementation of many activities aimed at securing the needs of Polish and foreign victims of trafficking in persons. Those activities included information campaigns aimed at raising awareness of the phenomenon of trafficking in persons for forced labour and of the associated risks, cooperation with employers' organizations and temporary job placement agencies in terms of combating forced labour, developing the National Intervention and Consultation Centre for victims of trafficking in persons, as well as providing trainings and handbooks for employees of institutions dealing with the issue of trafficking in persons and forced labour. In 2017, as a result of the work of a group of experts for victims' support of the Inter-Ministerial Team, the document "Practices of a labour inspector of the National Labour Inspection in case of suspected forced labour" had been updated and used for training of labour inspectors. In 2016, in cooperation with the public television, the Ministry of the Interior and Administration had realized 72 broadcasts of a prevention advertisement, and between October and December 2016, it had organized an outdoor information campaign in three cities on trafficking in persons for forced labour. A mobile exhibition entitled "Faces of trafficking in human beings" provided general information about the phenomenon of trafficking in persons, where to seek help, as well as about the forms of exploitation, including forced labour. Its content had been prepared in three language versions – Polish, English and Russian – and the exhibition had been presented in the majority of regions, particularly in regional government offices, schools, universities, bus and train stations and airports.

The National Action Plan also provided for the preparation of an analysis of the feasibility of detailing the national provisions to facilitate swifter and more efficient identification of cases of forced labour, a task that had also been included in the National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights for 2017–20. Apart from that, Poland had also adopted and implemented provisions ensuring equal treatment of foreigners in terms of employment; the number of controls in the field of legality of employment and working conditions of foreigners carried out by competent authorities increased every year. For example, the National Labour Inspection had conducted 4,257 such controls in 2016, which was 44 per cent more than in 2015 and 90 per cent more than in 2014.

The speaker considered that any cases related to serious infringements of migrant workers' rights, such as infringements related to forced labour, could only be of a purely incidental nature and under no circumstances could such incidents be considered to occur systematically. However, she explained that Poland was becoming the country of destination for a steadily growing number of labour migrants, especially for short-term employment, and the Government was aware of the fact that the situation presented numerous challenges, including the need to adjust the

existing provisions and to teach institutions which had not had frequent contacts with foreigners the practical methods of solving the emerging problems.

Recently, there had been some indications pointing to the employment of workers from the Democratic People's Republic of Korea (DPRK) in Poland, which could have contained elements of forced labour. However, the Government had treated such signals with utmost seriousness – steps had been taken to verify such allegations and carefully analyse the conditions of employment of DPRK citizens in Poland. Poland was not a party to any bilateral agreement with the DPRK, which would provide for any kind of cooperation in the field of exchange of workers, and the Polish authorities, including the Embassy in Pyongyang, neither participated in any way in employing DPRK citizens nor carried out any promotional activities in that regard. Employment of DPRK citizens took place only as an activity of individual entities and their numbers in recent years had amounted to dozen or several dozen per year.

Foreign employees were, in principle, subject to the same labour law as Polish citizens and the work of DPRK citizens in Poland was thus governed by the current Polish regulations. For a work permit to be issued to a foreigner staying in Poland, the worker must be offered a salary comparable to the salary of other employees in a similar position and the terms included in the agreement must be compatible with those specified in the work permit. The law provided for statutory sanctions for entities which had committed infringements in relation to employing foreigners and the relevant institutions were in charge of controlling, on a regular basis, the legality of the stay and employment of DPRK citizens and other foreigners in Poland. The border guard constantly monitored activities of DPRK citizens and kept the national border guard headquarters informed about the appearance of entities employing DPRK citizens in the region under their jurisdiction and about control measures taken against entities employing DPRK citizens and against those citizens.

Given the signals revealed in 2016, controls conducted by the National Labour Inspection and the border guard covered in practice all entities employing DPRK citizens in Poland. The verifications had not confirmed infringements against DPRK employees related to forced labour and there had been no violations concerning non-payment of wages for DPRK citizens, whether non-payment or payment of wages lower than indicated in work permits. Nevertheless, the control authorities had paid attention to the fact that a lack of cooperation between them and the potentially affected DPRK citizens could be observed and could hamper control activities by preventing an objective assessment. The speaker considered such a situation as challenging and sensitive, especially if actions taken by the host country could pose a threat to the worker or his or her family residing in the country of origin, and expressed interest in hearing the experience of other countries and social partners on how to cope with such challenges. She further indicated that control authorities and institutions involved in the issuance of work permits to foreigners had increased their vigilance to worrying signals which could indicate suspected exploitation of DPRK nationals. It was also underlined that each entity employing a DPRK national in Poland should be aware of the fact that it would receive attention of the competent institutions and each observed abuse would be punished in accordance with the applicable law.

In conclusion, the speaker emphasized that in 2016 and 2017, the Embassy of the Republic of Poland in Pyongyang had not issued any visa for DPRK citizens to seek employment and the only persons currently working in Poland would be those who had been in the country earlier. Therefore, the level of presence of DPRK employees on the Polish labour market, which had already been marginal – below 0.1 per cent of all foreigners working in Poland – was gradually decreasing. On 1 January 2017, there had been 400 DPRK citizens in Poland with valid residence permits other than visas, including 368 temporary residence permits and 31 long-term EU residence permits but not all of them worked in Poland. A general prohibition of arrival and taking up a job would have no basis in the applicable law, either at the national or EU levels, it would constitute discrimination on grounds of nationality and would also raise questions as to the best ways of action in cases of countries known to disrespect fundamental civil rights. The speaker questioned whether a total isolation of those countries, including a total prohibition of taking up a job, would be the best solution. Apart from the fact that probably not all the countries would agree to implement such a measure, the question remained as to whether such isolation would have any positive effects from the perspective of civil freedoms in such countries. She concluded by stating that the employment of DPRK citizens was a specific case that should not be generalized into the overall picture of employing foreigners in Poland but that such cases should, due to their nature, be considered with particular care, on the basis of well-documented data, while maintaining a certain proportion to the scale of detected abuse.

Les membres employeurs ont souligné que la Pologne a ratifié cette convention fondamentale de l'OIT depuis presque soixante ans, s'engageant ainsi formellement à supprimer immédiatement et définitivement de son territoire toute forme de travail forcé ou obligatoire. Les autorités nationales doivent donc rester proactives et veiller non seulement à disposer d'une législation en conformité avec la convention, mais également à en assurer l'application effective sur l'ensemble du territoire. Ces autorités doivent faire preuve d'une vigilance toute

particulière pour identifier les formes changeantes et inconnues que peut prendre le travail forcé. Les moyens humains et financiers nécessaires doivent donc être accordés aux services d'inspection pour garantir le développement des compétences professionnelles et l'indépendance juridique et déontologique des fonctionnaires. En outre, il y a lieu de s'assurer que les victimes ont un accès facile à la justice pour dénoncer les exactions dont elles sont l'objet, et que les auteurs et leurs complices sont systématiquement poursuivis et sévèrement punis, après application des procédures appropriées. Dans son rapport, le Rapporteur spécial des Nations Unies sur la situation des droits de l'homme en République populaire démocratique de Corée (RPDC) s'est référé à la situation d'environ 50 000 travailleurs nord-coréens envoyés par leur gouvernement pour travailler dans plusieurs pays dans des conditions relevant du travail forcé. Le Rapporteur spécial a mentionné 18 pays, dont la Pologne, prétendument impliqués dans ce système de travail forcé, sans donner de précisions sur le nombre de victimes dans chacun de ces pays. Il ressort néanmoins que la grande majorité de ces travailleurs ne sont pas occupés en Pologne. Le Rapporteur spécial s'est référé à l'étude indépendante menée en 2014 par MM. Shin Chang-hoon et Go Myong-hyun selon laquelle environ 500 travailleurs de la RPDC seraient victimes de travail forcé en Pologne. Si ce chiffre a été corroboré en 2016 par le syndicat indépendant et autonome «Solidarność», qui dénombre plusieurs centaines de travailleurs nord-coréens en Pologne, il a été cependant contesté par le gouvernement polonais et par l'organisation des employeurs de Pologne. Le gouvernement a en effet indiqué que l'inspection du travail n'a constaté aucune forme de travail forcé dont seraient victimes des travailleurs migrants de la RPDC. Aucune preuve d'irrégularités spécifiques dans le calcul ou le paiement des salaires et dans les conditions de travail des travailleurs de la RPDC en Pologne n'a été décelée. Or il convient d'accorder du crédit aux investigations et aux constatations faites par l'inspection du travail. A cet égard, la commission d'experts a salué plusieurs initiatives positives de la Pologne pour améliorer la qualité et l'efficacité des services d'inspection du travail, notamment en ce qui concerne la détection des situations de traite des personnes à des fins de travail forcé. L'organisation des employeurs de Pologne considère également que la législation nationale protège les travailleurs migrants en imposant des obligations spécifiques aux employeurs. Dans la pratique, l'inspection du travail concentre ses efforts sur les conditions de travail des travailleurs migrants ukrainiens qui sont environ 1 million en Pologne, et mène plusieurs milliers de visites d'inspection chaque année. S'agissant du travail forcé, selon un rapport de l'inspection du travail de 2016, seulement 10 travailleurs de la RPDC auraient été trouvés en situation irrégulière en Pologne. Les membres employeurs ont également considéré que les données transmises par «Solidarność» au sujet de travailleurs de la RPDC découverts dans une plantation, il y a une dizaine d'années, ne peuvent pas servir de fondement sérieux à une discussion au sein de cette commission. Considérant le manque de clarté des faits reprochés à la Pologne, il est assez surprenant qu'une telle situation fasse immédiatement l'objet d'une «double note de bas de page» de la part de la commission d'experts. Sous aucun prétexte, le travail forcé ne peut être organisé à l'initiative d'un gouvernement, d'une autorité publique ou d'une entreprise quelle qu'elle soit. Néanmoins, eu égard aux contradictions entre, d'une part, le rapport du Rapporteur spécial des Nations Unies corroboré par «Solidarność» et, d'autre part, le point de vue du gouvernement et de l'organisation des employeurs de Pologne, il convient d'encourager fortement le gouvernement à poursuivre les investigations et à mettre en œuvre tous les moyens nécessaires pour mieux cerner la situation vécue par les ressortissants de la RPDC travaillant en Pologne. Il est essentiel d'évaluer, de manière complète et objective, si les conditions de vie et de travail de ces travailleurs sont conformes aux normes fondamentales du travail. Si des pratiques de travail forcé sont découvertes, les victimes doivent être identifiées et protégées. En outre, les bénéficiaires de ces pratiques illégales doivent être identifiés et, après un procès équitable, faire l'objet de sanctions à la hauteur de la gravité des faits commis. Enfin, les membres employeurs ont également considéré que si des situations de travail forcé organisées par le gouvernement de la RPDC étaient constatées en Pologne, l'un des principaux responsables de ces situations abusives serait le gouvernement de la RPDC lui-même qui, par le fait de ne pas être membre de l'OIT, se met lui-même volontairement au ban de la société internationale et, notamment, des mécanismes de contrôle de l'OIT.

Les membres travailleurs ont salué la ratification par la Pologne du protocole de 2014 qui complète la convention n° 29 en l'adaptant aux formes modernes de travail forcé. La Pologne s'inscrit ainsi dans la lutte contre toutes les formes de travail forcé et notamment la traite des personnes qui constitue l'un des problèmes les plus urgents du XXI^e siècle. Il s'agit, dans le cas présent, d'évaluer l'application de la convention dans la pratique et, en particulier, les graves difficultés identifiées par la commission d'experts en ce qui concerne la vulnérabilité des travailleurs migrants face à l'imposition du travail forcé. Ces difficultés ont amené la commission d'experts à insérer dans son observation une double note de bas de page. Ce cas démontre également que le travail forcé est un phénomène qui affecte tous les pays et qu'il requiert, par conséquent, une vigilance constante et généralisée. Dans un contexte de flux migratoires importants, les travailleurs migrants sont particulièrement vulnérables et courent davantage de risques d'être victimes de travail forcé. La Pologne semble être un pays de destination de filières qui exploitent des migrants par le travail, notamment les travailleurs envoyés en Pologne par la RPDC. Toutefois, des travailleurs migrants provenant d'autres pays sont également vulnérables à ces pratiques. Si l'Etat polonais n'impose pas directement de travail forcé à ces travailleurs, il n'en demeure pas moins qu'il a le devoir et la responsabilité de prévenir, faire cesser et sanctionner ces pratiques. Les visites d'inspection qui ont ciblé les établissements employant des ressortissants de la RPDC n'ont pas révélé de situation relevant du travail forcé. Ceci pourrait paraître étonnant

au vu des observations formulées par «Solidarność» et par le Rapporteur spécial des Nations Unies au sujet d'un système par lequel ces ressortissants sont envoyés par leur gouvernement pour travailler de force à l'étranger, y compris en Pologne. La rémunération de ces travailleurs est ensuite en grande partie reversée au gouvernement de la RPDC. Le gouvernement polonais devrait adopter des mesures visant à renforcer les capacités des autorités chargées de l'application de la loi et des services de l'inspection du travail, et s'assurer que les sanctions imposées sont réellement efficaces et strictement appliquées. Depuis de nombreuses années, et de manière récurrente, la question de l'efficacité des moyens alloués à la lutte contre le travail forcé fait l'objet de commentaires de la part de la commission d'experts. Les efforts déjà déployés par le gouvernement demeurent insuffisants et doivent donc être renforcés. Il serait également souhaitable d'incriminer expressément le travail forcé dans l'arsenal législatif et de ne pas traiter cette question uniquement à travers la législation concernant la traite des personnes. Cette dernière notion ne couvre pas nécessairement toutes les formes de travail forcé. Le gouvernement doit également continuer de prendre des mesures pour protéger les victimes de travail forcé et leur permettre de dénoncer leur situation.

S'agissant de la possibilité pour les détenus de travailler pour des employeurs privés, les membres travailleurs ont rappelé que la convention exclut de la définition du travail forcé le travail exigé d'un individu comme conséquence d'une condamnation prononcée par une décision judiciaire. Le travail imposé dans ce contexte doit être réalisé sous la surveillance et le contrôle des autorités publiques et le détenu ne doit pas être concédé ou mis à la disposition de particuliers, compagnies ou personnes morales privées. Toutefois, la commission d'experts a considéré que, s'il existe les garanties nécessaires pour que les intéressés acceptent volontairement un travail, sans être soumis à des pressions ou à la menace d'une peine quelconque, un tel travail ne relève pas des dispositions de la convention. Toutefois, le contexte dans lequel ce consentement est exprimé, à savoir un contexte carcéral, rend difficile l'appréciation du caractère véritablement volontaire du consentement. C'est pourquoi de réelles garanties doivent être prévues dans la législation. La commission d'experts a souligné que des conditions de travail proches d'une relation de travail libre constituent l'indicateur le plus fiable du caractère volontaire du travail. Le libre consentement du travailleur doit ainsi être évalué au regard de ses différentes conditions de travail, et notamment du niveau de rémunération, de la sécurité sociale et de la sécurité et santé au travail. La législation polonaise prévoit que le détenu exprime son consentement au travail sans toutefois exiger que ce consentement soit formellement constaté. Il est donc essentiel de prévoir des dispositions garantissant que les détenus expriment préalablement et formellement un consentement libre et éclairé.

The Worker member of Poland noted that there could be no doubt that DPRK citizens were working in Poland, as reported by journalists and confirmed by inspection reports by the National Labour Inspectorate. However, inspectors had neither been able to confirm the limitations on the movements of DPRK citizens within Poland, nor the transferral of their remuneration to DPRK accounts, since payment of remuneration had been confirmed by the mention of the employees on the payment list. Similarly, in light of limited information received, labour inspectors were not in a position to confirm that DPRK citizens were indeed supervised by a "guardian" or a representative of the government of their country of origin.

While Poland had no legal definition of forced labour, applicable regulations provided for action against illegal work where work is performed under conditions of imprisonment, physical or psychological violence, deprivation of food or withholding of documents. Provisions in Chapter XXVIII of the Penal Code addressed offences against the rights of persons engaged in gainful employment, and relevant provisions were also contained in the Act of 15 June 2012 concerning the effect of employing foreigners residing illegally on the territory of the Republic of Poland (text No. 769), and the Act of 10 June 2016 on the posting of workers in the framework of the provisions of services (text No. 868). In extreme cases, provisions of the Penal Code criminalizing slavery could also apply.

Nevertheless, media reports in recent years had pointed to cases of DPRK citizens being subjected to forced labour on Polish territory, including situations in the construction and shipbuilding sectors. However, the National Labour Inspectorate, while acknowledging possible violations of labour laws in some cases, could not confirm that work had been extracted under the threat of punishment or coercion. Nevertheless, the fate of DPRK workers remained a source of concern that would require continued monitoring.

In conclusion, the speaker noted that, while the possibility of the existence of forced labour in Poland could not be denied, the legal confirmation of its existence was difficult. She stated that an international debate on the situation of DPRK workers was needed. At the same time, the Polish Government needed to work on amending the legislation in order to provide for a legal definition of forced labour and, given the scale of DPRK workers' employment in Poland, to provide a sufficient number of Korean sworn translators. Technical assistance by the ILO could help in the development of more effective national regulations and other instruments to support the formal proof of forced labour. The Polish Government was encouraged to seek ILO technical assistance in this area.

The Worker member of the Netherlands stated that the Dutch Federation of Trade Unions (FNV) had closely followed the case of DPRK workers in the EU and in Poland, in particular. In cooperation with the Leiden Asia Centre of Leiden University, research was conducted into the DPRK's practice of dispatching workers to the EU. Based on reports of the National Labour Inspectorate of Poland, in-depth interviews, company information and other relevant data, clear examples had been found of serious abuse of DPRK workers employed in Poland, which allowed to conclude that there was reason for concern about forced labour.

Given the difficulty encountered by the National Labour Inspectorate to prove forced labour, it was important for the National Labour Inspectorate to have full competence to investigate all aspects and indications of forced labour and for all officials involved to receive proper training. It was also recalled that the National Labour Inspectorate had been able to report in detail on several cases of forced labour, where workers had been misled, illegally employed and taken advantage of and had not received proper payment, holiday allowance, or holiday leave and that such infringements had been reported in at least 77 cases. The speaker provided details of one particular case – a fatal accident of a DPRK worker, Chon Kyongsu, in August 2014, in a shipyard in Gdynia – and indicated that the Polish Labour Inspectorate had subsequently looked into the case and found a number of illegal practices.

Based on the Convention, at least a number of indicators for forced labour were met: the DPRK workers, who had been sent from a country labelled by the UN as a country with unprecedented infringements of human rights, were likely targets for abuse of their vulnerability; the Labour Inspection had reported several cases of workers who had been misled or taken advantage of; passports were either kept at the embassy or with the managers and workers did not know when and how much they would be paid. Considering that Dutch companies were buyers of products produced with the possible use of forced labour, both Dutch trade unions and the Dutch Government had a clear interest in the situation of DPRK workers in Poland and were of the view that the companies must take responsibility in the supply chain. The Dutch Minister of Foreign Affairs had also expressed his concern and would further monitor research and actions on the matter.

The speaker welcomed the timely ratification by Poland of the 2014 Protocol to Convention No. 29 and trusted that efforts to implement the Protocol would lead to better instruments to fight such practices. With a clear definition of forced labour, protection for victims and access to remedies, including compensation, deterrent fines for infringements, and the strengthening of the National Labour Inspectorate, the Government would be in a better position to address forced labour.

The Worker member of Italy indicated that over one million Ukrainians lived in Poland. Most of them decided to migrate to Poland after the 2014 military conflict in eastern Ukraine, when the currency value had sharply declined and prices had risen. While the Committee of Experts drew attention only to Korean workers, the situation of living and working conditions of migrants coming from nearby countries was also important. These issues were included in the direct request addressed by the Committee of Experts to the Government.

The issue was particularly concerning in light of the 2016 Global Slavery Index which estimated that 181,100 people or 0.48 per cent of the total population lived in conditions of modern slavery in Poland. According to those data, forced labour affected especially migrant populations. Data from the Walk Free Foundation indicated that construction, domestic work, other manual labour and manufacturing were the most affected sectors.

Regionally organized crime organizations were implicated in forced begging. Roma mothers from poor communities in Moldova and the Ukraine were offered jobs in the sales or care sectors in Poland but had their passports confiscated upon arrival. Along with their children, they were forced to beg on the streets. According to estimates of the National Bank of Poland, 91 per cent of Ukrainian migrants in Poland had secondary or higher education, but as many as 70 per cent performed manual labour. According to information from the Foundation Nasz Wybór, in charge of helping Ukrainian citizens in Poland, selling fictional jobs was a serious issue, which increased undeclared work and left the labour rights of many workers unprotected. According to estimates of the Halina Nieć Legal Aid Centre, the number of victims of trafficking in persons in Poland reached several hundred every year and included a growing number of Ukrainians. It was difficult to estimate how many cases of modern-day slavery including trafficking for forced labour remained unreported.

A 2015 report by the European Union Agency for Fundamental Rights highlighted Poland as one of the EU countries where workers in the grey economy were most vulnerable to being exploited. This Agency had looked at "severe labour exploitation" across the EU with a particular emphasis on migrant workers. The Polish agricultural sector had been repeatedly mentioned, as no authority in Poland was permitted to monitor the working conditions in private farms. According to the same report, Poland was one of the four European countries where less than 1 per cent of all employers were inspected.

An immediate and concrete action was needed from the Government, in order to set cross-border cooperation to stop trafficking networks, protect migrant workers from abusive practices, identify the victims of forced labour and guarantee the prosecution of perpetrators.

The Worker member of Norway, speaking on behalf of the trade unions in the Nordic countries, stated that according to reports from “Solidarność” DPRK workers had been exploited and used for forced labour in Poland. Those observations had been confirmed by reports from various United Nations and EU agencies dealing with human rights, as well as reports by Polish scientists, researchers and the press. A report by academics from the Leiden Asia Centre of Leiden University in the Netherlands claimed that DPRK workers’ salaries were paid to managers and sent back to Pyongyang. According to United Nations estimates, the DPRK earned as much as £1.6 billion a year from workers it sent overseas. Human rights activists further claimed that tens of thousands of DPRK citizens had been sent abroad to work in about 40 countries as “state-sponsored slaves”. According to the Leiden report, the workers in Poland received a “minimal livelihood allowance” while often working more than 12 hours a day, six days a week.

The speaker also noted that according to a report by the European Union Agency for Fundamental Rights, Poland was one of the countries where workers in the grey economy are most vulnerable. Several incidents with migrant workers from many countries had been discovered, and Poland was one of four EU countries in which less than 1 per cent of employers were inspected. It was thus difficult for labour inspectors to control employers or to force them to meet their obligations, with a resulting increase of the risk of abuses, including trafficking in persons. Limitations in the legal capacities of labour inspection were especially apparent with cases of migrant workers, where the employer was a foreign entity not formally operating in Poland. In such case, the employer’s representative was responsible solely for documents confirming the legality of stay and the work permit, while inspectors had limited possibilities to communicate with workers because of restricted access to interpreters. As a result, labour exploitation of migrants could easily go unnoticed.

Although there were no legal obstacles for the workers to receive salaries in their country of origin, some countries could use internal legal provisions to carry out deductions. This was a common practice used by the DPRK Government, which deducted so-called “voluntary fees” as “contributions for the socialist revolution”.

In conclusion, the speaker noted that forced labour was prohibited in Poland and that it was not a common phenomenon, although changes in the law needed to be made when such cases were reported, in order to effectively prevent and protect foreign workers from forced labour and labour exploitation. Awareness should be raised among labour inspectors, enforcement agents, prosecutors, judges and among the public and the Government needed to improve monitoring on recruitment processes, while ensuring law enforcement.

The Government member of the Republic of Korea indicated that the issue of DPRK overseas workers had been a matter of concern of the international community not only from the standpoint of international labour standards but also from other perspectives including human rights and international security. Recent resolutions of the United Nations General Assembly and Human Rights Council had expressed serious concern at the violation of DPRK’s overseas workers’ rights. The United Nations Security Council, through resolution 2321 in 2016, had also voiced its serious concern that DPRK nationals were sent to work in other States for the purpose of earning money that the DPRK used for its nuclear and ballistic missile programmes and had called upon States to exercise vigilance over that practice. While recognizing the measures taken by the Government of Poland regarding the working conditions of DPRK workers and having full confidence that the recommendations made by the Committee of Experts would be faithfully implemented, it was hoped that the Government of Poland and the ILO would continue to make efforts to ensure that working conditions of DPRK workers in Poland be in accordance with relevant international standards.

The Worker member of Germany noted that the case at hand exemplified the fact that forced labour organized by the DPRK had gained a presence in the EU. There could be no doubt that the DPRK used forced labour to finance its military ambitions and maintain its system of oppression. That type of forced labour was systematically managed through enterprises such as those in Poland. It should be taken for granted that this system existed not only in the shipbuilding industry and that Poland was not the only country in which the DPRK was gaining hard currency through the use of forced labour.

Furthermore, the speaker drew attention to an additional dimension of these human rights violations, noting that the concerned enterprises were certified by NATO and thus eligible to participate in the public procurement of military contracts. At the same time, these enterprises had benefited from public funds such as the European Regional Development Fund. Client companies of such enterprises that were located in different countries of the EU were also profiting from the particularly inexpensive labour cost.

Given that the prohibition of forced labour was part and parcel of universal human rights norms, and in light of applicable United Nations, EU and ILO instruments, the speaker noted that the protection of human rights was not only the responsibility of States, but also that of companies, which had to ensure that they did not violate human rights in their business operations. In order to ensure that the responsibility for the protection of human rights could be properly discharged, it was necessary to guarantee transparency and public access to information. Thus, it was essential for the results of labour inspection to be made accessible and for additional, independent investigation to be conducted. Such a process should also be accompanied by the ILO. Furthermore, responsible enterprises and public entities needed to refrain from placing orders with companies associated with the violation of universal and fundamental human rights and should also abstain from participating in state-organized systems of forced labour such as that established by the DPRK.

The Government member of Norway, speaking also on behalf of the Government member of Iceland, indicated that forced labour was always unacceptable and that all member States were expected to do their utmost to eliminate forced labour in all its forms. There was concern about the situation of migrant workers from the DPRK, as described in the report of the Committee of Experts, including the information submitted by the Special Rapporteur of the United Nations. Therefore, all receiving countries needed to pay very close attention to the circumstances and conditions under which those workers worked and lived. Monitoring compliance by the labour inspectorate could often be very difficult. In that context, it was important to promote more transparency in supply chains. Forced labour was a serious violation of fundamental rights. Hence, receiving countries were strongly encouraged to take all needed measures in order to prevent its occurrence.

The Worker member of the United States recalled, with regard to the situation of forced labour of DPRK migrant workers in Poland and other countries such as Ukraine, the United Nations efforts to ensure “safe, regular and orderly” migration. According to documents provided to researchers, such workers were documented and arrived with permits to work in Poland. On the other hand, the process by which the Government of the DPRK mobilized those workers was largely hidden. Independent researchers and the National Labour Inspectorate had documented inconsistencies in the complex chain of employment relationships regarding the production by well-known shipbuilding and maintenance operations, as well as in other sectors – at least one of which is certified by NATO and therefore can bid on public contracts using taxpayer money from numerous countries.

In Poland, those workers lived and worked in a grey area. While their status as persons enabled to work in Poland was regular according to Polish and EU rules, the conditions in which they lived and worked there and under which they were paid was less clear. More transparency and accountability all along the supply chains using such workers – from labour recruitment to health and safety issues to wages and conditions – was needed. Regardless of the fact that in their country of origin their rights were not respected, the countries and companies in which they worked had the obligation to protect and respect those rights. The Leiden report referred to the profit made all along these supply chains. The Government of Poland should take measures to improve the situation. The discussion in the Conference Committee for labour migration should address those issues and should ensure that each worker was recognized as a person entitled to rights, not just as labour force.

The Government representative thanked all participants of the discussion and considered that the comments and suggestions coming from different perspectives were extremely valuable. Having acknowledged that the increasing inflow of foreigners seeking jobs in Poland presented a great challenge in terms of ensuring safe and decent working conditions and, in particular, protecting them against exceptionally severe forms of abuse, she considered that the views expressed could help Poland to comprehensively approach the issue. Poland had always carefully listened to the voice of the ILO and full commitment was expressed to the implementation of the recommendations formulated by the Committee. Furthermore, updated information and well-documented statistical data would be provided in the 2017 report on the application of the Convention.

Les membres travailleurs ont salué les informations fournies par la représentante gouvernementale, qui témoignent de la volonté de la Pologne de poursuivre sur la voie d’une meilleure application de la convention. A cette fin, le gouvernement devra:

- renforcer les moyens et les compétences des autorités chargées de l’application de la loi et des services de l’inspection du travail en vue de l’identification et de la répression des pratiques de travail forcé;
- désigner des interprètes parlant notamment coréen;
- accorder une attention particulière aux flux migratoires qui peuvent générer des situations de travail forcé;

- accorder une attention particulière aux méthodes de recrutement qui piègent les travailleurs dans des situations de travail forcé et prévoir des mécanismes de contrôle qui permettent de déceler et réprimer les pratiques abusives;
- renforcer le système répressif pour que des sanctions pénales dissuasives soient effectivement appliquées aux auteurs de ces pratiques;
- incriminer spécifiquement le travail forcé pour ne pas traiter cette question uniquement par le biais de la traite des personnes;
- continuer de renforcer, conformément à la recommandation (n° 203) sur le travail forcé (mesures complémentaires), 2014, les mesures de protection à l'égard des victimes afin que celles-ci puissent, sans crainte, introduire une plainte auprès des autorités. Il est également important de prévoir des recours effectifs et des mécanismes de réparation efficaces pour les victimes;
- prévoir de meilleures garanties pour s'assurer que les détenus qui travaillent pour des personnes morales de droit privé expriment formellement un consentement préalable, libre et éclairé.

Les membres travailleurs ont considéré que, pour réaliser l'ensemble de ces objectifs, la Pologne devait solliciter l'assistance technique du BIT.

Les membres employeurs ont pris dûment note des multiples initiatives prises par les autorités nationales, en particulier depuis 2016, pour prévenir toute forme de travail forcé en Pologne et pour sanctionner les abus constatés. Dans ce contexte, il convient de rappeler qu'il est de la responsabilité collective des mandants de l'OIT de garantir qu'au XXI^e siècle, les droits fondamentaux au travail soient respectés dans l'ensemble des Etats Membres. Toute plainte dans ce domaine doit être sérieusement examinée par les autorités nationales, en particulier par des fonctionnaires et des magistrats compétents et indépendants. Il en est ainsi du travail forcé qui doit sans attendre être éradiqué de manière permanente. La Pologne a démontré son engagement à lutter contre le travail forcé en ratifiant, en mars 2017, le protocole de 2014 relatif à la convention (n° 29) sur le travail forcé, 1930. Elle doit faire de cet engagement une réalité pour tous les travailleurs occupés sur le territoire, quel que soit leur statut ou leur nationalité. A cet égard, les organisations d'employeurs nationales, y compris en Pologne, s'engagent à accompagner les entreprises afin que les conditions de travail soient optimales et que tout abus envers les travailleurs soit interdit. Les membres employeurs se sont ralliés aux recommandations formulées par les chercheurs MM. Shin Chang-hoon et Go Myong-hyun dans leur étude indépendante, qui ont estimé que, pour mettre fin au travail forcé de travailleurs ressortissant de la RPDC, les pays d'accueil devraient contrôler sur le terrain leurs conditions de travail; mettre fin aux contrats de travail de ceux qui sont soumis à des conditions de travail forcé imposées par les autorités de la RPDC; et renforcer les contrôles sur les transactions bancaires liées au paiement des rémunérations. Toutefois, compte tenu des contradictions existantes et du peu d'informations disponibles, il est déplorable que ce cas figure sur la liste des plus graves violations des droits fondamentaux au travail en 2017. D'autres pays cités par le Rapporteur spécial des Nations Unies sont laissés hors de cause, et ceci ne paraît pas équitable. En conclusion, il convient de recommander aux autorités polonaises de: i) intensifier les efforts pour que les travailleurs migrants soient pleinement protégés contre les pratiques abusives et les conditions de travail qui seraient constitutives de travail forcé; et ii) fournir des informations sur les mesures prises pour identifier les situations de travail forcé dont peuvent être victimes des travailleurs migrants. En outre, si des situations de travail forcé étaient objectivement constatées, les autorités devraient fournir des informations, y compris statistiques, sur la situation des ressortissants de la RPDC victimes de travail forcé; prendre des mesures immédiates et efficaces pour que les auteurs de ces pratiques soient poursuivis et fassent l'objet de sanctions dissuasives; et assurer une protection adéquate aux victimes. Enfin, s'agissant des questions traitées dans la demande directe adressée à la Pologne, les membres employeurs ont considéré que celles-ci ne devraient pas faire l'objet de discussions spécifiques au sein de cette commission.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Poland to:

- increase its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to forced labour;

- provide information on the measures taken to identify cases of forced labour to the Committee of Experts paying particular attention to the situation of workers from the Democratic Peoples' Republic of Korea;
- take immediate and efficient measures so that the perpetrators of such practices, if they occur, are prosecuted and that dissuasive penalties are issued;
- ensure that identified victims of forced labour have access to adequate protection and remedies.

Conclusions

La commission a pris note des déclarations orales de la représentante gouvernementale ainsi que de la discussion qui a suivi.

Prenant en compte la discussion qui a eu lieu sur le cas, la commission a demandé au gouvernement de la Pologne de:

- accroître ses efforts pour assurer une protection totale contre les pratiques abusives et les conditions relevant du travail forcé;
- fournir à la commission d'experts des informations sur les mesures prises pour identifier les cas de travail forcé, en particulier sur la situation des travailleurs de la République populaire démocratique de Corée;
- prendre des mesures immédiates et efficaces visant à ce que les auteurs de telles pratiques, le cas échéant, soient poursuivis et que des sanctions dissuasives soient prononcées;
- faire en sorte que les victimes de travail forcé identifiées aient accès à une protection appropriée et soient indemnisées.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por la representante gubernamental y de la discusión que tuvo lugar a continuación.

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

- intensifique sus esfuerzos para garantizar que los trabajadores migrantes gocen de plena protección contra las prácticas y condiciones abusivas que constituyen trabajo forzoso;
- facilite información a la Comisión de Expertos sobre las medidas adoptadas para identificar los casos de trabajo forzoso, prestando especial atención a la situación de los trabajadores de la República Popular Democrática de Corea;
- adopte medidas inmediatas y efectivas para que los autores de tales prácticas, si ocurren, sean enjuiciados, y para que se impongan sanciones disuasorias, y
- vele por que las víctimas del trabajo forzoso tengan acceso a una protección adecuada y a vías de reparación.

Labour Inspection Convention, 1947 (No. 81)

Convention (nº 81) sur l'inspection du travail, 1947

Convenio sobre la inspección del trabajo, 1947 (núm. 81)

India (ratification: 1949)

Inde (ratification: 1949)

India (ratificación: 1949)

The Government provided written information which is reproduced in Document D.9. In addition, before the Committee, **a Government representative** referred to the constitutional structure of India, consisting of a federal setup and a defined distribution of powers between the centre (that is, the federal government) and the states (that is, the provincial governments), in which the centre and the states had concurrent powers to legislate and enforce labour laws. India had a very elaborate system of labour legislation, which was secured through a system of labour inspection, both at the central level and the level of the states. Reviewing and updating of labour laws was a continuous process to bring them in tune with the emerging needs of a globalized and knowledge-based economy, and included tripartite consultations.

The issue of the scope and objectives of the legislative amendments and reforms of the Government had been discussed during the 2015 session of the Committee. In this respect, he wished to reiterate the observations already made that no amendments to the scope of application of any labour laws had been enacted by the Government to exclude the workers from the purview of labour laws. In fact, the Committee of Experts had not referred to any specific legislative action that had in any way diluted the provisions relating to labour inspections or the protection of workers, as provided for under the Convention.

India followed the process of tripartite consultations in all its legislative reform initiatives. All proposed amendments to labour laws, or proposals for new laws were being discussed in appropriate tripartite forums, and only thereafter were the proposals carried forward. In this respect, he also referred to the written information that had been provided by the Government to the Committee on the progress in respect of various laws that had been passed or were currently under consideration. Recalling the intervention made during the 2015 session of the Committee, he wished to add that the proposed Small Factory Bill and the proposed amendments to the Factories' Act too were being re-examined and reviewed by the Government afresh.

The Office had provided technical assistance and inputs on the proposed legislative changes, especially on the draft Labour Codes. The Government remained committed and would also welcome future ILO technical assistance. As stated in the written information provided by the Government to the Committee, none of the legislation that had been adopted had any impact on the labour inspection system, or on the principles of the Convention.

Concerning the free initiative of labour inspectors to undertake labour inspections, the Government was committed to the obligations in the Convention that workplaces should be inspected as often and as thoroughly as necessary. Labour inspectors had full discretion in law and practice to undertake inspections of workplaces at any point of time as well as to initiate the action prescribed in law, without previous warning.

Concerning statistical information on labour inspection activities, the statistics sought by the Committee of Experts had been provided in the annex to the written submission of the Government to the Committee. He recalled that in view of the federal structure of the country and the sovereignty of the states, which were mostly responsible for the subject of "labour", there was no statutory mechanism for the states to furnish data to the central government. However, the Labour Bureau collected and compiled data on various labour related matters from the states on a voluntary basis. In this respect, he referred to the written information provided to the Committee on a project for the strengthening and modernization of the system for the collection of statistics by the Labour Bureau.

In relation to the absence of data on inspections in special economic zones (SEZs) by the states and in the IT and ITES sector, he explained that the Labour Bureau was currently not in a position to capture such data, but that there was indeed a need to strengthen the collection and compilation mechanism to enable such analytics, and ILO technical assistance in this respect would be welcome.

Concerning the self-certification scheme, as already stated during the discussion of the case before the Committee in 2015, this scheme did not entail any relaxation of or substitute for statutory inspections, and workplaces remained subject to inspection, despite having subscribed to the self-inspection scheme.

Concerning the delegation of inspection powers in SEZs, he emphasized that there had not been full delegation of labour inspection powers to the Development Commissioners in all SEZs as further detailed in the written submission of the Government. Moreover, the delegation of powers in the zones in which they had been undertaken had not diluted enforcement in any manner. It should be reiterated that the Development Commissioners, who were very senior government officers, were fully responsible for the enforcement of labour laws in SEZs, and could perform this duty without any conflict of interest.

He also emphasized that a tripartite meeting had been undertaken as requested by the Committee of Experts on whether the delegation of powers in SEZs had affected the quantity and quality of labour inspections. In this respect, he also reiterated the information provided in the written statement of the Government that the social partners had mostly considered that the delegation of powers was working satisfactorily. As indicated in the written submission, a regular review of the implementation of labour laws in SEZs would be developed in due course.

The working conditions in the IT and ITES sector were regulated by the provisions of the Shop and Commercial Establishment Act of respective state governments. These establishments were inspected by regular labour inspections like any other establishments. However, as described above, the current data collection system did not permit the extraction of specific data concerning the IT and ITES sector, which is why the Government had been unable to provide such data.

Concerning the free access of labour inspectors to workplace, he also reiterated the information provided in the written information that labour inspectors were granted this right and there had not been any cases where they had not been able to access workplaces for inspection.

He concluded by stating that the substantive issues raised in the case had been adequately responded to by the Government in a series of communications since 2015. The last comments made by the Committee of Experts had not concerned non-compliance with the Convention, but had been primarily limited to seeking more information and statistics. In the absence of any substantive issue, he felt that this case should not continue to be examined by the Committee and the case should be closed. The Government remained committed to labour welfare and the protection of labour rights and was willing to continue to avail itself of ILO technical assistance to achieve the cause.

The Employer members recalled that the application of the Convention had previously been examined by the Committee in 2015 and on numerous occasions by the Committee of Experts in the last ten years. The examination of this case in 2017 was in fact a continuation of issues that had been dealt with by the Committee two years ago. While cases on the Convention often concerned the total failure of labour inspection, this case was being examined due to the fact that the Government had failed to provide information in reply to the 2015 conclusions of the Committee or to the comments of the Committee of Experts. The speaker understood India's federal structure, with its central and state governments, but this structure did not justify why that information requested by the Committee was not provided. The Employer members therefore recalled each point that had been raised by the Committee in its 2015 conclusions, highlighting that the Government had failed to provide information on almost all of the following points.

With respect to detailed statistical information covering, at the central and state levels, all the matters set out in Article 21 of the Convention with a view to demonstrating compliance with Articles 10 and 16, and specifying as far as possible the proportion of routine to unannounced visits and information in relation to the proportion of routine and unannounced visits in all SEZs, no information had been provided by the Government. With respect to an explanation as to the arrangements for verification of information supplied by employers making use of self-certification schemes, no information had been provided by the Government. With respect to information explaining the division of the responsibility of labour inspection between the state and central spheres for each law and regulation in question, no information had been provided by the Government. With respect to information explaining, by reference to the relevant statistics, the extent to which the number of labour inspectors at the disposal of central and state government inspectorates were sufficient to ensure compliance with Articles 10 and 16 of the Convention, no information had been provided by the Government. With respect to detailed information on compliance with Article 12 of the Convention with regard to access to workplaces, to records, to witnesses and other evidence, as well as the means available to compel access to such, no information had been provided by the Government. With respect to detailed information on health and safety inspections, undertaken by certified private agencies, including the number of inspections, the number of violations reported by such agencies, and compliance and enforcement measures taken, no information had been provided by the Government.

Furthermore, in relation to the review, with the social partners, of the extent to which delegation of inspection authority to the Development Commissioners in SEZs had affected the quantity and quality of labour inspections, the Government had submitted information on a relevant tripartite meeting that had been held in May 2017. The Employer members recalled that information provided had in fact been requested two years ago. With respect to ensuring that amendments to the labour laws, in consultation with the social partners, undertaken at the central or state level, complied with the provisions of the Convention, making full use of ILO technical assistance, the Government had indicated that this matter was in progress.

The Government had now provided detailed statistics, but the information provided by the Government in its written submission was received late. The Employer members emphasized that a presence on the shortlist of cases to be discussed at the Committee should not have to be necessary to bring a country to provide the information requested by the Committee. When the Committee requested a Government to supply information, it expected to receive this information in a timely manner.

They concluded by stating that the Committee had started its session with the discussion of cases of serious failure by member States to respect their reporting obligations. The case of India appeared to be a similar case, as information had been requested two years ago and not provided in time. While there seemed to have been progress and the case should be closed, they called on the Government to continue to avail itself of ILO technical assistance with respect to the legislative reform.

The Worker members recalled that the Committee had last discussed the case in 2015, following the Government's proposal to radically reform the labour inspection regime, in their view to end the so-called "Inspector Raj". In its conclusions, the Committee had requested detailed information, including labour inspection statistics, to better assess the efficacy of the labour inspection system. The written information provided by the Government to the Committee did not meet the requests made by the Conference Committee and the Committee of Experts. The Worker members aligned themselves with the comments made by the Employer spokesperson on the lack of information provided by the Government of India. Therefore, they had to ask the Government, once again, to explain its actions, which significantly weakened rather than strengthened the labour inspection regime, in clear violation of the Convention.

They emphasized that only a committed, systematic effort by an expanded labour inspectorate could make a difference with regard to the widespread violations of labour laws in the country, including with regard to the very large number of child labour, forced labour, and the serious violations on working time, occupational safety and health, and equality legislation.

The Worker members congratulated the Government of India for having ratified the child labour Conventions, but emphasized that this would not automatically bring about changes on the ground for working children. The Labour Inspectorate had an important role in changing the practice of employing children, and in ensuring that the new standards are in fact implemented. This required the strengthening of the Labour Inspectorate.

The Worker members reiterated their concerns as to the adoption of the legislation which had been pending for a long time, including the draft Small Factories Bill, 2015, the draft Labour Code on Wages and the draft Labour Code on Industrial Relations. Those reforms would undermine the independence of inspectors in carrying out their duties and remove the potential for free access to workplaces without prior notice, which was essential for proper scrutiny of workplace conditions. They remained concerned that labour inspectors no longer had the power to decide which workplaces to inspect since the computerized system (the Shram Suvidha Portal) randomly determined the workplaces to be inspected based on information gathered from risk assessments. Employers were notified in advance of some categories of inspections (so-called Optional Inspections). Penalties could only be imposed after an inspector had issued a written order and given the employer additional time to comply. The explanation of the Government that "emergency inspections" were immediately carried out in the event of fatal or serious accidents and "mandatory inspections" were carried out in the two years following such accidents, merely served to highlight the failure of the inspection regime to prevent those accidents from occurring in the first instance.

Labour inspectors needed to have free access to workplaces without prior notice and be able to administer adequate penalties for violations of the legal provisions or for the obstruction of inspectors in the performance of their duties. There should be detailed records of denial of access or incidents of obstruction.

The Worker members expressed their concern about the rights of workers in SEZs, where working conditions were quite poor, especially as trade unions remained largely absent because of anti-union discrimination practices. The situation had worsened following the delegation of enforcement powers to the Development Commissioners in several states, under the SEZs Rules, 2006. That represented a clear conflict of interest in light of their central

function to attract investment. The legal framework in SEZs allowed the zone authorities rather than the Labour Commissioner to enforce the law. There had been an increase in violations of labour legislation, without the more effective safeguards of enforcement powers by state authorities. Accordingly, they urged the Government to effectively reform the labour inspection system in SEZs to ensure that workplaces were inspected in line with the provisions of the Convention.

The Worker members also remained concerned that the labour inspectorate was extremely understaffed. According to the latest available statistics of the Directorate General Factory Advice Service and Labour Institutes, which dated from 2011, for a total of 325,209 registered factories there were only 743 inspectors and the number of injuries stood at 29,837, 1,433 of which were fatal. Child labour and other abuses of workers' rights remained endemic in the garment sector, especially where factories were outsourced parts of a global supply chain. It was clear that the labour inspection regime was incapable of protecting workers in all states and in all industries. They urged the Government to hire an appropriate number of inspectors for the size of the workforce and ensure that they received the adequate training and tools necessary to carry out inspections effectively.

The Government's reliance on self-inspection as a means of law enforcement was also a matter of concern. The very purpose of the labour inspection regime was subverted as there was no mechanism for the verification of information supplied. Yet self-assessments were among the primary sources of information used by the Central Analysis and Intelligence Unit, which monitored employers' compliance with labour standards. There should be an independent means of verification by public inspectors as opposed to self-certification by employers who clearly had no incentive to report. They supported the call of the Committee of Experts that the Government should provide information as to how self-certificates were verified by the labour inspectorate, as the written information provided to the Committee had not provided a response to that question. The Worker members urged the Government to incorporate the advice of ILO technical assistance and the views expressed by the Indian trade unions.

Regarding coverage of workplaces by inspectors, in line with the 2015 conclusions of the Conference Committee, and as requested by the Committee of Experts, the Worker members also called for proper scrutiny of occupational safety and health (OSH) inspections which were undertaken by certified private agencies. The function of OSH inspections should remain with the public authorities to secure effective recourse when violations occurred. Proper scrutiny also meant that the Government should provide statistics on the number of inspections, the number of violations reported by such private agencies, and compliance and enforcement measures taken.

The lack of information prevented the Committee of Experts from assessing the capacity of the inspection regime to ensure the effective application of the legal provisions concerning the protection of workers through an adequate number of labour inspectors and labour inspections. Unfortunately, the evidence showed that the labour inspection system was inadequate to achieve this purpose. There was a need for a discussion with the Government on the expansion of the Labour Inspectorate. Inadequate statistical information meant that it was not possible to determine accurately whether inspections were being carried out, whether workers had access to a remedy and whether employers were sanctioned when appropriate. The Worker members expected that the Government would this time fully implement the conclusions and provide the requested information to the Committee Experts in time for its next report.

The Employer member of India explained that the Indian labour market was characterized by widespread informality, many medium-sized and small enterprises, and a Startup Hub which was the largest in the world. At the same time, governance of work had been traditionally jarred by rigid labour laws and a cumbersome regulatory regime. Recent legislative decisions (including a complete ban on child labour, the increase in the number of weeks of paid maternity leave and initiatives in relation to the payment of wages) were an indication of the country's commitment to protect and promote labour rights and welfare. Care was also taken to provide for formal employment.

The Indian employers wished to indicate that the initiatives taken by the Government in recent years had basically been undertaken to address certain needs.

Firstly, to overcome the problem of the multiplicity of labour laws, the Government had proposed the consolidation of labour laws into four codes to cover: (a) wages; (b) industrial relations; (c) social security; and (d) occupational safety and health. Tripartite discussions had already been held with regard to wages and industrial relations, and the corresponding legislative procedure was under way. Views of the social partners on the draft code on social security had also been obtained.

Secondly, to address the issue of compliance cost and create a conducive environment for business growth. Complex and cumbersome filing procedures and documentation had been simplified through digitization, including

the creation of a digital platform called the “Shram Suvidha portal”, the reduction in the number of returns and records to be maintained and the promotion of online transactions. The governance reforms, in turn, had incentivized workplaces to adhere to the compliance regime more scrupulously.

The Government had already provided detailed statistics regarding the labour inspections carried out under the new regime. The submissions of the Government on the issue of labour law compliance in SEZs deserved particular attention. The primary objective of SEZs was to promote industrial activity which could generate huge investments as well as large-scale employment. The tripartite review in May 2017 on the effectiveness of labour governance in SEZs had found the system to work satisfactorily. The limited delegations in SEZs had in no manner created an escape route for employers from fulfilling their obligations towards workers.

The self-certification scheme for voluntary compliance together with strict monitoring was a progressive step towards promoting responsibility and ethics among employers. In the understanding of the Indian employers, the self-certification had not substituted sovereign labour inspections. Moreover, in their understanding, there had not been any legislative decisions to dilute any labour inspection provisions.

The Indian employers had always contributed to the tripartite consultation process and had appreciated the efforts of the Government to find the optimum solution to all issues which were discussed. The Committee was requested to take note of these facts and set aside the case.

A Worker member of India noted the Government’s submission and recalled that the world of work had been changing at an unprecedented speed. Conventional employment was already dated and the speed of technological evolution had limited the life span of an industry and resulted in demographic shifts in production. While the world had seen tremendous economic progress, this had not always resulted in an equitable share of benefits, and had led to widening inequalities, a rise in informality and the loosening of labour market institutions. In addition to this, the extremely elaborate legislative framework, and its implementation, had created a gap in the realization of workers’ rights. Noting the information provided by the Government on inspection services and staff, and its willingness to engage with the ILO for technical assistance, limitations in the availability of data persisted. While acknowledging the importance of creating an environment conducive to economic development, the spirit of the Constitution revolved around principles of social justice and non-discrimination, and labour rights were non-negotiable.

Information provided on the issue of enforcement and compliance of SEZs with labour laws and the intentions of the Government to organize a tripartite consultation to review the situation in SEZs were noted. The Worker member further welcomed the institutionalization of a monitoring mechanism in SEZs to ensure compliance. The Government should continue tripartite consultations, recognizing the long history of trade unions in India and their noteworthy contributions to shaping its labour policies. Partners in the growth narrative of India demanded a rightful share and the speaker requested the Committee to take note of the information provided by the Government in a positive manner.

Another Worker member of India expressed growing concern at workplace safety and health violations that had resulted in numerous worker deaths. The Government had not only refused to follow up on the conclusions of the Committee made in 2015, but on the contrary had continued to elaborate a computerized system to generate inspection schedules. Through its circular of 25 June 2014, the Central Labour Commissioner had set up a Central Analysis and Intelligence Unit responsible for a computerized inspection system which did not include OSH inspections and was based on self-certification, the receipt of complaints and a list of defaulters. Labour inspectors were now redesigned as “facilitators” and contrary to the indications made by the Government, trade unions had not been part of any tripartite consultation mechanism; moreover they no longer had a role in labour inspection.

The written information provided by the Government to the Committee had not been made available to the social partners prior to its submission, and they had therefore not been consulted on the information provided. Inspection in the SEZs had been virtually abolished: in many SEZs, labour authorities had been divested of their powers in favour of Development Commissioners under the Ministry of Commerce rather than the Ministry of Labour. On 30 May 2017, a tripartite meeting had been called to ease pressure of the ILO. During the meeting, a report had been presented that revealed that the Development Commissioners in one year had only undertaken 14 inspections in an SEZ employing 251,000 workers. The statement in the written information provided by the Government that only one worker had been critical of the devolution of powers to the Development Commissioners did not reflect the truth. Instead, the Government had refused to consider documents that had been presented by the worker member during the meeting. The Development Commissioners had been actively refusing registration of trade unions on the basis of self-invented laws. They also passed on information about initiatives that had been taken to form trade unions, enabling owners in SEZs to harass workers involved in those initiatives. Contrary to the

Government's statement, the Shops and Establishment Act had not been extended to the IT and ITES sectors, nor had any labour inspections yet been established covering these sectors.

As the Committee had unsuccessfully encouraged the Government to comply with the Convention, it was necessary to investigate the real situation on the ground.

The Government member of the Islamic Republic of Iran thanked the Government for the information provided on the latest situation concerning the application of the Convention. A number of legislative reforms were ongoing to create an enabling environment for economic growth and job creation. In this respect, it was positive that the Government was working closely with the ILO to ensure that the legislative reforms were consistent with ILO Conventions. Moreover, the Government had provided detailed information and statistics on the labour enforcement system, both at the central and state levels. The Government was encouraged to continue availing itself of ILO technical assistance. The speaker called on the Committee to give due consideration to the information and clarifications provided by the Government.

The Worker member of Malaysia indicated that Indian workers continued to be vulnerable to precarious conditions, including occupational health and safety issues, and remained victims of labour law violations. Effective application of labour laws depended on effective labour inspection, yet, to this day, there were workers that were excluded from labour inspection, for example those working in agriculture, the informal economy, health care services or workers not categorized as teaching staff in teaching institutions, one of the largest sectors of the Indian economy.

The Government had manipulated labour inspection in SEZs, such as Noida in the state of Uttar Pradesh, where the Labour Office had closed and issues have since been managed by Development Commissioners, who had only performed 17 inspections per year in a sector with 352 industries. The Labour Office had reopened for just one year following the comments made by the ILO supervisory bodies, but was again closed in 2016. Given that the IT sector fell within the scope of the Shops and Establishments Act, no labour inspections have been carried out in this sector. Noting that the Government reiterated that no legislative amendments had been carried out to alter legal provisions that might dilute the application of the Convention, the speaker stated that this information was incorrect. Labour inspection was already watered down and completely unavailable in several sectors. The Government's planned codification of 44 labour acts would exclude workers employed in establishments with less than 40 workers from the 16 laws related to trade unions and therefore from labour inspection. Noting that such thresholds were not supported by the Committee of Experts, the speaker called on the Committee of Experts to expediently address this matter by investigating the real situation on the ground and urged the Government to walk the walk by complying with the Convention.

The Government member of Sri Lanka indicated that since the examination of the application of the Convention by India in the Committee in 2015, the Government had complied with the comments of the Committee of Experts and had provided detailed information on the steps it had taken to give full effect to the provisions of the Convention in law and practice. In this regard, the Government had taken steps to broadly codify 44 central labour acts into four labour codes. However, those initiatives were still at the consultation stage. The Government had followed a proper consultative process in this regard in the form of social dialogue, giving effect to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The speaker was of the view that codifying labour Acts into simplified forms and giving full effect to the national labour laws and ILO Conventions that India had ratified would help to promote employment generation and effectively address the compliance issues as well. Moreover, there seemed to be no negative impact on the labour inspection system, as a result of legislation that had been adopted. The speaker considered that the Government of India had adequately responded to the substantive issues that had been raised, thus giving effect to the principles enshrined in the Convention.

The Worker member of Australia stated that there were workplaces in India where labour inspection either did not occur or occurred rarely. In order to increase foreign direct investment of multinational corporations, SEZs were consciously structured to promote the non-implementation of labour laws. Domestic labour standards, including the labour inspection requirements of the Factories Act 1948 did apply inside SEZs, however, labour inspection was almost entirely absent in practice.

Entrusting the implementation of labour laws to the Development Commissioner within each SEZ rather than the Labour Commissioner of the Factories Act, 1948 had permitted a regime free of labour inspection. Moreover, state governments had empowered the Development Commissioner to entrust the function of labour law compliance to a delegated person. For example, the Uttar Pradesh Government had empowered the Development Commissioner to call for the inspection by any external agency for the safety and health of workers in any SEZ premises. As the primary role of a Development Commissioner was to drive production within the SEZ under its responsibility, the

health and safety of workers within them might be considered a conflicting and lower priority. Examples also showed that the labour department was actively dissuaded from conducting inspections in SEZs, such as in the state of Andra Pradesh. The fact that entry into the zones was restricted in practice made the prospects of an unannounced inspection very unlikely. Consequently, the separate administration of labour law within SEZs effectively meant that they were unregulated by labour inspection, which had dire consequences for workers who worked within them. In this respect, he referred to a number of examples concerning unsafe and unhealthy working conditions in SEZs, and the consequences to workers that had resulted.

Taking into account the continued failure of the Government to provide adequate information on labour inspection in SEZs, and the fact that this matter had been before the Committee on a number of occasions, an escalation of the supervisory regime to a direct contacts mission was necessary.

The Government member of Turkey welcomed the efforts made and the measures taken by the Government with a view to simplifying practices and reducing regulatory burden through tripartite consultations in the labour inspection sphere. The speaker appreciated that the Government had provided detailed information and statistics on labour inspections under various laws and regulations regarding working life. The Government was encouraged to continue working closely with ILO to establish an institutionalized inspection system which would facilitate the regular supply of information. Taking into account the information that had been provided and noting that the Government was ready to accept ILO technical assistance, the speaker was of the view that the Committee should not continue examining this case.

La miembro trabajadora del Brasil expresó su preocupación por la gravedad del presente caso, que muestra la importancia de tener un movimiento sindical unido y solidario internacionalmente. Asimismo, deploró la falta de información por parte del Gobierno, necesaria para que la Comisión y el mecanismo de control funcionen correctamente. Con respecto a la información proporcionada por el Gobierno en el documento D.9, ésta debe ser analizada con cautela. Dicho documento no fue compartido con los sindicatos, fue redactado sin una consulta tripartita previa y por lo tanto, su veracidad es cuestionable. Además, la ausencia de información estadística en el documento D.9 no permite contrastar la información en él proporcionada. En este sentido, alentó al Gobierno a realizar consultas tripartitas y a proporcionar la información requerida por la Comisión de Expertos.

Sin embargo, indicó que el problema real yace en la inexistencia de un sistema de inspección del trabajo ineficaz. La función primordial de la inspección del trabajo es evitar los accidentes de trabajo mediante la prevención y la cohibición de prácticas perjudiciales para la salud y la vida de los trabajadores. Por esta razón, consideró muy problemática la implantación de un sistema informatizado para determinar aleatoriamente los establecimientos que deben inspeccionarse. Este sistema perjudica la libre actividad de los inspectores. Además, posee una base de datos viciada y restringida que no incluye todos los lugares de trabajo, es decir, si una fábrica no está incluida en la base de datos del sistema, nunca será seleccionada para una inspección.

La oradora consideró, en conclusión, que el Gobierno ha violado el Convenio y así debe quedar reflejado en las conclusiones de la Comisión.

The Government member of Bangladesh welcomed the progress made by the Government to comply with the Convention. He appreciated the process of labour law reforms initiated in order to ensure protection of workers as well as to promote investment and generate quality employment opportunities. Tripartite consultation had been an integral part of the process of legislative reform, in compliance with ILO Conventions. The initiatives of the Government did not aim to curtail the authority of the labour inspectorate, but to make the inspection mechanism more transparent and accountable. Inspection mechanism based on a computerized system would make the inspections more objective and targeted. He welcomed the decision taken by the Government to have an institutionalized system to review the enforcement of labour laws in the SEZs. The ILO should continue providing development cooperation and assistance to the Government to complete the ongoing reform process and to further promote labour standards in line with the Conventions, particularly Convention No. 81. Finally, the speaker called on the Committee to take into account the significant efforts made by the Government to address the issues raised by the Committee of Experts.

The Government member of the Russian Federation had studied the Committee of Experts' observation on the application of the Convention in detail and thanked the Government for its submission. Recalling that the Government of India was a founding member of the ILO, he noted the continued commitment of the Government to labour standards and efforts to support tripartite dialogue. The Government's coordination and cooperation with the ILO with regard to legislative reform was welcomed, and he noted their openness to address the comments of the supervisory bodies. Explanations and clarifications had been provided by the Government and it was therefore

to be expected that regular information would be received in the future and that the Government was committed to work in this way.

The Government representative provided observations in relation to the different comments raised during the discussion. Concerning the observations made on the non-availability of statistics, he wished to refer to the reports sent in 2015 and 2016 containing the statistics as required by the Convention. Moreover, the reports of the Government provided to the Committee of Experts had been circulated to all social partners. That report contained many statistical data, including on the number of labour inspectors in many states, the number of labour inspections undertaken, including the number of labour inspections in SEZs.

Concerning the labour law reforms, he explained that Indian labour laws dated back to the 1920s and therefore had to be updated to meet the current requirements and developments in the world of work. The social partners were part of the consultations in this legislative review and it was expected that, based on the recommendations made during the review, the labour laws would be fortified. While many comments had been made in relation to these drafts, a violation of the Convention was simply not possible at the current stage, as the labour laws were still under review.

He emphasized that labour inspection was a public function in India and that no private inspections had been introduced at the central level or the level of the states. Concerning the verification of the information supplied through the self-certification scheme, it should be clarified that self-certification was different from inspection, and that self-inspection was by no means a form of private inspection or to replace labour inspections in any way. The self-inspection scheme only provided statements by employers on the compliance with provisions of labour laws and in some cases were accompanied by a security deposit. Workplaces would continue to be subject to the normal labour inspection system and self-certification was only an additional mechanism for compliance.

Concerning SEZs, he wished to indicate that in the reports of the Government provided to the Committee of Experts, statistical information in relation to particular SEZs had been provided. The Government representative reiterated that there were seven economic zones, out of which four zones had not delegated inspection powers. In these four economic zones, normal inspections would continue. Moreover, in the zones in which inspection powers had been delegated to the Development Commissioner, OSH inspections continued to be undertaken by the inspection services of the states. At the moment, only minimal delegation had taken place and it would be seen in the future how these delegations had worked. The Government had undertaken the tripartite reviews as suggested by the Committee of Experts and it would continue to ensure that in the future, the right of workers were ensured.

Finally, in relation to the issues relating to OSH, it followed from the statistics provided in 2015 and 2016 that industrial accidents were decreasing.

He concluded by stating that the Government remained committed to the principles in the Convention so as to ensure the protection of workers and compliance with labour standards. Moreover, the Government endeavoured to promote labour welfare through enhanced social security, provide for labour reforms through appropriate tripartite consultation, and would continue to work closely with the ILO to ensure alignment with international labour standards.

The Worker members recalled that on 2 September 2016, over 100 million workers across India participated in a national strike to protest against the Government's anti-worker policies. Their demands included strict enforcement of all basic labour laws. The system as presented by the Government representative seemed perfect. However, for rights to be exercised they had to be protected through an efficient public labour inspection system, and information on inspections had to be published regularly and made readily available as provided for by the Convention. However, the Government was not complying with these obligations, and the labour inspection system was in a state of transition in the wrong direction. It was therefore important that the Committee issued firm conclusions so that the Government had political guidance, with a preventive approach. The Government could start by implementing the technical assistance provided regarding the draft Small Factories Bill, 2015, the draft Labour Code on Wages and the draft Labour Code on Industrial Relations.

Furthermore, the Government should adopt the following measures: ensure effective labour inspections in all SEZs, and provide detailed information on the number of routine and unannounced visits, as well as on the dissuasive fines imposed against infractions; promote the collaboration between officials of the labour inspectorate and employers and workers or their organizations, in particular with respect to inspection reports; ensure draft legislation in conformity with the Convention; provide information on the measures taken to ensure the discretion of labour inspectors to initiate prompt legal proceedings without previous warning; provide information on verification by the labour inspectorate of the submission of information by employers through self-certification, in

particular in relation to health and safety inspections; provide information explaining the division of the responsibility for labour inspection between the state and central governments for each law and regulation in question; provide information explaining, by reference to the relevant statistics, on the extent to which the number of labour inspectors at the disposal of central and state government inspectorates is sufficient to ensure compliance with Articles 10 and 16 of the Convention and submit the information to the Committee of Experts; and continue to avail itself of ILO technical assistance in relation to those recommendations.

The Employer members recalled that there were various reasons for which a Government could be called before the Committee, even in cases where it had not provided information on the application of the Convention in time, which was the main reason why this case had been selected. The discussion covered a wide range of issues many of which had gone beyond the scope of the Convention. It was expected that the discussion of the case would, in the future, make the Government provide timely information in response to any requests made by the Committee. They suspected that the same conclusions would be made by the Committee, but that these conclusions would be stronger than the ones made by the Committee in 2015. The Government was urged to provide detailed and reliable information as requested, including on various aspects of labour inspection and the ongoing labour law reform.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of India to:

- **ensure that effective labour inspections are conducted in all SEZs, and provide detailed information about the number of routine and unannounced visits as well as the dissuasive fines imposed against infractions;**
- **promote the collaboration between officials of the labour inspectorate and employers and workers or their organizations, in particular when it comes to the implementation of inspection reports;**
- **increase the resources at the disposal of the central and state government inspectorates;**
- **ensure that draft legislation is in conformity with the Convention.**

The Committee requested the Government to provide detailed information, including statistical information, to the Committee of Experts on:

- **the measures taken to ensure that labour inspectors have the discretion to initiate prompt legal proceedings;**
- **how the information submitted by employers through self-certificates is verified by the labour inspectorate, in particular in relation to health and safety inspections;**
- **the division of the responsibility of labour inspection between the State and central spheres for each law and regulation in question.**

The Committee invited the Government to continue to avail itself of ILO technical assistance in relation to these recommendations.

Conclusions

La commission a pris note des informations que le représentant gouvernemental a fournies oralement et de la discussion qui a suivi.

Prenant en compte cette discussion, la commission a prié le gouvernement de:

- **veiller à ce que des inspections du travail efficaces soient menées dans toutes les ZES et à fournir des informations détaillées sur le nombre de visites de routine ou inopinées qui ont été conduites, ainsi que sur les amendes dissuasives imposées pour les infractions relevées;**

- promouvoir la collaboration entre les fonctionnaires de l'inspection du travail et les employeurs et les travailleurs ou leurs organisations, en particulier en ce qui concerne la mise en œuvre des rapports d'inspection;
- accroître les ressources mises à la disposition de l'inspection du travail au niveau central et à celui des Etats;
- veiller à ce que le projet de législation soit en conformité avec la convention.

La commission a demandé au gouvernement de fournir à la commission d'experts des informations détaillées, y compris des informations statistiques, sur:

- les mesures prises pour veiller à ce que l'initiative visant à entreprendre des poursuites légales immédiates soit laissée à la libre décision des inspecteurs du travail;
- la façon dont les informations soumises par les employeurs par le biais de l'autocertification sont vérifiées par l'inspection du travail, en particulier en ce qui concerne les inspections relatives à la santé et la sécurité;
- la répartition de la responsabilité de l'inspection du travail entre le niveau central et celui des Etats pour chaque loi et règlement en question.

La commission a invité le gouvernement à continuer à se prévaloir de l'assistance technique du BIT en relation avec ces recommandations.

Conclusiones

La Comisión tomó nota de la información suministrada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

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

- vele por que se realicen inspecciones del trabajo en las ZEE, y comunique información detallada sobre el número de visitas rutinarias y visitas sin previo aviso, así como sobre las multas disuasorias impuestas en caso de infracción;
- promueva la colaboración entre los funcionarios de la inspección del trabajo y los empleadores y trabajadores o sus organizaciones, en particular en lo referente a la implementación de los informes de inspección;
- aumente los recursos de los servicios de la inspección del trabajo del gobierno central y de los gobiernos de los estados, y
- se asegure de que el proyecto de legislación es conforme al Convenio.

La Comisión pidió al Gobierno que comunique a la Comisión de Expertos información detallada, incluida información estadística, sobre:

- las medidas adoptadas para garantizar que los inspectores del trabajo tengan facultades discrecionales para iniciar rápidamente procedimientos legales;
- la manera en que la información presentada por los empleadores mediante la auto-certificación se comprueba por la inspección del trabajo, en particular en relación con las inspecciones en materia de seguridad y salud en el trabajo, y
- la división de la responsabilidad de la inspección del trabajo, en relación con cada ley y reglamento en cuestión, entre el ámbito estatal y central.

La Comisión invitó al Gobierno a que continúe recurriendo a la asistencia técnica de la OIT en relación con estas recomendaciones.

Labour Inspection Convention, 1947 (No. 81) and Labour
Inspection (Agriculture) Convention, 1969 (No. 129)

Convention (n° 81) sur l'inspection du travail, 1947,
et convention (n° 129) sur l'inspection du travail (agriculture), 1969

Convenio sobre la inspección del trabajo, 1947 (núm. 81)
y Convenio sobre la inspección del trabajo (agricultura), 1969 (núm. 129)

Ukraine (ratification: 2004)

Ukraine (ratification: 2004)

Ucrania (ratificación: 2004)

The Government provided written information which is reproduced in Document D.7. In addition, before the Committee, **a Government representative of Ukraine** confirmed that in 2015, at the legislative level, labour inspections in Ukraine had been totally suspended. However, new legislation regulating labour inspection had now been adopted and had entered into force on 1 January 2017. In addition, the Government adopted two important pieces of legislation, namely: (i) the Procedure on State Control over Compliance with Labour Laws; and (ii) the Procedure on State Supervision over Compliance with Labour Laws, which entered into force on 16 May 2017. The Government was concerned to promote the effective functioning of the labour inspection services to ensure compliance with legislation on occupational safety and health (OSH), wages and other matters. Labour inspections could be initiated on the basis of several grounds, including: notification of labour law violations; a claim from an individual with whom employment relations were not duly formalized; a court decision; information obtained from State supervision and monitoring bodies, law enforcement agencies and the labour inspectorate; a trade union organization; or, state authorities. The new regulations enabled labour inspection services to operate independently, giving them the right to undertake inspections at any hour of the day, in all types of workplaces that use hired labour. A new system had been established to overcome violations. Employers could not be held liable if they had undertaken steps to rectify a violation following the issuing of a compliance notice, except in cases where they had been using undocumented workforce and failed to pay the national minimum wage or did not pay wages on time and in full.

The Government was interested in establishing effective labour inspection services to ensure compliance with the new legislation on the national minimum wage, which had doubled in January 2017, a decision taken in agreement with the organizations of employers and workers, which was also used to strengthen efforts aimed at facilitating the transition from the informal to the formal economy. The ILO's technical assistance in reforming the labour inspection services had been very welcome. Labour inspection was now also the responsibility of local authorities and could be conducted by public inspectors appointed by trade unions. In this context, it was important that labour inspectors received adequate training enabling them to carry out their work in an appropriate manner. The Government representative of Ukraine thanked the country's social partners, namely trade unions, for having repeatedly raised the issue of labour inspection and thanked the Conference for having brought this issue to public attention.

Les membres travailleurs ont rappelé que, dès son origine, l'OIT a fait de l'inspection du travail l'une de ses préoccupations prioritaires. Cette question figurait déjà parmi les principes généraux énoncés dans le Traité de Versailles. Il est évident que, sans un dispositif d'inspection efficace, l'effectivité des normes sociales relèverait d'un pari hasardeux. Il serait inutile d'élaborer et de voter des lois s'il n'existait pas un corps d'inspection chargé d'en contrôler efficacement l'application et d'en expliquer le contenu aux différents acteurs. S'agissant du cas de l'Ukraine, la commission d'experts a fait un certain nombre de remarques particulièrement inquiétantes concernant les services de l'inspection du travail qui ont fait récemment l'objet d'une réorganisation. Le gouvernement a communiqué l'organigramme de la structure centrale, mais n'a fourni aucune information sur la structure régionale. Or les conventions n°s 81 et 129 soulignent l'importance de placer l'inspection du travail sous le contrôle direct et exclusif d'une autorité centrale pour assurer son indépendance à l'égard des autorités locales et faciliter l'élaboration et la mise en œuvre d'une politique uniforme sur l'ensemble du territoire. Il est également indispensable que les services de l'inspection soient effectivement présents sur les plans régional et local. La présence de l'inspection au niveau régional et le contrôle effectif d'une autorité centrale sont complémentaires. Les membres travailleurs ont salué l'assistance technique qui a été fournie par le BIT dans le cadre de la réforme de l'inspection et ont invité le gouvernement à s'en prévaloir autant que possible. En ce qui concerne la collaboration des services d'inspection avec les employeurs et les travailleurs, il convient également de saluer la démarche du gouvernement d'impliquer les partenaires sociaux dans les questions concernant l'inspection du travail. Toutefois, le gouvernement n'a fourni

aucune information permettant d'avoir une idée précise des modalités de cette collaboration. L'inspection du travail ne peut atteindre ses objectifs sans une collaboration effective des employeurs et des travailleurs à ses activités. Plus particulièrement, il est essentiel que le droit des travailleurs de porter à la connaissance de l'inspection du travail les cas de violation de la législation soit garanti et protégé. Les membres travailleurs se sont déclarés inquiets de la mise en place d'un moratoire sur les inspections du travail de janvier à juin 2015 et de la préparation de nouveaux textes en vue de l'adoption d'un nouveau moratoire. En 2010, la commission d'experts avait déjà souligné qu'une mesure similaire avait été adoptée. L'instauration d'un moratoire sur les inspections constitue une grave violation de la convention et envoie un signal particulièrement négatif car cela revient à considérer que le contrôle du respect de la législation du travail est une préoccupation mineure. Il convient donc de féliciter le gouvernement d'avoir renoncé à cette mesure.

S'agissant des services d'inspection et des inspecteurs du travail, l'importance des moyens qui leur sont alloués reflète l'importance accordée aux normes et législations qu'ils sont chargés de faire respecter. En effet, accorder aux inspecteurs un statut et des conditions de service inappropriées a pour conséquence, d'une part, de rendre la fonction d'inspecteur moins attrayante et d'engendrer une réduction des effectifs, comme c'est le cas en Ukraine, et, d'autre part, de mettre en péril leur indépendance et leur impartialité. Une attention particulière doit également être accordée à l'information selon laquelle les inspecteurs du travail du pays se voient confier d'autres fonctions que celles liées à l'inspection du travail. Certes, les conventions n'interdisent pas de confier aux inspecteurs d'autres tâches, mais il est impératif d'avoir une idée précise du volume de travail que ces tâches représentent et de veiller à ce qu'elles n'interfèrent pas avec leurs fonctions principales. Le gouvernement doit communiquer des informations précises sur ce point et apporter les garanties nécessaires. Personne ne peut contester le fait que l'Ukraine se trouve dans une situation compliquée en raison de l'existence d'un conflit armé sur une partie de son territoire et de la mise en œuvre de politiques d'austérité, qui pèsent lourdement sur le pays, afin d'obtenir un financement du Fonds monétaire international. Toutefois, ces difficultés ne doivent pas conduire à accepter que la justice sociale et les moyens pour y parvenir, notamment l'inspection du travail, soient sacrifiés sur l'autel de l'austérité. Des mesures d'austérité qui touchent un élément aussi primordial risquent d'avoir un impact encore plus négatif sur l'équilibre général de la société. A cet égard, il convient de rappeler la partie du préambule de la Constitution de l'OIT sur la paix et l'harmonie universelle ainsi que la Déclaration de Philadelphie qui affirment que le travail n'est pas une marchandise. Par ailleurs, le gouvernement n'a pas fourni d'information sur les progrès accomplis dans la mise en œuvre d'un plan d'action national en matière de santé et de sécurité au travail, notamment en ce qui concerne la déclaration des accidents du travail et des maladies professionnelles. Il n'a pas non plus communiqué d'information sur le registre actualisé des lieux de travail soumis à inspection, lequel permet d'élaborer des plans d'inspection ciblés et d'inclure les informations pertinentes dans les rapports annuels d'inspection. Dans ce contexte, il faut aussi souligner que la mission préventive de l'inspection du travail est particulièrement importante pour la santé économique et sociale de toute la communauté, car de mauvaises conditions de travail engendrent inévitablement des conflits et des difficultés sur les lieux de travail et entraînent une augmentation des prestations sociales, notamment pour les accidents du travail et les maladies professionnelles. Le gouvernement est par conséquent invité à fournir les informations demandées par la commission d'experts sur ce point. Les membres travailleurs se sont déclarés convaincus que, pendant les périodes difficiles, le réflexe salutaire consiste à se rapprocher de la justice sociale en renforçant les moyens qui permettent d'y parvenir. C'est le seul antidote pour lutter contre la misère et le désespoir.

The Employer members recalled that in 2010, the Committee of Experts had referenced the observations made by the Federation of Trade Unions of Ukraine (FTTU) regarding restrictions and limitations to the supervisory function of labour inspectors, and had noted that several legislative provisions (in particular Act No. 877-V concerning the fundamental principles of state supervision in the area of economic activity adopted on 5 April 2007, as well as the provisions of Cabinet Order 502) violated the Convention. The Committee had also noted that legislation was contemplated to remedy the situation. In 2011, the Committee of Experts noted that the Government had not provided relevant information and requested information on measures taken to ensure compliance with obligations under the Convention. In its 2013 observations, it again requested measures to ensure that Act No. 877-V be amended and requested information on the application of labour inspection in agriculture. Most recently, the Committee noted progress made in 2016, in its joint comments on Conventions Nos 81 and 129, noted with interest the technical assistance provided by the ILO to support the labour inspection reform initiated in 2014. Specifically, the Committee had noted that the ILO had undertaken a needs assessment of the labour inspection system in response to a Government request, and a number of recommendations had been made. The Committee had also positively noted the ILO project on "The strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" undertaken in September 2016. The Employer members noted with interest the information provided by the Government that new legislation had entered into force in May 2017, which had had an impact on state supervision and labour inspection. They also welcomed information provided on what may trigger inspections, and the organization and feedback on engagement with the ILO, particularly the training of labour inspectors. The

Government was also encouraged to continue to accept technical assistance to ensure that new and any existing legislation reflected the provisions of the Convention, in particular, the requirement that labour inspectors be public officials, independent of changes in Government and any external influences. In this regard, improper external influences in the recruitment should be eliminated and measures to ensure qualifications and adequate training for inspectors to perform their duties were encouraged. Reports that the Government had appointed local self-government staff in the role of labour inspectors was noted with concern. The Government was requested to provide information to the Office so that training and qualifications of labour inspection staff could be assessed. The moratorium was an issue that had been raised by the Committee of Experts. The Employer members had noted that the moratorium had now expired and had not been extended. The suspension of labour inspections contravened obligations under the Convention. Information from the Government on the moratorium, including confirmation that it had been lifted was requested. Taking into account the difficult circumstances in the country, they urged the Government to continue to avail itself of ILO technical assistance in order to ensure compliance in law and practice.

The Worker member of Ukraine recalled that, for seven years, the Committee of Experts had been raising issues concerning Ukraine's compliance with its obligations under Conventions Nos 81 and 129. The Committee of Experts had confirmed the views expressed by the FTUU in 2010 that a number of provisions in Act No. 877-V concerning the fundamental principles of state supervision in the area of economic activity, adopted on 5 April 2007, and the Cabinet Decree providing for temporary restrictions on state supervision and monitoring until the end of 2010 were not in conformity with the Conventions. The Cabinet of Ministers had acknowledged the violations and proposed amendments, but they had not been adopted.

In 2015, the authorities had introduced a moratorium on labour inspections. In view of the serious situation concerning workers' rights, the FTUU, together with the other most representative workers' organizations, had once again made observations. More than 4 million workers were working illegally without contracts, and more than 100,000 workers were affected by delays in the payment of wages. During the moratorium, the number of complaints both to Gostrud and to trade union organizations had significantly increased. The Government had taken specific steps to improve the situation in terms of monitoring compliance with labour legislation and preventing violations, including the adoption of new legislation, the repeal of the moratorium and the significant increase in the level of fines. The trade unions had supported the request of the Government for ILO technical assistance in reforming the labour inspection services.

Many issues remained, including the inadequate number of labour inspectors, the insufficient qualification of inspection team leaders and the paltry wages of labour inspectors, which left them open to corruption. In fact, the Government standard of 3,636 labour inspectors for more than 1.2 million workplaces employing workers was insufficient to guarantee workers' rights. According to Gostrud, in 2016, of 2,610 vacant positions, only 594 had been filled through new recruitment. Frequent changes to national legislation required systematic training for labour inspectors, including in the use of new technology.

In view of the need to enhance employer compliance with legislation on OSH, labour and employment and social insurance, in 2016 a cooperation agreement had been concluded between the trade unions and the State Labour Service (SLS) to complement State inspections with inspections by trade unions. This had been made possible by the adoption of Decision No. 295 in April 2017, which provided that labour inspections could be carried out on the basis of information received from trade unions, as well as individual workers.

However, just days before the start of the 106th Session of the International Labour Conference, the Verkhovna Rada had seen the introduction of a new Bill to amend several laws to avoid "excessive pressure on economic entities", including through labour inspection. It had been drafted by some 20 members of Parliament who were lobbying for the interests of enterprises. This was yet another attempt to introduce restrictions to labour inspection and weaken sanctions for employers in violation of labour legislation. One of the "innovations" was the proposed introduction of administrative liability for persons submitting unfounded complaints of violation of labour legislation. This was a direct breach of Convention No. 181, which provided that labour inspectors should be prohibited from revealing the source of complaints. The Bill particularly affected workers in the informal economy, who were not unionized and were afraid to approach the labour inspection services for fear of losing their jobs. The drafters of the Bill were deliberately trying to scare workers. The Bill also proposed fines ranging from about 850 to 1,700 hryvnia, which might even more than double in the case of "repeat offenders". The FTUU had made a very negative assessment of the Bill to parliamentary parties but had received no reply. He requested the Committee to warn the Verkhovna Rada not to adopt the Bill, so as to avoid a negative impact on the application of Conventions Nos 81 and 129. He concluded by stating that further technical assistance was needed.

The Employer member of Ukraine noted that the moratorium in 2015 and the temporary restrictions on inspections in 2010 had been imposed to eliminate corruption in numerous government institutions, and did not only concern the SLS. At that time, the moratorium had been supported by the national employers' associations and had had a positive effect on business activity: 100,000 workplaces had been created, including many green workplaces, mostly small and medium-sized enterprises. As the moratorium had been brought to an end, there was no contradiction with the Conventions. However, some violations of the Conventions had occurred with the adoption of recent changes to the national legislation. Act No. 1774 (6 December 2016) amending section 34 of the Local Government Act had empowered local authorities to monitor compliance with labour and employment legislation within their territorial jurisdiction, to conduct inspections and to impose penalties. This was not in conformity with the Conventions: labour inspectors should be public servants and labour inspection should be conducted under the supervision and control of a central authority, appropriately qualified technical experts and specialists should be involved in inspections, labour inspectors should receive continued training.

In reality, in Ukraine the activities of the local self-government officials endowed with the powers of labour inspectors did not meet the requirements of the Conventions. Local self-government officials were neither controlled by, nor accountable to, the central competent authority (SLS). Moreover, there were often conflicts and confrontation in determining the limits of the powers of the local and central inspectors. Local self-government officials did not undergo the relevant qualification selection and were not under the coordination and methodological support of the SLS. Nor were local self-government officials independent: they were under the influence of local elites and often could not be impartial. It was therefore impossible to appeal against the actions of the local self-government officials or to hold them responsible for misconduct. He noted that the changes had also created duplication of the powers of SLS regional branches and local authorities. This had imposed double inspections by two different bodies on employers.

He concluded by insisting on the need to repeal the mentioned provisions of the national legislation which in his view contradicted the provisions of the Conventions and unreasonably extended discretionary powers of the labour inspectors, defined by these Conventions, to the officials of local self-government incapable of effectively performing such state functions.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Georgia, Montenegro, Norway, the former Yugoslav Republic of Macedonia, and Turkey, emphasized the commitment to the EU-Ukraine Association Agreement with its Deep and Comprehensive Free Trade Areas (DCFTA), and welcomed the results of the EU-Ukraine summit held in November 2016. The speaker noted with interest the reform initiated by the Government in 2014 to strengthen labour inspection services and expressed support to the development of the SLS with an important technical assistance project to be implemented by the ILO. Recalling the considerable drop in the number of inspections and significant rise in number of complaints concerning labour law violations when the moratorium was introduced in 2015, he welcomed the lifting of the moratorium for unplanned inspections and strongly encouraged the Government to seek further modernization of its labour inspection system. Recalling the highly politicised debate on the draft Labour Code, he strongly encouraged the Government to pay due regard to the comments provided by the Office, particularly in the areas of working conditions, occupational health and safety and mining. Government intentions to include appropriate clauses on non-discrimination in the Labour Code in line with the Association Agreement were welcomed. It was expected that following these consultations, the Government would take the necessary steps to bring national legislation and practice related to labour inspection in conformity with ILO Conventions and that it would continue to avail itself of ILO assistance. The speaker reiterated commitment to close and constructive engagement and partnership with the Government.

An observer representing the International Trade Union Confederation (ITUC) indicated that recent reforms to the labour inspection system had in fact resulted in the loss of many qualified labour inspectors. Only 3,500 remained to cover 1.2 million enterprises, making it difficult to monitor OSH effectively. Ukraine's mines were the most dangerous in the world from a technical point of view, with deep shafts and high gas concentrations, among other hazards. Inspections carried out following a fatal accident in March 2017 had revealed thousands of breaches of OSH legislation in mines across the country. Nothing had been done to rectify the situation. The limited possibilities for labour inspections and the high level of corruption meant that tens of thousands of miners risked their lives and health every day.

In 2016, the ILO had begun providing support to improve OSH and labour inspection, and a number of measures had been taken with international assistance, but this was not enough. The right of labour inspectors to carry out their duties not only in the event of an accident but also with a view to identifying violations proactively, as provided for in ILO Conventions, should finally be restored in law and practice. Draft amendments to the Labour

Code had been examined with the Office, which had identified a number of discrepancies with ILO Conventions; however, so far only 22 of them had been removed. Further consideration of the draft Code was urgently needed, as subsequent amendments proposed had introduced further incompatibilities.

The Worker member of the United States recalled that, in this year's General Survey, the Committee of Experts had noted that the national OSH programme in Ukraine had included a number of specific measures and targets relating to the mining sector. While this was positive, there was serious concern regarding labour inspection, including considerable reductions in the number of labour inspections and even occasional moratoriums. In one recent year, the mining authority had performed inspections in only 2.7 per cent of production facilities. Ukraine was second only to China in mining and other industrial accidents rates. There were violations of health and safety norms, insufficient preventive measures, and lack of individual security equipment. In March 2017, eight miners had died in the Stepnaya mine, and around 30 had been hospitalized, despite the specific prescriptions that had been issued by the labour inspectors who had visited the mine in November 2016. After that tragedy, the Government had decided to inspect many mining workplaces, discovering more than 2,500 violations. However, nothing had yet been done to correct these situations.

The labour inspectorate had to be fully empowered, with a mandate, a budget and the capacity to collect meaningful fines, and corruption had to be addressed. It was vital to resume unannounced workplace inspections and cease current efforts to weaken and suspend inspections in law and in practice simply to present a more "business-friendly" environment. Moreover, the lack of regular and broad inspections has had an impact on social protection schemes and workers' rights. According to the Ukrainian Parliament Commissioner for Human Rights, this had led to a situation in which a third of the workforce was employed illegally, and about 40 per cent of the wages in the country were paid unofficially without paying taxes or a single social contribution, causing huge losses to the State, pension and other funds of compulsory social insurance. As much as freedom of association was the enabling right for workers to claim their rights, labour inspection was the government function and responsibility that allowed it to fulfil so many of its other obligations to protect and respect rights of workers and citizens.

The Worker member of Sweden speaking on behalf of the Nordic Trade Unions, indicated that the case under discussion fitted well into the context of the debate on the 2017 General Survey concerning occupational health and safety. Compliance with the requirements of the Conventions on labour inspection was not possible when labour inspections were subject to a moratorium. Ukraine had ratified the Conventions only in 2004, and the ratification of a Convention created obligations. Ukraine had reportedly imposed the moratorium on labour inspection to increase its competitiveness and attractiveness. However, that was not an acceptable justification for non-compliance with ratified standards. Labour inspection was not just a formality, but an efficient means for ensuring compliance with applicable standards, and thus fair competition, and to secure a safe and healthy work environment. She therefore expected that Ukraine would bring its national legislation into conformity with the Conventions and that it would not introduce restrictions and limitations on labour inspection.

An observer representing IndustriALL Global Union stated that occupational health and safety in the majority of enterprises, particularly in state-owned and small and medium-sized enterprises, was close to an emergency-like situation. Despite having ratified Convention No. 81, many bureaucratic obstacles had hindered appropriate implementation, proving that there was inadequate funding and capacity for labour inspection. A systematic lack of financial support had led to the huge deficit of skilled health and safety specialists in all responsible State bodies, including the labour inspectorate. Thanks to the trade unions, some 2,946 health and safety violations had been registered in Ukrainian coal enterprises in 2016. Some 485 accidents in Ukrainian mines had occurred in 2016 alone, which had resulted in the death of 12 miners. Health and safety was chronically underfunded. A joint mission by IndustriALL and the ITUC to Ukraine had taken place in March 2017, whereby concern was expressed about the lack of real social dialogue. She expressed support for the concerns and demands of the FTUU, particularly for the Bill passed in May 2017, and urged the Government to fund and give priority to setting up proper programmes to implement health and safety measures, including solid and competent health and safety bodies with highly skilled staff in 2017 and following years.

La membre gouvernementale de la Suisse a rappelé qu'au cours de ces dernières années, selon les informations disponibles, le nombre d'inspections du travail en Ukraine a diminué. Le rôle de l'inspection du travail est primordial pour assurer la protection des travailleurs et il convient d'encourager le gouvernement à assurer l'application de la législation du travail au moyen d'inspections, conformément aux obligations découlant de la convention n° 81. Des inspections efficaces et opérationnelles contribuent non seulement à des conditions de travail décentes, mais aussi au développement économique et à une concurrence loyale entre les entreprises. Le gouvernement est invité à moderniser ses procédures d'inspection et à les harmoniser avec les standards internationaux, en consultation et en coopération avec les partenaires sociaux et le secteur privé.

The Government representative noted that the criticism that had been voiced by the Ukrainian employers and workers reflected the internal processes under way in the country. It was recalled that the Parliament was a body that was not subject to the will of the Government, the employers' organizations had lobbyists in the Parliament and could exert influence on its decisions and on the adoption of legislation, by which all, including the Government, workers and employers, needed to abide.

The Government was keen to establish effective labour inspection services that had adequate powers. He emphasized that full account would be taken of the criticisms expressed by the employers concerning the alleged inadequacy of the current legislation to ensure the effective functioning of labour inspection services and that relevant measures would be taken. Currently, about 3,500 labour inspectors worked at the labour inspectorate as public servants. Before its summer break, the Parliament was planning to discuss the legislation on local government, which would also cover public labour services undertaken by the local authorities. The Government entirely agreed with the Worker representatives about the need for more funding and proper training of labour inspectors. He concluded by saying that his Government had welcomed the ILO technical assistance, which had made a significant contribution to the effective functioning of the labour inspectorate. He noted that a number of issues had been discussed in the framework of this assistance, such as training of labour inspectors, and expressed hope that already next year his Government would be in a position to report to the Committee of Experts on positive developments in relation to labour inspection.

The Employer members expressed their appreciation concerning the response of the Government in relation to some of the specific issues raised during the discussion. The statements made by the Worker and Employer members from Ukraine had provided further insight into the national situation. It was clear that progress had been made, although the situation was not perfect. They welcomed the Government's willingness to continue to engage with the national workers' and employers' organizations, and to avail itself of ILO support to continue to improve the labour inspection services and the training of labour inspectors. Information was requested from the Government on: (1) the legislation that had entered into force in May 2017, particularly with regards to its impact on labour inspection; (2) confirmation that the moratorium had not in any way been extended; and (3) the circumstances surrounding the moratorium and the relevant vote in Parliament. The positive engagement between the ILO, the Government and the social partners was the first of many steps to ensure a well-functioning and well trained labour inspection service.

Les membres travailleurs ont remercié le gouvernement pour ses explications, qui démontre sa volonté de mettre en œuvre les conventions, et lui ont suggéré de continuer à se prévaloir de l'assistance technique du Bureau dans le cadre de la réforme de l'inspection du travail. Les membres travailleurs ont déclaré attendre des actions concrètes de la part du gouvernement afin d'assurer la collaboration effective des employeurs et des travailleurs à ce processus. Le droit des travailleurs de porter plainte, même de façon anonyme, doit être assuré ainsi que leur protection lorsqu'ils l'exercent. Par ailleurs, le gouvernement doit s'engager fermement à ne plus avoir recours à des mesures telles qu'un moratoire sur les inspections et fournir des informations à la commission d'experts à cet égard. De même, afin de permettre à l'inspection du travail d'accomplir ses fonctions de conseil et de contrôle, le gouvernement doit renforcer les moyens qui lui sont alloués, notamment en augmentant le nombre d'inspecteurs, en améliorant leur formation et en leur assurant une rémunération adéquate. Les inspecteurs doivent pouvoir procéder aux contrôles avec toute la latitude nécessaire, surtout dans les industries à haut risque. Enfin, le gouvernement doit accomplir davantage d'efforts dans la mise en œuvre d'un plan d'action national en matière de sécurité et de santé au travail.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Ukraine to:

- **provide detailed information regarding recent legislation enacted on the regulation of the labour inspection system, including providing a copy of the same for analysis and consideration in relation to the application of Conventions Nos 81 and 129;**
- **promote effective dialogue with employers' and workers' organizations concerning labour inspection matters;**

- continue to avail itself of ILO technical assistance in order to strengthen the capacity and resources of the labour inspection system, in particular with regards to the training and capacity building of labour inspectors;
- ensure that the status and conditions of service of labour inspectors guarantee their independence and impartiality in line with the Conventions;
- ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.

In view of the information provided by the Government about the expiration of the moratorium placed on labour inspection, the Committee calls upon the Government to refrain from imposing any such restrictions on labour inspection in the future.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

Prenant en compte cette discussion, la commission a demandé au gouvernement de l'Ukraine de:

- fournir des informations détaillées sur la législation récemment adoptée régissant le système d'inspection du travail, notamment en communiquant une copie de celle-ci à des fins d'analyse et d'examen en relation avec l'application des conventions n^{os} 81 et 129;
- promouvoir un dialogue efficace avec les organisations d'employeurs et de travailleurs à propos des questions concernant l'inspection du travail;
- continuer à se prévaloir de l'assistance technique du BIT pour renforcer les capacités et les ressources du système d'inspection du travail, en particulier en ce qui concerne la formation et le renforcement des capacités des inspecteurs du travail;
- veiller à ce que le statut et les conditions de service des inspecteurs du travail garantissent leur indépendance et leur impartialité en conformité avec les conventions;
- veiller à ce que les autres fonctions confiées aux inspecteurs du travail ne fassent pas obstacle à leurs fonctions principales ni n'aient un impact négatif sur la qualité des inspections du travail.

Compte tenu des informations fournies par le gouvernement à propos de l'expiration du moratoire instauré sur l'inspection du travail, la commission invite le gouvernement à s'abstenir à l'avenir d'imposer toutes restrictions de ce type à l'inspection du travail.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

Teniendo en cuenta la discusión, esta Comisión instó al Gobierno de Ucrania a que:

- suministre información detallada acerca de la legislación promulgada recientemente sobre la regulación del sistema de inspección del trabajo, y proporcione asimismo una copia de la misma para su análisis y consideración en relación con la aplicación de los Convenios núms. 81 y 129;
- promueva el diálogo efectivo con las organizaciones de empleadores y de trabajadores sobre cuestiones relativas a la inspección del trabajo;

- **continúe recurriendo a la asistencia técnica de la OIT con miras a fortalecer la capacidad y los recursos del sistema de inspección del trabajo, en particular en lo que respecta a la formación y al desarrollo de la capacidad de los inspectores del trabajo;**
- **vele por que el estatus y las condiciones de servicio de los inspectores del trabajo garanticen su independencia e imparcialidad de conformidad con lo dispuesto en los Convenios, y**
- **asegure que otras funciones encomendadas a los inspectores del trabajo no interfieran con sus responsabilidades principales ni menoscaben la calidad de las inspecciones del trabajo.**

En virtud de la información proporcionada por el Gobierno sobre la expiración de la moratoria impuesta a la inspección del trabajo, la Comisión instó al Gobierno a que se abstenga de imponer en el futuro cualquier restricción de este tipo a la inspección del trabajo.

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

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

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

Algérie (ratification: 1997)

Algeria (ratification: 1997)

Argelia (ratificación: 1997)

Un représentant gouvernemental de l'Algérie, tout en saluant le travail de la commission d'experts et du Comité de la liberté syndicale, a marqué son étonnement de voir figurer l'Algérie parmi les cas examinés par la Commission de la Conférence et a demandé avec insistance à cette dernière de réexaminer les critères de désignation des pays. La Constitution algérienne garantit toutes les libertés fondamentales, les droits de l'homme et du citoyen, incluant la liberté d'association et de réunion et la liberté de manifestation pacifique, l'exercice du droit syndical et du droit de grève, ces droits s'exerçant dans le cadre du strict respect de la loi. Aussi le dispositif juridique mis en place en application de la loi fondamentale du pays est-il en conformité avec l'esprit et la lettre des conventions et instruments internationaux ratifiés par le pays. Dans ce contexte, le pluralisme syndical consacré par la Constitution depuis 1989 a permis à l'Algérie d'enregistrer une intense activité syndicale, aussi bien dans le secteur économique que dans la fonction publique. A ce jour, 102 organisations syndicales ont été enregistrées dont 66 organisations de travailleurs et 36 organisations d'employeurs. Depuis 2014, il a été procédé à l'enregistrement de 5 organisations syndicales. L'activité syndicale, en Algérie, s'exerce dans le cadre de la loi, sans aucune difficulté ou entrave, y compris concernant le recours à la grève. En 2016, 35 mouvements de grève ont été enregistrés (23 dans la fonction publique et 12 dans le secteur privé) et ont compté la participation de plus de 200 000 travailleurs issus des différents secteurs. S'agissant de l'enregistrement des syndicats, l'orateur a rappelé qu'il revient à l'administration du travail de contrôler en amont la conformité des textes fondateurs de l'organisation syndicale de travailleurs ou d'employeurs aux dispositions de la législation nationale régissant l'exercice du droit syndical, en conformité avec les dispositions de la convention n° 87. Les dossiers des trois syndicats cités par la commission d'experts ont été examinés par les services compétents du ministère du Travail; des observations leur ont été notifiées dans les délais fixés par la législation en vigueur et une réponse de leur part est attendue. Pour ce qui est de Confédération générale autonome des travailleurs en Algérie (CGATA), cette organisation a introduit une demande d'enregistrement en juin 2013; une réponse portant observations de l'administration sur ses statuts lui a été notifiée en juillet 2013, à l'adresse figurant dans la demande d'enregistrement, mais le courrier a été retourné pour fausse adresse. Le 2 décembre 2014, l'organisation a saisi l'administration du travail pour s'enquérir des suites réservées à sa demande de constitution. Il y a plus de deux ans qu'un nouveau courrier a été adressé à l'organisation l'invitant à mettre ses textes fondateurs en conformité avec la loi algérienne mais, force est de constater que, à ce jour, aucune réponse n'a été enregistrée au niveau de l'administration du travail. L'organisation n'a donc pas d'existence légale. Sur le dialogue social, l'orateur a indiqué que la pratique du dialogue social au niveau national a permis la signature, entre le gouvernement et les partenaires économiques et sociaux, du pacte national économique et social en 2006, lequel a été reconduit en 2010, ainsi que du pacte national économique et social de croissance, en février 2014. Au niveau des branches et des secteurs d'activité, le dialogue social s'est traduit par la signature de 82 conventions collectives

et de 167 accords collectifs de branche. En outre, le ministère de l'Education nationale et huit syndicats sectoriels (sur les 10 que compte le secteur) ont procédé à la signature, en 2015, d'une charte d'éthique comportant des engagements de toutes les parties pour la préservation et la promotion d'un climat social propice à la résolution des problèmes du secteur. Pour sa part, l'Union générale des travailleurs algériens (UGTA) a procédé en 2015, à la signature, avec les organisations patronales, d'un pacte de stabilité et de développement de l'entreprise dans le secteur privé. Enfin, 3 671 conventions collectives et 17 242 accords collectifs d'entreprise ont été conclus. L'orateur a notamment rappelé que l'expérience algérienne en matière de pratique du dialogue social fait actuellement l'objet d'un partage avec les pays africains dans le cadre d'une convention signée avec l'OIT, visant à promouvoir la coopération Sud-Sud à travers la mise en œuvre d'un programme financé par l'Algérie, et qu'un événement parallèle sur l'expérience algérienne en matière de dialogue social et de protection sociale a été organisé lors de la 329^e session du Conseil d'administration du BIT. S'agissant de l'observation citée par la commission d'experts relative à l'usage de violence policière à l'encontre de syndicalistes lors de manifestations, l'orateur a indiqué que la manifestation à laquelle il est fait allusion a été organisée en violation des dispositions de la loi 89-28 relative aux réunions et manifestations publiques, qu'elle avait pour objectif la perturbation et l'atteinte à l'ordre public et que, à ce titre, les manifestants se sont exposés aux sanctions prévues par la loi. L'intervention des services de l'ordre s'est faite dans le respect de la loi et en conformité avec les standards internationaux en matière d'exercice de la liberté de manifestation pacifique. Enfin, s'agissant des questions législatives relatives à l'avant-projet de loi portant Code du travail, l'orateur a rappelé que, conformément aux conclusions de la 104^e session de la CIT (juin 2015), le gouvernement en a transmis une copie à la commission d'experts en octobre 2015. Cet avant-projet de loi a pris en compte une série d'observations contenues dans le mémorandum de commentaires techniques élaboré par les services du BIT. Pour ce qui est des questions relatives aux articles 3, 4 et 6 de la loi 90-14 du 2 juin 1990, relative aux modalités d'exercice du droit syndical, des précisions ont été intégrées dans l'avant-projet en vue de répondre aux préoccupations soulevées. Le texte se trouve toujours au stade de la concertation avec toutes les organisations syndicales de travailleurs et d'employeurs, et la concertation a été élargie aux départements ministériels et aux autorités départementales. Une réunion a d'ailleurs été organisée en janvier 2017 avec les syndicats sectoriels, et un débat fructueux a été enregistré entre l'administration du travail et ces derniers, en présence du Bureau de l'OIT à Alger. Les délais peuvent certes paraître longs pour certains mais, s'agissant d'un texte de loi d'une extrême importance, il convient de rechercher l'adhésion du plus grand nombre à l'effet de disposer d'un texte cohérent qui prenne en charge les préoccupations du monde du travail dans leur globalité et leur complexité. L'orateur a tenu à rassurer la Commission de la Conférence sur la volonté du gouvernement de faire aboutir le processus de concertation sur cet avant-projet de texte.

Les membres travailleurs ont souligné que, depuis la précédente discussion de ce cas en 2015, la situation en Algérie s'est détériorée. Le Code du travail n'a pas été amendé en dépit des demandes de révision persistantes émanant des organes de contrôle de l'OIT. L'Algérie n'a pas remédié aux problèmes soulevés par l'OIT et n'a pas engagé de consultations, même les plus élémentaires, avec les partenaires sociaux. Le projet de Code du travail de 2015 n'a pas été révisé alors que certaines des dispositions de ce projet enfreignent explicitement la convention comme les articles 510-512, en vertu desquels les syndicats ne pourraient s'affilier à des fédérations ou des confédérations que s'ils appartiennent aux mêmes branches ou secteurs. Par ailleurs, le projet de loi imposait une série de conditions préalables concernant le nombre requis de syndicats de la même profession, du même secteur ou de la même branche pour établir des fédérations et confédérations de leur choix. L'article 514 du projet autorise uniquement les personnes de nationalité algérienne ou celles naturalisées algériennes depuis au moins cinq ans à établir des syndicats ou à y adhérer en contradiction avec la convention qui reconnaît le droit de tous les travailleurs d'établir des organisations de leur choix et de s'y affilier. Là encore, aucune amélioration n'a été apportée. Le gouvernement n'a en outre donné suite à aucune des demandes concernant les articles 517 et 525 du projet qui requièrent qu'une série de procédures publiques soient suivies lors de la création d'un nouveau syndicat ou lorsque des changements interviennent dans les statuts ou les conseils exécutifs de syndicats existants. Les clarifications demandées n'ont jamais été données et le processus de révision avec les partenaires sociaux n'a jamais eu lieu. L'article 534 du projet de Code du travail reste lui aussi inchangé et prévoit que les syndicats nationaux ne peuvent accepter des cadeaux et des legs d'organisations étrangères que suite à une autorisation expresse à cet effet délivrée par les autorités publiques, en contradiction avec la convention. La loi 90-14 du 2 juin 1990 relative aux modalités d'exercice du droit syndical prévoit une condition préalable liée à la nationalité, qui limite la possibilité de créer des syndicats et d'y adhérer. Cette disposition limite le droit des travailleurs étrangers à établir un syndicat sur la base d'une discrimination fondée sur la nationalité alors que, selon la convention, la liberté syndicale doit être garantie sans discrimination d'aucune sorte. L'Etat cherche à décourager et à saper le cœur même du mouvement syndical indépendant en Algérie et dresse des obstacles différents et persistants chaque fois qu'un syndicat introduit une demande de reconnaissance et d'enregistrement. En dépit des dispositions de la loi 90-14, les autorités ont arbitrairement refusé de délivrer les récépissés d'enregistrement aux syndicats. Qui plus est, les syndicats sont fréquemment appelés à modifier leurs statuts ou à fournir des documents complémentaires qui ne sont pas exigés par la loi. La non-délivrance des récépissés d'enregistrement restreint le pouvoir des syndicats de fonctionner

normalement. Sans le récépissé, les syndicats ne sont pas autorisés à percevoir de cotisations d'affiliation, qui constituent la source essentielle des revenus d'un syndicat. Ils ne peuvent pas non plus ouvrir un compte bancaire ni engager d'actions en justice. Tel est notamment le cas de la CGATA – qui reste en attente de son enregistrement depuis plus de vingt ans. Un autre syndicat, le SNAP, n'a été reconnu qu'au bout de deux ans, au terme d'une procédure de plainte introduite auprès du Comité de la liberté syndicale. La liste de licenciements arbitraires et discriminatoires de syndicalistes en Algérie est sans fin. Comme le cas de M. Mellal Raouf, président du Syndicat national autonome des travailleurs du gaz et de l'électricité (SNATEGS), licencié en mars 2015 en représailles de ses activités syndicales. En décembre 2016, il a été condamné par contumace à six mois de prison et à une amende de 50 000 dinars algériens pour avoir dénoncé la pratique illégale de la compagnie nationale d'électricité et de gaz Sonelgaz consistant à gonfler les factures d'électricité. La sentence pénale a été confirmée par le Tribunal de deuxième Instance en mai 2017. En avril 2013, M. Rachid Malaoui, président du SNAPAP, a été limogé de son poste à l'université de la formation continue pour «absence non justifiée de son poste» et le paiement de son salaire a été suspendu. Il n'a pu obtenir une copie de sa lettre de licenciement qu'en juin 2013, et sa demande de révocation de son licenciement a été rejetée par le Conseil d'Etat en janvier 2017. En outre, plusieurs cas de détention arbitraire et d'ingérence injustifiée au cours de manifestations pacifiques ont eu lieu en Algérie en 2017, comme l'arrestation dans un hôtel de Tizi Ouzou des dirigeants du SNATEGS, de la Sonelgaz, dont le président, M. Mellal Raouf, le secrétaire général, M. Kouafi Abdelkader, le directeur des communications, Chaouki Fortas, ainsi que deux membres du comité exécutif, Mekki Mohammed et Baali Smail. En mars 2017, la police a réprimé une manifestation pacifique organisée par le même syndicat – 240 travailleurs, dont 30 femmes, ont été arrêtés. Il est impératif que l'Algérie mette en œuvre dans les plus brefs délais les réformes législatives demandées depuis dix ans. Les victimes de cette inaction sont les milliers de travailleurs algériens qui sont sujets aux abus et au déni de leur droit fondamental de s'organiser. Il s'agit d'un cas d'une extrême gravité, que l'OIT devra continuer à suivre. Les membres travailleurs ont exhorté le gouvernement à modifier sa législation, à reconnaître immédiatement tous les syndicats légitimes et à réintégrer tous les travailleurs illégalement licenciés pour leurs activités syndicales.

The Employer members considered that this was a case of extremely slow progress rather than that of deliberate breach and recalled that it concerned the following three issues. First, since 2011, acts of violence had been alleged on a number of occasions. In this respect, the most recent allegations related to the arrest, in February 2016, of trade union members and acts of violence by the police against protest action in the education sector. However, due in part to the fact that in the various interventions made over the years these allegations had been made by persons from countries other than Algeria, this was not an easy situation for this Committee to supervise. The lack of direct allegations by Algerian nationals, coupled with the Government's indication that no complaints had been made to the competent authorities regarding these matters, made it difficult to do more than simply acknowledge the allegations. Had the Algerian workers lodged the complaints, the Employer members expected that these would have been investigated. Thus, before drawing conclusions it was necessary to have a balanced set of facts and detailed information on the actions taken by the Government, or the lack thereof. Second, regarding the Committee's previous request to undertake consultations with the representative employers' and workers' organizations in order to take their views into account in drafting the Labour Code, a number of consultations had taken place. In 2016, a copy of the draft Code was submitted to the ILO for comments and, as a consequence, a number of suggestions to improve it were made. Before and since, numerous tripartite and bipartite meetings were held to discuss the Code and related issues. In January 2017, copies of the draft, including amendments suggested by the ILO, were provided to employers' organizations and unions for comments and further suggestions for change. A final draft was in preparation and was expected to be submitted to Parliament once finalized. Algeria was not reluctant to engage in discussions with the social partners and had an active record of tripartite engagement on a range of issues at national, industry and enterprise levels. These included the signing of the National Economic and Social Growth Pact and of a number of collective agreements and accords. In so far as the Labour Code was concerned, this was a case of progress, although a slow one and the Government was encouraged to bring it to a conclusion as soon as possible, taking into account the 2016 direct request in which the Committee of Experts identified a number of restrictive provisions. Third, regarding restrictions on the right to establish trade unions and the right of workers to establish and join organizations of their own choosing, section 6 of Act No. 90-14 of 2 June 1990 restricted the right to establish a trade union organization to persons who were originally of Algerian nationality or who acquired Algerian nationality at least ten years earlier and sections 2 and 4 of that Act, read jointly, had the effect of restricting the establishment of federations and confederations in an occupation, branch or sector of activity. The Committee had previously noted the Government's indication that the Act was to be amended so that the right to establish trade unions was extended to foreign nationals and to include a definition of federations and confederations. Given the Government's stated willingness to make these changes and in the absence of information on any new developments in this regard, the Employer members called on the Government to amend sections 4 and 6 of the Act as soon as possible. In addition, with respect to the concerns previously expressed over the long delays in the registration of the Higher Education Teachers' Union (SESS), the National Autonomous Union of Postal Workers (SNAP) and the Autonomous General Confederation of Algerian Workers (CGATA), the

Employer members noted the Government's indication that SNAP had been registered, that the authorities informed the SESS of certain requirements that must be resolved for its application to be in conformity with the law, and that the CGATA was informed in 2015 that it did not meet the legal requirements for the establishment of a confederation. Regarding the latter, it was not clear which requirements were not fulfilled. They thus urged the Government to provide information in this respect and to take all necessary measures to guarantee the prompt registration of trade unions which had met the requirements set out by the law, and, if necessary, require the competent authorities to ensure that the organizations in question were duly informed of the additional requirements that had to be met.

La membre travailleuse de l'Algérie a estimé que certains utilisent des stratagèmes pour exercer une pression sur les travailleurs à des fins tout autres que celles de la défense légitime des intérêts des travailleurs. L'expérience a montré que le syndicalisme qui reflète la volonté des travailleurs ne doit pas être entravé; le respect des principes fondamentaux au travail dans un contexte objectif loin de toute influence négative constitue une condition essentielle du progrès social. Autrement, le syndicalisme perdra toute crédibilité parmi les travailleurs. Elle a souligné l'importance d'un véritable dialogue social et d'une véritable représentativité établis selon les critères de l'OIT. L'UGTA qu'elle représente bénéficie d'une longue expérience qui a été partagée en de nombreuses occasions avec d'autres organisations syndicales.

La membre employeuse de l'Algérie a souligné que la ratification de la convention et des conventions fondamentales de l'OIT ainsi que la promulgation des lois sociales de 1990 ont permis d'enregistrer plus de 102 organisations syndicales. Depuis 1990, un dialogue social soutenu a permis de concrétiser un pacte économique et social en 2006, reconduit en 2010, ainsi qu'un pacte national économique et social de croissance en 2014. Un accord de développement de l'entreprise signé entre les organisations des employeurs et l'UGTA a été remis au BIT en juillet 2016. L'avant-projet du Code du travail longuement débattu par les employeurs a été transmis à ACT/EMP pour avis et propositions. Les observations des employeurs ont récemment été transmises au gouvernement. Dans le domaine du dialogue social, les initiatives entreprises par les autorités algériennes constituent une grande avancée qui mérite soutien et encouragements.

The Government member of Mauritania noted that Algeria had made considerable efforts to translate Convention No. 87 into reality, based on the conviction that freedom is a powerful engine, which is not surprising in a country of a million martyrs who paid the highest price for the achievement of this goal. Algeria is a country in which 102 trade union organizations conduct their work in freedom and, side by side with the Government, promote social dialogue at all levels. Trade unions can safely register, and there are no conditions for the conduct of trade union activities other than compliance with the basic legal and regulatory framework. As regards social dialogue, the speaker referred to the activities organized by Algeria for the benefit of African countries in the framework of the South-South cooperation initiative financed by Algeria. The example set by the country in this regard is highly valued by Mauritania. The dynamics of social dialogue at the national, sectoral and institutional levels have brought about positive results.

Une observatrice représentant la Confédération syndicale internationale (CSI) a souhaité faire le bilan du suivi donné aux trois recommandations formulées en 2015 par la Commission de la Conférence. En ce qui concerne les demandes d'enregistrement des organisations syndicales, celles-ci sont toujours traitées par les autorités avec un large pouvoir discrétionnaire sans que rien n'ait vraiment changé. Non seulement il n'y a pas eu de réintégration, mais les licenciements n'ont pas cessé, et ce dans tous les secteurs. En ce qui concerne le Syndicat des enseignants du supérieur solidaires (SESS), en dépit du dépôt de deux demandes d'enregistrement en 2012 et même d'une modification du statut du syndicat, aucune réponse du gouvernement n'est intervenue. Le cas de la CGATA, relatif au droit d'organisation, reste sans progrès depuis dix ans en dépit des plaintes adressées au Comité de la liberté syndicale, des différents rapports de suivi ainsi que des rapports de la commission d'experts. Il a fallu que la CGATA dénonce le contenu du nouveau projet de Code du travail pour attirer l'attention du Comité de la liberté syndicale et de la commission d'experts. Enfin, le cas du SNATEGS a pris une dimension particulière car, si le SNATEGS a obtenu son enregistrement après plusieurs années en 2013 suite à une plainte formée devant le Comité de la liberté syndicale, on doit déplorer le licenciement abusif des deux présidents successifs du syndicat par l'employeur qui a toujours refusé par écrit de reconnaître le SNATEGS, en dépit de son enregistrement officiel et malgré les différents recours. L'oratrice a conclu en indiquant que le ministre du Travail venait de décider de retirer l'enregistrement du SNATEGS.

La miembro gubernamental de Cuba indicó que la dinamización de las relaciones laborales reguladas por las leyes sociales, ha propiciado la constitución de 102 organizaciones sindicales de trabajadores y de empleadores. Según la información facilitada por el Gobierno, el diálogo social se desarrolla en tres niveles, o sea a nivel nacional, de la industria y de las compañías, lo que ha permitido la participación de los interlocutores sociales y la negociación

de convenios colectivos. Asimismo, la OIT formuló observaciones al anteproyecto del Código del Trabajo, las cuales están siendo consideradas por el Gobierno. El espíritu de cooperación y la voluntad demostrada por el Gobierno argelino debe tenerse debidamente en cuenta por esta Comisión.

El miembro gubernamental de la República Bolivariana de Venezuela subrayó la información facilitada por el Gobierno de Argelia en relación con la creación de 102 organizaciones sindicales, tanto de trabajadores como de empleadores; la celebración de un gran número de convenciones colectivas, tanto a nivel de industrias como a nivel de empresas; y la celebración de 20 reuniones tripartitas entre el Gobierno, los empleadores y la Unión General de Trabajadores Argelinos (UGTA). Entre 2006 y 2015, el diálogo social ha permitido la firma de varios pactos nacionales en los sectores económico y social, y en el de la educación, así como la estabilidad y el desarrollo del sector privado. Asimismo, el anteproyecto de Código del Trabajo ha sido objeto de discusiones celebradas en enero de 2017, con las organizaciones sindicales, y toma en cuenta las observaciones de la OIT. Una vez que sea objeto de concertación con las organizaciones sindicales, el anteproyecto será sometido al Parlamento para su adopción. El orador instó a la Comisión de la Conferencia a tener en cuenta la buena disposición y los esfuerzos realizados por el Gobierno, que se desprenden de las explicaciones y argumentos presentados, y confió en que las conclusiones de dicha Comisión, producto del debate, sean objetivas y equilibradas, lo cual ayudará a que el Gobierno pueda considerarlas y valorarlas en el marco del cumplimiento del Convenio.

Le membre employeur de la Mauritanie a noté que l'amélioration de l'environnement syndical avec la promulgation en 1990 des lois sociales a conduit au pluralisme syndical qu'attestent aujourd'hui des dizaines d'organisations syndicales de travailleurs et d'employeurs. Il suffit aux organisations syndicales de se conformer aux dispositions législatives pour être enregistrées et entrer immédiatement en activité. Le nombre élevé de conventions collectives et d'accords collectifs enregistrés au plan national souligne le résultat probant du dialogue social. L'avant-projet de loi portant Code du travail, élaboré en concertation avec les partenaires sociaux et le BIT, est en passe d'être soumis au gouvernement et adopté par le Parlement. Au vu des avancées remarquables, la demande faite à l'Algérie de fournir des informations relatives aux manquements dans l'application des dispositions de la convention devrait être reconsidérée.

La membre gouvernementale de la Guinée a relevé la volonté politique du gouvernement de respecter les normes de l'OIT démontrée par la ratification de 60 conventions, dont les huit fondamentales, qui sont prises en compte dans la législation nationale, ainsi que l'adoption d'un dispositif juridique conforme aux instruments internationaux en ce qui concerne la liberté syndicale, le pluralisme syndical et le droit de grève. Il convient donc d'encourager le gouvernement algérien à poursuivre les contacts avec le BIT afin de bénéficier de son assistance technique.

La miembro trabajadora de España, hablando en nombre de los sindicatos CCOO, UGT, CIG y ELA (España), CGT y CFDT (Francia), CGIL, CISL, UIL (Italia), LO-N (Noruega), TUC (Gran Bretaña), DGB (Alemania) y la Unión Sindical Suiza (Suiza), se refirió a diferentes casos relativos al registro de organizaciones sindicales en Argelia. Por ejemplo, al Sindicato Autónomo de Abogados en Argelia (SAAVA, por su sigla en francés) que ha depositado su expediente de registro el 8 de septiembre de 2015 y todavía no ha recibido respuesta del Ministro de Trabajo, Protección Social y Empleo, a pesar de la carta de recordatorio que se envió el 24 de marzo de 2016 a las autoridades. Otro ejemplo es el Sindicato de Docentes de la Enseñanza Superior (SESS) que, además de rechazar su registro, se le abrió una investigación policial contra todos sus miembros fundadores quienes fueron citados telefónicamente o por escrito, procedimiento ilegal cuyo objeto era presionar a los fundadores del SESS y tratar de detectar elementos de debilidad sobre los que las autoridades pudieran haberse apoyado para realizar una eventual clonación de esta organización. Del 367.º informe del Comité de Libertad Sindical de marzo de 2013, se desprende que no ha habido ningún progreso, así como la mala fe y el rechazo de la aplicación de sus recomendaciones por el Gobierno. Lo mismo se puede indicar de las observaciones de la Comisión de Expertos de 2015 y la de 2016. En lo que se refiere a la Confederación General Autónoma de Trabajadores en Argelia (CGATA), su estatuto ha sido elaborado por expertos de ACTRAV y de la CSI para ajustarse perfectamente a la ley y los convenios ratificados por el país. A pesar de ello, el Ministerio de Trabajo no ha registrado a varias organizaciones sindicales, tal como el Sindicato Nacional Autónomo de Trabajadores Argelinos (SNATA), en septiembre de 2000, o la Confederación Autónoma de Trabajadores Argelinos (CASA), en abril de 2001. Se desprende del examen de quejas por el Comité de Libertad Sindical, así como de los informes de seguimiento, y del examen del cumplimiento del Convenio núm. 87 por la Comisión de Expertos y la Comisión de Aplicación de Normas, que no ha habido progreso. En relación con el SNAPAP, después de su rechazo de posicionarse respecto a la elección del Presidente de la República en 1998, las autoridades decidieron sancionarlo. La primera forma de sanción fue la creación de otro sindicato SNAPAP, con un diputado a la cabeza de la nueva organización. Las autoridades intentaron todas las estrategias posibles para presentarlo como sindicato legítimo concediéndole un nuevo registro y los recursos

financieros, y pidiendo a las administraciones a todos los niveles que no trabajaran con ningún otro sindicato que no fuera éste. La queja presentada al Comité de Libertad Sindical contiene las pruebas a todas estas cuestiones.

Para finalizar, la miembro trabajadora de España recordó que en el año 2016 las autoridades argelinas impidieron la entrada en territorio argelino a una delegación de la Confederación Sindical Internacional (CSI), prohibición que no ha recibido por el momento ninguna explicación sobre su naturaleza.

Le membre gouvernemental du Tchad a fait observer que le paysage syndical en Algérie ne peut que faciliter la constitution des organisations syndicales étant donné qu’une seule condition – la conformité aux dispositions législatives régissant l’exercice du droit syndical – est requise pour l’enregistrement d’une organisation syndicale. Le pluralisme syndical progresse grâce à la volonté du gouvernement de donner plus d’espace aux organisations syndicales et d’alléger les conditions de légalité de leurs activités. Les résultats d’un dialogue social qui s’étend à tous les niveaux sont tangibles. Le gouvernement en fait un outil de paix et de stabilité comme l’atteste la conclusion des pactes nécessaires au développement socio-économique du pays. Quant à l’élaboration d’un document appelé à régir les activités et la vie des travailleurs et de leurs familles, l’approche mise en œuvre par le gouvernement s’inscrit dans la dynamique de la recherche du consensus avec ses partenaires sociaux. Le gouvernement ne fournit pas suffisamment d’efforts pour se conformer à la convention; il convient donc de l’encourager et de lui donner le temps de faire aboutir les projets et les réformes enclenchés.

An observer representing IndustriALL Global Union expressed a grave concern at the severe violation of trade union rights experienced by SNATEGS. In December 2016, the SNATEGS President, Mr Raouf Mellal, was sentenced in absentia to six months in prison after being accused of illegally obtaining documents. These documents, which were freely available on the Internet, exposed the inflation of electricity bills by the state-owned energy company, Sonelgaz, over a ten-year period, affecting 8 million customers. However, instead of being commended for uncovering corruption, he was being persecuted; an appeal against his sentence, examined in May 2017, was unsuccessful. Since the beginning of 2017, SNATEGS had staged a series of strikes across Algeria to demand higher wages, trade union freedoms and better safety standards after numerous deaths of workers on electricity lines at the company. In retaliation to the successful strikes, 93 union leaders had been fired and a further 663 SNATEGS members were facing legal action. On 16 May 2017, just days before a planned five-day strike, the Minister of Labour withdrew SNATEGS’ registration and dismissed Mr Mellal, in violation of the national law, Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Algeria in 1962. SNATEGS leaders and members faced ongoing physical harassment and persecution by the security forces for carrying out their legitimate union activities and exercising their right to strike. In March 2017, more than 240 trade union leaders and members were arrested and 30 women physically assaulted following peaceful demonstrations. The situation was critical. She called on the Government to drop all charges against Mr Mellal and other SNATEGS members, to reinstate 93 union members and to reverse immediately the decision to withdraw SNATEGS registration.

Le membre gouvernemental de Madagascar a déclaré que le respect des normes constitue un élément important et fondateur de l’Organisation. Le fait qu’il y ait 102 organisations syndicales enregistrées en Algérie atteste que les procédures correspondantes existent. Ce nombre significatif est dans un contexte de liberté accordée aux travailleurs. Les textes normatifs existent et ces organisations sont régies par leurs statuts et ont signé plus de 3 000 conventions collectives. Dès lors, il convient de s’interroger sur la manière dont elles ont procédé pour signer ces conventions et quel est le pourcentage d’employés couvert par ces conventions collectives. La signature récente de pactes et chartes en matière de développement économique et social suite à des concertations organisées entre les entités concernées en Algérie témoigne l’ouverture des autorités au dialogue. Le projet de Code du travail en cours d’élaboration procède d’une démarche participative et bénéficie de l’expertise du BIT; son aboutissement devra permettre une confiance mutuelle entre les parties et améliorer l’environnement socio-économico-politique du travail. L’orateur s’est dit persuadé que, forte de ces instruments nationaux, soutenus par des procédures de contrôle et d’évaluation permanentes, l’Algérie sera en mesure de se conformer à la convention. Il a encouragé le gouvernement à poursuivre ses efforts afin d’appliquer efficacement les instruments nationaux, mettre en place un mécanisme de suivi et d’évaluation avec des indicateurs appropriés, tout en fournissant à la commission d’experts les informations nécessaires.

The Worker member of Sudan stated that there were over 100 trade unions in Algeria, that national laws and regulations enabled trade unions to play an important role and that wide external relations of Algerian trade unions enabled them to lead the trade union movement at both regional and international levels. He pointed out that Algeria had committed to implementing the provisions of the Convention and expressed the hope that the Government would avail itself of ILO technical assistance in this respect.

The Government member of Turkey appreciated the concrete and positive steps taken by the Government. These included the signing of the National Economic and Social Growth Pact, the Ethics Charter in the Education Sector and the Pact for Stability. The measures taken towards enriching social dialogue, which had led to the conclusion of a number of collective accords and agreements, were indicators of the Government's willingness and commitment to further improve the situation of trade union rights in the country. The efforts to enact the Labour Code by taking the views of the stakeholders into consideration should also be commended. He encouraged the Government to increase its efforts aimed at improving working life and protecting of trade union rights and to continue working closely with the ILO in this respect.

Le membre travailleur du Mali, secrétaire général de l'Union nationale des travailleurs du Mali (UNTM), rappelant que le non-respect des libertés est un frein au développement, a noté que le gouvernement est ouvert à l'expression libre des idées qui concourent à la reconnaissance effective de la liberté syndicale. Le gouvernement est dès lors encouragé à respecter la convention dans sa lettre et à garantir l'exercice du droit syndical pour tous. L'avant-projet de Code du travail est un instrument important de bonne gouvernance, et sa soumission aux partenaires sociaux et au BIT est encourageante pour répondre aux attentes des parties concernées. L'orateur a conclu en indiquant que cette concertation doit se poursuivre et en observant que le gouvernement s'est engagé, à travers le Pacte économique et social national, à promouvoir un cadre institutionnel de renforcement du dialogue et de la concertation dans tous les domaines.

The Government member of Libya welcomed the Government's commitment to apply the Convention in practice. Indeed, as indicated by the Government, social dialogue exists at all levels. The draft Labour Code was discussed with the economic partners, administrative authorities and trade union organizations. The social partners were included in the dialogue and this resulted in the signing of several agreements, as evidenced by the meeting held in January 2017 between the Minister of Labour and independent trade union organizations. He was thus surprised that Algeria had been placed on the list of cases before this Conference Committee.

Une observatrice représentant la CSI s'est référée à l'utilisation de la violence policière en dehors du cadre judiciaire visant à entraver le droit légitime à la liberté d'association des syndicats indépendants et l'interdiction des manifestations pacifiques. En octobre 2015, des policiers ont pénétré dans l'enceinte de l'Université de Tiaret pour arrêter le délégué SNAPAP, M. MANSRI Ahmed, qui a été relâché le lendemain. En octobre 2016, un rassemblement au sein de la ville de Bouira a été violemment réprimé, 75 personnes ont été embarquées et retenues pendant toute la matinée dans les commissariats de la ville. En février 2016, le siège du SNAPAP-CGATA a été encerclé; plusieurs syndicalistes ont été retenus pendant plusieurs heures sans aucune décision judiciaire. L'oratrice informe également que la marche des enseignants et enseignantes contractuels, partis de la ville de Bejaia en mars 2016, a été bloquée pendant une quinzaine de jours par un important dispositif policier aux portes d'Alger, avant que ses participants ne soient finalement évacués de nuit par les forces de l'ordre. En mai 2017, le siège du SNAPAP-CGATA d'Oran a été encerclé afin d'empêcher le rassemblement pacifique organisé par la CGATA.

The Government member of Egypt indicated that the Government had demonstrated its efforts to ensure trade union pluralism existed and that the numbers of registered trade unions in the country exceeded 100. He welcomed the social dialogue approach adopted by the Government within the framework of the National Economic and Social Pact, which was adopted by the social partners as an equitable and successful basis for industrial relations. Noting the Government's will to bring the national regulations into conformity with the Convention, he encouraged it to deploy further efforts in this regard, possibly with ILO technical assistance.

The Worker member of the United States, speaking on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Canadian Labour Congress (CLC) highlighted that serious restrictions on unions' right to freedom of assembly were imposed in the country and that, while the state of emergency was lifted in 2011, the ban on public protest remained in place. In addition to the ban, authorities relied on a number of penal provisions to criminalize peaceful assembly: (i) article 97 of the Penal Code prohibited unarmed gatherings deemed to have the potential to disturb public order – a violation of this provision was punishable by up to three years in prison; (ii) article 98 punished organizing or participating in an unauthorized demonstration with up to one year in prison; (iii) article 100 prohibited "incitement to an unarmed gathering"; and (iv) Law 91-19 required Algerians to notify authorities before holding a public meeting or demonstration, which in practice meant that protestors must obtain prior authorizations, which were then regularly denied. Authorities were also resorting to the courts to silence dissent, particularly in cases of strikes. In addition to the criminalization of peaceful assembly, section 24 of the Labour Code required unions to fulfil a number of requirements before they could strike, and even when these requirements were met, strikers were often dismissed from their jobs and faced criminal prosecution. Despite the fact that article 49 of the Constitution guaranteed the right to peaceful assembly, strikes and political demonstrations were still routinely met with police violence and repression. This was the case

of a peaceful demonstration of thousands of SNATEGS members who marched in March 2017 for decent wages and the right to freedom of assembly and which ended up with the arrest of 240 participants and the physical assault of 30 women. The AFL-CIO and the CLC shared the deep concern expressed by the UN Special Rapporteur in a 2013 report, as well as by Amnesty International and Human Rights Watch with respect to the country's continuing and serious violations of the Convention.

The Government member of Ghana noted that the Government of Algeria had put in place structures and committed efforts, guided by the Committee of Experts, in order to achieve the goal of fully meeting the requirements of the Convention and socio-economic emancipation through the interplay of demand and supply of labour and a cordial relationship between employers and employees. This journey could not be achieved without the commitment of time, money and human capital to obtain optimum results. The Government of Algeria was in the process of achieving this feat through the enactment of laws that would guarantee trade union pluralism and the formation of workers' organizations. It had also instituted social dialogue and good governance through consultation for the drafting of the Labour Code which was currently under consideration. Major issues in this draft bill were the outcome of consultation with the economic partners, various administrative authorities and trade unions, with much ILO involvement. The Government should therefore be encouraged to intensify this engagement with its social partners and the ILO in order to bring this laudable aspiration to fruition.

La membre gouvernementale du Sénégal a salué l'ensemble des réponses données par le gouvernement aux préoccupations formulées par la commission d'experts dans sa dernière observation, ainsi que les mesures prises par celui-ci depuis l'adoption des lois sociales de 1990. Ces dernières ont permis notamment la création de 102 organisations syndicales de travailleurs et d'employeurs, le maintien du dialogue social, comme le démontre les consultations tripartites et bipartites, la négociation de conventions collectives et d'accords de branche et la signature de nombreux pactes; et la concertation inclusive, à l'origine de l'élaboration de la nouvelle législation, est preuve de l'engagement du gouvernement à la rendre conforme aux normes de l'OIT. Il convient d'encourager les partenaires sociaux à poursuivre leur travail dans le sens du respect des normes sociales de l'OIT et le gouvernement à continuer ses efforts en vue de mettre en œuvre la convention, tout en gardant à l'esprit que l'atteinte de l'objectif du travail décent passe nécessairement par le dialogue social et le respect de la liberté syndicale.

Un observador en representación de la Internacional de Servicios Públicos (ISP) destacó que el caso ha sido examinado por la Comisión de Expertos casi todos los años en los últimos quince años, y por la Comisión de la Conferencia en 2014 y 2015. En estas ocasiones, el Gobierno ha repetido que la legislación y la reglamentación del trabajo se basan en los principios previstos en los convenios de la OIT; los interlocutores sociales están representados en todos los sectores de actividades a nivel regional; y que el registro de las organizaciones sindicales obedece a las disposiciones legales, mediante formalidades simples y sin limitaciones. Sin embargo, el examen del caso por la Comisión de la Conferencia demuestra lo contrario. Las quejas presentadas ante el Comité de Libertad Sindical han documentado los despidos antisindicales, los actos de acoso por parte de las autoridades públicas, así como el arresto y la detención arbitrarios de sindicalistas pertenecientes a organizaciones de trabajadores autónomas que no acatan el *diktat* del Gobierno. El Gobierno se ha cebado con algunos miembros del SNAPAP, afiliado a la ISP, y con los miembros de la Confederación General de Trabajadores en Argelia (CGATA), y hasta hoy no le han dado el registro sindical. El Sr. Rachid Malaoui, presidente de la CGATA fue despedido en 2013. El 16 de enero de 2017 el embajador de Argelia en Bruselas comunicó en una carta a la CSI en la cual menciona que el Sr. Malaoui está acusado de tratar de provocar una insurrección civil. A pesar de que nos alaga saber que el Gobierno considera que un sindicalista tiene tal poder de convocatoria, hay que admitir que éste no es el caso y que es sólo una excusa más para la denegación de registro de la CGATA. Otros sindicalistas han sido recientemente despedidos por su actividad sindical, tal como el Sr. Hasan Fouad, responsable de migración y refugiados de la CGATA, en diciembre de 2016, y el Sr. Naser Kaca, responsable de la sección sindical de la educación superior de la CGATA en la ciudad de Bejaia, el 26 de abril de 2017. Otros afiliados han sido suspendidos, degradados, o se les ha castigado con descuentos salariales. Este es el caso por ejemplo de los Sres. Yahia Habib y Arab Haddak, responsables de la sección de enseñanza superior del SNAPAP-CGATA en las ciudades de Tiaret y Bejaia. Por su parte, la Sra. Hassina Bensaïd, de la sección sindical municipal del SNAPAP-CGATA en la ciudad de Bejaia, ha sido trasladada hasta en nueve ocasiones en un solo año. Asimismo, su persistencia en la actividad sindical la llevó a ser amenazada con un arma de fuego por parte del presidente de la asamblea municipal. También, la Sra. Nadia Bedri, de la sección sindical del SNAPAP-CGATA en la Agencia Nacional de Recursos Hidráulicos, ha sido obligada a someterse a una pericia psiquiátrica por haber interpuesto una denuncia por acoso sexual. El Gobierno no ha dado seguimiento a todas las recomendaciones de la Comisión de Expertos y del Comité de Libertad Sindical, así como a las conclusiones de la Comisión de la Conferencia de 2014 y 2015. La Comisión debe condenar enérgicamente estas prácticas e instar al Gobierno a poner su legislación en línea con el Convenio y respetar sus principios.

The Government member of the Islamic Republic of Iran welcomed the measures undertaken by the Government to reinforce trade union pluralism and, in this respect, took note of the statistics provided on the creation of workers' and employers' organizations in the country. As regards social dialogue, 20 tripartite meetings and 14 bipartite meetings were held at the national level, which yielded a number of pacts between the Government and the social partners. The draft Labour Code was discussed with trade unions, economic partners and the concerned administrative authorities. These efforts demonstrated the willingness and commitment of the Government to make progress in this case. While supporting these measures, he encouraged the Government to continue making efforts and called on the Office to provide the necessary technical assistance.

The Government member of Qatar thanked the Government for providing detailed information, which highlighted the measures adopted to apply the Convention. He commended Algeria on the efforts deployed in undertaking social dialogue and in holding consultations with the social and economic partners, which resulted in the signing of several national and sectorial agreements.

The Government member of Pakistan welcomed the steps taken by the Government to enforce labour standards in the country through legislative and policy measures and its constructive engagement with the ILO supervisory bodies. He noted that 102 trade unions were registered in the country, which pointed to opportunities afforded for social dialogue and freedom of association. The draft Labour Code was being discussed with the social partners and the Government was awaiting the views of all trade unions for a possible enrichment of the Code. He hoped that trade unions would constructively engage in this process and that their genuine concerns would be addressed by the Government.

Le membre gouvernemental de l'Angola a noté avec satisfaction que, suite à la promulgation des lois sociales de 1990, l'Algérie a facilité la mise en œuvre du pluralisme syndical. Plusieurs organisations syndicales des travailleurs et employeurs ont ainsi été créées, en conformité avec la législation en vigueur. En outre, le dialogue social en Algérie se déroule dans un parfait respect du tripartisme, permettant notamment la signature du Pacte économique et social de croissance, lequel définit un certain nombre d'objectifs de gestion adéquate des secteurs économique et sociale. L'Algérie est encouragée à poursuivre ses efforts dans le renforcement du pluralisme syndical. La Commission de la Conférence ainsi que le Bureau doivent accompagner le gouvernement dans la mise en œuvre des réformes économiques et sociales destinées au développement et à la paix sociale.

The Government member of Kenya noted that the current national laws of Algeria had enabled registration of both employers' and workers' organizations which had as a result grown to over 102 trade unions. This showed that the statutory requirements for trade union registration were aligned with the requirements of the Convention. She also took note of the national economic and social growth pact signed between the Government and the economic and social partners in order to strengthen dialogue and enhance consultation, and the fact that it was being regularly and periodically renewed. Finally, she noted that there had been an increase in the number of collective bargaining agreements signed over the years. She concluded by emphasizing that the process of changing laws and institutional restructuring did take time and consequently, the Government should be given more time and ILO technical assistance in order to enhance compliance with the Convention.

The Government member of Bangladesh welcomed the progress made by the Government in enforcing the existing labour laws and regulations and promoting social dialogue at all levels, as well as the ongoing engagement of the Government with the social partners and the ILO in drafting the Labour Code. He encouraged the ILO to continue providing its technical assistance to Algeria to complete the ongoing reforms and to improve institutional capacity of the regulatory mechanisms.

The Government member of Sudan expressed his appreciation of the great efforts made by the Government in social dialogue, as well as in the formulation of national labour regulations. He highlighted that social dialogue gave legitimacy to all measures carried out by the Government, which would grant the social partners the right to freedom of association without any conditions, except those specified by law. He encouraged the Government to continue its efforts on social dialogue and commended it to request ILO technical assistance with respect to the Labour Code.

La membre gouvernementale du Liban a accueilli favorablement les informations fournies par le gouvernement sur l'application de la convention, suite aux commentaires de la commission d'experts, et sur le projet de Code du travail dont les dispositions sont en conformité avec les normes internationales du travail et tout particulièrement la convention n° 87. Elle a encouragé les partenaires sociaux à poursuivre le dialogue social existant, le cas échéant, en sollicitant l'assistance technique du BIT.

The Government member of Zimbabwe took good note of the comprehensive legislation which existed in Algeria, as well as the Government's commitment to dialogue which had been echoed by the Employer member from this country. She shared the concerns raised by the Government representative concerning the criteria of listing cases to be discussed in the Committee. Both the Government representative and the Employer member of Algeria had confirmed the existence of a mechanism of social dialogue as evidenced by numerous meetings convened both at tripartite and bipartite levels. The outcome of these meetings had been social and economic pacts which had been beneficial to the labour market in Algeria and this was highly commendable. Social dialogue could neither be rushed nor fast tracked if indeed it was to achieve its desired goals. The Committee should give due regard to the willingness of the Government of Algeria to engage with its social partners and the tripartite partners should be encouraged to continue working together in order to come up with home-grown solutions to the challenges that they faced as a country. This was a case of good progress and the Office should continue to offer technical support in order to strengthen ongoing initiatives for promoting social justice in the Algerian labour market.

Le représentant gouvernemental a souligné que, malgré le soutien de la majorité des intervenants des trois secteurs, quatre ou cinq ont porté des accusations envers son gouvernement auxquelles une réponse doit être donnée. Le dialogue et le respect doivent être réciproques et il doit être évité de s'éloigner des grands principes prônés par l'OIT en la matière. L'Algérie a reconquis et préservé sa stabilité au prix d'énormes sacrifices, stabilité bénéfique dont l'impact se mesure dans toute la région africaine et pourtour méditerranéen. La 2^e session du Comité technique spécialisé sur le développement social, le travail et l'emploi de l'Union africaine, qui a été réalisée à Alger il y a environ deux mois, a permis aux délégations africaines tripartites présentes dans cette commission de constater la réalité du dialogue social en Algérie, où il n'y a ni restriction ni menace, ni entrave. L'orateur a mentionné deux exemples. S'agissant du SNAPAP, les communications transmises au BIT en 2014 et 2015 ont été claires et précises. A l'époque, il y avait un problème concernant la situation de cette organisation syndicale, mais la justice a décidé qu'il existe un seul SNAPAP et non pas deux. Le SNAPAP est dirigé par M. Felfour, et les personnes qui ont été mentionnées dans les interventions ne sont pas concernées par cette question. Le SNAPAP a travaillé avec l'administration, obtenu des documents officiels et tenu des assemblées générales réglementaires. Concernant le SNATEGS, suite à la demande de l'ISP, une rencontre entre le secrétaire adjoint de l'ISP et le gouvernement a eu lieu il y a quarante-huit heures dans les locaux du BIT. La discussion a été franche et amicale, mais il semble toujours avoir des questions concernant une prétendue dissolution. Le SNATEGS est une organisation syndicale enregistrée et active; elle est dirigée par M. Boukhaly. Il a été indiqué au secrétaire adjoint de l'ISP que la personne mentionnée dans les précédentes interventions n'en est pas le président. Elle travaille comme avocat depuis 2016 et, par conséquent, ne peut pas défendre les intérêts de travailleurs là où il ne travaille pas. L'intéressé est respecté comme citoyen algérien, mais il n'est pas secrétaire général du SNATEGS. Le ministère du Travail, de l'Emploi et de la Sécurité sociale connaît les procédures concernant l'enregistrement ou la dissolution. Si une question de dissolution se présente, elle suivra les procédures officielles et, si des informations contraires circulent, les personnes seront induites en erreur. En ce qui concerne le Code du travail, de la lenteur peut être perçue, mais il est important d'élaborer un texte qui résiste au temps et soit près de la réalité. Le gouvernement réalise actuellement la concertation avec tous les partenaires sociaux. L'Algérie dispose d'un arsenal juridique et adapte et améliore le Code du travail et sa législation nationale pour la mettre en conformité avec une certaine évolution du secteur économique et de l'entreprise. En conclusion, il a mentionné qu'il faut éviter les faux débats et accusations gratuites qui peuvent porter préjudice à cette commission. L'Algérie travaille de manière transparente avec toutes les institutions car le dialogue et la concertation entre les parties sont la base de la législation nationale.

The Employer members thanked the Government and the Committee members for their interventions which had helped to clarify certain issues and facilitate a greater understanding of the situation in the country. The Government had provided a lot of information on the law and practice in Algeria, including on the social dialogue processes at several levels and had indicated its readiness to meet with the parties concerned in order to address the concerns raised during the discussion. While the Government seemed to be addressing the issues in practice, the vehicle for improved social dialogue was, above all, the draft Labour Code under preparation for a number of years and this legislative instrument had not been adopted yet. Even though it was understandable that such a process might be lengthy, its duration should remain within reasonable limits. Consequently, the Employer members encouraged the Government to complete the work it had started in relation to the Labour Code. Also, recalling that the Employer members generally did not condone the use of violence, and that they would have liked to have the benefit of more detailed information on the reasons for the Government's actions, they encouraged the Government to provide such information to the Committee of Experts in order to allow for an appropriate examination of this case.

Les membres travailleurs se sont déclarés préoccupés par les violations systématiques du droit de liberté syndicale en Algérie et ont espéré sincèrement que la sélection de cas apportera des changements concrets dans la vie des syndicalistes confrontés aux licenciements illégaux, aux détentions arbitraires et aux ingérences policières

violentes lors de manifestations pacifiques. Le gouvernement doit restaurer la justice pour les femmes et les hommes qui luttent sans relâche, souvent au risque de leur vie et de leur liberté, pour établir un mouvement syndical indépendant. La question qu'il convient de se poser est de savoir comment il serait possible de jeter les bases d'un Etat démocratique si un droit aussi fondamental que le droit de s'associer et d'adhérer librement à des associations pour représenter les intérêts des travailleurs n'est pas reconnu. La réponse est on ne peut plus simple: cela n'est pas possible. Le droit de libre association constitue le fondement même de toute société démocratique. En refusant d'enregistrer et de reconnaître les syndicats indépendants, le gouvernement algérien affiche clairement une préférence pour des procédés autoritaires. Le Comité de la liberté syndicale, la commission d'experts et la Commission de l'application des normes ont, à maintes reprises, appelé le gouvernement à prendre toutes les dispositions nécessaires pour garantir, le plus rapidement possible, l'enregistrement des syndicats qui réunissent les conditions prévues par la loi. Ces appels ont malheureusement été ignorés et cela fait plus de dix années que le gouvernement ne réagit pas aux recommandations réitérées d'apporter des modifications fondamentales à la loi 90-14. L'Algérie persiste à bafouer des droits garantis aux travailleurs en vertu de la convention, et ce au mépris des obligations internationales auxquelles elle a souscrit. Les membres de la commission ont la responsabilité de veiller au plein respect des droits garantis au titre de la convention et d'adopter une position ferme, même à l'égard de gouvernements qui semblent n'y accorder que peu d'importance. Le gouvernement doit prendre – sans plus tarder – des dispositions en vue de la mise en œuvre des recommandations émanant des mécanismes de contrôle de l'OIT concernant la liberté syndicale. Des réformes doivent être engagées en concertation avec les partenaires sociaux. En particulier, le président de la CGATA, M. Rachid Malaoui, et le président du SNATEGS, M. Raouf Mellal, qui, entre autres, a été condamné à six mois d'emprisonnement en raison de sa militance syndicale, doivent être réintégrés dans leur poste. En outre, le gouvernement doit immédiatement procéder à l'enregistrement des syndicats indépendants, en particulier de la CGATA et SAAVA, et annuler la décision ministérielle du 16 mai 2017 portant le retrait du récépissé d'enregistrement du SNATEGS. Ces mesures urgentes constituent un premier pas indispensable pour ramener l'Algérie sur la bonne voie. L'orateur a terminé son intervention en exhortant le gouvernement à accepter une mission de haut niveau avant la prochaine session de la Conférence internationale du Travail.

Conclusions

La commission a pris note des déclarations orales du représentant du gouvernement et de la discussion qui a suivi.

La commission a exprimé sa profonde préoccupation face aux restrictions persistantes du droit des travailleurs de constituer des syndicats, des fédérations et des confédérations de leur choix et d'y adhérer. La commission a noté avec préoccupation que les progrès accomplis dans la mise en application de la convention n° 87 demeurent inacceptablement lents, étant donné que cela fait plus de dix ans que ce cas est discuté et que le gouvernement doit encore soumettre le projet de code du travail au Parlement en vue de son adoption définitive. La commission a déploré que le gouvernement n'ait pas encore répondu de manière satisfaisante à ses conclusions de 2015.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a prié le gouvernement de l'Algérie de prendre, sans délai, les mesures suivantes:

- **assurer que l'enregistrement des syndicats, en droit et dans la pratique, soit conforme à la convention n° 87;**
- **traiter les demandes d'enregistrement de syndicats en suspens qui répondent aux conditions fixées par la loi et informer la commission d'experts des résultats à cet égard;**
- **assurer que le nouveau projet de code du travail soit conforme à la convention n° 87;**
- **modifier l'article 4 de la loi n° 90-14 afin de lever tout obstacle à la constitution de fédérations et de confédérations de leur choix par les organisations de travailleurs, quel que soit le secteur auquel elles appartiennent;**
- **modifier l'article 6 de la loi n° 90-14 afin que soit reconnu à tous les travailleurs, sans distinction de nationalité, le droit de constituer une organisation syndicale;**

- assurer que la liberté syndicale peut être exercée dans un climat exempt d'intimidation et sans violence contre les travailleurs, les syndicats ou les employeurs;
- réintégrer les agents de la fonction publique licenciés pour des motifs de discrimination antisyndicale.

Le gouvernement devrait accepter une mission de contacts directs avant la prochaine Conférence internationale du Travail et faire rapport à la commission sur les progrès accomplis avant sa session de novembre 2017.

Conclusions

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

The Committee expressed serious concern over the persistence of restrictions on the right of workers to join and establish trade union organizations, federations and confederations of their own choosing. The Committee noted with concern that progress towards compliance with Convention No. 87 remained unacceptably slow as this case has been discussed for more than a decade and that the Government had yet to bring the draft Labour Code to Parliament for it to be finally passed. The Committee regretted that the Government did not satisfactorily respond to the Committee's 2015 conclusions.

Taking into account the discussion, the Committee called upon the Government of Algeria, without delay, to:

- ensure that the registration of trade unions in law and in practice conforms with Convention No. 87;
- process pending applications for the registration of trade unions which have met the requirements set out by law and notify the Committee of Experts of the results in this regard;
- ensure that the new draft Labour Code is in compliance with Convention No. 87;
- amend section 4 of Act. No. 90-14 in order to remove obstacles to the establishment by workers' organizations, of federations, and confederations of their own choosing, irrespective of the sector to which they belong;
- amend section 6 of Act No. 90-14 in order to recognize the right of all workers, without distinction on the basis of nationality, to establish trade unions;
- ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers;
- reinstate employees of the Government, terminated based on anti-union discrimination.

The Government should accept an ILO direct contacts mission before the next International Labour Conference and report progress to the Committee of Experts before its November 2017 session.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión expresó su profunda preocupación por la persistencia de las restricciones al derecho de los trabajadores de constituir las organizaciones, federaciones y confederaciones sindicales que estimen convenientes y de afiliarse a las mismas. La Comisión tomó nota con preocupación de que los progresos realizados para dar cumplimiento al Convenio núm. 87 siguen siendo inaceptablemente lentos, ya que este caso lleva discutiéndose más de un decenio y que el Gobierno aún no ha presentado el proyecto de código del trabajo ante el Parlamento para que sea finalmente aprobado. La Comisión lamentó que el Gobierno todavía no haya dado seguimiento satisfactorio a las conclusiones de 2015 de la Comisión.

Teniendo en cuenta la discusión del caso, la Comisión pidió al Gobierno de Argelia que, sin demora:

- garantice que el registro de sindicatos sea conforme al Convenio núm. 87 en la legislación y en la práctica;
- tramite las solicitudes pendientes de registro de los sindicatos que cumplan los requisitos establecidos por la legislación y comunique a la Comisión de Expertos los resultados a este respecto;
- se asegure de que el nuevo proyecto de código del trabajo sea conforme al Convenio núm. 87;
- enmiende el artículo 4 de la Ley núm. 90-14 a fin de eliminar todos los obstáculos para que las organizaciones de trabajadores puedan constituir las federaciones y confederaciones que estimen convenientes, independientemente del sector al que pertenezcan;
- enmiende el artículo 6 de la Ley núm. 90-14 a fin de reconocer el derecho de todos los trabajadores, sin distinción de nacionalidad, de constituir sindicatos;
- garantice que la libertad sindical pueda ejercerse en un clima exento de intimidación y de actos de violencia contra los trabajadores, los sindicatos o los empleadores, y
- reintegre a los trabajadores gubernamentales despedidos por motivos de discriminación antisindical.

El Gobierno debería aceptar una misión de contactos directos antes de que se celebre la próxima Conferencia Internacional del Trabajo y comunicar los progresos realizados a la Comisión de Expertos antes de que se reúna en noviembre de 2017.

Le représentant gouvernemental de l'Algérie a souligné que le contenu des conclusions doit être fidèle aux discussions qui se sont déroulées au sein de la commission. Sur les 32 interventions faites par un membre travailleur, employeur ou gouvernemental, 26 ont soutenu les actions engagées par l'Algérie. Sur cette base, la question de l'envoi d'une mission de contacts directs ne devrait pas se poser. Soulignant que ces conclusions ne reflètent pas les réactions des membres de la commission ni les réalités de l'exercice du droit syndical dans le pays, l'orateur a demandé à ce qu'elles soient révisées.

Il a également affirmé que certaines des allégations rappelées par les membres travailleurs sont fausses et dénuées de tout fondement. Le Syndicat national autonome des travailleurs du gaz et de l'électricité (SNATEGS) est enregistré et poursuit ses activités normalement, alors qu'il a été prétendu qu'il avait été dissous. S'agissant du projet de code du travail, contrairement à ce qui a été dit, le processus législatif suit son cours et le processus de consultations avec les partenaires sociaux a été engagé. Un nouveau projet de texte a été communiqué au BIT. Le gouvernement a donné des informations suffisantes sur le paysage syndical algérien. Enfin, s'agissant du cas personnel de M. Mellal, le représentant gouvernemental a indiqué qu'il était avocat et non travailleur de la Sonelgaz. Tout en rappelant que l'Algérie est un pays démocratique, le représentant gouvernemental a réitéré sa demande de révision des conclusions qui ont été adoptées.

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

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

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

Bangladesh (ratification: 1972)

Bangladesh (ratification: 1972)

Bangladesh (ratificación: 1972)

The Government provided written information which is reproduced in Document D.8. In addition, before the Committee, a **Government representative** recalled the commitment of the Government to the protection of human

and labour rights as enshrined in the Constitution of Bangladesh and reaffirmed that the Government had taken full note of the issues raised in the 2016 special paragraph and had initiated a number of measures to bring Bangladesh in to full compliance.

General efforts undertaken by the Government after the Rana Plaza incident were also recalled, in particular the initiation of rescue and rehabilitation efforts, drastic actions to put in place immediate measures and institutional mechanisms to strengthen safety rules, the revision of labour laws, including the Bangladesh Labour Act, 2006 (BLA), and of the national labour policy in order to address imminent labour concerns and improve labour rights, as well as the strengthening of the monitoring mechanisms. Utmost priority was given to improving labour rights and working conditions in the country, while acknowledging that, as a least developed country, Bangladesh was striving to deal with numerous challenges related to the elimination of poverty, hunger and malnutrition and ensuring decent life, adequate nutrition, basic health care and universal free education up to secondary level. Many of the country's challenges were caused by outdated laws regarding maintenance of law, order and peace, but even under such conditions Bangladesh had been able to balance between development, protection of rights and maintenance of law and order. Per capita income had increased from US\$ 583 in 2006 to US\$ 1,620 in 2017 and take home pay for workers had also increased, contributing to a congenial working environment and income stability of workers. Such development was a reflection of the firm commitment to labour rights, in particular freedom of association and collective bargaining. The Government's commitment had also found expression in its efforts to render trade union registration and the wage payment system transparent, while promoting collective bargaining. While it was recognized that more was to be done in terms of addressing capacity, structural and systematic conditions, as well as civil and political challenges, the Government had been engaging with all the relevant stakeholders to ensure the effective application of labour legislation and to achieve the shared views of the social partners. A number of other developments were mentioned, including access to justice for any aggrieved party through an inbuilt system for addressing grievances, such as the Labour Tribunal, the Labour Appellate Tribunal and the High Court Division of the Constitutional Court; implementation of the ILO's Better Work Programme, as well as a National Plan of Action to promote freedom of association and collective bargaining in the ready-made garment (RMG) sector; establishment of an Occupational Safety and Health Policy; signature of a tripartite Statement of Commitment on fire safety at workplaces; development of an integrated inspection guideline for the RMG sector and organization of fire safety training for factory managers.

Turning to the conclusions of the Committee of Experts, the speaker provided the following information, in addition to that already supplied in Document D.8:

- The proposed Export-Processing Zones (EPZ) Labour Act, 2016, was to be reviewed through a multi-stakeholder approach and an advanced draft should be shared with the Committee of Experts by August 2017, after which formalities would be initiated to place the draft before the Parliament.
- The newly created Tripartite Technical Committee (TTC) for amendment of the BLA had already held its first meeting, demonstrating that work was being done to conform the legislation to ILO standards, and it had been asked to complete work on preparing an initial draft by August 2017.
- Both the Tripartite Consultative Council (TCC) and the newly created RMG Tripartite Consultative Committee (RMG TCC) would be supported by the ILO, serving as their secretariat.
- The recently adopted and published standard operating procedures (SOPs) for registration had already been implemented, had reduced the time frame for resolving issues concerning registration and should also reduce the registration rejection rate.
- A transparent remediation strategy with a timeline was to be developed and shared with the Committee by the end of August 2017.
- Access to further funding should be facilitated and recruitment of 169 labour inspectors should be finalized by June 2018.

In conclusion, the speaker reaffirmed the Government's commitment to a better and safer workplace for workers to uphold their rights to collective bargaining, freedom of association and their right to strike for realizing their legal demands. Legislative amendments were ongoing and the Government was also engaging with factory owners, businesses and buying houses to ensure that they followed good business practices and recognized that responsible behaviour by all stakeholders was a necessary factor for progress in that field. Moreover, commitment was also expressed to achieving full and productive employment and decent work for all by 2030, in line with the

2030 Agenda for Sustainable Development. The speaker stated that Bangladesh sought continued cooperation, support and understanding from their international friends and partners in order to achieve that goal.

The Worker members recalled that, for the last five years, Bangladesh had appeared before the Committee to explain why it had failed to make any progress in relation to ILO Conventions, in particular Convention No. 87. Each year, the Government had made claims and excuses and concluded with promises to do better the following year. These promises had not only proved to be empty but the situation had worsened each passing year. The Government had still made no progress to implement the repeated observations of the Committee of Experts, the recommendations of the 2016 high-level tripartite mission to Bangladesh and the conclusions of the Conference Committee. The special paragraph that the Committee had applied last year to signal the serious concern with the Government's failures had had no effect whatsoever. Despite all of the technical assistance and the millions of euros in donor resources, garment workers, and workers in other industries, were worse off today than they had been a year ago. The Worker members stressed that, in the final days of 2016, the Government had unleashed a wave of repression against garment workers following a peaceful demonstration for a higher minimum wage that had started on 11 December in Ashulia. Police rounded up union leaders and union organizers, many of whom had not even been in Ashulia at the time of the demonstrations. They were detained for several weeks and some were beaten in custody or forced to pay bribes to avoid physical abuse. Most workers were charged under the provisions of an emergency powers law that had been repealed in the 1990s. Garment manufacturers also suspended or dismissed over 1,600 workers in a massive and coordinated closure of roughly 60 garment factories. Police raided the offices of several unions and worker rights NGOs, disrupting their activities and locking their doors. Police even disrupted a health and safety training event funded by the ILO on 20 January 2017. Following all those events, the Government had refused to act until major international garment brands announced that they would boycott the Dhaka Apparel Summit on 25 February 2017 over their concerns related to the repression in Ashulia. As a result, government and industry representatives reached an agreement with the IndustriALL Bangladesh Council on 23 February 2017. However, the Government had failed to implement that agreement too. Very recently, on 27 May 2017, local thugs had threatened and physically attacked workers and leaders in Chittagong. Union leaders had been warned that if they continued to organize unions they would be killed. The local police watched as union leaders were assaulted. A poster with the union's president in a noose had been circulated in Chittagong.

The Worker members further pointed to the matters raised in the comments of the Committee of Experts. The revised BLA continued to fall short of international standards with regard to freedom of association and collective bargaining despite minor amendments in 2013. In late 2015, the Government had issued the Bangladesh Labour Rules (BLR). Despite the lengthy period taken to draft the Rules, their quality was extremely poor as many provisions violated the Convention. The Government had so far done nothing to amend either the BLA or the BLR to bring them into compliance with Conventions Nos 87 and 98.

With respect to EPZs, trade unions had been banned and only workers' welfare associations (WWAs) could be established. The WWAs did not have the same rights and privileges as trade unions. While the authorities in the EPZs claimed that collective bargaining was permitted, it did not exist in practice. The last draft legislation on EPZs, in 2016, had once again prohibited unions and allowed only for WWAs. There still existed no text, even in draft form, that would allow workers in EPZs to exercise their rights consistent with the Convention. Concerning anti-union discrimination, the leaders of many of the unions that had been registered post-2013 suffered retaliation, sometimes violent, by management or their agents. Some union leaders had been brutally beaten and hospitalized as a result. The Government had done absolutely nothing to address anti-union discrimination.

With regard to the refusal to register unions, since the Rana Plaza incident, and at considerable risk for themselves, young, mostly women, garment workers had attempted to form and register unions for a collective voice. Their numbers would be much greater were it not for the Government's arbitrary rejection of registration applications. The reasons for rejection were inconsistent from one application to the next, did not comply with the law and the implementing rules, and had no factual basis. During the process, workers and their unions were unable to challenge reasons presented for rejecting a union. The only option available for workers was to file a case in one of the country's few and overburdened labour courts, where cases languished for several years. The arbitrary nature of the process was most apparent in Chittagong, where, in 2016, only around 43 per cent of applications for registration had been approved. Despite some unions submitting applications several times with well over the 30 per cent minimum support of the workforce as required by law, the applications were rejected on multiple occasions. The Joint Director of Labour (JDL) often claimed that many workers' signatures on union forms did not match employer documentation. Yet there was no such provision in the law or rules for rejecting an application for such reason, and the JDL did not ask the worker in question whether he or she had in fact signed the form. Recently, the Government had promised that it would draft SOPs to assist the registration process but such procedures had not yet been completed or adopted and the Worker members had serious doubts as to whether a set of procedures would

result in any meaningful change. The Worker members did not doubt that the Government would make more promises to the Committee, but trust had been broken. It was time that this changed for good.

The Employer members thanked the Government for the information it had provided and, in particular, for its reinforced commitment to implement the Convention, its stated intention to pursue social dialogue with workers' and employers' organizations and its reiterated commitment to cooperate with the ILO. The case at hand had been the subject of 22 observations of the Committee of Experts and had been examined by the Conference Committee on seven occasions, most recently in 2013, 2015 and 2016. Given its lengthy and complex nature and the many facets of the Committee of Experts' observations, it was necessary to look closely at the measures adopted by the Government. Although more work had to be done and some concerns still remained, especially in respect of allegations of intimidation and violence, progress had been made. It was also important not to lose sight of the role played by the RMG sector in the socio-economic development of the country and its contribution to the empowerment of millions of women.

It was recalled that in 2016, the Conference Committee had expressed deep concern at the lack of progress on a number of previously highlighted issues, that the high-level tripartite mission had considered the registration process as highly bureaucratic and had urged the Government to develop SOPs to ensure that the registration process would not become an obstacle to the registration of trade unions. Since then, the Government, in cooperation with the ILO and through consultation with the social partners, had agreed on the adoption of SOPs concerning registration, which was, according to the Employer members, a positive measure. It was stated that while the registration process must be transparent, it did not have to be a simple formality and the Government could determine minimum registration requirements in light of the national context and to ensure a climate of social and industrial peace. Given that the Committee of Experts had raised issues of delays in registration, lack of transparency and lengthy judicial proceedings when challenging registration, the Government was asked to provide further information to the Committee of Experts on the terms of reference of the SOPs, as well as information demonstrating the transparent nature of the registration process.

With regard to the amendment of the BLA, the speaker noted the information provided by the Government, in particular that the revision was an ongoing process, as well as the Government's commitment to work with the social partners and the ILO to address the pending matters. The Employer members noted with interest the recently established TTC and its possible role in contributing to the revision of the BLA. The Government was also encouraged to provide further information to the Committee of Experts in relation to the BLR, so that they could more fully understand how the BLR operated and whether there were any issues to be further discussed.

With regard to the issue of EPZs, the Employer members had previously noted that a situation where a separate legislative framework existed for enterprises located in EPZs was problematic. In Bangladesh, the BLA applied to employers operating outside the EPZs and the EPZ Workers Welfare Association and Industrial Relations Act, 2010 (EWWAIRA), applied to those employers operating inside the EPZs. The EWWAIRA did not allow workers or employers to form organizations of their own choosing and although a draft EPZ Labour Act had been submitted to Parliament, only limited consultations appeared to have been done with national workers' and employers' organizations. Furthermore, the high-level tripartite mission had expressed concerns over the fact that the draft legislation restricted freedom of association of workers' organizations and investor employers in EPZs. Therefore, the Employer members positively noted that the draft EPZ Labour Act had been recalled by the Government and would be subject to a thorough review with the stated intention of ensuring its compliance with Convention No. 87. In particular, the Government was considering deleting Chapters 9, 10 and 15 and replacing them with Chapter 13 of the BLA, thus providing the right to freedom of association to all workers. In such a revision, freedom of association for investor employers should not be overlooked. Overall, the Government's efforts to amend the legislation governing EPZs was welcomed and considered as a significant step towards the implementation of the Government's obligations to ensure that workers and employers could form and join organizations of their own choosing. It was important to encourage the Government to provide the new draft EPZ Labour Act to the Committee of Experts for further examination and to complete the process without delay, as the Committee would note any concerns if no further action was taken in that regard.

The Worker member of Bangladesh was concerned about the lack of protection of freedom of association. He had hoped that after the Rana Plaza incident, the Government and employers would have learned a painful lesson and would finally act responsibly, respecting the rights of workers to form and join trade unions and bargain collectively. Under the Bangladesh Sustainability Compact, the Government had promised the ILO, the European (EU), the United States and Bangladeshi workers that it would respect freedom of association, further revise the BLA, ensure that workers in EPZs could exercise their fundamental rights and ensure that workers could freely

register trade unions and undertake union activities without retaliation. However, the Government had failed to keep those promises and although it was making them again, workers could no longer trust only words.

The RMG industry in Bangladesh exported billions of dollars of goods to global brands in the EU and the United States market each year. At the same time, the wages of garment workers remained very low; they were paid a base wage plus allowances of only \$67 dollars a month. The speaker stressed that it was not possible to live on such a low wage. One of the reasons why wages had remained so low was that for many years the Government had maintained a “no-union” policy in the RMG sector.

Regarding union registration, the speaker recalled that it took 60 days to register a union and that the union must have membership of a minimum of 30 per cent of the workers of the factory. This threshold was too high, since factories had between 10,000 and 15,000 workers. With regard to the Ashulia movement, he expressed hope that all dismissed workers would be reinstated. Regarding the EPZs, it was recalled that WWAs were different from trade unions, as they did not have the same rights and privileges. Therefore, the Government should modify its legislation, taking into account workers’ views in order to comply with the Convention.

In conclusion, the speaker expressed hope that the industry would prosper and create jobs for the millions of workers in the country. However, the jobs must be good and based on the principles of decent work. It was underlined that workers should not have to produce garments at wages so low that they could not live in dignity. The Government had a clear choice: it could respect its workers and its international obligations and implement the repeated conclusions of the Committee without any further delay, or it could continue with business as usual at the expense of its own citizens. If the latter was chosen, the Government would be the only one to blame if one day global brands, tired of the constant headlines about the abuse of workers in their supply chains, decided to source their garments elsewhere.

The Employer member of Bangladesh recalled the shock and shame of the 2013 Rana Plaza incident and the global attention that it had attracted. Three initiatives – the Accord, the Alliance and the National Initiative – were established in response, to overhaul the industry and establish safe factories and improved working conditions. In 2013, the Government had signed a Sustainability Compact with the EU, the United States and the ILO and some 3,780 garment exporting factories had been inspected through one of the three established initiatives, resulting in the closure of less than 3 per cent of factories that were found to be unsafe. All other factories that were inspected had been required to undertake measures to improve safety conditions. Nonetheless, hundreds of small and medium-sized factories had also closed due to their financial inability to carry out remedial measures, which caused thousands of job losses. Never had that scale of inspections for fire, building and electrical safety been witnessed in such a brief period of time. Noting the significant investments employers had continued to make in improving factory safety, he urged international buyers to re-evaluate their pricing policies for the survival of struggling factories. With the support of the ILO and development partners, the Government had made efforts to strengthen the capacity of its regulatory institutions and create an optimal culture for adherence to occupational safety and health regulations. Recognizing that close to 1,200 factories had shut down due to compliance costs, and thousands of workers had lost their jobs, some positive developments were noted, including improvements in manufacturing facilities, the issuance of several Leadership in Energy and Environmental Design (LEED) certifications and growth of green factories. Bangladesh was a global leader in the establishment of green garment factories, with 67 such factories having been certified by the US Green Building Council, and some 220 more prepared for certification.

Multiple weaknesses and challenges in the broader regulatory and institutional framework had emerged in the process of establishing factory safety, such as capacity for inspections, unfair labour practices, respect for trade union rights and rights at work, and weak social dialogue, which had demanded a large number of initiatives to be taken by all stakeholders.

The special paragraph and its reference to four specific issues the Government needed to address immediately was another major challenge. The comments of the Committee of Experts and the Conference Committee had been taken very seriously by the Government. Commitment to bring about changes in several areas relating to the regulating of labour standards and their enforcement had been made. Various initiatives had been taken involving employers, including the adoption of SOPs for the registration of trade unions. The Government was committed to working with the ILO to ensure that all stakeholders were aware of the SOPs and that staff implemented them effectively. Additional SOPs for handling cases of anti-union discrimination and unfair labour practices were also being developed in collaboration with the ILO. Noting the challenges of implementing such procedures, he welcomed the Department of Labour’s attention to the issue and efforts to strengthen its resources to perform tasks agreed upon by the tripartite partners. He recalled the illegal work stoppages and vandalism in Ashulia in December 2016, and the 11 cases filed by factory management and law enforcement authorities. Five of those cases had been

disposed of by police following investigation, with no witness to prove the prosecution, and the remaining cases should be disposed of through an expeditious investigation process, following due legal processes. The Ashulia Tripartite Agreement was being implemented in compliance with the law.

Full support should be given to social dialogue and tripartism. The speaker noted that employers in the RMG sector had been holding regular monthly meetings with leaders of trade union federations under the IndustriALL Bangladesh Council since March 2017. The TCC for the RMG sector had also been formed in March 2017, comprising of worker, employer and government representatives, and had already met. He expressed confidence in the role of the body in strengthening social dialogue, industrial relations and helping chart the future course of the garment sector.

Amendments to the Labour Act and the EPZ Labour Act were being addressed by the Government and he welcomed the review of the Labour Act by a subcommittee of the TCC, which would propose necessary amendments by the end of August 2017, to bring it in line with the Convention. The draft EPZ Labour Act had also been withdrawn following submission to Parliament and would go through a thorough review to address the concerns and recommendations of the ILO and the Sustainability Compact partners before being shared in November 2017.

The RMG sector had an extraordinary role in the development of Bangladesh, accounting for 80 per cent of export earnings and the majority of jobs in the formal economy. Close to 4 million workers, of which 80 per cent were women depended on the sector for their livelihoods and all partners had a moral obligation to ensure its growth and consolidation. The country was undergoing gigantic reforms on multiple fronts, each involving a major and elaborate process and carrying great potential. The comprehensive reforms would provide an exemplary model for job creation, workplace safety, protection of labour rights, social dialogue and international cooperation, and required a positive approach from the Government, with support from tripartite constituents and other stakeholders, national and international. The speaker urged the Government to remain continuously engaged with the social partners and to facilitate their capacity building. The importance of the rights and safety of all workers in Bangladesh was reiterated. Consideration of the livelihoods of the millions of workers in the industry and the need for care, sensitivity and compassion in the consideration of this case was essential.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, Bosnia and Herzegovina, Montenegro, Norway, the former Yugoslav Republic of Macedonia, and Serbia, indicated that they attached great importance to the respect of human rights, including freedom of association and protection of the right to organize, and recognized the important role of the ILO in developing, promoting and supervising international labour standards.

The EU, together with the ILO, United States and Canada, had established intensive cooperation with Bangladesh in the framework of the Bangladesh Sustainability Compact and Bangladesh benefited from preferential access to the EU market through the “Everything but Arms” arrangement, which largely depended on respect of human and labour rights. Additionally, the 2001 cooperation agreement between Bangladesh and the EU specifically mentioned the need to respect ILO principles, including freedom of association and the right to organize and bargain collectively.

While recognizing progress achieved on a number of labour issues, notably on factory safety, setting up new labour-related structures – such as the new RMG TCC – and SOPs, as well as the recall of the draft EPZ Labour Act for review, the speaker expressed serious concern regarding respect for labour rights, particularly freedom of association and the right to collective bargaining. Despite the 2016 conclusions of the Committee and the seriousness of the case, deep regret was expressed about the fact that the steps taken by the Government did not respond adequately to the concerns raised. The Government was strongly encouraged to come forward with more substantial and time-bound steps.

Concerning the specific incidents of violence and use of force against trade unionists contained in the report of the Committee of Experts, the Government was called upon to ensure that all workers could freely exercise their fundamental labour rights, and ensure effective, expedient, and transparent investigations, as well as prosecution of violence and harassment against trade unions and workers’ representatives. The Government was further encouraged to extend the existing helpline to other regions, to develop and implement SOPs to address anti-union discrimination and to provide further information on the follow-up made on the reported cases.

Bangladeshi labour laws and procedures continued to pose important barriers to founding and operating a union. For instance, registration of trade unions continued to be hindered by various obstacles. Given the concerns

expressed in that regard by the Committee of Experts, the Government was called upon to ensure that trade union registration was carried out in a transparent and expeditious manner through the effective implementation of SOPs and to ensure full and transparent reporting on registration procedures. Other provisions of the BLA restricted the right to form a trade union, including the 30 per cent minimum membership requirement, and the Government was, therefore, urged to amend, as a matter of urgency, the BLA and the BLR so as to bring their provisions fully in line with the Convention. It was also asked to provide clarification regarding the alleged new membership requirement of 400 workers to form a union in the agricultural sector. The speaker welcomed the Government's commitment to do so, as well as the recent formation of the TTC.

Finally, the legislation regulating the right to organize in EPZs or other specific export-oriented zones remained an important issue of concern. The Government was urged to adopt the new law governing the EPZs allowing for full freedom of association in consultation with the social partners.

In conclusion, while welcoming the Government's willingness to address the concerns raised, such commitment needed to translate into firm, concrete and time-bound actions, both in law and practice. Furthermore, progress on the matter was urgently expected and would be closely monitored by the EU, which remained committed to cooperation with Bangladesh.

Le membre gouvernemental de l'Algérie a mentionné que le gouvernement du Bangladesh a consenti beaucoup d'efforts pour améliorer la situation du dialogue social et du libre exercice du droit syndical. Il a noté avec intérêt les modifications apportées en 2013, après de larges consultations, à la loi sur le travail au Bangladesh: la diligence dans le traitement des plaintes concernant des pratiques qui peuvent porter atteinte aux activités syndicales; les efforts fournis en matière de vulgarisation des questions relatives à l'exercice du droit syndical via des sites Web; le renforcement des capacités des personnels pour faire face aux cas d'atteinte à la liberté syndicale; le renforcement des capacités des travailleurs et des employeurs sur le dialogue social; l'information et l'assistance en ligne accordées aux travailleurs pour faciliter l'introduction de plaintes; et l'assouplissement des procédures d'enregistrement des syndicats. Il a salué les progrès réalisés par le gouvernement et encouragé celui-ci à poursuivre ses efforts en concertation avec ses partenaires économiques et sociaux afin de garantir une application effective des normes pertinentes de l'OIT.

An observer representing IndustriALL Global Union regretted the lack of progress made in compliance with the Convention given the continued acts of trade union repression. In December 2016, over 1,600 garment workers had been dismissed following worker demonstrations over low wages in Ashulia. At least 34 workers and trade unionists had been arrested and detained, trade union offices had been ransacked and vandalized, and union organizers had gone into hiding, fearing retribution. The creation of a tripartite forum for sectoral dialogue in the RMG industry was one positive outcome, which the Government should build on by providing a clear legal basis for bargaining at the sectoral level.

Applications for trade union registration were rejected on unwarranted grounds, and there were strong indications of political interference in the registration process. Denial of union registration at two factories in Chittagong was cited as an example of continued violations since February 2016 and IndustriALL's shipbreaking affiliates faced similar problems in Chittagong. Union registration decisions should be based on objective criteria and politicization of the process was a violation of the right to freedom of association. The Conference Committee had previously recognized the failure of the Government to address incidents of violence against trade unionists and this climate of impunity continued. Workers in Chittagong had been threatened, beaten and warned that, if they continued to organize unions, they would be killed. This general hostility towards trade unions persisted in Bangladesh despite international pressure which had led to the release of workers and trade unionists detained following the labour unrest in Ashulia in 2016. Noting that none of the charges against the workers had been dropped, she stressed that pending charges contributed to a lack of confidence in organizing and the suppression of trade unions' activities. The Prime Minister's recent public comments served to increase hostility towards trade unionists and raised further doubts on the Government's commitment to the Convention. The speaker called for the inclusion of the case in a special paragraph.

The Government member of Canada commended the Government's actions and commitment towards improving workers' rights and safety, specifically in the RMG sector. In the follow up to the Bangladesh Sustainability Compact, the Government had reported on progress in establishing SOPs for trade union registration, and an online system to improve transparency in the handling of anti-union discrimination cases and the rejection of trade union applications. Continued efforts to enforce and sustain the use of that system were encouraged. Recalling issues of harassment and violence against trade unions, and interference with union activities, she urged

that all acts, such as those during the recent Ashulia crisis, be investigated. A report on lessons learned from Ashulia and on measures taken to avoid repetition was requested.

With the removal of the draft EPZ Labour Act from Parliament, prompt action was necessary to ensure a revised draft law that reflected international standards was submitted to the Committee of Experts by autumn 2017. A revised draft of the BLA, addressing freedom of association and collective bargaining issues, should also be submitted to the Committee of Experts for review. The newly formed TCC and its role in providing recommendations on changes to the BLA was noted in this regard, and she called for the development of a terms of reference and comprehensive workplan for the Council, and regular updates to stakeholders. The Government had taken the issues seriously and continued to make good progress in the RMG sector, with positive impacts on other industries; however, there was still work to be done. The development of a strategy with concrete and time-bound actions to address the full range of concerns raised by the Committee of Experts and the Conference Committee was recommended.

The Worker member of Germany, speaking also on behalf of the Worker members of France, Italy, Netherlands, Spain and Sweden, referred to violations of human rights, including freedom of association, in Bangladesh. A variety of instruments and initiatives had been adopted in order to support the Government's efforts to build a society in which human rights and trade union rights were fully respected. For example, the Alliance for Sustainable Textiles in Germany was a unique national initiative, in which all stakeholders were committed to improving social conditions along the entire supply chain in the textile sector. The alliance was launched by the Government of Germany and was supported by employers' and workers' organizations, the federal Government and NGOs. Reference was also made to the EU's "Everything but Arms" arrangement, which granted Bangladesh duty-free and quota-free access to sell its goods in EU markets. Bangladesh was taking full advantage of this special treatment under the Generalized Scheme of Preferences (GSP). Compliance with fundamental rights and other labour rights was a prerequisite for continuing to participate in the GSP. Bangladesh benefited from the special treatment, but did nothing to maintain it or to approach the further stage, namely the GSP+ arrangement. The speaker referred to the comments of the Committee of Experts that had not been implemented by the Government, and indicated that it was necessary for the EU to initiate an investigation on the basis of the requirement of the GSP and the timely removal of existing benefits if the situation in Bangladesh did not improve. That demand had been addressed by the international trade union federations in a joint letter of May 2017. It must be made clear to the Government of Bangladesh that fundamental human rights and trade union rights were of the utmost importance to the EU.

The Employer member of India appreciated the progress made by the Government of Bangladesh. The threshold limit to form a union in the agriculture sector had been framed by the Government according to the realities of the sector. The situation of violence that had taken place in Ashulia was subject to investigation and five out of 11 cases had been disposed of. Labour laws for the EPZs were being reviewed. The legislation recognized the right to register unions, as demonstrated by the fact that 960 unions had been registered in less than a year. The existence of rejection of union registrations based on technical or administrative grounds did not mean that union registration was not allowed. Cohesive and strong unions were recommended in order to provide for successful collective bargaining, since multiplicity of unions frustrated the cause of collective bargaining. Therefore, fixing the threshold for registration of trade unions at 30 per cent was reasonable. In conclusion, the speaker called on the Committee of Experts to consider those facts and to allow the Government additional time to report on progress.

The Government member of China took note of the information provided by the Government of Bangladesh and noted the progress made in respect of protecting labour rights, including the revision of the labour law, drafting of the EPZ Labour Act, increased rate of trade union registrations, social dialogue and establishment of the TTC. Compliance with ratified ILO Conventions was an obligation of every member State and development cooperation could assist with the implementation of the Convention. Efforts made by the Government should be recognized. The speaker hoped that the ILO would continue to provide technical assistance to support the Government in complying with its obligations.

The Employer member of New Zealand noted that the case illustrated growing concern over the years around the discussion of issues that should not come before the Committee. He questioned whether the Rana Plaza incident should be raised in discussions relating to the application of principles of freedom of association. Interventions should be focused on issues pertaining to the Convention. Bangladesh had demonstrated that it could move forward. The collapse of Rana Plaza rocked the world, and what had been achieved since then was a massive review of the system and companies, and the emergence of green factories. While recognizing that challenges associated with the registration of trade unions and discrimination against unions persisted, it was incorrect to claim nothing had been done. The gap between the provisions of the new acts and the practices and situation in the country

needed to be addressed and the Government had demonstrated a willingness to pursue social dialogue through its withdrawal of the draft bill on EPZs and its subsequent actions. The situation was certainly not perfect, but it never was. This should be recognized in consideration of the issues expressed by workers and others.

La miembro trabajadora de la Argentina expresó su preocupación por la situación de los trabajadores y líderes sindicales de la industria textil en Bangladesh. Existen violaciones constantes de las normas fundamentales del trabajo y los salarios continúan siendo los más bajos del mundo. El salario mínimo de un trabajador de la industria textil alcanza aproximadamente la suma de 5 300 takas, es decir, casi 67 dólares mensuales. Dicha cifra está muy por debajo de la línea de pobreza que establece el Banco Mundial y también del salario mínimo de los países vecinos que son productores textiles, tales como Camboya. A finales de 2016, con motivo de la realización de una protesta pacífica en la ciudad de Ashulia para el reclamo de mejoras salariales, se desencadenó una ola de represión contra los trabajadores y dirigentes sindicales de la industria textil. La policía arrestó aproximadamente a unas 34 personas, muchas de ellas dirigentes sindicales que ni siquiera habían participado en la misma. Algunos dirigentes sindicales fueron acusados de acuerdo con normas derogadas y otros fueron demandados por productores textiles por supuestos daños a la propiedad que todavía no han sido probados. Además, unos 1 500 trabajadores han sido despedidos o han sido obligados a renunciar a su puesto de trabajo. También se produjeron allanamientos a oficinas de sindicatos y ONG que protegen los derechos de los trabajadores. Sorprende que esta situación se dé mientras que las preferencias comerciales del país con la Unión Europea continúan condicionadas al cumplimiento del Pacto de Sostenibilidad, acuerdo negociado entre la Unión Europea y Bangladesh el 8 de julio de 2013 con el apoyo de la OIT. Este acuerdo fue motivado por el desastre de Rana Plaza, que costó la vida de 1 200 trabajadores de la industria textil. Al año siguiente del derrumbe de Rana Plaza, mientras que la comunidad internacional tenía el foco allí puesto, el Gobierno permitió a los trabajadores afiliarse a sindicatos, pero apenas la conmoción de la comunidad internacional se diluyó, se volvieron a tomar medidas en contra de los trabajadores. Por estas razones son necesarias leyes y regulaciones que generen responsabilidad de las empresas por las violaciones de las normas laborales y de derechos humanos.

The Government member of the United States noted that the Committee was discussing the application by Bangladesh of the Convention for the fourth time in five years and that the issues remained largely unchanged: the Government must investigate violence against trade unionists in a transparent and credible manner. It had yet to establish a transparent trade union registration process as indicated by high rates of trade union registration rejections. While a tripartite review of the BLA was promised in the near future, no steps had been taken to amend the Act or its implementing rules in line with ILO supervisory recommendations; and workers in EPZs still did not enjoy the right to freedom of association – an issue that the Committee of Experts had been highlighting over the past 25 years.

The May 2017 review of the Bangladesh Sustainability Compact yielded no demonstrable achievements on the part of the Government over the past year with regards to freedom of association, and there was little evidence that efforts were being made to address the observations of the Committee of Experts, the conclusions of the Conference Committee, or the recommendations of the high-level tripartite mission that had visited Bangladesh in 2016. The Government's response to the December 2016 labour protests in Ashulia also indicated that freedom of association was not protected in Bangladesh.

The speaker fully endorsed the conclusions of the Conference Committee, which had been made repeatedly over the past few years and urged the Government to act, without further delay, to ensure that the trade union registration process was transparent and based on clear and objective criteria, that actions of anti-union discrimination were fully investigated and prosecuted, that the law governing EPZs allowed for full freedom of association and that the BLA and its implementing rules were revised in line with the observations of the Committee of Experts. He recommended bringing the conclusions of the discussion before the plenary of the Conference.

The Worker member of the United States, speaking also on behalf of the Worker members of Canada, described the day-to-day harassment and abuse that workers, their organizations and their allies faced when they organized to raise the wages of the poorest, form unions and plan collective action. Such hard work took place in the months before and after such dramatic events as the recent strikes. At every turn, the employers and the Government acted to block workers. Those tactics had been widespread since the strikes in late 2016, but they had long been used and continued apace as the Committee met. Workers had described blacklisting: those who took action in Ashulia and Chittagong could no longer get work. Surveillance of all workers had increased. Police also "visited" workers at home and harassed the entire family. Moreover, many labour organizers had been charged with crimes that had taken place when the person charged was out of the region or the country. The charges against strikers in Ashulia and Chittagong, and countless others, continued, as part of the permanent pressure on workers. Independent unions and their allies were repeatedly harassed while training workers on safe workplaces. On

20 January 2017, the industrial police forced workers at a safety training to disperse after photographing them, recording names of participants and their entire family, warning workers to avoid the union BIGUF, and threatening to drown one BIGUF leader. The speaker pointed out that, on that occasion, workers had met for an ILO-funded safety training. He also referred to an incident that had occurred only ten days ago, where an employer in Chittagong had filed charges against BIGUF leader Chandon and factory-level leaders for alleged unlawful assembly. Chandon had not even been in the country on the date of the alleged offense. That employer in question had a long history of harassing workers who organized. The speaker called on the Committee to send the strongest message possible – a special paragraph – to demand that Bangladesh finally stop attacking and act to defend its workers.

The Government member of the Islamic Republic of Iran welcomed the measures taken by the Government to improve labour rights in Bangladesh. A tripartite technical committee had been established by the TCC to review the BLA. Moreover, trade union registration had increased to 63 per cent in 2016, compared to 32 per cent in 2015. SOPs had been developed with the assistance of the ILO so as to expedite trade union registration. With respect to anti-union discrimination or unfair labour practices, intensive training programmes for labour officials were being conducted. The Government was encouraged to continue to take measures to comply with the Convention. The speaker called on the Office to provide technical assistance to support the Government in this regard.

The Government member of Sri Lanka was of the view that the Government of Bangladesh was committed to giving full effect to the provisions of the Convention. The BLA was being reviewed and legislation in relation to EPZs was being drafted. Moreover, SOPs had been developed to expedite trade union registration. The TCC had been established to deal with labour issues at the national level and to promote social dialogue. The speaker expressed the hope that the Government would effectively address all issues that had been raised.

The Worker member of Japan, speaking on behalf of the Japanese Trade Union Confederation (JTUC–RENGO), stated that the case of Bangladesh had been examined at numerous occasions in the last few years, which demonstrated the seriousness of the issue. In Bangladesh, it was difficult to organize due to lack of freedom of association and social dialogue, legal restrictions and strong resistance from employers against the establishment of unions. In 2016, only around 60 per cent of trade union applications submitted for registration were approved. In addition, workers encountered many issues when attempting to form a union, including dismissal, threats and violence, as was the case in a large factory in May 2017 and in the biggest oil company. While taking note of some improvements made in the BLA in 2013, the speaker expressed concern about the large number of industrial disputes when forming a union and requested the Government to further amend the legislation, including the 30 per cent minimum membership requirement, and fully implement it. It was also stated that in April 2017, the Government had declared services by its national flag carrier to be essential, thereby restricting the aviation unions' ability to take collective action. The Government should address this issue as a matter of urgency. In light of the seriousness of the described situation, the speaker considered that the matter should be addressed in a special paragraph.

La membre gouvernementale de la Suisse a indiqué que son gouvernement soutient la déclaration faite par l'UE. Elle a regretté que les demandes formulées par la commission l'an dernier soient restées sans réponse. Les objectifs fixés par cette commission restent valides, soit: la mise en conformité du droit et de la pratique à la convention, le respect des partenaires sociaux et de la liberté syndicale, ainsi que le respect des libertés publiques dans leur ensemble. Le gouvernement du Bangladesh est appelé à faire cesser tous les actes de violence et de harcèlement, y compris ceux effectués contre des syndicalistes. En tant que soutien au programme Better Work de l'OIT, le gouvernement de la Suisse insiste pour que les droits des travailleurs soient pleinement respectés. Les procédures d'enregistrement des syndicats doivent être rendues plus efficaces et plus rapides afin que les retards soient comblés et que les organisations puissent être reconnues. De plus, la législation s'appliquant aux zones franches d'exportation doit respecter la liberté syndicale. Des progrès dans ce sens doivent avoir lieu. Enfin, la Suisse souligne que les conclusions passées et à venir de cette commission doivent être respectées et mises en œuvre par le gouvernement.

The Worker member of Italy highlighted the climate of anti-union violence, intimidation and impunity which was pervasive throughout Bangladesh. She recalled that workers and approximately 70 trade union leaders in a factory in Chittagong had recently been attacked in front of the factory gate within sight of factory management and the police. Workers and trade union leaders had also been blackmailed: if they had continued to organize unions, they would have been killed. The factory had filed false charges against trade union leaders, most of whom were in jail.

The attackers, at the request of management, continued to intimidate trade union leaders and their families by visiting their homes, making phone calls and threatening to kill them. These recent attacks followed the workers'

fourth attempt to apply for union registration. Since 2016, the Government had rejected the workers' application on arbitrary and baseless grounds. While the recent escalation of attacks against those workers had been among the most severe, it was not the first. Since 2014, various episodes of violence against trade union leaders had taken place and trade unions of the factory group had been forcefully removed one after the other. The assaults had been carried out at the behest of the company.

Earlier instances of labour rights violations had only been stopped through far-reaching and coordinated intervention of global brands, who had threatened to sever ties with that group of factories. The impunity in Bangladesh showed how both the Government and the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) were condoning these clear violations of national labour legislation and core international labour standards. The EU had acknowledged the Government's failure to protect freedom of association many times and had urged it to take concrete steps to ensure that national legislation and practice were in line with international labour standards. There was well-documented and abundant evidence demonstrating the systematic violation of core human and labour rights. The speaker requested for this case to be treated as particularly serious by the Committee and included in a special paragraph.

The Worker member of the United Kingdom, indicated that consumers, many of them workers and union members, bought garments from Bangladesh but were deeply troubled by the terrible conditions faced by workers in the textile industry. Consumers wanted to continue to buy those garments, but they also expected the Government of Bangladesh to meet its international obligations, especially the right to freedom of association. British workers were deeply alarmed when, after ten days of strikes beginning on 12 December 2016, thousands of workers were dismissed in Ashulia. Union leaders had been imprisoned under entirely inappropriate wartime legislation and many more had been forced into hiding. Union offices had been forcibly shut down and vandalized by the authorities. In February 2017, more trade unionists had been arrested in Chittagong after police interrupted a training session in union offices. The speaker then referred to the Ethical Trading Initiative (ETI), a multi-stakeholder body involving unions, corporations and NGOs. Corporate members of the ETI, including many of the UK global brands, had joined unions in calling for the union leaders in Ashulia to be released. Moreover, in protest at the arrests, the ETI and its global corporate members withdrew from the Dhaka Apparel Summit organized by the BGMEA. The speaker called on the Government to take urgent action to bring its law and practice in line with the Convention and to ensure non-discrimination of trade unionists.

The Government member of Kenya welcomed the information provided by the Government of Bangladesh and the steps the country had taken to fulfil its obligations. She welcomed the review of the rules regulating the EPZs, the use of SOPs, which enabled an increase in trade union registration, and the constitution of a TCC for the RMG sector, which promoted harmonious industrial relations. She was convinced that the challenges that persisted would be addressed by the Government and she called for continued technical assistance by the ILO to support the necessary changes.

The Employer member of Cambodia commended the Government of Bangladesh for the various initiatives taken to improve the working conditions in the RMG sector and supported the view of the Employers of Bangladesh that the livelihood of millions of workers in the industry needed to be taken into account while considering this case. The RMG industry generated more than four fifths of Bangladesh's export revenue and employed millions of workers, the majority of whom were women. The speaker was confident that Bangladesh employers would respect the rights of all workers in the country. Good industrial relations between employers and workers were essential. Over the last four years, Bangladesh had made considerable progress to improve workplace safety in the garment sector and it was hoped that the ILO would continue to support the country in the development of this sector.

El miembro gubernamental del Uruguay agradeció las explicaciones presentadas por el Gobierno. Sin embargo, mostró su preocupación ante el presente caso debido a que en la actualidad existen trabajadores que no tienen resuelta su situación procesal penal. Subrayó que esta situación ha sido originada por acciones sindicales legítimas y no delictivas, y lamentó que por las mismas razones se hayan producido un número muy importante de despidos, de acciones de discriminación sindical y de agresiones al ejercicio de la libertad sindical. El Uruguay es firme defensor de las normas de la OIT, en especial de los convenios que garantizan la libertad sindical. Los hechos sobre los cuales funda su queja el sector trabajador parecerían contravenir las disposiciones del Convenio núm. 87. Por ello, solicitó amablemente al Gobierno que redoble sus esfuerzos para garantizar el correcto y estricto cumplimiento del Convenio, así como de todas aquellas disposiciones que garanticen el ejercicio de la libertad sindical plena y de la negociación colectiva.

An observer representing the International Organisation of Employers (IOE) acknowledged that the Honourable Minister of Law, Justice and Parliamentary Affairs was leading the Government delegation of

Bangladesh, which showed strong commitment by the Government in responding to the issues raised under the special paragraph. The Government's response should be appreciated as it demonstrated that concrete, specific and time-bound action was being taken. Although Bangladesh was a least developed country, it was trying to emerge out of poverty by 2021 under a strategic economic policy by a Government committed to observing the core ILO Conventions. Bangladesh was a world leader in the RMG sector by virtue of the great skills of its workers and was moving towards a lower middle income status, with close to 4 million people engaged in the RMG sector, of which 80 per cent were women, although other sectors were also important. Bangladesh had been successful in eliminating child labour, including the worst forms of child labour, and had given emphasis to the protection of rights of workers and creating a healthy and safe working environment through social dialogue. Gratitude was expressed towards the ILO and other development partners for continuous support, which allowed the Government to implement remediation works at the factory level. The speaker noted that compliance with labour standards should not reduce the competitiveness of Bangladesh and considered that the ILO must ensure a level playing field for all actors in the global supply chain. In that regard, it should provide technical assistance for capacity building and engagement with social partners. With regard to low wages in the RMG sector, he urged the ILO to strongly advocate for fair pricing of the goods and services produced in Bangladesh to ensure decent work and decent wages for the workforce through a fair process of globalization, targeting the elimination of all poverty by 2030 in the framework of the Sustainable Development Goals. The speaker made a strong appeal for Bangladesh to be removed from the special paragraph.

The Government member of India thanked the Government for the information provided and recalled that the matter had been discussed in successive sessions of the Conference. The significant legislative amendments that the Government was working on with respect to EPZs and its close cooperation with the ILO was welcomed. The establishment of a TCC to examine issues raised by the Committee and to strengthen tripartite consultation and the realization of a harmonious industrial relations culture were appreciated. Improvements in the labour statistics system demonstrated progress and steps taken to address issues of anti-union discrimination were welcomed, including through capacity building of labour officials, awareness raising and capacity building of workers, development of SOPs, a helpline for workers, and the strengthening of databases despite the significant socio-economic challenges faced by the country. He noted the information provided by the Government on trade union registration and urged the Committee to favourably consider the positive steps taken by the Government.

The Employer member of Turkey recognized the transition of Bangladesh, which had enabled a rapid change in its economic and social structures. Those circumstances raised questions on the functioning of its industrial relations system, which the country and its social partners had had to address in addition to serious occupational health and safety, trade union representation and labour dispute challenges. International focus on the situation had also led to a wider debate that contributed to the reshaping of its legal and administrative structures. New legal instruments and administrative measures were adopted for the improvement of working conditions. The draft regulation on EPZs was noted and the legislative process was expected to be completed following a revision process that would increase compliance with international labour standards. The new law should respond to all expectations of tripartite constituents and pave the way for a new era in Bangladeshi industrial relations. The long and demanding transformation of the country, while it faced serious and broad problems in the implementation of its international obligations, should be positively recognized by ILO supervisory bodies.

The Government member of Egypt noted the measures adopted by the Government to ensure compliance with the provisions of the Convention, including the development of new policies, the amendment of laws, awareness campaigns and social dialogue. Efforts to fight anti-union discrimination both in law and practice were welcomed. The speaker encouraged continued collaboration between the Government and the ILO.

La miembro gubernamental de Cuba agradeció al Gobierno la información proporcionada, en especial con respecto a la revisión de la BLA; la activación del CTT; la actualización de las normas del trabajo; y el fortalecimiento del Departamento Gubernamental de Trabajo. Asimismo, apreció la voluntad del Gobierno para continuar fortaleciendo el marco legislativo laboral.

The Government representative noted that it was unfortunate that some of the information presented was outdated and distorted and for that reason considered that it was necessary to respond and clarify matters that had been raised. In addition to the written statement reproduced in Document D.8, he provided the following information:

- Out of the 11 Ashulia cases, three had been withdrawn and two resolved, a final report having been produced in all five cases, and six other cases were being investigated under due process and would be resolved without delay, as the Government, while respecting the independence of the judiciary, had requested the investigating authority to expedite the matter.

- SOPs for registration had been published on 22 May 2017 and been given effect from that date.
- As for the tripartite agreement reached with IndustriALL after the Ashulia incident, a meeting had been held on 23 February 2017, as a result of which all persons imprisoned and under police custody had been released on bail, the salary of workers who had left jobs had been paid as per the labour legislation and all zonal offices of the registered federations at Ashulia had been reopened.
- In the telecommunications sector, utmost priority was given to smooth functioning, which is why it had been identified as an essential service under the Essential Services Act of 1958.
- In addition to the mentioned amendment of Chapters 9, 10 and 15 of the draft EPZ Labour Act, which would be brought in line with the BLA, administration and inspection of factories in EPZs would also be under the BLA.
- The Chittagong incident was a dispute between two labour groups and had nothing to do with the Government or the employers.

The speaker expressed firm commitment to the implementation of the mentioned measures within the indicated timeframe and requested the withdrawal of the special paragraph from the conclusions of the Committee. He thanked all who had taken part in the discussion, in particular the speakers who understood the challenges, appreciated steps taken and encouraged the Government to move forward.

The Employer members recognized the importance of the RMG sector in the development of the country and the empowerment of women, and took note of the information provided by the Government. The Employers recalled their disagreement with the Committee of Experts' views concerning Convention No. 87 and the right to strike. They recalled the Government group's statement of March 2015 according to which "the scope and conditions of this right are regulated at the national level". It is in this light that the Employers have addressed the case of Bangladesh. In light of the observations of the Committee of Experts, governance of industrial relations took place at the national level and there should be freedom to balance interests. In consideration of commitments made by the Government and measures adopted, the Employer members urged the Government to ensure that the law on EPZs ensured the right to freedom of association for workers and employers, particularly, to form organizations of their own choosing, and to ensure applications for union registration were expeditious and transparent. Measures to provide for online registration, which would encourage transparency were welcomed in that regard. Noting the development of SOPs for the registration of trade unions as a positive measure and requesting a copy of those, it was emphasized that continued investigation of acts of anti-union discrimination and the development of procedures for handling such cases were necessary. Information on the operation of the labour rules was requested so that the Committee of Experts could have a fuller understanding of the status of the rules and their impact on the implementation of the BLA. The establishment of the TCC and continued social dialogue was encouraged and further progress was expected without delay. In that regard, the Employer members urged the international community and development partners to continue to support the positive progress and on that basis, it was not appropriate to include a special paragraph on Bangladesh in the Conference Report. More needed to be done to encourage progress, and a full report on measures taken should be provided to the Committee of Experts.

The Worker members responded to some of the statements made during the discussion, including on the steps that had been taken by the Government on issues that fell outside the scope of the Convention. Although those steps were welcomed, those steps could not compensate for the complete lack of progress in relation to the application of the Convention in Bangladesh. The garment industry did in fact employ more than 4 million workers, but that did not exonerate factory owners from their obligations. Decent work and sustainable jobs could only be created where fundamental rights were respected. The Worker members were in agreement with the Employer members concerning the need for objective and transparent requirements for the registration of trade unions. A minimum membership requirement was clearly not in itself incompatible with the Convention. However, the minimum membership requirement must be fixed in a reasonable manner so that it did not hinder the establishment of trade unions. In the case of Bangladesh, the Committee of Experts had repeatedly highlighted that the minimum membership requirements were excessive. It was beyond doubt that the Government had firmly returned to its long-standing, anti-union ways, apparently hoping that the limited progress it made on fire and building safety would obscure the Government's efforts to deny freedom of association to Bangladeshi workers. At every turn, the Government was making it nearly impossible for workers to exercise their fundamental rights. There appeared to be no labour justice for workers. The Government had employed every tactic to delay or deny trade union registration. Some unions, which had been the most successful in registering new unions following the Rana Plaza incident, currently found their applications routinely denied. If anyone had any doubts, the crackdown in Ashulia made it clear that it was the policy of the Government to repress workers' rights in order to attract and maintain investment. The arrests and absurd charges under long-ago repealed laws showed just how little

commitment the Government had for the rule of law. The fact that police shut down an ILO-funded health and safety programme should be seen as an insult to every Committee member. The Government had failed to comply with nearly all of its international commitments. It had ignored the observations of the Committee of Experts, the conclusions of the Conference Committee, as well as the Bangladesh Sustainability Compact. Even the achievements on fire and building safety had been largely the result of private initiatives, not the Government's own efforts, therefore calling into question the sustainability of the progress. Every year, the Government informed the Conference Committee that they understood and would do better. The Worker members concluded that the Government would not follow through with its commitments unless significant additional measures were taken. Even the joint conclusions of the EU Sustainability Compact reflected that no progress had been made, as the parties had urged the Government to undertake once again the promises it had made in 2013 related to freedom of association. The speaker reiterated the conclusions of the Conference Committee of the previous two years, adding a new point in relation to the Ashulia crackdown. In that regard, the Government was urged to fully implement the tripartite agreement of February 2017, including to drop all charges against trade unionists, to end the surveillance of unions and interference in their activities, and to reinstate those workers who were dismissed in Ashulia following the December 2016 demonstrations. The Worker members also called for the conclusions of the Committee to be placed in a special paragraph. The tripartite constituents were also urged to take all possible measures to persuade the Government of Bangladesh to comply with its legal obligations.

Conclusions

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

The Committee noted the long-standing nature and the prior discussion of this case in the Committee, most recently in 2015 and 2016. The Committee took note of the drafting of Standard Operating Procedures (SOPs) regarding union registration in collaboration with the ILO, the establishment of the Tripartite Consultative Council for the ready-made garment (RMG) sector, and the recall from Parliament of, and the preparation of, the draft EPZ Labour Act. At the same time, the Committee noted the insufficient progress in relation to previous discussions of the Committee, and emphasized that more needed to be done to achieve compliance with Convention No. 87 and that this must take place without further delay.

Taking into account the discussion, the Committee called upon the Government of Bangladesh to:

- ensure that the Bangladesh Labour Act and the Bangladesh Labour Rules are brought into conformity with the provisions of the Convention regarding freedom of association, paying particular attention to the priorities identified by the social partners;
- ensure that the draft EPZ Labour Act allows for freedom of association for workers' and employers' organizations and is brought into conformity with the provisions of the Convention regarding freedom of association, with consultation of the social partners;
- continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law;
- ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.

The Committee urges the Government to continue to effectively engage in ILO technical assistance to address the Committee's recommendations and to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

La commission a relevé que ce cas n'est pas nouveau et qu'elle l'a déjà examiné, tout récemment, en 2015 et 2016. Elle a pris note de l'élaboration de procédures standard en matière d'enregistrement de

syndicats, en collaboration avec le BIT, de la création du Conseil consultatif tripartite pour le secteur du prêt-à-porter et du retrait du projet de loi sur le travail dans les ZFE, qui avait été soumis au Parlement, afin de lui soumettre une nouvelle version. Dans le même temps, la commission a relevé le manque de progrès par rapport à ses discussions antérieures et insisté sur le fait que davantage doit être fait pour assurer sans délai le respect de la convention n° 87.

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

- de s'assurer que la loi sur le travail et la réglementation sur le travail sont mises en conformité avec les dispositions de la convention en matière de liberté syndicale, en accordant une attention particulière aux priorités définies par les partenaires sociaux;
- de s'assurer que le projet de loi sur le travail dans les ZFE permet aux organisations de travailleurs et d'employeurs d'exercer la liberté syndicale et qu'il est conforme aux dispositions de la convention en matière de liberté syndicale, en consultation avec les partenaires sociaux;
- de continuer à enquêter, sans retard, sur tous les actes de discrimination antisyndicale présumés, y compris dans la région d'Ashulia, de veiller à ce que ceux qui ont été licenciés illégalement soient réintégrés et d'imposer des amendes ou des sanctions pénales (en particulier en cas de violence à l'encontre de syndicalistes) prévues par la loi;
- de faire en sorte que les demandes d'enregistrement de syndicats soient rapidement traitées et qu'elles ne soient refusées que si elles ne remplissent pas les critères clairs et objectifs fixés dans la loi.

La commission prie instamment le gouvernement de continuer à prendre effectivement en compte l'assistance technique du BIT pour donner suite aux recommandations de la commission et faire rapport de manière détaillée sur les mesures prises pour les mettre en œuvre avant la prochaine réunion de la commission d'experts, en novembre 2017.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota de que éste es un caso de larga data y ha sido examinado en la Comisión con anterioridad, más recientemente en 2015 y 2016. La Comisión tomó nota de la redacción de los procedimientos operativos normalizados (SOP) sobre el registro de sindicatos en colaboración con la OIT, del establecimiento del Consejo Consultivo Tripartito para el sector de la confección textil, y del retiro del Parlamento del proyecto de ley sobre el trabajo en las ZFE con miras a su reelaboración. Al mismo tiempo, la Comisión tomó nota de los insuficientes progresos realizados en relación con las discusiones anteriores de la Comisión, y puso de relieve la necesidad de redoblar los esfuerzos, sin más demora, para lograr el cumplimiento del Convenio núm. 87.

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

- asegure que la Ley del Trabajo de Bangladesh y el reglamento del trabajo de Bangladesh se pongan en conformidad con las disposiciones del Convenio relativas a la libertad sindical, prestando particular atención a las prioridades identificadas por los interlocutores sociales;
- asegure que el proyecto de ley del trabajo en las ZFE permita la libertad sindical de las organizaciones de trabajadores y de empleadores, y se ponga en conformidad con las disposiciones del Convenio relativas a la libertad sindical, en consulta con los interlocutores sociales;
- siga investigando, sin demora, todos los actos de discriminación antisindical alegados, incluido en la zona de Ashulia, asegure la reincorporación de quienes hayan sido despedidos ilícitamente, e imponga multas o sanciones penales (particularmente en los casos de violencia contra sindicalistas) de conformidad con la legislación, y

- asegure que las solicitudes de inscripción de los sindicatos se tramiten con celeridad, y sean denegadas únicamente si incumplen criterios claros y objetivos establecidos en la legislación.

La Comisión instó al Gobierno a que siga recurriendo efectivamente a la asistencia técnica de la OIT para dar curso a las recomendaciones de la Comisión, y proporcione información detallada a la próxima reunión de la Comisión de Expertos de noviembre de 2017, sobre las medidas adoptadas para aplicar estas recomendaciones.

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

Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948

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

Botswana (ratification: 1997)

Botswana (ratification: 1997)

Botswana (ratificación: 1997)

A **Government representative** stated that significant effort had been made, in collaboration with the social partners, towards the enactment of labour laws that protected and promoted workers' rights. The Trade Disputes Act had been amended in August 2016 in order to address delays in the resolution of trade disputes. Legislative amendments had also been introduced pursuant to the Court of Appeal ruling on the invalidity of statutory provisions which gave the Minister the power to amend the list of essential services. That judgment clarified that it was the role of Parliament to determine the list of essential services. In response to the judgment, the Government had presented amendments to the Trade Disputes Act which included the issue of essential services. The Government's position on essential services was premised on the socio-economic circumstances of the country. Inclusion on the list of essential services did not deny those categories of employees the right to organize or to associate, but only the right to withdraw their labour. Section 13 of the Constitution guaranteed freedom of association, and allowed the reasonable limitation of that right in the interest of defence, public safety, public order, public morality or public health. The Trade Disputes Act had been carefully crafted to ensure its conformity with the Constitution and had been promulgated after extensive consultations. A considerable consultation had also been undertaken with public service unions on the Public Service Bill, and care had been taken to ensure that the Bill was constitutional. The Bill was at the stage of publication in the *Official Gazette* before being tabled before Parliament. That publication would allow for further consultation and input, and could result in further amendments prior to its consideration in Parliament.

The Committee of Experts considered that essential services were those whose interruption would endanger the life, personal safety or health of the whole or part of the population. However, the Committee of Experts also considered that account must be taken of the special circumstances that existed in various member States. While the interruption of certain services in some countries might only cause economic hardships, it could prove disastrous in others and rapidly lead to conditions that might endanger the life, personal safety or health of the population and stability of the country. That flexibility allowed the taking into account of the circumstance of the country when incorporating the spirit and intent of a Convention into domestic legislation. A more rigid approach would unduly restrict member States. The original list of essential services in the Trade Disputes Act had been adopted approximately 25 years ago, and was amended in 2016 in response to new developments and the specific circumstances in the country.

The exclusion of prison officers from the coverage of the Trade Disputes Act and the Trade Unions and Employers' Organizations Act had also been cited as a contravention of the Convention. Prison officers in Botswana were classified as members of the disciplined forces and were the custodians of public safety and security. The constitutionality of that exclusion had been reaffirmed by the Court of Appeal. However, support staff or administrative staff were covered by the Trade Disputes Act and the Trade Unions and Employers' Organizations Act.

In the spirit of discussion and consultation, the Employment Act and Trade Unions and Employers' Organizations Act were being reviewed, which would include a number of the issues raised by the Committee of

Experts. A request had been made to the ILO Decent Work Team for Eastern and Southern Africa in January 2017 for technical assistance in a number of areas, including labour law reform, with a focus on the Employment Act and the Trade Unions and Employers' Organizations Act. The objectives of that review were: addressing the gaps in those Acts; making the legislation conducive to the undertaking of business; incorporating the various decisions of the Courts; and aligning the Acts with the international labour standards ratified. Several ILO missions had been undertaken in April 2017. There had been general consensus that some of the labour legislation was outdated and needed revision in order to align it with ILO Conventions, and to comply with the decisions of courts. It had therefore been agreed that the main focus for the reform would be the Employment Act and the Trade Unions and Employers' Organizations Act, but reform could be extended to include other Acts, to ensure consistency. Social dialogue and stakeholder engagement during the labour law reform process were considered central to its success. The Government was committed to aligning its labour laws with ILO Conventions. There had not yet been the opportunity for open discussion with the social partners on the labour laws and the law reform and other consultation processes should be allowed to take their course. It was therefore necessary to wait for the outcome of these discussions.

The Employer members commended the Government for its ratification of all eight fundamental Conventions. Pursuant to certain provisions of the Trade Unions and Employers' Organizations Act, the Trade Disputes Act and the Prison Act, members of the prison service were part of the disciplined forces, and were therefore prohibited from becoming members of a trade union. According to Article 9(1) of the Convention, only armed forces and the police could be exempted from the application of the Convention. The national courts believed that the prison service was functionally akin to the police or armed forces. In its observation, the Committee of Experts had appeared to initially agree with that assessment. However, it then concluded that the prison service was not akin to the police or the armed forces, and requested the Government to amend the Law to grant the rights under the Convention to the workers in the prison service. In that respect, the Committee of Experts' recommendations appeared to be contradictory, and its conclusion without an explanation of its reasoning was confusing. Clarity in that respect was required in order to enable the Conference Committee to properly supervise the case. In addition, the right to associate did not automatically mean that the trade unions of prison staff would have a right to bargain collectively. It also did not mean that those workers would have the right to industrial action, as the Committee of Experts had recognized that prison services were essential services where strikes could be prohibited. However, the difference between the right of association and representational rights was sometimes not well understood.

Section 46 of the Trade Disputes Act, as amended, defined essential services to include the Bank of Botswana, diamond sorting, cutting and selling services, operational and maintenance services of the railways, veterinary services in the public service, teaching services, government broadcasting services, immigration and customs services, and services necessary to the operation of any of these services. Pursuant to section 46(2) of the Trade Disputes Act, as amended, the Minister could declare any other service as essential if its interruption for at least seven days endangered the life, safety or health of the whole or part of the population or harmed the economy. In that respect, the Employer members disagreed with the conclusion of the Committee of Experts. With reference to the Joint Statement of the Workers' and Employers' groups at the 2015 Tripartite Meeting on the Convention in relation to the right to strike and the modalities and practices of strike action at national level, they considered that there was no basis for a discussion in the Committee on that point. Regulation at the national level was appropriate for those issues and the national regulation thereof had been in accordance with a decision of the courts.

Section 48B(1) of the Trade Unions and Employers' Organizations Act granted certain facilities only to unions representing at least one third of the employees in the enterprise. While the Committee of Experts had requested that this be amended, the difficulty with this provision was not clear. It would have therefore been more appropriate for the Committee of Experts to request information on the motivation behind that section. Section 43 of the Trade Unions and Employers' Organizations Act provided for inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time". The Employer members agreed with the Committee of Experts' conclusion that "any reasonable time" was not appropriate and that inspection should be limited to an obligation to provide periodic reports.

The Committee of Experts' direct request referred to the reform of employment legislation. The ILO was providing technical assistance in that respect. The Government had met with the social partners and there was a general agreement on the need for a holistic review of the legislation, rather than of certain provisions of the Trade Unions and Employers' Organizations Act, the Trade Disputes Act and the Prison Act. In that respect, the Government and the social partners should be given the time needed to finish that holistic review and to amend the legislation in accordance with the Committee's ultimate conclusions, and then to report back.

Les membres travailleurs ont souligné que la liberté syndicale consacrée dans la convention constitue un droit fondamental indispensable pour la réalisation de tous les autres droits. Ce droit implique, d'une part, le droit de s'associer avec d'autres travailleurs pour fonder des organisations syndicales et, d'autre part, le droit de mener des actions collectives. La commission d'experts a fait état à plusieurs reprises de violations de la convention par le Botswana, ce qui lui vaut d'être présent sur la liste des cas individuels et de devoir fournir des explications circonstanciées sur les faits qui lui sont reprochés. S'agissant tout d'abord des actes de favoritisme à l'égard de certains syndicats, cette question constitue une des violations de la convention les plus insidieuses et plus dangereuses car elle a pour conséquence de semer la dissension et la divergence au sein des organisations de travailleurs. En outre, le fait de favoriser une organisation au détriment des autres constitue une atteinte indirecte au droit de s'affilier à l'organisation de son choix.

En ce qui concerne la nécessité de modifier la législation pour permettre aux travailleurs de l'administration pénitentiaire de s'affilier à un syndicat, le gouvernement estime que les services pénitentiaires font partie des forces tenues à la discipline et, par conséquent, peuvent être exclus de la protection de la convention au même titre que la police ou les forces armées. Les membres travailleurs ont souligné à cet égard que la dérogation permise à l'article 9 pour la police et les forces armées doit être interprétée de manière restrictive, comme l'a observé la commission d'experts dans son étude d'ensemble de 2012 sur les conventions fondamentales. C'est la nature des activités exercées par les fonctionnaires de l'administration pénitentiaire qui permet de relever de la dérogation et non le fait que l'administration pénitentiaire soit soumise à un régime de discipline. D'ailleurs, la police, les forces armées et les services pénitentiaires sont réglementés par des législations séparées.

S'agissant de la longue liste des services essentiels contenue dans le projet de loi sur les conflits du travail à laquelle s'est référée la commission d'experts, les membres travailleurs ont souligné que plusieurs services repris dans la liste ne peuvent pas être considérés comme relevant des services essentiels, c'est-à-dire ceux dont l'interruption mettrait en danger, dans l'ensemble ou dans une partie de la population, la vie, la sécurité ou la santé de la personne. En outre, la disposition permettant au ministre de déclarer tout autre service comme étant essentiel si son interruption porte atteinte à l'économie revêt un caractère arbitraire et n'est pas compatible avec la convention. Cette disposition est de nature à vider le droit de mener des actions collectives de toute sa substance dans la mesure où toute action d'une certaine ampleur aura inévitablement un impact sur l'économie du pays. La législation doit donc être modifiée afin de limiter la liste de services essentiels.

En ce qui concerne les seuils de représentativité exigés pour accorder certaines facilités aux syndicats, l'instauration de seuils de représentativité n'est pas en soi incompatible avec la convention. Toutefois, cette possibilité est soumise à des conditions (caractère précis et objectif des critères ou distinction opérée limitée à certains privilèges). Dans le cas d'espèce, la loi ne fixe pas un seuil minimum d'effectif pour constituer un syndicat mais pour accorder certains privilèges comme l'accès aux locaux de l'entreprise pour recruter des membres ou la représentation des membres en cas de plaintes, de sanctions disciplinaires ou de licenciement. Or ces deux éléments sont des aspects fondamentaux et élémentaires de l'action syndicale. Sans eux, il devient presque impossible pour un syndicat de recruter des membres et de s'implanter au sein d'une entreprise. Par conséquent, les travailleurs n'ont plus la possibilité de choisir librement leur organisation syndicale.

Les membres travailleurs se sont référés à une autre disposition de la législation violant la convention et devant être amendée, celle habilitant le greffier des syndicats à inspecter les livres et documents d'un syndicat «à tout moment raisonnable». Cette mesure constitue une ingérence dans les activités des organisations contraire à la convention dans la mesure où les contrôles des autorités ne peuvent être que d'ordre exceptionnel et strictement encadrés. Les organisations doivent disposer de l'autonomie et de l'indépendance nécessaires.

En 2005, la commission d'experts a salué les efforts déployés par le Botswana pour assurer une meilleure application de la convention. Il est à espérer que de nouveaux progrès pourront être constatés concernant les différents points évoqués ci-dessus afin d'assurer le respect total de la liberté syndicale.

The Worker member of Botswana expressed support for the Committee of Experts' conclusion that prison staff were not members of the disciplined forces and were therefore being unjustly denied the right to organize and bargain collectively. No court ruling had indicated that prison staff belonged to the disciplined forces. The recent amendments of the Trade Disputes Act had significantly enlarged the definition of essential services. In April 2011, the public service unions had gone on strike and demanded a salary increase when no agreement had been reached through negotiation. In response, the Government had quickly introduced legislation seeking to categorize a number of services as essential, including the teaching services and the diamond cutting and polishing services. That legislation had subsequently been ruled unlawful by the judiciary. In 2016, despite the strong opposition of trade unions, amendments to the Trade Disputes Act had been adopted extending the list of essential services from 10 to

16 services, certain of which did not fall under the definition of essential services in the strict sense of the term. Those amendments had opened the door for the classification of the whole economy as essential, in providing that all other services that were necessary for the operation of the services listed were also considered essential. Both workers directly involved in the services listed as essential and those working in supporting services were affected, including workers in the public, parastatal and private sectors. Moreover, the amended Act prohibited all workers in essential services from participating in a strike, which aimed to prevent the use of strikes as a bargaining tool. Those provisions had not been enacted pursuant to court rulings. Section 46(2) of the Trade Disputes Act as amended further authorized the Minister to declare more services essential if a strike lasted more than seven days after consulting the Labour Advisory Board. That was unacceptable, as consultation of the Labour Advisory Board had often been a formality. The industrial relations situation in the country was deteriorating, as evidenced by the newly proposed amendments to the Public Service Act, which were to be presented before Parliament in July 2017. The proposed amendments sought to deprive public employees of the right to bargain. Section 72 of the proposed amendments provided that the Department of Public Service Management would be the secretariat of the Public Service Bargaining Council (PSBC), and that would enable the Government to take control of the Council. In addition, section 74(4) of the proposed amendments authorized the Minister to appoint the Chairperson and Vice-Chairperson of the Council without any consultations with, or agreement of, the trade unions. The proposed amendments would also allow employers to make salary increments without the Council's approval. Those changes, if adopted, would render collective bargaining in the public service useless. He urged the Committee to call upon the Government to comply with its international obligations.

The Government member of Swaziland, speaking on behalf of the member States of the Southern African Development Community (SADC) acknowledged the efforts of the Government. ILO technical assistance had begun with a view to achieving compliance with the Convention, and that assistance should continue. Meaningful and constructive social dialogue was encouraged among all the partners involved in ensuring full compliance with the Convention, taking into account the socio-economic environment of the country. The Government should be given the opportunity to continue the internal review process of the relevant national legislation in an effort to ensure full conformity with the Convention, and the necessary technical assistance should continue.

The Worker member of Zimbabwe stated that the Trade Unions and Employers' Organizations Act violated labour rights. Sections 11 and 15 of the Act prohibited unregistered trade unions from conducting any operations. However, the Committee of Experts had previously recommended that the activities of unregistered unions should not be totally banned and that an opportunity should be provided to rectify the absence of formal registration, by virtue of Article 2 of the Convention. Moreover, section 27 of the Act required that trade unions and employers' organizations conduct "a general meeting" by convening all members of the concerned organization, which was difficult to achieve in practice. Trade unions must have the right to regulate their own operations through their constitutions. Stipulating such conditions was inconsistent with the requirement of Article 3(1) and (2) of the Convention and amounted to interference. The Trade Unions and Employers' Organizations Act also granted excessive authority to the registrar. Pursuant to section 43 of the Act, the registrar could interfere in the operations of a trade union by inspecting its books without any cause. The Government had a duty to ensure transparency, but there were no guarantees of an impartial procedure by the competent judicial authorities. It was regrettable that those provisions, which interfered with the autonomy and financial independence of trade unions, had not been amended despite the repeated recommendations by the Committee of Experts. Consequently, the Government must be called upon to abide its international obligations.

The Government member of Malawi took note of the Government's statement regarding the challenges surrounding the practical application of the Convention. She commended the Government's efforts, particularly its request for ILO technical assistance with the labour law review, to address certain gaps and with a view to guaranteeing the constitutional right to freedom of association. The ILO should provide the support necessary in order to fulfil the country's obligations. She encouraged the Government to engage in meaningful consultation with the social partners and stakeholders to align the labour laws with ILO Conventions.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, expressed disappointment that the new Trade Disputes Act limited the fundamental rights of many workers. Prison workers were prohibited from joining trade unions. Section 46 of the Trade Disputes Act as amended enumerated a broad list of essential services, and other services could be added at the Minister's discretion. This affected approximately 20,000 workers and appeared to stifle trade union activities. Botswana's tripartite Labour Advisory Board currently only advised the Minister. Instead of imposing restrictions, the Government should enhance social dialogue with the social partners on the basis of trust and respect, and agree on a roadmap for cooperation. The right to organize for all workers was not antithetical to an agreement as to what constituted essential services. In conclusion, the

Government should promote the development and use of collective bargaining mechanisms and laws in both the private and public sectors, and widen the scope of workers covered by effective collective bargaining agreements.

Le membre gouvernemental de la France s'est référé aux problèmes identifiés par la commission d'experts concernant, d'une part, les entraves au libre exercice d'une activité syndicale, et notamment l'impossibilité pour le personnel pénitentiaire de s'affilier à une organisation syndicale, et, d'autre part, la définition très large des services essentiels qui exclut de nombreux travailleurs de l'exercice du droit de grève. La liberté syndicale et les dispositions concrètes, qui permettent le plein exercice de ce droit à travers un dialogue social effectif et équilibré ou des protections et facilités accordées aux représentants des travailleurs, sont primordiales. De même, le droit de grève constitue un élément essentiel de la liberté syndicale, et il convient de rappeler l'importance qui s'attache à son respect dans le cadre de l'application de cette convention. L'orateur a invité le gouvernement à tenir compte des demandes formulées par la commission d'experts concernant la modification de la législation sur les conflits du travail et la fonction publique afin de permettre aux travailleurs dont les fonctions ne peuvent raisonnablement pas relever des services essentiels d'exercer librement une activité syndicale.

An observer representing Education International noted with concern the inclusion not only of teachers but of support staff among the essential services in section 46 of the Trade Disputes Act, as amended. As outlined in the 2012 General Survey of the Committee of Experts, the restriction of the right to strike should only be limited for those services whose interruption would endanger life, personal safety or health, and teachers did not fall within that definition. During a lengthy strike, the possibility of establishing minimum services in consultation with the social partners made the inclusion of education on the list even less necessary. The core value of respect for teachers must be reflected in appropriate working conditions as well as in freely negotiated collective agreements, for which the ability to strike was fundamental. Unions had been given only three days to make written submissions on the draft amendments to the Public Service Act, without any face-to-face consultations. Nonetheless, the amendments had been gazetted and would be submitted to Parliament in July 2017.

An observer representing the International Transport Workers' Federation (ITF) recalled that, as clearly enunciated by the Committee of Experts, the essential services enumerated in section 46 of the amended Trade Disputes Act did not constitute essential services in the strict sense of the term. Transport generally did not constitute an essential service. Other than air traffic control, the transport occupations listed in the Act, namely the operational and maintenance services of the railways and the transportation and distribution of petroleum products, did not constitute essential services. Furthermore, the broad classification of services necessary to operate essential services as also essential would invariably capture the majority of transport operations in the economy. Harm to the economy caused by the interruption of a service was insufficient to consider it as an essential service and this would limit collective bargaining. For example, the majority of members of the ITF-affiliated rail union workers in the state railways' operations, engineering, finance and IT departments, were all covered by the essential services provision. Moreover, the Government had failed to give compensatory guarantees for workers deprived of the right to strike. The Government had not even considered the introduction of a negotiated minimum service as a possible alternative to a total prohibition on strikes. The new essential service provisions made it more difficult for transport workers to take action in defence of their jobs, livelihoods and working conditions. Echoing the comments by the Government member of France, he recalled that the right to strike was a human right protected in international law, not only covered by the Convention, but also recognized now as customary international law. The Government was therefore urged to comply with the observations of the Committee of Experts in order to bring the amended Trade Disputes Act into conformity with the Convention.

The Worker member of South Africa, speaking on behalf of the Southern Africa Trade Union Co-ordination Council (SATUCC) and its affiliates in the SADC, recalled that the Trade Disputes Act and related legislation such as the Public Service Bill and the Prison Act subjected workers to a labour market system in which organizing and bargaining were viewed as contradictory to progress. Botswana illustrated a tendency to restrict workers' rights in the race to diminish labour standards. Botswana had for some time been ambivalent regarding labour rights and the freedom to express contending views. There was a regional trend to erode gains made by workers and seemingly to test problematic legislation which restricted workers' rights. When the Trade Disputes Act had been adopted it essentially eliminated the right to strike and the means to bargain. The Committee should call on the Government to respect the unequivocal and unambiguous provisions of the Convention regarding the rights of workers to organize. Ratifying a Convention without adapting national law was in violation of international law.

An observer representing Public Services International (PSI) noted that the Government had started a wide-ranging process of revising the labour legislation in the country. Certain provisions of the new Public Service Bill were not fully in line with ILO principles on freedom of association and collective bargaining. Section 3(2)(c) of the Bill excluded some categories of workers from unionization. This included "members of staff" of the

Directorate of Intelligence and Security. The term “members of staff” had a wide meaning, which would exclude support staff such as labourers and cleaners. Section 19(2) excluded, among others, persons who had been convicted of a criminal offence from joining the public service. The term “criminal offence” was also broad and it might prevent, for example, a person convicted of over-speeding from joining the public service. Section 50 banned political expressions in the public service but was silent as to what constituted a political matter. According to ILO principles, workers should enjoy civil liberties and freedom of political expression. Section 61 removed the power of the PSBC to settle disputes or grievances of whatever form. Sections 72 and 74(4) of the Bill gave power to the Directorate of Public Service Management and the Minister to appoint the secretariat, Chairperson and Deputy Chairperson of PSBC respectively. Currently the Constitution of the PSBC conferred that power to the Council itself. Section 74(3) provided that representatives of both the worker and employer shall be public officers. That restriction limited both parties to be represented by experienced negotiators of their choice and was contrary to Article 3 of the Convention. Section 75 gave the employer the power to unilaterally change terms and conditions of service without input from PSBC, or even workers. Finally, section 76(2) gave the possibility for the employer to confer benefits during ongoing negotiations, which short circuited the bargaining process and might be contrary to the duty to bargain in good faith. The revision of the labour legislation in Botswana was a great opportunity for the Government and the social partners to adopt legislation in line with ILO Conventions. In that process, consultations with representative trade unions were of the utmost importance for constructive labour relations and to maintain the social peace. He requested that the Government keep working with the ILO and that there be a formal process of consultation with trade unions representing public sector workers.

The Government member of Zimbabwe expressed support for the statement delivered by the Government member. Consultations were ongoing with a view to aligning legislation with the ILO Conventions. The Committee should afford the tripartite partners an opportunity to undertake these consultations in earnest. The issues raised by the Committee of Experts provided a good platform within which the tripartite constituents in the country could continue to engage. Issues around labour law reform and social dialogue required the collaboration of the tripartite partners. The speaker encouraged the ILO to provide the necessary support in order to achieve the desired objectives.

The Government representative acknowledged the contributions in the discussion as helpful and indicated that some issues raised by members of the Committee had not been factual. For instance, all registered trade unions had the right to organize and no trade unions were favoured by the Government. All trade unions were subjected to labour laws and could have recourse to established trade dispute resolution mechanisms and the courts of law. He did not agree with the statement by the Worker member of Botswana that consultations in the Labour Advisory Board were superficial. Botswana had ratified 15 ILO Conventions as a result of the advice of that body. He fully agreed with the position of the Employer members regarding the need for a holistic review of the labour laws. The Government also undertook to further engage with social partners to clarify certain issues during the labour law reform process. Consultations must be given the necessary time to take place.

Les membres travailleurs ont réaffirmé que ce cas avait toute sa place dans la liste des 24 cas individuels, qui est établie de manière consensuelle. Les violations sont clairement énoncées par la commission d'experts depuis 2001 et il est à espérer que le gouvernement mette tout en œuvre pour respecter ses obligations internationales. Pour cela, il doit notamment: i) s'abstenir de toute action ayant pour conséquence de favoriser une organisation au détriment des autres; ii) modifier la législation en vue de permettre à tous les travailleurs de l'administration pénitentiaire de s'affilier à un syndicat et de limiter la liste des services essentiels. A cet égard, il y a lieu de rappeler que, dans leur déclaration conjointe de 2015, les membres employeurs et les membres travailleurs ont reconnu le droit de mener des actions collectives. Le fait de discuter de la notion de service essentiel permet de déterminer quelles limites peuvent être apportées à ce droit, sur la base de cette déclaration conjointe. Par ailleurs, le fait de permettre à un Etat de considérer qu'un service relève d'un service vital si son interruption porte atteinte à l'économie comporte une double conséquence: cela remet en cause le droit des travailleurs à mener des actions collectives et cela contredit l'objectif principal de l'Organisation en soumettant la réalisation de la justice sociale à un impératif d'ordre économique. A ce titre, il y a lieu de se féliciter de la déclaration du membre gouvernemental de la France selon laquelle le droit de grève constitue un élément essentiel de la liberté syndicale.

Concernant les privilèges accordés uniquement aux syndicats représentant un tiers des salariés de l'entreprise, le gouvernement doit soit revoir le seuil fixé, soit revoir les privilèges accordés à ces syndicats. Ces privilèges empêchent le développement du pluralisme syndical. Enfin, le gouvernement doit supprimer la disposition permettant au greffier des syndicats de consulter les livres et documents d'un syndicat à «tout moment raisonnable». Pour mener à bien ces réformes, les membres travailleurs ont demandé au gouvernement de se prévaloir de l'assistance technique du BIT et de mettre en place un plan de travail en collaboration avec les partenaires sociaux.

The Employer members stated that they were in agreement that the list's determination was a consensual process. They reiterated that the Committee of Experts had been correct to indicate that the legislative provision providing for the inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time" should be limited to a periodic basis. Disagreement existed on the issue of essential services and the right of those services to industrial action. Disagreement existed with respect to the existence of the right to strike under the Convention. In that respect, the Government group statement of the 2015 Tripartite Meeting on the Convention in relation to the right to strike and the modalities and practices of strike action at national level had stated that the scope and conditions of the right to strike were regulated at the national level. That also applied to issues of essential services. Noting the reference to the 2012 General Survey of the Committee of Experts, the Employer members stated that the contents of the General Survey had led to difficulties in the Committee's functioning for several years.

The Employer members indicated that the provision of technical assistance should continue. The holistic review of the legislation should also continue, particularly in light of the numerous pieces of legislation mentioned by various members of the Committee. The Government should then report back as to the outcome of the holistic review and the changes made.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Botswana to:

- **take appropriate measures that ensure that the labour and employment legislation grants members of the prison service the rights guaranteed by the Convention;**
- **ensure that the Trade Disputes Act is in full conformity with Convention No. 87, and engage in social dialogue, with the further technical assistance of the ILO;**
- **amend the Trade Unions and Employers Organisations Act, in consultation with employers' and workers' organizations, to bring these laws into conformity with the Convention.**

The Committee called upon the Government of Botswana to develop a time-bound action plan together with the social partners in order to implement these conclusions. The Committee urged the Government to continue availing itself of ILO technical assistance in this regard and to report progress to the Committee of Experts before its next meeting in November 2017.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

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

- **prendre des mesures appropriées pour faire en sorte que la législation sur le travail et l'emploi reconnaisse aux membres de l'administration pénitentiaire les droits garantis par la convention;**
- **faire en sorte que la loi sur les conflits du travail soit en totale conformité avec la convention n° 87 et entamer un dialogue social, avec l'assistance technique renouvelée du BIT;**
- **modifier la loi sur les syndicats et les organisations d'employeurs, en concertation avec les organisations d'employeurs et de travailleurs, afin de mettre cette législation en conformité avec la convention.**

La commission a prié le gouvernement d'élaborer, avec les partenaires sociaux, un plan d'action assorti de délais afin de mettre en œuvre ces conclusions. Elle l'a prié instamment de continuer de faire appel à l'assistance technique du Bureau à cet égard et à rendre compte des progrès accomplis à la commission d'experts avant sa prochaine réunion de novembre 2017.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

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

- adopte medidas apropiadas para garantizar que la legislación laboral y en materia de empleo reconozca a los miembros del servicio penitenciario los derechos garantizados por el Convenio;
- asegure que la Ley de Conflictos Laborales esté en plena conformidad con el Convenio núm. 87, y entable un diálogo social, con la asistencia técnica adicional de la OIT, y
- modifique la Ley de Sindicatos y Organizaciones de Empleadores, en consulta con las organizaciones de empleadores y de trabajadores, con miras a poner esta legislación en conformidad con el Convenio.

La Comisión pidió al Gobierno de Botswana que elabore un plan de acción con plazos establecidos con la colaboración de los interlocutores sociales, a fin de poner en práctica estas conclusiones. La Comisión instó al Gobierno a que siga recurriendo a la asistencia técnica de la OIT a tal efecto y a que informe a la Comisión de Expertos, antes de su próxima reunión de noviembre de 2017, sobre los progresos realizados.

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

Convention (nº 87) sur la liberté syndicale et la protection
du droit syndical, 1948

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

Cambodia (ratification: 1999)

Cambodge (ratification: 1999)

Camboya (ratificación: 1999)

A **Government representative** recalled that a direct contacts mission (DCM) requested by the Conference Committee in 2016 had visited the country from 27 to 31 March 2017. The DCM had met with the Minister and high-level officials of the Ministry of Labour and Vocational Training (MLVT), representatives of the Ministry of Interior, Ministry of Justice, the National Police, the secretariat of the Arbitration Council, the secretariat of the National Strike and Demonstrations Committee, representatives of workers' confederations, federations, unions and associations, and representatives of interested national and international non-governmental organizations. The Government had reviewed and taken due note of the DCM conclusions and recommendations.

In connection with murders of trade unionists, the Government deeply regretted and shared profound sorrows for the loss of lives with the victims' families. It was committed to taking all necessary measures in line with the national laws and regulations to bring the perpetrators and instigators to justice so as to bring justice to the victims' families. It was regrettable that, as had been reported to the DCM, the Government was not in position to expedite the investigation due to the various challenges, including the lack of collaboration from the victims' families. The Government was nevertheless committed to doing its utmost to conclude the investigation. Certain progress had been made and a tripartite subcommission would be set up to provide a better access and facilitate the submission of evidence and information from all stakeholders, especially from the victims' families. This Sub-Commission would assist the Inter-ministerial Commission for Special Investigation on Case No. 2318, concerning the murder of trade union leaders namely Chea Vichea, Hy Vuthy and Ros Sovannareth, pending before the Committee on Freedom of Association, to expedite and conclude the investigation. Furthermore, the right to lawful strike and peaceful demonstration was well protected under the current legal framework and fully exercised. To secure the public security and interest, however, any violent strike or demonstration was punishable in accordance with the laws and regulations in force. The Government remained regretful about January 2014 events which were instigated by certain politicians by using the minimum wages as the propaganda. As had been reported to the DCM, this incident was a riot, did not fall under the strike definition provided by the international labour standards and was

accompanied by violent actions and destruction of public and private properties. When facing such incidents or threats to harm public order the Government must take immediate action to preserve peace and stability in the country. If in doing so, the police forces violated the law, such incidents were investigated and those responsible convicted. In response to the specific allegation made by the International Trade Union Confederation (ITUC) in this regard, the Government needed adequate time to report as it was still awaiting for the relevant court decisions.

Regarding legislative issues, the newly adopted Law on Trade Unions (LTU) aimed at protecting lawful rights and interests of all persons covered by the Labour Law as well as the personnel of the air and maritime transportation; ensuring collective bargaining rights; promoting harmonious industrial relations; and contributing to the development of decent work, and enhancement of productivity and investment. Due note was taken of comments and concerns raised by the social partners regarding the implementation of the LTU and the issues of trade union registration and representation had been already discussed. To make it easier for a newly established trade union to get registered, the MLVT simplified and reformed the registration procedures. In particular, the LTU shortened the registration period for 60 days, as previously provided for under the Labour Law, to only 30 days. In other words, while the Labour Law required the applicant to wait until 60 days, the LTU stipulated that a trade union should be considered as having been duly registered if the applicant did not receive any information from the Registrar within 30 days following its submission. Furthermore, Prakas No. 249 on the Registration of Trade Unions and Employers' Associations was issued on 27 June 2016. It detailed procedures and provided for the list of required documents and downloadable templates. In addition, while in the past, trade unions could apply for registration only at the MLVT in Phnom Penh, to save time and reduce expenses, the registration authority was now delegated to every Provincial Department of Labour and Vocational Training. Several trainings had been carried out for officials in charge of registration. A complaint mechanism had been established to settle any disputes arising from the registration. However, as these were new regulations and practices some difficulties occurred. There was always room for improvement and some points needed to be reviewed to remedy the challenges faced by the social partners in this respect. Concerning the recognition of the most representative status and capacity of unions to represent their members, an implementing regulation was being drafted in consultation with the social partners. Thus, at the moment, it was not necessary to amend the legislation; rather its interpretation needed to be clarified through tripartite consultation process. Several training courses for employers and workers had been conducted by the MLVT in collaboration with trade unions and employers' associations to ensure a proper understanding of the legislation and its effective implementation. Furthermore, domestic workers and workers in the informal economy were not excluded from the scope of the LTU. They were free to form a trade union of their own choice as long as the conditions stipulated under the Law were satisfied. If they failed to meet the requirement to form a union under the LTU, they could still join an association whose mission was to safeguard their rights and interests. In the same vein, civil servants enjoyed and exercised their freedom of association under the Law on Association and Non-Governmental Organization (LANGO). While the Ministry of Interior could reject the registration if it endangered or adversely affected public safety or public order, the applicant was entitled to file an appeal to the court against such a decision. The laws and regulations in force, including the Law on Common Statute of Civil Servants, the Law on Education, the LANGO, and the LTU and its implementing regulations, freedom of association of all workers, including teachers, civil servants, domestic workers and informal economy workers was fully protected and exercised. In order to further promote the exercise of this freedom, the Government would duly review the recommendations of the DCM and of this Committee to see if any further measures must be taken. The implementing regulations of the LTU were being drafted and submitted for tripartite consultations. On 9 May 2017, a tripartite meeting was convened at the MLVT to discuss four draft prakas to implement them. Further consultations would be conducted so as to address all concerns of the social partners. The Government expected to receive ILO technical support in this respect and undertook to provide a report on the implementation of the legislation in due course.

Lastly, on the application of the Convention in practice, a zero draft Law on Labour Disputes Adjudication was finalized and circulated for comments. The MLVT drafting team was working on the comments and feedback received from the ILO and the Arbitration Council and was awaiting further comments from the line ministries before proceeding with the tripartite consultation on the revised zero draft with the ILO support and technical assistance. Recognizing the effectiveness of the Arbitration Council, the Government was willing to promote its roles by empowering this institution to hear individual disputes. The draft law will be submitted to the Parliament for adoption by the end of this year.

In conclusion, the Government was doing its utmost to promote the exercise of freedom of association and to consult with the social partners. The speaker called for a strong and close collaboration with the social partners to build a peaceful environment and industrial harmony for the benefits and interests of the people and economic development. Adequate time for the implementation of the recommendations was needed. The Government

undertook to provide detailed information on the observations made by the social partners to the Committee of Experts in due course.

The Worker members highlighted that the application of the Convention had been examined by this Committee in 2007, 2010, 2011, 2013, 2014 and 2016. However, the Government continued to limit or effectively prohibit trade unions from exercising their right to organize. Since 2016 the situation had worsened substantially. The Government had curtailed freedom of association through highly repressive legislation. Perhaps the most harmful was the new LTU, adopted on 17 May 2016. The observations and direct requests of the Committee of Experts, as well as the observations of the DCM clearly indicated that its numerous provisions violated the Convention, despite the Government's claim that the Law was fully in compliance with it. Those provisions included, for example, the requirements imposed on trade union leadership and the setting of quorum for decision-making, as well as provisions that facilitated the dissolution of trade unions. Teachers remained unable to form a trade union and workers in the informal economy, including domestic workers, remained effectively excluded from the coverage of the law. While the Government suggested that they registered as NGOs, this did not ensure the extension of trade union rights. The highly burdensome union registration process set out in the LTU and the accompanying regulations was of concern. The regulations required applicants to fill out numerous forms with excessive information, much of which was irrelevant, concerning not only workers, but also their extended family. In many cases, workers had not been provided with the information necessary to complete the application by the Government or by the employer. Applications had been denied for minor typos, reasons outside the scope of the law or for no reason at all. Because the law prohibited trade unions from carrying out any activity prior to registration under threat of sanction, the excessive delays and arbitrary denials of registration had prevented workers from exercising their fundamental rights under the Convention. The registration process was in fact, a request for a prior authorization, exercised in an arbitrary manner. In addition, once a union was registered, each year it had to submit to the Government a complete list of its activities in order to maintain registration. This was an extraordinary interference in trade unions activities and was a violation of the Convention.

Of serious concern was also the provisions of the LTU on the most representative status (MRS). Only a MRS union, possibly representing as little as 30 per cent of the workers, could represent workers in grievances or in disputes before the Arbitration Council or courts or bargain collectively on behalf of the workers. This was clearly a violation of freedom of association. In addition, the Government's failure to regulate that issue had meant that trade unions had been unable to obtain an MRS certification and as a result, they had been unable to bring claims before the Arbitration Council or courts. That led to a steep decline in the number of cases taken to the Arbitration Council, thus depriving workers of access to a remedy for labour law violations. Moreover, unions had been unable to bargain collectively and the existing collective agreements expired with no union entitled to renegotiate them.

The draft Law on Labour Dispute Adjudication would create an excessively long dispute settlement process requiring workers and unions to go through multiple and unnecessary levels of adjudication. A broader contextual concern was the lack of independence of the judiciary. The Arbitration Council had been considered by all parties to be reliable and neutral. However, the law would place it under newly created labour courts, which were likely to be influenced by the executive branch. Moreover, the draft provided the excessive fines, which disproportionately targeted workers rather than employers and criminalized the peaceful exercise of fundamental freedoms. Even the proposed Minimum Wage Law imposed severe restrictions on freedom of association rights through, for example, the proposed ban on any form of "objection" to the agreed-upon minimum wage (section 26), the prohibition on conducting an independent research on the minimum wage (section 23). In addition, the Government continued to lodge criminal charges against union leaders and the courts, notorious for their lack of independence, held those charges indefinitely. Union leaders were then required to continuously report to the court and were thus restricted in their freedom of movement. The pending charges thus harassed and intimidated union leaders. Since 2014, 25 leaders of the Cambodian Labour Confederation or its affiliates had been jailed. The Worker members shared the Committee of Experts' deep concern that nobody had been held responsible for the violence against those who took part in protests for higher wages, which took place in January 2014 and left five people dead, dozens seriously injured and 23 arrested. In that respect, they urged a credible, independent investigation. The Government claimed that the committees established to investigate the situation completed their work but that they could not release the reports. The Worker members, like the Committee of Experts and the DCM, urged the Government to release its findings and conclusions. Additionally, the murder of Chea Vichea and Hy Vuthy had remained unsolved for over a decade. In order to end the impunity, the Government needed to conclude those investigations and to bring the perpetrators to justice, without any further delay.

The Government continued to limit the right to public protest. About 2,000 workers celebrating May Day were prevented from marching with a list of demands, including higher wages and an end to union-busting. The Worker members once again highlighted that workers continued to be disciplined or dismissed for their trade union activity.

Those violations were rarely investigated effectively, and workers rarely obtained a remedy, even when the Arbitration Council ruled in their favour. Finally, they recalled that the Committee on Freedom of Association had considered that “fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights.” The Government had repeatedly sought to undermine the rulings of the Arbitration Court, which had interpreted the law to prohibit fixed-term contracts beyond a total of two years, and to expand their use for even longer. In conclusion, the Worker members strongly urged the Government to respect the Convention in law and in practice.

The Employer members recalled that the application of the Convention by Cambodia had been examined by the Committee over a number of years. There was nothing new concerning the substance matter of the case and all issues had already been discussed before. They noted that a DCM had visited the country and wished that its report had been circulated. They recalled that this case concerned the following four issues: (1) the investigation of violence and unsolved murders of several unionists, (2) legislative issues, (3) the right to organize not adequately recognized to teachers, civil servants, domestic and informal economy workers, and (4) the independence of the judiciary. In relation to the first point, since 2014, a large number of trade union leaders and activists had been charged with criminal offences for union activities and an increasing number of injunctions and requisition orders against trade unions and workers had been granted in labour disputes, which restricted trade union activities and industrial actions. A large number of allegations against the persistent use of violence by the police against workers during protest actions had been made. A framework for the exercise of freedom of association rights needed to be developed. The Employer members thus encouraged the Government and the social partners to look at the experience of other countries in this regard. With regard to the long-standing recommendations to carry out expeditious and independent investigations into the murders of three trade union leaders, they noted the information provided by the Government on the establishment in August 2015 of a special Inter-ministerial Commission for Special Investigations.

In relation to the incidents that had occurred during the strikes and demonstrations of 2–3 January 2014, which had resulted in serious violence and assaults, death, and arrests of workers as well as alleged procedural irregularities in their trial, the Government had provided information on the work of the three bodies and more specifically that: (i) the Damages Evaluation Commission evaluated the damage arising from the unrest and the need for restitution; (ii) the Veng Sreng Road Violence Fact-Finding Commission had concluded that the violence was a civil unrest rather than industrial action; and (iii) the Minimum Wages for Workers in Apparel and Footwear Section Study Commission had been transformed into the tripartite Labour Advisory Committee, which advised on and promoted working conditions, including minimum wage setting. The Employer members thus questioned whether discussing this aspect on an annual basis was the best use of the Conference Committee. While considering that murders were linked to freedom of association only if it could be shown that they were committed to frustrate freedom of association, otherwise they should be dealt with as criminal issues, they urged the Government to bring those investigations to a fruitful conclusion.

Concerning legislative issues, the Employer members noted that the LTU was promulgated in May 2016 and that during the drafting process, a series of tripartite, bipartite, multilateral and public consultations had been conducted and the ILO comments had been included in the final draft. Nevertheless, the draft did not provide full satisfaction to the social partners. The employers were not satisfied with the minimum threshold before a trade union could be established, and the workers were dissatisfied with the scope of the law, which excluded civil servants. The ITUC had also raised the following issues with regard to the new LTU, as noted by the Committee of Experts: undue requirements for leaders and officers, including age, literacy, conviction records and permanent residence; matters such as quorum requirements for decision-making, which should be determined by trade unions themselves; the need to amend the section pertaining to the dissolution of trade unions; registration procedures; and the recognition of the MRS. These were valid questions and should be examined. It was therefore regrettable that no further details had been provided. Without those, it could only be recommended that all facts should be made available to the competent authorities so that they could be investigated.

Concerning trade union rights and civil liberties, the Employer members recalled that Article 2 of the Convention guaranteed the right of workers and employers, without distinction whatsoever, to establish and join organizations. This meant that the right to establish and join occupational organizations was guaranteed for all, including public servants and officials, whether or not they were engaged in the state administration at the central, regional or local level, were officials of bodies which provided important public services or were employed in state-owned economic undertakings. While noting the Government’s indication that section 36 of the Common Statutes for Civil Servants guaranteed freedom of association rights to civil servants appointed to a permanent post in the public service, that section 37 of the Law on Education guaranteed these rights to teachers and that the LANGO also provided for freedom of association rights, the Employer members considered that some of the LANGO

provisions contravened freedom of association rights of civil servants by subjecting the registration of their association to the authorization of the Ministry of Interior, which was contrary to Article 1 of the Convention. They also observed that this law lacked provisions recognizing that civil servants' associations had the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without the interference of the public authorities, and the right to affiliate to federations or confederations, including at the international level. This had created a potentially ambiguous situation in which different and conflicting applications of the Convention might occur. The Employer members urged the Government in consultation with the social partners to take appropriate measures, including through the immediate amendment of the legislation, to ensure that civil servants, including teachers, who were not covered by the LTU, were fully ensured their freedom of association rights.

On the final point, while the role of the judiciary was not regulated by the Convention, the Employer members commended the Government on the progress made in relation to the drafting of a guideline on the operation of the Labour Court and the Labour Chamber. The Government had indicated that, with the ILO technical assistance, the Law on Labour Procedure of the Labour Court was in the drafting process and that it intended to consult the social partners before the end of the year to ensure that the labour dispute system was quick, free and fair. The Employer members urged the Government to complete this work in full consultation with the social partners.

To conclude, there was no new information, other than a range of new allegations. To shed light on these issues, the DCM report should be published so that it could provide the basis for the way forward.

The Worker member of Cambodia stated that since the entry into force of the LTU in May 2016, freedom of association had further contracted. A whole new set of requirements had been provided for, such as the type of information to be supplied which included the employment book, the social security number, the names of the leaders and their phone numbers, and particulars of the spouse, parents and children. He stated that the said requirements were excessive, unjustified and fear-inducing. Trade union registration could now be blocked by the mere reason of not having supplied the required information. In some cases, the registration had been held up by government officers who returned documents for correction again and again. Moreover, bank accounts, financial statements, and activity reports would have to be supplied to the Ministry, in order to keep the registered trade union status. Trade unions and individuals could be prosecuted for inciting protests if they had objected to the minimum wage level approved by the Wage Council. In short, the right of trade unions to manage their operations and conduct activities had been undermined. Collective bargaining and negotiations to resolve collective disputes had been paralyzed, since the passing of the LTU. The Department of Labour and the Arbitration Council had precluded unions from filing collective disputes for their members either because they had not kept their registration status, or because they no longer were the most representative union. Employers had taken advantage of that to reject negotiations of collective bargaining agreements or dispute resolutions. He indicated that the problem before the Committee concerned the implementation of that new piece of legislation, rather than a lack of ministerial regulations. The absence of trade union dissolutions did not mean that trade unions could operate and perform their duties freely. As long as the LTU remained, trade unions and trade unionists would regularly be under the threat of being prosecuted for "illegal operation". Moreover, for the sake of preserving "legal peace", trade unions could lose the right to represent their members' interests in the workplace. The requirements concerning age, literacy and absence of criminal records for trade union leaders had left out a number of unions from the informal sector. Workers in the informal sector could not produce their employment information and were in effect excluded. Additionally, no steps had been taken towards reforming the Common Statutes for Civil Servants nor the Law on Education, in order to ensure equal rights for public servants and teachers. Employers had continued using short-term employment contracts and terminating workers for joining trade unions. Judicial harassment was ongoing and violence had remained unpunished. Little action had been taken by the Government in order to implement the legal protection of trade unions, to clear or reduce the arbitration backlog, including that of the reinstatement awards brought by the national centres to the Committee last year. Instead, the authorities and employers had been using the LTU to challenge the unions' legal status or representativeness. Unionists had genuinely feared that the draft Law on Labour Procedure of the Labour Courts would further exclude minority unions from submitting collective disputes. Under the mandatory dispute procedure, trade unions' right to declare industrial action would be further undermined. As regards freedom of association and respect of trade union rights, the situation had not improved since the Committee's latest examination. The Government had to amend the LTU related regulations in order to bring it into compliance with the Convention, drop all criminal charges against workers and union leaders, and resolve the reinstatement cases. Ultimately, the Government also had to take measures to ensure fair, independent and transparent investigation of previous murder cases, punish the perpetrators and provide compensation as prescribed by law.

The Employer member of Cambodia recalled that since Cambodia had been discussed by the Committee in 2010, the Government had shown strong commitments. A DCM had visited Cambodia in March 2017 and formulated recommendations to improve the situation in May 2017, which did not give the Government sufficient time to implement them in time for the Conference. As regards the recommendation concerning the exercise of freedom of association in a climate free of intimidation and violence, the Committee of Experts should indicate the time span in which this process should be implemented given the short period elapsed since the recommendations were adopted. The recommendation concerning the right to organize of all workers, including teachers and civil servants, domestic workers, and informal economy workers, also required time as engaging or consulting with organizations representing the workers and arranging for technical assistance of the ILO required one or two years. The recommendation to amend the LTU also required time, so as the recommendations pertaining to the practical application of the Convention. The speaker considered that this case should not be selected again in 2018.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Montenegro, the former Yugoslav Republic of Macedonia, Serbia, Albania, Bosnia and Herzegovina and the EFTA country Norway, recalled that this case had been discussed at the Conference Committee in 2016 and welcomed the fact that, as requested by the Conference Committee, a DCM had taken place. However, he expressed deep concern over the workers' allegations outlined in the DCM report, notably the repeated use of violence by the police against workers during protest actions and the increased number of injunctions and requisitions orders granted in labour disputes to restrict trade unions activities. Further information should be provided on these allegations. The Government was called upon to take urgent and concrete actions to comply with the call of the Committee of Experts to ensure that trade union rights were fully respected and that trade unionists were able to engage in their activities in a climate free of intimidation or risk. The Government had also been requested by the Conference Committee to undertake full and expeditious investigations into the murders of trade unions leaders in 2004 and 2007 and other incidents of violence against trade union activists and to bring the perpetrators as well as the instigators of these crimes to justice. Concerns remained that despite the establishment of an Inter-ministerial Commission for Special Investigations, no concrete progress had been reported in this area. He therefore urged the Government to provide the information requested by the Committee of Experts on the outcome of the investigations of these cases. Moreover, information was sought from the Government regarding the findings of the commissions that were set up to investigate the death, injury and arrest of protesters that took place on 2–3 January 2014 following a labour dispute demonstration. Intervention of the police should be in proportion to the threat to public order. Furthermore, given the concerns that certain aspects of the LTU might not be in conformity with the Convention, the Government was encouraged to work further with the ILO to ensure that the Law was fully aligned. Finally, he noted with interest that the Law on Labour Procedure of the Labour Court was currently being drafted with the support of the ILO. He encouraged the Government to consult with the social partners on this Law and to the adoption shortly, so as to ensure independence and effectiveness of the judicial system and further ensure that workers' freedom of association rights were respected and enforced. It was important, also in the context of the EU's Generalised Scheme of Preferences, that Cambodia took concrete and lasting measures to ensure the respect of core labour rights.

The Government member of Thailand, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), welcomed the progress made in the application of the Convention and noted the continuous efforts by the Government in ensuring and promoting freedom of association, in accordance with the international labour standards. He encouraged the Government to take appropriate measures to implement the recommendations of the DCM. Emphasizing the essential role of social dialogue in promoting harmonious industrial relations, he encouraged the Government and the social partners to continue resorting to social dialogue at all levels to promote freedom of association. In light of the progress made by the Government, he requested the Committee to provide it with adequate time for proper review and effective implementation of the recommendations of the DCM.

An observer representing IndustriALL Global Union recalled that the LTU and its implementation continued to raise serious concerns with regard to their compliance with Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) as little action had been taken by the Government to enforce the legal protection of trade unions. There was a backlog of arbitral awards which continued to hinder the reinstatement of independent unionists who were ignored by the employers with impunity. The Cambodian Labour Confederation reported a backlog of un-enforced arbitral awards, involving at least 2,826 members (2,584 of them in the garment sector) pending reinstatement since 2013. It was worrisome that employers used civil litigation to bypass the arbitration awards, and judicial harassment to terminate union leaders who needed to prove anti-union discrimination in the civil court where the relevant provisions of the Labour Law were seldom considered. Enforcement of arbitration awards was appallingly low compared to the withdrawal rate by the workers who could not afford to wait years to get reinstatement. In many of these cases, trade unions were forced to stage a strike to press the employers to enforce reinstatement, followed by multiple criminal charges against them that were

indefinite. The new Labour Dispute Procedure Law currently being drafted was likely to be used as an administrative tool by the Government to further control and punish trade unions who were seeking to redress violations of Conventions Nos 87 and 98 by imposing an extremely cumbersome dispute procedure under the newly created labour courts, which were certain to be dominated by the executive. The compulsory procedure and the provisions on the most representative union, as well as nomination of worker representatives by the conciliator to resolve the dispute, would eliminate the role of the minority unions and greatly reduce the space of trade unions in organizing their activities including industrial actions. The speaker urged the Government to undertake a consultative process on the draft Labour Dispute Procedure Law, to ensure the rights of the minority unions, and to further ensure that an adjudicatory system was accessible and provided for an expeditious and fair resolution of disputes in compliance with the Convention. The Government should accept technical assistance of the ILO and a high-level tripartite mission.

The Government member of the United States commended the Government for its ongoing engagement with the ILO and its constituents, including during the recent DCM, in order to bring its laws in line with international labour standards. However, noting that there were still areas for improvement, he expressed his continued support for the conclusions reached by both the Committee of Experts and the Conference Committee. In particular, he noted the Committees of Experts' observations that certain key provisions of the LTU did not comply with the Convention. He recommended that the Government should consider the following actions: to amend the Law to cover workers who were currently excluded; to remove excessive registration requirements that may impact a union's ability to become registered, form federations, or otherwise interfere in a union's activities; to remove requirements for specific quorums or ballot thresholds, which may interfere with a union's right to draw up its own constitution and by-laws; to remove minimum literacy and age requirements that interfere with the right to vote or ability to run for office; and to ensure that any subsequent implementing regulations do not further restrict the ability of unions to register and gain most representative status or access dispute resolution procedures. In light of the allegations that trade union leaders and activists had been charged with criminal offences for participating in union activities, and considering the information on the increase in unfavourable labour dispute resolutions intended to restrict union activities, he also recommended that the Government should take steps to foster an environment that is free from violence, pressure, and intimidation for trade unionists. He urged the Government to take immediate action to effectively address issues of non-compliance with the Convention with the technical assistance of the ILO and in full consultation with the social partners, beginning by complying with the recommendations of the 2016 Conference Committee. He also urged the Government to provide a progress report to the ILO on its efforts to adopt the Law on Labour Procedure of the Labour Court.

The Worker member of Japan indicated that the Government should strive to create an environment allowing trade unionists to perform their role without fearing unfair criminal charges. Civil and criminal lawsuits had been filed against union leaders for different reasons, such as obstruction of business, disruption of traffic and incitement to strike. The lawsuits had allowed the charges to be held indefinitely. Moreover, union leaders had been subjected to irregular summons and judicial harassment aiming to intimidate them and discourage trade union activities. She gave the example of five activists who had been taken to court by a garment company for staging a strike and that of three activists who had been detained for a month after taking part in a protest for the reinstatement of sacked bus drivers. Cambodia Labour Confederation officers had been charged with offences related to a demonstration, despite not having attended. In various cases, companies had charged for loss of profit, sometimes the loss would amount to as much as US\$60,000. She indicated that employers tended to resort to civil courts, in order to bypass the law and override Arbitration Council awards. She urged the Government to take measures to prevent the criminalization of union leaders.

La membre gouvernementale de la Suisse a indiqué que la Suisse reconnaît le processus transparent et inclusif mené par le gouvernement pour adopter la loi sur les syndicats, en particulier les consultations avec le parti de l'opposition et l'organisation d'un forum public en mars 2016. Certaines dispositions de la loi demeurent cependant préoccupantes et il est regrettable que les demandes faites précédemment soient restées sans réponse, car elles restent valables: donner la possibilité d'exercer la liberté syndicale sans violence et intimidations, assurer la mise en conformité du droit et de la pratique avec la convention, et poursuivre les auteurs de meurtres et de violences à l'encontre de syndicalistes pour mettre un terme à l'impunité. Il faut dès lors espérer que la loi sur les tribunaux du travail et celle sur les syndicats soient mises en conformité avec la convention.

The Worker member of Australia stated that the Government had either directly participated in, or tacitly condoned, wide spread discrimination, intimidation and violence against organized workers and their representatives. Members and leaders of independent unions were being routinely terminated. In the case of independent trade unions, the dismissal of their elected leaders or candidates, once the employer had been informed of their identity, entailed their destruction. In some cases, local unions were uprooted with all, or a majority of its

members. Trade union leaders had been dismissed for “serious misconduct” and fabricated offences. Strikers had been terminated, despite having observed all procedures. Legal protection was not enforced and the use of strike breakers had remained unpunished. In the event of reinstatement being awarded by Arbitration Councils the awards were simply ignored, in some cases, for years. The situation was exemplified by the Cambodian Alliance of Trade Unions (CATU) case and that of the Building and Woodworkers’ Trade Union in Cambodia (BWTUC). Three CATU officials had been dismissed and the remaining one had resigned following threats to her parents by company representatives. Three local union leaders of BWTUC had been sacked after a congress, more than 60 workers had been locked up by a security guard in order to prevent them from joining a strike, and another leader was threatened with legal action for allegedly stealing company property and inciting strike action. Such blatant and serious breaches of the Convention should not be tolerated, and the Government should be placed under the highest possible supervision.

The Worker member of the United States, jointly with the Canadian Labor Congress, recalled that the LTU expressly prohibited teachers from organizing. While the Government insisted that teachers were able to exercise their freedom of association through the LANGO, groups such as Human Rights Watch had decried this law as “designed to restrict the legitimate activities of civil society and human rights defenders in violation of the right to freedom of association”. The Committee of Experts noted that the LANGO violated the Convention. Indeed, the Government used the LANGO for political discrimination against dissident organizations. For six months now, the Cambodian Independent Teachers’ Association had not been able to secure registration based on its political orientation against the ruling party. In practice, the LTU also prohibited informal sector workers from organizing. In order to form a union, informal workers must meet the requirement of including at least ten workers employed in the formal economy by a single employer. It is extremely difficult for informal sector workers to organize under this model. For example, the BWTUC, which organized in the informal construction industry, had been unable to register any of its seven local unions. This restriction affected the vast majority of Cambodia’s workforce. The Organization for Economic Cooperation and Development estimated that 76.7 per cent of Cambodian workers laboured in the informal economy. Over half of these workers were women; all of these workers were marginalized. In respect of domestic workers, most of the country’s 240,000 domestic workers were required to cook, clean, and take care of their employer’s children between eight and 13 hours a day. They worked seven days a week with no holidays. The Cambodian Domestic Workers Network, citing an ILO study, reported that 60 per cent of domestic workers earned less than \$50 a month, while only 4 per cent earn more than \$100 a month. To put this into perspective, living wage researchers called for a monthly wage of at least \$195 per month in 2016. Denying informal sector workers labouring in precarious industries the right to freedom of association is particularly concerning. The Committee had repeatedly commented that LANGO did not provide equal trade union rights to the public servants and the informal workers. It was not an alternative to amending the applicable laws for full protection to these workers’ right to organize. She called on the Government to guarantee that all Cambodian workers enjoyed the protections of the Convention.

The Employer member of Australia supported the statements made by the Employer members and the Employer member of Cambodia. She indicated that while a DCM had visited the country in March 2017, its report had not been made available until May 2017. From the excerpts of the report shared by the Employer member of Cambodia, it could be inferred that all parties had been consulted on the outstanding matters discussed by the Committee. The report had not disclosed evidence of intimidation or violence in the current environment. Moreover, employers had reported that the legislation set the minimum number of members required to register an enterprise union at ten, which was below the level originally suggested. The absence of intimidation or discrimination was evidenced by the existence of 3400 registered enterprise unions. She recommended that the report of the DCM be published, allowing for this case to be closed and, should the need arise, to be commenced afresh.

La membre travailleuse de la France, s’exprimant également au nom de la Fédération internationale des ouvriers du transport, a déclaré que la liberté d’association pose de nombreux problèmes au Cambodge et impacte de plein fouet les capacités de négociation collective des travailleurs, et donc leurs conditions de travail et leurs salaires. Si l’Etat est garant de la mise en œuvre des normes internationales du travail, les entreprises ne sont pas pour autant exemptes de responsabilités, notamment en ce qu’elles ont devoir de vigilance tout au long de leur chaîne d’approvisionnement. Malheureusement, une grande entreprise de la construction participe allègrement à bafouer les droits fondamentaux des travailleurs par le biais de l’entreprise commune moyennant laquelle elle opère dans les trois aéroports du pays et qui a, en 2012, apporté unilatéralement des modifications substantielles à l’accord collectif existant, au mépris des trois organisations syndicales représentées sur ces sites. Au motif de vouloir introduire la polyvalence dans les emplois, l’entreprise a commencé à harceler les travailleurs afin qu’ils signent individuellement une lettre dite «volontaire» supprimant toutes les garanties obtenues pour la période de l’accord couvrant 2011-2013. Menaces, intimidations, lettres d’avertissement, discriminations ont alors été le quotidien de ces travailleurs qui refusaient de voir leurs droits ainsi niés. L’entreprise a alors recruté de nouveaux employés

polyvalents qui ont eu pour interdiction de dévoiler les termes de leurs contrats de travail aux trois syndicats signataires de l'Accord sur l'échelle des salaires et la description des tâches 2004-2013 et de l'Accord 2011-2013. Les salariés ont vu leurs charges et intensité de travail augmenter, la comptabilité des heures supplémentaires se réduire drastiquement, les perspectives d'avancements et les bonus disparaître, et les salaires baisser des deux tiers. Dans l'aéroport de Siem Reap, l'entreprise a interdit les grèves et recourt régulièrement à des embauches en contrats à durée déterminée pour casser les grèves. La responsabilité sociale des entreprises sur une base volontaire, et dans ce cas d'une multinationale française, est largement insuffisante pour garantir les droits fondamentaux dans le cadre des chaînes d'approvisionnement mondiales. Il convient d'appeler au respect des droits fondamentaux par les multinationales dans les chaînes d'approvisionnement, au respect des normes internationales du travail et au respect des principes des Nations Unies relatifs aux entreprises et aux droits humains, et de soutenir une norme de l'OIT relative au travail décent dans les chaînes d'approvisionnement. L'oratrice a conclu en déclarant son soutien à l'initiative du gouvernement de l'Equateur pour un traité contraignant des Nations Unies relatif aux entreprises et aux droits humains.

The Worker member of the Republic of Korea recalled that during the examination of the case in the Conference Committee in 2016 she had already referred to the increasing use of fixed duration contracts (FDCs) in the garment industry, which created employment insecurity and undermined freedom of association. In addition to the garment sector, the use of FDCs had now also become a widespread practice in other sectors. In accordance with the national legislation, the duration of FDCs could not exceed a period of two years. However, in practice, employers ignored this by securing the authorization of the MLVT officers, or by getting workers to sign a waiver and promising them five per cent severance pay at the end of their FDCs. Although the law prohibited the non-renewal of FDCs based on anti-union discrimination, workers could have their contract not renewed for any reason. The widespread use of FDCs allowed employers to discriminate and dismiss union leaders and members with impunity. In this respect, she referred to a number of examples relating to the garment sector, the beer industry and other industrial workplaces. She urged the Government to ensure that the application of sections 67, 73 and 75 of the Labour Law concerning the restriction of the use of FDCs would be ensured by the Government so as to ensure that workers were able to exercise their trade union rights freely.

The Government representative thanked his ASEAN colleagues for their support and encouragement for better freedom of association in Cambodia and further thanked the delegates for their constructive inputs and support to improve the application of the Convention and fulfil the ambitious agenda to promote decent work in the country. The Government would continue to develop a strong legal framework through ensuring a more effective implementation of the legislation. Peaceful and harmonious industrial relations would be achieved through social dialogue at all levels. The ILO technical assistance remained a key implementing strategy. The Government welcomed further support to implement the DCM recommendations in due course. A National Committee on Follow-up of the Application of the Ratified International Labour Conventions by Cambodia was being established in accordance with the Royal Government Notification No. 432 issued on 29 May 2017. While reiterating the commitment of the Government to report any progress made in a timely manner, he indicated that adequate time was needed to implement the DCM recommendations.

The Employer members stated that the Committee had received a great amount of information, some of which was new and a lot of which was not. The discussion had confirmed that there was a good understanding of the issues at hand. The DCM report captured the essence of the case and summarized the recommendations that had been made over a number of years. The Government should seek ILO technical assistance to address remaining issues; the comments of the Committee of Experts should provide guidance in this process. They further encouraged the Government, through tripartite consultations, to effectively normalize the ability of all organizations and all workers to join organizations of their own choosing. The concerns of both employers' and workers' organizations with regard to the LTU, should be addressed through the social dialogue, to which the Government had expressed its full commitment. Similarly, the DCM recommendations regarding the exercise of the right to industrial action should be addressed through tripartite dialogue. In this regard, the Employers recalled their disagreement with the Committee of Experts' views concerning Convention No. 87 and the right to strike. They recalled the Government group's statement of March 2015 according to which "the scope and conditions of this right are regulated at the national level". Overall, social dialogue was the preferable course of action. The Government should be given time to address these issues internally.

The Worker members emphasized that each year the issues remained remarkably the same. There continued to be acts of violence against trade unionists by police or thugs with impunity. Anti-union dismissals of workers were committed regularly without any remedy or sanction. Harassment and intimidation of union leaders and activists by employers and state officials continued. Workers who carried out peaceful rallies were met by a phalanx of heavily armed police. The legal framework regulating trade unions was far from compliant with the Convention.

They emphasized that the climate of violence and murders of trade unionists constituted a serious obstacle to freedom of association, as repeatedly highlighted by the International Labour Conference. A resolution adopted in 1970 stated that “freedom of association [was] wholly ineffective without the protection of the unionist’s fundamental civil liberties”. The LTU and the proposed new laws made Cambodia even less compliant with its legal obligations. The Government was using new laws and regulations to deny registration to trade unions, which were not aligned with the governing political party. Unregistered unions were considered illegal and leaders could be sanctioned for carrying out legitimate trade union activity in the absence of registration, even when it had been arbitrarily denied. Fixed-duration contracts were commonly used to frustrate trade unions. Those problems were compounded by a highly-politicized judiciary. The Worker members noted with interest the DCM report, which reflected many of the concerns they and the Committee of Experts had raised before. However, they noted that the Government had no intention to take any measures to solve the issues that the Workers group, the ILO and other UN bodies had raised. The report was handed to the tripartite constituents in Cambodia and it was surprising to hear that somebody mentioned that the report had not been distributed. They hoped that it would also be sent to the Committee of Experts for its examination in its next session in November 2017. The Worker members urged the Government to elaborate a road map together with all social partners in order to define time-bound actions to implement the recommendations of the Committee of Experts and the DCM.

Conclusions

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

The Committee expressed deep concern at the acts of violence which resulted in the death, injury and arrest of workers.

Taking into account the discussion, the Committee called upon the Government of Cambodia to:

- ensure that freedom of association can be exercised in a climate free of intimidation and violence against workers, employers and their respective organizations;
- provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders to the Committee of Experts, and ensure that the perpetrators and instigators of the crimes are brought to justice;
- ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied;
- keep under review the Trade Union Law, closely consulting employers’ and workers’ organizations, with a view to finding solutions that are compatible with Convention No. 87;
- ensure that workers are able to register trade unions through a simple, objective and transparent process;
- ensure that teachers, civil servants, domestic workers and workers in the informal economy are protected in law and practice consistent with Convention No. 87;
- ensure that all trade unions have the right to represent their members before the Arbitration Council;
- complete, in consultation with workers’ and employers’ organizations, the proposed legislation and regulations on labour disputes, in conformity with Convention No. 87, so as to ensure that the labour dispute settlement system has a solid legal basis that allows it to fairly reconcile the interests and needs of workers and employers involved in the disputes;
- develop a roadmap to define time-bound actions in order to implement the conclusions of this Committee.

The Committee recommended the Government to avail itself of ILO technical assistance and to report progress to the Committee of Experts before its November 2017 meeting.

Conclusions

La commission a pris note des déclarations orales faites par le représentant gouvernemental et de la discussion qui a suivi.

La commission a exprimé sa profonde préoccupation face aux actes de violence au cours desquels des travailleurs ont été tués, blessés ou arrêtés.

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

- de s'assurer que la liberté syndicale peut être exercée dans un climat exempt d'intimidations et de violences contre les travailleurs, les employeurs et leurs organisations respectives;
- de fournir à la commission d'experts les rapports des trois commissions chargées d'enquêter sur les assassinats de dirigeants syndicaux et sur les actes de violence perpétrés à leur encontre, et de veiller à ce que les auteurs et les responsables de ces crimes soient traduits devant la justice;
- de veiller à ce que tout acte de discrimination antisyndicale fasse rapidement l'objet d'une enquête et, s'il est avéré, à ce que des voies de recours appropriées soient prévues et des sanctions dissuasives appliquées;
- de poursuivre la révision de la loi sur les syndicats, en étroite consultation avec les organisations d'employeurs et de travailleurs, afin de trouver des solutions compatibles avec la convention n° 87;
- de s'assurer que les travailleurs peuvent enregistrer des syndicats au moyen d'une procédure simple, objective et transparente;
- de garantir que les enseignants, les fonctionnaires, les travailleurs domestiques et les travailleurs de l'économie informelle sont protégés en droit et dans la pratique conformément à la convention n° 87;
- de s'assurer que tous les syndicats ont le droit de représenter leurs membres devant le conseil d'arbitrage;
- d'achever, en consultation avec les organisations de travailleurs et d'employeurs, les textes de loi et réglementations proposés sur les conflits du travail conformément à la convention n° 87, de façon à ce que le système de règlement des conflits du travail repose sur une base légale solide lui permettant de concilier équitablement les intérêts et les besoins des travailleurs et des employeurs concernés par les conflits;
- d'élaborer une feuille de route pour définir des actions assorties de délais afin de mettre en œuvre les conclusions de la présente commission.

La commission a recommandé au gouvernement de se prévaloir de l'assistance technique du BIT et de rendre compte des progrès accomplis à la commission d'experts avant sa réunion de novembre 2017.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión expresó su profunda preocupación por los actos de violencia que provocaron muertes, lesiones y detenciones de trabajadores.

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

- asegure que se pueda ejercer la libertad sindical en un clima exento de intimidaciones y de violencia contra los trabajadores, los empleadores y sus respectivas organizaciones;

- facilite a la Comisión de Expertos los informes de las tres comisiones encargadas de las investigaciones de los asesinatos y de la violencia perpetrados contra dirigentes sindicales y se asegure de que los autores e instigadores de esos delitos sean llevados ante la justicia;
- asegure que los actos de discriminación antisindical se investiguen con celeridad y que, si se verificaran, se apliquen medidas correctivas adecuadas y sanciones que sean disuasorias;
- mantenga en revisión la Ley de Sindicatos en estrecha consulta con las organizaciones de empleadores y de trabajadores con vistas a encontrar soluciones que sean compatibles con el Convenio núm. 87;
- asegure que los trabajadores puedan registrar sindicatos mediante un proceso sencillo, objetivo y transparente;
- vele por que los docentes, los funcionarios públicos, los trabajadores domésticos y los trabajadores de la economía informal reciban en la legislación y en la práctica una protección acorde con el Convenio núm. 87;
- asegure que todos los sindicatos tengan derecho a representar a sus afiliados ante el Consejo de Arbitraje;
- complete, en consulta con las organizaciones de trabajadores y de empleadores, la legislación y reglamentación propuestas sobre conflictos laborales, de conformidad con el Convenio núm. 87, a fin de garantizar que el sistema de solución de conflictos laborales tenga una sólida base jurídica que le permita conciliar con equidad los intereses y necesidades de los trabajadores y los empleadores involucrados en los conflictos, y
- elabore una hoja de ruta para definir acciones con plazos establecidos a fin de aplicar las conclusiones de esta Comisión.

La Comisión recomendó al Gobierno que recurra a la asistencia técnica de la OIT y que informe a la Comisión de Expertos, antes de su reunión de noviembre de 2017, sobre los progresos realizados.

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

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

Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948

Ecuador (ratificación: 1997)

Ecuador (ratification: 1997)

Equateur (ratification: 1997)

Un representante gubernamental se refirió al terremoto del 16 de abril de 2016 y a sus graves consecuencias y al comienzo de funciones del nuevo Presidente del Ecuador el 24 de mayo de 2017. Reiteró la importancia que el Gobierno asigna a la OIT y a sus órganos de control, así como al cumplimiento de los convenios de la OIT. Manifestó que la nueva administración tiene la intención de fomentar el diálogo con los interlocutores sociales y buscar soluciones conjuntas en temas laborales de manera tripartita. Como cuestión preliminar consideró que los casos de tratamiento grave y urgente debían centrarse en situaciones que revestían tal carácter (violaciones graves de los derechos humanos de los trabajadores sindicalistas o de sus familias) y no en meras cuestiones administrativas como aquellas por las cuales se había convocado al Ecuador. Reiteró el llamado del Grupo de los Estados de América Latina y el Caribe (GRULAC) para que la selección de casos obedezca a criterios objetivos y procedimientos transparentes. La situación requiere de un análisis sistemático de toda la estructura legal e institucional aplicable al caso, de tal forma que se permita satisfacer las recomendaciones de la Comisión de Expertos y tal análisis no se ha verificado en el tratamiento de este caso. Pasando a las cuestiones planteadas por la Comisión de Expertos, primero,

sobre las observaciones respecto de la negociación colectiva en el sector público, expresó que el Gobierno cumple con lo indicado por la Comisión de Expertos al garantizar el derecho de asociación de los trabajadores del sector público, reconociéndose la posibilidad de crear sindicatos. Como prueba de que no se ha eliminado la negociación colectiva en el sector público indicó que la autoridad nacional del trabajo competente ha suscrito 35 contratos colectivos de trabajo a partir de la publicación de las enmiendas constitucionales. Segundo, respecto de los comentarios de la Comisión que indican que no debe imponerse ninguna sanción penal por la participación en una huelga, indicó que el delito de la paralización de un servicio público previsto en el artículo 346 del Código Orgánico Integral Penal en ningún caso afecta el derecho de asociación ni de protesta social, sino que se limita a sancionar la paralización ilegal e ilegítima de un servicio público, lo que está en conformidad con el párrafo 158 del Estudio General de 2012 de la Comisión de Expertos. No existe sanción en caso de huelga, que es un derecho de los trabajadores; sin embargo, en caso de paralización de servicios públicos existe una sanción, en virtud de que dichos servicios son un derecho de la sociedad según el artículo 326.15 de la Constitución. La huelga o manifestación pacífica y dentro del marco del respeto de los derechos de los ciudadanos es un derecho de los trabajadores previsto en la ley, sin menoscabar ningún convenio internacional del trabajo. Tercero, sobre la determinación de los servicios mínimos aceptables para convocar a la huelga, indicó que las instituciones encargadas de determinar los servicios mínimos en caso de divergencia de las partes eran instituciones que cumplían con lo indicado por la Comisión de Expertos. La Inspección del Trabajo es un órgano que ejerce un primer control de legalidad del conflicto y de inmediato se constituye un facilitador de los procesos, con el acuerdo entre los trabajadores y empleadores. En caso de falta de acuerdo se integra el Tribunal de Conciliación y Arbitraje con representantes de los trabajadores y empleadores, por lo que existe total imparcialidad y participación de las partes en conflicto. Por otra parte, la determinación de los servicios mínimos aceptables para convocar a la huelga es necesaria a fin de garantizar el normal funcionamiento de los servicios básicos. De todas formas, el Gobierno analizará la posibilidad de adoptar las recomendaciones de la Comisión. Cuarto, sobre el arbitraje obligatorio, consideró que el recurso al arbitraje en el conflicto colectivo elimina la posibilidad de la judicialización de los temas sometidos a su conocimiento, permite la participación de las partes en el órgano resolutorio, y genera una disminución de la conflictividad laboral, no existiendo evidencia de que la eliminación del arbitraje disminuya la conflictividad social o afecte a una renegociación sindical. De todas formas, el Gobierno analizará la posibilidad de adoptar las recomendaciones de la Comisión. Por último, indicó que el proceso de compra de renuncia obligatoria es un proceso reglado que se sustenta en normas constitucionales y legales para su aplicación y en este contexto no tiene un efecto de discriminación antisindical.

The Worker members recalled that in 2016 the Committee had discussed the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), by Ecuador. With respect to the right to freedom of association, reference was made to Case No. 2970 of the Committee on Freedom of Association, in which it was noted that the Government had gradually started dismantling the collective rights of public sector workers. An ILO technical mission had visited Ecuador in January 2015 issuing a number of recommendations, including on the right of public sector workers to form trade unions of their own choosing. However, since then the situation had become worse. The Committee of Experts had repeatedly expressed concern over the limitations to the right of workers to establish organizations of their own choosing without previous authorization in state bodies. Regrettably, the Government had failed to amend article 326(9) of the Constitution, which provided that for all purposes relating to industrial relations in state institutions, workers shall be represented by a single organization. Moreover, despite numerous requests by the ILO supervisory bodies and the 2015 ILO technical mission, the Government continued to refuse the registration of the National Federation of Education Workers (UNE). The UNE had applied for registration in January and July 2016. However, both applications had been declined. On 18 August 2016, the Government ordered the dissolution of the union and the confiscation of its assets. This decision drew heavy criticism from the special procedures of the United Nations Human Rights Council. Referring to the comments of the Committee of Experts, the Worker members called on the Government to take measures to immediately register the UNE and review its legislation in order to prevent the administrative dissolution of trade unions for expressing views on economic and social policy. The anti-union climate in the public sector was further aggravated by prison sentences imposed on workers in the public sector who engaged in peaceful strike action under section 346 of the Basic Comprehensive Penal Code. The restrictions on the right to freedom of association were sadly not limited to the public sector. The national legislation imposed excessive requirements with respect to the minimum number of workers required for the establishment of workers' organizations in the private sector. A legal provision introduced back in 1985 increased the minimum number of workers required to form a union from 15 to 30. Most enterprises in Ecuador had less than 30 workers. The Government justified this provision by arguing that the minimum number of workers required to establish unions was kept high intentionally in order to ensure the representative nature of enterprise committees. While this might be a legitimate consideration when it came to the recognition of trade unions for collective bargaining, this was not an acceptable argument when it came to the formation of trade unions. Furthermore, strict compulsory time limits for the convening of trade union elections infringed on the right of workers to determine the rules governing the administration and the elections of their unions. Trade union elections

were an internal matter and needed to be regulated through union statutes. Thus, the compulsory time limits set by law constituted a violation of the Convention. In addition, workers who were not union members continued to be granted the right to stand for elections as officers of enterprise committees under section 459(3) of the Labour Code. The Worker members stressed that the rules around the election of Worker representatives should be set by the committees themselves and should not be imposed by law. This issue had still not been addressed by the Government despite repeated calls by the ILO supervisory bodies. The Worker members were deeply troubled by the lack of compliance with the Convention and the specific recommendations of the Committee of Experts. The Government was therefore urged to give serious consideration to the issues that had been raised on numerous occasions and to engage in a tripartite dialogue at national level in order to decide on the way forward.

Los miembros empleadores recordaron primeramente su desacuerdo con la postura de la Comisión de Expertos en relación al Convenio núm. 87 y el derecho de huelga. Asimismo, expresaron que en la declaración de marzo de 2015 realizada por el Grupo Gubernamental se indicaba que «el ámbito y las condiciones de ejercicio de este derecho son regulados a nivel nacional». Mostraron también su preocupación por el presente caso debido al número de veces que éste ha sido examinado y a que afecta a un convenio fundamental. En cuanto a la aplicación del Convenio en el sector público, consideraron peligrosa la afirmación realizada por el Gobierno en la que se expresa que el objetivo del artículo 326.9 de la Constitución es el de evitar la proliferación desordenada de organizaciones laborales, ya que de acuerdo con la Comisión de Expertos, esta postura es contraria al artículo 2 del Convenio. La unicidad organizativa impuesta por ley, ya sea directa o indirectamente, atenta contra los principios de la libertad sindical. Aunque tal unidad es un objetivo deseable, ésta debe ser decidida por los propios sindicatos utilizando los medios que consideren más adecuados. Sin embargo, también debe tenerse en cuenta que en el artículo 326.7 de la Constitución se garantiza el derecho y la libertad de las personas trabajadoras a formar sindicatos, gremios, asociaciones y otras formas de organización. De este modo, requirieron más información al Gobierno para conocer a ciencia cierta si en el Ecuador los trabajadores del sector público gozan en la práctica de dicha garantía constitucional y pueden formar sindicatos sin limitación alguna. En lo relativo al decreto ejecutivo núm. 16, de 20 de junio de 2013, reformado por el decreto núm. 739, de 12 de agosto de 2015, que establece la posibilidad de disolución administrativa de determinadas asociaciones profesionales de servidores públicos, compartieron la valoración de la Comisión de Expertos. Coincidieron en que la naturaleza profesional de estas asociaciones les confiere el carácter sindical necesario para gozar de la protección del Convenio núm. 87 y en que la susodicha norma viola el artículo 4 del Convenio. En cuanto a las observaciones de la Comisión de Expertos sobre el Código Orgánico Integral Penal, los miembros empleadores decidieron no pronunciarse sobre este tema debido a la reserva expresada al inicio de su intervención. En cuanto a la aplicación del Convenio en el sector privado, recordaron que la Comisión de Expertos parte del principio de que los trabajadores deben poder crear libremente las organizaciones que estimen convenientes y que la exigencia de un nivel razonable de representatividad para firmar convenios colectivos no es contraria a los convenios de la OIT sobre libertad sindical. En cuanto a la recomendación de la Comisión de Expertos para que se revisen las normas legales referentes a una de las instituciones que integran el derecho colectivo del trabajo, consideraron que un llamado debe hacerse para que el gobierno y los interlocutores sociales intenten un diálogo social para llevar a cabo la revisión integral de todas las instituciones que conforman el derecho colectivo del trabajo. Teniendo en cuenta que la modificación de una norma de forma aislada siempre tiene repercusiones sobre las demás, la reforma debe ser integral para no convertir el sistema en no funcional. En cuanto a los plazos para convocar a elecciones sindicales, compartieron la preocupación expresada por la Comisión de Expertos en cuanto a que las elecciones constituyen un asunto interno de las organizaciones y deben ser regidas por sus estatutos, requiriendo al Gobierno más información sobre la aplicación práctica de esta normativa. Además, compartieron la preocupación de la Comisión de Expertos por la violación del principio de autonomía de los trabajadores contenida en el artículo 459.3 del Código del Trabajo, ya que solamente los trabajadores afiliados a una organización laboral tienen el derecho a estructurar su forma de gobierno. Finalmente, recalcaron que el Gobierno y los interlocutores sociales deben asumir un proceso de revisión integral para dotar al sistema legal de consistencia interna y evitar que reformas aisladas puedan ocasionar contradicciones o contravenciones de otros convenios internacionales.

El miembro trabajador del Ecuador subrayó que el Gobierno mantiene una posición firme y radical sobre el derecho a la libertad de asociación de los trabajadores que les permite conformar asociaciones, sindicatos y federaciones. Sin embargo, recordó que estos derechos llevan consigo también obligaciones y que para defender los derechos laborales es necesario seguir los cauces legales. Con respecto a la Unión Nacional de Educadores (UNE), afirmó que sus miembros son servidores públicos protegidos por la Ley Orgánica del Servicio Público y la Ley Orgánica de Educación e Interculturalidad, pero que éstos no están amparados por el Código del Trabajo. Recordó que la UNE fue constituida en 1950 por acuerdo del Ministerio de Educación y que por tanto, si sus miembros consideran que sus derechos han sido violados deben acudir a los órganos judiciales pertinentes. Asimismo, indicó que los miembros de la UNE tienen derecho a la libertad de organización conforme al artículo 326.7 de la Constitución del Ecuador. Finalmente, recordó que el Ecuador ha ratificado 61 convenios de la OIT e invitó a la UNE a que inicie un diálogo con el nuevo Gobierno para resolver la presente situación.

El miembro empleador del Ecuador recordó que la libertad de sindicalización de los trabajadores, sean del sector público o del sector privado, implica la posibilidad de formar cualquier tipo de organización y que la organización laboral sólo puede ser disuelta por voluntad de sus propios integrantes. Señaló que la ley que regula la conformación de organizaciones laborales distingue las variantes de éstas y los requisitos mínimos para su organización, con la finalidad de que se cumpla con el requisito de «representatividad». En su opinión, no se coarta la libertad sindical por el hecho de que la legislación interna de cada país imponga requisitos para garantizar un nivel mínimo de representatividad. Consideró errada la premisa que utiliza la Comisión de Expertos de que «la exigencia de un número mínimo de 30 afiliados para constituir sindicatos de empresa en países cuyas economías se caracterizan por la prevalencia de pequeñas empresas, obstaculiza la libre constitución de organizaciones sindicales». El orador señaló que en el Ecuador existen 5 860 organizaciones laborales, de las cuales el 72 por ciento están en el sector privado. En la última década se crearon 83 organizaciones por año, mientras que en los 68 años anteriores apenas fueron 31 por año. Puso de manifiesto que el problema de la sindicalización radica fuera del sector formal de la economía, considerando que cualquier observación respecto a la libertad de sindicalización, debiera discutirse con los grupos de interés y en el análisis general de la institución de la contratación colectiva, con miras a determinar objetiva y racionalmente sus impactos ya que una recomendación de modificación inconsulta afectaría gravemente la generación de trabajo adecuado y pondría en riesgo la sostenibilidad del sector formal.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro and Norway, said that the EU attached great importance to human rights, including freedom of association and trade union rights, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The EU was actively engaged in the promotion of universal ratification and implementation of the core labour standards, as part of its Action Plan on Human Rights, adopted in July 2015. The recent accession of Ecuador to the EU trade agreement with Colombia and Peru was welcomed. It was recalled that this agreement included commitments to effectively implement the fundamental ILO Conventions. Concern was expressed at the allegations made by the trade unions reporting police violence in the context of a peaceful demonstration following the adoption on 3 December 2015 of amendments to the national Constitution, and the arbitrary detention of several persons, including the President of the Confederation of Workers of Ecuador, Mr Edgar Sarango. Referring to the comments of the Committee of Experts, three points were highlighted: (i) the impossibility of establishing more than one trade union in state bodies; (ii) the fact that associations of public servants were subject to administrative dissolution or suspension; and (iii) the imposition of penal sanctions on workers participating in a peaceful strike. With respect to the first point, the Government was urged to ensure that the new provisions of the Bill to amend the legislation governing the public sector would fully respect the right of public servants to establish organizations of their own choosing for the collective defence of their interests. Second, the Government was urged to amend the legislation and to take necessary measures in order to ensure that occupational associations of public servants were not subject to the grounds for dissolution, which prevented them from fully exercising their mandate of defending their members' interests. The EU also called on the Government to revoke its decision to dissolve the UNE in order to allow the UNE to immediately exercise its activities. Third, as to the imposition of penal sanctions on workers participating in a peaceful strike, the Government was urged to amend the provisions of the Basic Comprehensive Penal Code commented on by the Committee of Experts so as to bring the legislation into conformity with the Convention. In relation to freedom of association in the private sector, the EU called on the Government to take the following measures, as requested by the Committee of Experts: (i) amend the Labour Code to reduce the minimum number of members required to establish workers' associations and enterprise committees; (ii) amend Ministerial Decision No. 0130 of 2013 to ensure that the consequences of any delay in convening trade union elections were set out in the by-laws of the organization themselves; and (iii) with regard to the election of workers as officers of the enterprise committee who were not trade union members, amend the Labour Code in order to bring it into compliance with the principle of trade union autonomy. Additionally, it was suggested that the Government facilitate the organization of trade unions at the sectoral level. In conclusion, the EU called upon the Government to avail itself of the ILO's expertise and to comply with its standards-related obligations.

El miembro gubernamental de Panamá, hablando en nombre del GRULAC, agradeció al Gobierno por la información aportada en relación al cumplimiento del Convenio núm. 87 y destacó el compromiso con el sistema de control de la OIT expresado por el actual Gobierno que inició sus funciones el pasado 24 de mayo, así como su invitación al diálogo a los interlocutores sociales. Las respuestas del Gobierno han aclarado aspectos sobre los que la Comisión de Expertos había solicitado mayores detalles. En este sentido el Gobierno señaló que bajo el amparo de la enmienda al artículo 229 de su Constitución y la reforma al artículo 247 de su Código del Trabajo, se garantiza el derecho de asociación de los trabajadores del sector público. De igual manera, el Ecuador ha mostrado que no se ha eliminado la negociación colectiva en el sector público, como lo prueban los 35 contratos colectivos acordados entre empleadores y trabajadores públicos a partir de la publicación de la enmienda constitucional en diciembre de 2015. En relación con los comentarios de la Comisión de Expertos que indican que no debe imponerse sanciones

penales a quienes participen en una huelga pacífica, el Gobierno aclaró que tal situación sólo procede cuando hay una interrupción ilegal e ilegítima de un servicio público fuera del procedimiento respectivo para ejercer el derecho de huelga. Entre los avances laborales registrados por el Ecuador destacó la Ley de Justicia Laboral, en vigencia desde el 20 de abril de 2015, que incluye normas como el despido ineficaz para proteger a los dirigentes sindicales en sus funciones de representación de las organizaciones laborales. Reiteró el llamado del GRULAC para que la Comisión de Expertos seleccione los casos a ser tratados por la Comisión de Aplicación de Normas mediante el uso de mecanismos objetivos y transparentes que respondan a la gravedad de los hechos y que sus recomendaciones sean claras, concisas y sobre todo, realizables.

Una observadora representando a la Internacional de la Educación (IE) lamentó tener que comparecer nuevamente ante la Comisión para describir la violación sistemática de los derechos sindicales de la UNE y el proceso de destrucción de dicha organización por parte del Gobierno. Afirmó que el Gobierno: i) eliminó en 2009 el derecho a la recolección de la cuota sindical a la UNE, derecho que no ha sido restituido hasta el presente a pesar de las interpelaciones de la OIT; ii) denegó el registro a la nueva directiva de la UNE a pesar de haberse cumplido todos los requisitos necesarios; iii) basándose en el decreto ejecutivo núm. 739, de 12 de agosto de 2015, procedió a la disolución administrativa de la UNE, violando de esta manera el artículo 4 del Convenio núm. 87; iv) con la intervención de la policía nacional, cerró oficinas y secuestró dos de los edificios principales de la UNE en Quito y Guayaquil, y v) liquidó el patrimonio que pertenece a la UNE desde hace 73 años, iniciando la venta de varios inmuebles. Afirmó adicionalmente que el Gobierno creó, financia y promueve a otra organización, conocida como Red de Maestros, única organización de maestros que el Gobierno reconoce como representativa en el país, a pesar de que la presenta en el exterior como una mera organización educativa. En los últimos años, el Gobierno ha destituido a más de 20 dirigentes sindicales en razón de sus actividades sindicales, los casos más recientes siendo aquellos del Sr. Juan Cervantes, vicepresidente nacional (agosto 2016) y la Sra. Glenda Soriano, presidenta de la UNE del Guayas (marzo 2017). La oradora solicitó que la Comisión designara una misión tripartita de alto nivel para verificar los datos expuestos y que instara al Gobierno a restituir la larga lista de los derechos de la UNE que han sido violados, incluyendo su derecho a administrar el fondo de cesantía para la jubilación. Subrayó que el diálogo es el mejor camino para resolver conflictos y encontrar soluciones sostenibles y deseó que el camino del diálogo permita evitar una nueva comparecencia ante esta Comisión el año que viene.

La miembro gubernamental de Cuba se adhirió a la declaración del GRULAC. Recordó los adelantos sociales experimentados en el Ecuador y reflejados en la reducción de la pobreza, la inclusión de grupos vulnerables en la vida nacional, así como la atención a niñas, adolescentes y mujeres. Apuntó que en temas laborales el Ecuador se está centrando en la erradicación de las peores formas del trabajo infantil y el establecimiento de seguridad social para las trabajadoras no remuneradas del hogar y para quienes ejercen el empleo doméstico. Enfatizó que el Gobierno ha reiterado el llamamiento a los agentes sociales para iniciar un diálogo social y que es necesario conceder al nuevo Gobierno un espacio de tiempo para que pueda solucionar las cuestiones planteadas.

Un observador representando a la Internacional de Servicios Públicos (ISP) y hablando en nombre de las 11 federaciones y las dos confederaciones sindicales y gremiales del sector público, afiliadas a la ISP en el Ecuador, así como también en nombre del Frente Unitario de los Trabajadores (FUT) y de las ocho organizaciones fraternas del sector público que representan a los trabajadores de las universidades, del órgano legislativo, del sector de la electricidad y bomberos; lamentó que todas estas organizaciones hayan sufrido el peso de la contra reforma laboral en el sector público, llevada a cabo por el Gobierno en los últimos diez años. Puso de relieve que en el Ecuador la violación a los artículos 2, 3 y 4 del Convenio ha sido sistemática, convirtiéndose en una política de Estado del anterior Gobierno. Indicó que la injerencia del Estado en las organizaciones sindicales se ha producido a través de amenazas de disolución y de condiciones a sus planes de acción, hechos que han sido constatados en varias ocasiones por la Comisión de Expertos. Además, apuntó que en octubre de 2008 se inició la revisión administrativa y unilateral de todos los contratos colectivos del sector público bajo el falso argumento de eliminar las cláusulas consideradas privilegios, sin posibilidad de reclamo alguno y sin sentencia judicial. A pesar de ello, manifestó su disposición para llevar a cabo un proceso de diálogo con el nuevo Gobierno del Ecuador que incluya a todos los sectores de trabajadores ecuatorianos, con énfasis en el empleo público, con acompañamiento de la OIT y con carácter vinculante. De este modo, urgió al Gobierno a aceptar una misión tripartita de la OIT como inicio de una nueva fase de diálogo.

El miembro trabajador de Colombia expresó su preocupación por la denuncia presentada por seis centrales sindicales nacionales ante la Comisión de Verificación de Poderes de la Conferencia Internacional del Trabajo por no haber sido tenidas en cuenta para la participación en esta Conferencia. Enfatizó que los gobiernos deben cumplir con los convenios internacionales de la OIT con independencia de su inclinación política. Respecto al artículo 326.9 de la Constitución del Ecuador, consideró dicho artículo como contrario a la pluralidad sindical y recordó que la Comisión de Expertos instó al Gobierno a tomar de inmediato las medidas necesarias para que de conformidad con

el artículo 2 del Convenio, la ley respeta plenamente el derecho de los servidores públicos a constituir libremente las organizaciones que estimen convenientes. Asimismo, mencionó que la reforma legislativa de 1985, la cual incrementó el número mínimo de trabajadores para constituir un sindicato de 15 a 30, provocó una disminución de las organizaciones sindicales. Finalmente, consideró necesario que se lleve a cabo una misión tripartita de la OIT.

La membre gouvernementale de la Suisse a indiqué que son pays soutient la déclaration faite par l'UE. Elle a souligné que l'autonomie et la liberté des partenaires sociaux sont essentielles pour réaliser un dialogue social effectif et pour contribuer au développement économique et social, aussi bien dans le secteur public que dans le secteur privé. Jugeant préoccupantes les règles restrictives en matière de dialogue social et l'ingérence de l'Etat dans les affaires des partenaires sociaux, l'oratrice a encouragé le gouvernement à suivre les recommandations de la commission en vue de garantir la liberté syndicale en droit et en pratique.

El miembro gubernamental de Nicaragua se adhirió a la declaración del GRULAC y agradeció al Gobierno por las informaciones aportadas, que han aclarado aspectos sobre los que la Comisión de Expertos había solicitado mayores detalles. A este respecto, recordó que el Gobierno en diversas ocasiones ha dado respuesta a los comentarios y observaciones de los Expertos y que, no obstante, dichas respuestas no han sido tomadas debidamente en cuenta. Por ejemplo, se cuestiona el requisito de la legislación ecuatoriana de un mínimo de 30 personas para constituir un sindicato cuando en otros países el requisito mínimo es más alto. Por otra parte, el hecho de que el actual Gobierno haya tomado funciones recientemente requiere que se le conceda tiempo para que pueda evaluar la situación laboral en el país. En este sentido, valoró positivamente y reiteró el llamado del Gobierno a los interlocutores sociales a emprender el diálogo tripartito.

Un observador representante de la Confederación de los Trabajadores de las Universidades de las Américas (CONTUA), hablando también en nombre de la ISP, al mismo tiempo que resaltó la incomodidad de plantear cuestiones políticas duras contra un gobierno con el cual se comparten muchos objetivos, afirmó que nada puede justificar el incumplimiento de las normas internacionales del trabajo que son el sustento de los derechos humanos laborales. En el Ecuador existen graves problemas en las relaciones colectivas del trabajo, con una injerencia explícita, decididamente articulada por parte del Gobierno, en el campo sindical a través de leyes, acciones intimidatorias, y discriminación sindical que tienen como objetivo principal el debilitamiento del sindicalismo independiente. Estas políticas han llevado a la aplicación de sanciones y despidos, especialmente a los y las dirigentes sindicales del sector público, a la erradicación, casi general, de la negociación colectiva en el sector público y a la situación gravísima de la UNE. No obstante dicha posición crítica, el orador observó que la llegada de un nuevo Gobierno en el Ecuador podía marcar una señal positiva. Por eso convocó al Gobierno a que se abriese al diálogo y a una misión tripartita. Señaló la próxima visita al Ecuador de la secretaria general de la ISP, la Sra. Rosa Pavanelli, del 16 al 22 de junio, con el objetivo de encontrarse con las más altas autoridades ecuatorianas y de acompañar a las organizaciones sindicales y gremiales afiliadas, en un camino de restitución de derechos.

El miembro gubernamental del Estado Plurinacional de Bolivia se adhirió a la declaración del GRULAC. Destacó que tanto la Constitución como la legislación nacional garantizan ampliamente la libertad sindical y sugirió que la Comisión de Expertos debe ser más prolija y exhaustiva en su metodología de trabajo, especialmente cuando se cuestiona el contenido de normas constitucionales. Con respecto al artículo 346 del Código Orgánico Integral Penal, consideró que esta disposición no implica la penalización de la huelga, sino la tipificación de acciones violentas que interrumpen servicios públicos. El artículo debe ser interpretado a la luz del principio de *ultima ratio* y conforme a los instrumentos de derechos humanos, como establecen los artículos 3 y 13.1 de la propia norma penal. En relación a la disolución de organizaciones sindicales, manifestó que de acuerdo a la ley, ésta solamente puede ser solicitada por los miembros de las organizaciones sindicales y no por el Estado ni por los empleadores. Consideró que una interpretación errada del Convenio que neutralice cualquier margen de apreciación y reglamentación por parte de los órganos legislativos con respecto al ejercicio de la libertad de sindicación, no contribuye al diálogo social ordenado y puede menoscabar las propias organizaciones sindicales. Resaltó los esfuerzos realizados por el Gobierno para salvaguardar el derecho de los ciudadanos a tener acceso a los servicios públicos sin limitación alguna y estimó apropiado el balance existente en la legislación ecuatoriana. Finalmente, indicó que el aumento en el número de organizaciones sindicales registradas muestra el compromiso del Gobierno con la libertad de asociación.

The Worker member of Italy, speaking also on behalf of the Worker members of Austria, Belgium, Honduras and the United States, drew the Committee's attention to specific violations on the application of the Convention regarding banana workers in Ecuador. The banana sector was central to Ecuador's economy. However, the banana plantation structure was characterized by a large number of small (0–30 hectares) and medium-sized (30–100 hectares) producers, as approximately 79 per cent of all producers nationwide had farms that did not exceed 30 hectares and in many of them the number of workers did not reach the number of 30. Even in larger farms with

more than 30 workers, many workers were often not employed directly by the farm but had been subcontracted to undertake specific tasks, such as packaging or fumigation. It was clear that this practice of subcontracting or limiting the number of employees to less than 30 was an elusive measure to prevent workers from reaching the legal number for the creation of a union. Despite the comments of the Committee of Experts, gross violations of freedom of association continued and the national legislation remained unchanged. Given the very specific structure of Ecuadorian economy, the prerequisite of 30 workers to create a union was far too high and consistently denied freedom of association to hundreds of thousands of workers. The Government was therefore urged, in consultation with the social partners, to take the necessary measures to amend the Labour Code, specifically sections 443, 452 and 459, in order to reduce the minimum number of members required to establish workers' associations and enterprise committees. The Government was also requested to set up an independent inquiry regarding the high number of anti-union actions which took place around the establishment of trade unions at the company level and to undertake remediation actions without delay, including those in relation to the application to register trade unions. Without any further delay, the Government needed to apply the ILO Conventions it had ratified and the international rules it had subscribed.

El miembro gubernamental de la República Bolivariana de Venezuela se adhirió a la declaración del GRULAC y tomó nota de las informaciones actualizadas brindadas por el Gobierno, las cuales demuestran su compromiso con el sistema de control de la OIT. Valoró la vocación de diálogo que tiene el Gobierno con los interlocutores sociales y recordó que, de acuerdo al artículo 8 del Convenio, los trabajadores, los empleadores y sus organizaciones respectivas, al ejercer los derechos que les reconoce ese Convenio, están obligados a respetar la legalidad del país. Valoró la invitación al diálogo promovida por el Gobierno y expresó su convencimiento de que a través de éste se alcanzarán soluciones concertadas tripartitamente. Por último manifestó su esperanza de que las conclusiones de la Comisión, producto de este debate, serán objetivas y equilibradas, lo cual dará lugar a que el Gobierno pueda considerarlas y valorarlas en el marco del Convenio.

The Government member of Canada indicated that her Government placed great importance on Convention No. 87 and strongly encouraged all member States to respect its terms. In its comments, the Committee of Experts had noted a number of issues in Ecuador in relation to the application of the Convention. Moreover, in 2015 the ILO had made several recommendations following an expert mission to the country. Among these recommendations, the mission had urged the Government to register a new board of directors for the UNE. The UNE had repeatedly tried to register their new board on several occasions without success. The speaker was also concerned about the use of Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015, to dissolve the UNE in August 2016, and that in March 2017 these Decrees were presented in draft legislation to the National Assembly to allow for greater state powers to dissolve non-governmental organizations. The Government was encouraged to ensure that any new legislation operated in conformity with the Convention to guarantee freedom of association and the right to organize.

El representante gubernamental agradeció las intervenciones de todos los participantes en la discusión. Primero, respecto de las organizaciones sindicales públicas, se refirió a la Ley Orgánica Reformativa a las Leyes que rigen el Sector Público, publicada el pasado 19 de mayo de 2017. Esta ley garantiza el derecho a la igualdad, libertad de organización y huelga, y en consecuencia cubre una de las preocupaciones planteadas por los trabajadores. Segundo, sobre la sindicalización privada, indicó que la cuestión del número mínimo y la extensión de los períodos en el proceso de cambio de las autoridades sindicales será analizada incorporando los conceptos de pleno empleo, empleo inadecuado y conformación del capital social de los emprendimientos, además del requerimiento numérico y temporal en cada caso. Tercero, respecto de la cuestión de la UNE, indicó que se arbitrarán las medidas de gestión que correspondan para que su diferendo con el Ministerio de Educación sea tratado según corresponde, al tiempo que indicó que en el Ministerio de Trabajo dicha organización no mantiene registro alguno ni ha iniciado procedimiento de regularización ni nueva constitución. Cuarto, formuló una invitación a los trabajadores y empleadores a un proceso permanente de fortalecimiento del diálogo tripartito. Para este efecto, se realizará una convocatoria nacional con el fin de diseñar, formular, consensuar y ejecutar una agenda mínima de diálogo laboral, sus herramientas, plazos y contenidos. Expresó su esperanza de que los trabajadores y los empleadores, en reciprocidad, realizarán un pronunciamiento formal al respecto. El Gobierno propondrá a la OIT su participación en el lanzamiento de las mesas de diálogo técnico en materia laboral y en el diseño de programas de capacitación tripartita en aplicación de los convenios. Finalmente, manifestó que, desde la fecha en que el Ecuador tomó conocimiento de su inclusión en la lista de países con doble nota al pie de página, mantuvo no menos de cinco reuniones de consulta a diferentes niveles con funcionarios de la OIT reuniones con los representantes de empleadores y trabajadores en la Conferencia, con quienes se han establecido contactos iniciales y constructivos.

Los miembros empleadores agradecieron al Gobierno por la información proporcionada. Reconocieron los esfuerzos que está haciendo el nuevo Gobierno al tomar las riendas de la administración pública recientemente, pero recordaron que no se puede aceptar tal circunstancia como eximente de los compromisos asumidos por el país ante la

OIT. Consideraron que existen áreas en donde el Gobierno todavía puede aportar información sobre la aplicación práctica del Convenio, a saber: la posibilidad de los trabajadores del sector público de constituir una o más organizaciones de trabajadores dentro de cada entidad de la administración a su entera voluntad, según lo establecido en el artículo 326.7 de la Constitución y que fuera desarrollado en la norma recientemente promulgada en mayo de 2017. Instaron al Gobierno a incluir en sus memorias un informe detallado sobre el particular antes del 1.º de septiembre de 2017. Coincidieron en cuanto a la necesidad de revisar algunas normas laborales, pero ello debe hacerse con criterios de integralidad y sin afectar las instituciones colectivas del derecho de trabajo. La tarea debe ser asumida dentro del marco del diálogo social, por medio de la debida consulta en el Consejo Nacional del Trabajo y Salarios, con fundamento en el Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144). Finalizaron recordando que las conclusiones de este caso únicamente deberán recoger aquellos temas en los que existan acuerdos.

The Worker members sincerely hoped that the recent election in Ecuador would mark a turning point and the start of a full and frank dialogue with the country's social partners in order to achieve progress towards a number of serious and long-standing issues. The commitment expressed by the Government to start a process of consultation with the trade unions concerned in order to address the issues raised by the Committee was welcomed. Workers should not be obliged to join an organization established by law. Workers, both in the public and private sector, must have the right to freely pursue their collective interests. Moreover, the dissolution of the UNE was deeply troubling. The Worker members urged the Government to register the UNE without further delay and to take the necessary measures to prevent the dissolution of workers' organizations for expressing their views on broader social and economic policies. Furthermore, section 346 of the Basic Comprehensive Penal Code should be amended and the Government was urged to refrain from criminally prosecuting the peaceful participation in strikes. No worker should have to face criminal charges and penalties unless he or she committed violence or engaged in other serious violations of the penal law. In addition, a number of laws in the country created enormous obstacles to the free functioning of trade unions in the private sector. In this regard, the Government should review and amend sections 443, 452 and 459 of the Labour Code and lower the minimum requirement to a reasonable number in consultation with the social partners. Questions relating to the internal rules and administration of trade unions should be left to workers and should not be set by law. The compulsory time limits for the election of trade union officials under section 10(c) of Ministerial Decision No. 0130 of 2013 and the election of non-union members as workers' representatives in enterprise committees under section 459(3) of the Labour Code required the close attention of the Government. Those provisions must be amended to be brought into line with the Convention. The Worker members expressed their disappointment with the lack of progress on those issues. Constructive social dialogue required the recognition of independent trade unions in all sectors of the economy. The Government was therefore urged to bring its laws and practices into line with the Convention without any further delay.

Conclusiones

La Comisión tomó nota de las declaraciones orales del representante gubernamental y de la discusión que tuvo lugar a continuación.

Teniendo en cuenta los puntos de vista expresados, la Comisión pidió al Gobierno del Ecuador que:

- **garantice el pleno respeto del derecho de los funcionarios públicos de constituir las organizaciones que estimen convenientes para la defensa colectiva de sus intereses, incluida la protección en relación a la disolución o suspensión administrativa;**
- **revoque la decisión de disolver la UNE y permita el libre funcionamiento de la organización sindical;**
- **enmiende la legislación para garantizar que sean los propios estatutos de las organizaciones los que definan las consecuencias de una eventual mora electoral, e**
- **inicie un procedimiento de consulta con las organizaciones de empleadores y de trabajadores más representativas con miras a identificar la manera en que habría que enmendar el marco legislativo actual para poner toda la legislación pertinente de conformidad con el Convenio núm. 87.**

La Comisión invitó al Gobierno a considerar la posibilidad de recurrir a la asistencia técnica de la OIT en relación con el proceso de reforma legislativa. Asimismo, la Comisión invitó al Gobierno a que informe a la Comisión de Expertos en 2017 sobre los progresos realizados con respecto a las recomendaciones mencionadas anteriormente.

Conclusions

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

Taking into account the expressed views, the Committee called upon the Government of Ecuador to:

- ensure full respect for the right of public servants to establish organizations of their own choosing for the collective defence of their interests, including the protection regarding administrative dissolution or suspension;
- revoke the decision to dissolve the UNE and to allow the free functioning of the trade union;
- amend legislation to ensure that the consequences of any delay in convening trade union elections are set out in the by-laws of the organizations themselves;
- initiate a process of consultation with the most representative employers' and workers' organizations to identify how the current legislative framework needs to be amended in order to bring all the relevant legislation into compliance with the text of Convention No. 87.

The Committee invited the Government to consider availing itself of ILO technical assistance in relation to the legal reform process. The Committee invited the Government to report progress in relation to the abovementioned recommendations to the Committee of Experts in 2017.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

Prenant en compte les vues exprimées, la commission a prié le gouvernement de l'Equateur de:

- garantir le plein respect du droit des fonctionnaires de constituer des organisations de leur choix pour défendre collectivement leurs intérêts, y compris la protection contre la dissolution ou la suspension administrative;
- annuler la décision de dissolution de l'UNE et permettre le libre fonctionnement de ce syndicat;
- modifier la législation pour veiller à ce que les conséquences d'un éventuel retard dans l'organisation des élections syndicales soient définies dans les statuts des organisations elles-mêmes;
- entamer un processus de consultation des organisations les plus représentatives d'employeurs et de travailleurs pour déterminer comment le cadre législatif actuel doit être modifié afin de rendre l'ensemble de la législation applicable conforme au texte de la convention n° 87.

La commission a invité le gouvernement à envisager la possibilité de recourir à l'assistance technique du BIT pour le processus de réforme du droit interne. La commission a également invité le gouvernement à faire rapport à la commission d'experts, en 2017, des progrès réalisés s'agissant des recommandations susmentionnées.

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

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

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

Egypt (ratification: 1957)

Egypte (ratification: 1957)

Egipto (ratificación: 1957)

A **Government representative** assured the Committee that his Government fully respected its obligations under all the Conventions it had ratified, including the Convention under examination, ratified in 1957. Based on its belief in the importance of trade union freedom for the realization of social peace and stability as well as balanced labour relations, the Ministry of Manpower had issued a statement on the establishment of trade union freedoms, according legal personality to trade unions and providing for the receipt and deposition of their founding documents. Thus, 1,800 trade unions had been established at the enterprise level, in addition to 63 general trade unions and 24 trade union federations, which did not belong to the Egyptian Trade Union Federation (ETUF). These trade union organizations played their role in defending the rights and interests of their members, engaging in collective bargaining and concluding collective agreements, which had been registered and deposited at the Ministry.

However, judicial decisions passed by administrative judges and the ordinary judiciary as well as decisions by the State Council had not recognized the statement of the Minister of Manpower, as the ministerial decision could not override the Trade Union Act No. 35 of 1976, which only recognized trade union organizations established according to its provisions. Furthermore, the Civil Code, which provided the general legal framework for all labour legislation, did not recognize legal personality other than that established by law, and not by ministerial decision. Therefore, and in spite of the upheavals since 2011, the Government, since June 2013, had been fully determined to improve and correct the state of affairs, including with regard to trade union organizations, and it had thus taken measures to issue a law in this regard. The President himself had thus urged the House of Representatives to expedite the issuance of labour legislation, including the draft Labour Code and the draft law on trade union organizations, which would abrogate the current Trade Union Act No. 35 of 1976 and thus also lift the before-mentioned judicial decisions.

Although the protection of trade union freedoms was already enshrined in the Constitution of 2014, the new law had been drafted in an explicit manner, using the terms of “trade unions and federations” and not “the federation” as in the current law. The new law was to be considered complementary to the Constitution as it undoubtedly granted additional protections and guarantees, while the Constitution itself was inspired by the international human rights treaties and Conventions which Egypt had ratified, including Convention No. 87. Article 76 of the Constitution thus provided that the establishment of trade unions and federations on the basis of democratic principles was a right guaranteed by law, and that they would possess legal personality, freely conduct their activities, contribute to enhancing the skills of their members and defend their rights and protect their interests. It further provided that the State guaranteed the independence of trade unions and federations, whose governing bodies could not be dissolved other than by a court judgment.

Based on these constitutional provisions and the international Conventions ratified by Egypt, the Government had elaborated a draft law, with due consideration of all comments by the Committee of Experts and the ILO on the current Trade Union Act. The Ministry had released the law on 27 April 2016, submitting it to the House of Ministers, which, in turn, had approved it and passed it to the State Council. A copy of the law had been sent to the Director-General of the ILO to obtain the ILO’s views on the provisions of the law. Comments received from the ILO had partly been integrated in the text of the law during its discussion at the State Council, while responses had been provided on other comments. In April 2017, while the law was pending with the House of Representatives, the ILO had transmitted a second set of comments after having received the final version of the law. The Government had then invited a delegation of experts from the ILO Department of International Labour Standards, which indeed visited Cairo in May 2017. An open discussion had thus been held on technical comments, and agreement had been reached on the amendment of some provisions of the law, which demonstrated Egypt’s seriousness and its eagerness to move forward.

In the same month, the President of Egypt had urged the House of Representatives to pass the pending labour legislation. Subsequently, the Labour Committee of the House of Representatives had finalized the draft Labour Code on 28 May 2017, while it had commenced its discussion of the draft law on trade union organizations on 23 May 2017, in preparation for its submission to the plenary session of the Parliament for its adoption.

The draft law on trade union organizations enshrined the principle of freedom of association for trade unions and federations, while guaranteeing their democratic nature and independence. In particular, it enshrined the freedom for workers to establish trade union organizations, and to join such organizations or to withdraw from them. The bill renounced the notion of the existence of a single trade union federation. It also provided explicitly that public authorities were to refrain from any interference that would restrict or impair the legitimate exercise of these rights. Furthermore, the draft law prohibited the dissolution of trade unions or their governing bodies, or the halting of their activities, by administrative authorities or the competent ministry. It also provided that trade unions, regardless of their level, should acquire legal personality, and abolished the unified hierarchical structure.

With regard to some specific provisions of the draft law on trade union organizations, the speaker explained that sections 1, 4 and 13 provided for the possibility to establish more than one federation, ensuring trade union plurality, and the freedom to join any trade union or federation. Sections 14, 16 and 17 provided for the annulment of provisions on a unified structure. Moreover, the draft law would make it possible for a trade union to establish its own relations if it wished to join a higher organization. Sections 59, 60, 61 and 65 allowed trade union federations to draw up their own financial regulations.

After submission of the draft law on trade union organizations to the House of Representatives and following discussion with the ILO concerning the Committee of Experts comments on the Trade Union Act, and the two sets of comments transmitted by the ILO on the bill, agreement had been reached. Already before the Conference, and during the meeting with ILO representatives in Cairo, the tendency had been to involve the representatives of the independent trade unions in the social dialogue on the draft law taking place in the Ministry of Manpower or in the Labour Committee of the House of Representatives. Moreover, the presidents of the Egyptian trade union federations (ETUF; Egyptian Federation of Independent Trade Unions; Democratic Union of Egyptian Workers) had signed a joint document with the heads of the employers' organizations in Egypt, in which they had identified the provisions agreed upon in the draft law and affirmed their full faith in the principle of freedom of association as the basic element for the stability of labour relations in Egypt.

In conclusion, the speaker wished to emphasize that: (i) the draft law on trade union organizations had passed through several stages, all with the consensus of the social partners and in full and continuous coordination with the ILO, in all transparency and clarity to ensure its compatibility with international labour standards; (ii) the most important reason behind the delay of its adoption was the absence of an Egyptian Parliament until the beginning of 2016, and the fact that the bill, being complementary to the Constitution, could not be issued by decree; and (iii) the Ministry had not frozen the activities or accounts of the independent trade unions, since it considered it important to give them an opportunity to adjust their conditions and enter under the umbrella of the new law. The new trade unions continued to freely conduct their activities, defend the rights of workers, engage in collective bargaining and conclude collective agreements.

Finally, the speaker questioned the basis and criteria applied for the inclusion of Egypt in the list of individual cases, while reconfirming the Government's seriousness and eagerness to realize social justice for workers, which was not possible without freedom of association, to which the Government was committed through its Constitution and the international Conventions it had ratified. Thus, he reaffirmed that the ongoing cooperation with the ILO had contributed to achieving the progress made in a very short time subframe, and that the Government would continue on this path, in accordance with the Egyptian Constitution and ratified international Conventions.

The Employer members welcomed the information provided and appreciated the recent engagement of the Government with the social partners and the ILO as well as its stated intention to respect the commitment to ensure compliance with the Convention. The Committee of Experts had repeatedly commented on the Labour Code No. 12 of 2003 and had noted the formulation of a new draft Labour Code and the social dialogue taking place in this regard with employers' and workers' organizations. The Employer members recalled their disagreement with the Committee of Experts' views concerning Convention No. 87 and the right to strike. They also recalled the Government group's statement of March 2015 according to which "the scope and conditions of this right are regulated at the national level". The Employer members, highlighting their views on the subject matter, emphasized that industrial action could be regulated at the national level by the Government taking into account national circumstances.

Furthermore, the Employer members made reference to the Committee of Experts' observation that the final draft law on trade union organizations was expected to be finalized soon to replace the Trade Union Act. Emphasizing that the discussions on the bill were ongoing since 2011, the Committee of Experts reiterated its comments on the Trade Union Act, in particular concerning the single trade union system, the control exercised by the ETUF over other trade unions and the prohibition to join more than one trade union. The Employer members noted with interest the steps taken to date by the Government, in particular the completion of the draft law on trade union organizations in April 2016 in a process of social dialogue with the involvement of the workers' and employers' organizations. In August 2016, the Government had received technical comments on the bill from the ILO, which had been discussed by the Council of State and had entailed certain amendments. In April 2017, a second version of the bill had been submitted to the ILO and a mission had been accepted in May 2017 to discuss the additional technical comments from the ILO. In July 2017, the bill would be presented to the stakeholders in a process of social dialogue and would be submitted to Parliament in October 2017.

The Employer members felt encouraged by the concrete steps taken by the Government, which illustrated its commitment towards compliance with the Convention. They urged the Government to continue to bring the discussion forward so as to demonstrate tangible results of its efforts, and invited the Government to continue working with the ILO in cooperation with the social partners so as to ensure that the draft pieces of legislation were in line with the express requirements of the Convention. The Government should provide up-to-date information on all measures taken in time for its examination by the Committee of Experts.

Les membres travailleurs ont souligné que les engagements du gouvernement pris devant la commission en 2013 en faveur du respect de la liberté syndicale n'ont pas été suivis d'effets. Il est vrai que depuis cette date le pays a connu un changement de régime, mais cela ne saurait justifier l'inertie constatée depuis quatre ans, quand des syndicalistes attendent depuis si longtemps que leur pays se conforme à ses engagements internationaux en leur garantissant la liberté syndicale. A cela s'ajoute un contexte général peu favorable, le pays étant de nouveau en état d'urgence depuis le 9 avril, avec des conséquences importantes sur les libertés publiques. En outre, une nouvelle loi sur les organisations non gouvernementales (ONG) a été adoptée. Elle contient des dispositions qui durcissent drastiquement les modalités de leur constitution, ainsi que des sanctions pénales très sévères en cas de violation de la loi. Certaines déclarations du gouvernement laissent craindre que les principes de cette loi soient également appliqués aux syndicats. Plusieurs circulaires qui visent à limiter la liberté d'action des syndicats indépendants ont aussi été édictées. De plus, la commission d'experts mentionne dans son rapport qu'elle a pris connaissance de plusieurs allégations concernant des cas d'arrestation et de harcèlement de syndicalistes. Or, comme elle le rappelle au paragraphe 59 de son étude d'ensemble sur les conventions fondamentales, 2012, qui fait également référence à la résolution concernant les droits syndicaux et leurs relations avec les libertés civiles de 1970, en l'absence d'un ordre démocratique respectant les droits fondamentaux et les libertés publiques, la liberté syndicale ne peut se développer pleinement. Pour qu'il y ait une véritable liberté syndicale, il est indispensable que les droits suivants soient consacrés: i) le droit à la liberté et à la sûreté de la personne, ainsi qu'à la protection contre les arrestations et les détentions arbitraires; ii) la liberté d'opinion et d'expression, en particulier le droit de ne pas être inquiété pour ses opinions, et celui de chercher, de recevoir et de répandre, sans considération de frontière, les informations et les idées par quelque moyen d'expression que ce soit; iii) la liberté de réunion; iv) le droit à un procès équitable par un tribunal indépendant et impartial et v) le droit à la protection des biens des syndicats. Les organes de contrôle de l'OIT n'ont cessé de relever l'interdépendance entre les libertés publiques et les droits syndicaux, soulignant ainsi l'idée qu'un mouvement syndical réellement libre et indépendant ne peut se développer que dans un climat exempt de violence, de pressions ou de menaces de quelque nature que ce soit à l'encontre des dirigeants et des membres de ces organisations. Le gouvernement est ainsi invité à prendre toutes les mesures nécessaires pour garantir toutes les dimensions de la liberté syndicale énumérées ci-dessus.

S'agissant des aspects législatifs, un projet de loi sur les syndicats est en cours d'élaboration et sera prochainement adopté. Une mission du BIT s'est récemment rendue dans le pays pour donner un avis technique sur ce projet de loi et pour discuter plus généralement de la liberté syndicale. Il convient d'être tout particulièrement vigilant sur les points suivants: i) le projet de loi contient, en son article 2, une disposition qui place la Fédération égyptienne des syndicats (ETUF), le seul syndicat réellement reconnu aujourd'hui, dans une situation plus favorable que les autres organisations syndicales. En effet, ce syndicat conservera sa personnalité juridique avec la nouvelle loi et ne devra accomplir que quelques démarches supplémentaires, tandis que les syndicats indépendants devront accomplir les nouvelles démarches afin d'obtenir la personnalité juridique. Pour prévenir cette différence de traitement entre organisations, la seule solution consiste à ce que les syndicats indépendants soient reconnus dès à présent; ii) sauf pour les exceptions admises à l'article 9 de la convention, la nouvelle loi ne doit pas contenir de dispositions constituant de fait, pour certains travailleurs, une interdiction de s'affilier à une organisation syndicale, en raison, par exemple, de la nationalité ou de la conviction politique. Il en va de même de l'interdiction de s'affilier à plusieurs syndicats; iii) le nouveau texte devra également veiller à ne contenir aucune disposition susceptible

d'entraver l'organisation de la gestion et de l'activité des organisations syndicales, contrairement aux dispositions du projet de loi actuel qui prévoient des mesures de contrôle de la gestion financière exercées par la Confédération des syndicats. L'instauration d'un contrôle financier de la comptabilité exercé de manière systématique par les autorités publiques, même par l'entremise d'un organe tel qu'«une confédération des syndicats» ou de la Cour des comptes constitue une violation de la convention; iv) enfin, la nouvelle législation devra garantir aux organisations le droit d'élaborer leurs statuts et règlements administratifs, à l'abri de toute ingérence des pouvoirs publics. Ce droit est garanti à l'article 3 de la convention et fait obstacle à ce que les autorités imposent des exigences qui vont au-delà des conditions de forme généralement admises telles que la nécessité de respecter la forme démocratique ou l'instauration d'un droit de recours aux affiliés. Ces différents éléments font l'objet d'observations dans le rapport de la commission d'experts. En tout état de cause, il serait utile que les remarques émises par le Bureau dans le cadre de son assistance technique soient jointes au projet de loi lors de son examen par le Parlement, afin qu'il en tienne compte. S'agissant des circulaires ministérielles évoquées plus haut, elles limitent la liberté d'action des syndicats indépendants. Ces circulaires interdisent de traiter avec ces syndicats et les privent également de la possibilité de percevoir les cotisations de leurs affiliés. Ceci illustre clairement l'ambiguïté que fait régner le gouvernement égyptien: d'un côté, il déclare vouloir respecter la convention et, de l'autre, il prend des mesures qui vont à l'encontre de celle-ci. En attendant que le nouveau texte entre en vigueur, les syndicats indépendants continuent à tomber sous le coup de ces mesures. Le gouvernement doit sans délai y mettre fin, étant donné que la nouvelle loi ne sera d'application que dans plusieurs mois. Il est urgent de permettre aux organisations syndicales indépendantes de pouvoir exercer librement leurs droits. L'Histoire enseigne que les institutions n'acquièrent de la stabilité que lorsqu'elles reposent sur la justice et sur le respect de la dignité humaine.

The Employer member of Egypt indicated that he did not share the view expressed by the Worker members. Egypt enjoyed social stability and peace, and there was good cooperation between the Government and the social partners. An agreement had been signed with the social partners and had been submitted to the ILO for comments. Freedom of association should not necessarily mean a proliferation of trade unions which would inevitably lead to conflicts. There were 1000 trade unions and 26 federations with 5 million members in the country. The independent trade union counted 166 members and a federation of trade unions could not be formed with such limited number of members. Freedom of association should be guaranteed, but on a clear and well-regulated basis, in order to ensure that trade unions were representative.

The draft law on trade union organizations guaranteed freedom of association for workers as well as for employers. The country was adopting new legislation after a period where Parliament did not exist. The Parliament had started to function again in 2016, and this legislation could not be adopted by way of presidential decree. Egypt had ratified ILO core Conventions and the Government ensured their compliance. The Constitution of Egypt guaranteed the right to freedom of association and tripartism, and the Government did not interfere with the independent unions. The Constitution also protected the right to strike. Steps had to be taken before strike action but if followed, they were the only obligations to be met prior to a strike.

While expressing his respect for the work of the Committee of Experts, the speaker stated that it sometimes exceeded its mandate when addressing the right to strike and other issues under the Convention. The Committee of Experts needed to focus on the application of the Convention. More information and facts could also be brought to the attention of the Conference Committee. In his view, the Worker members had referred to facts that were inaccurate.

Lastly, when a country was selected in the shortlist, it generated reaction in the society. The Committee needed to take into consideration the political and economic situation of the countries concerned and to define clear criteria for the selection of cases. A possibility would be to hear the Employer and Worker members from the country concerned before the adoption.

The Worker member of Egypt denied that the state of emergency impacted trade unions. It had been adopted to protect citizens given that innocents had been murdered.

The speaker confirmed the engagement of the social partners in the tripartite dialogue as reported by the Government. Delays in the elaboration of the draft law on trade union organizations and its adoption were due to political, social and economic difficulties since June 2013. The Committee was asked to show understanding with the circumstances of the country. A new President and a new Parliament had been elected. Numerous draft laws had been submitted to the new Parliament.

On 23 May 2017, a dialogue between the ETUF and the independent unions had been initiated and had led to the signature of a joint declaration that approved the draft law on trade union organizations. The Government and

the employers had been informed of the joint declaration. The ETUF had taken the initiative to negotiate with all trade unions, since the draft law on trade union organizations constituted a major challenge for workers.

The ETUF had submitted to the Government a number of modifications to the draft law that had been accepted. The Government had sent the draft law to Parliament where it was under discussion and would be on the agenda the same year. This draft law was consensual and constituted a new era for industrial relations in the country. It was time to revive the trade unions, in the context of the numerous legislative reforms that required harmonization. Egyptian unions wanted to train leaders to face this challenge and transfer from an old system to a new and modern one that would take into account the changes in labour relations. The workers of Egypt wanted to launch a new movement and elections would take place to form a new trade union.

A memorandum of understanding had been signed between the ETUF, the independent unions, and the Federation of employers. This agreement benefited the country as a whole, the workers, and the employers of Egypt. The draft law had been discussed by the three relevant stakeholders, and workers in Egypt were determined to watch over the adoption of a law that would protect freedom of association, in line with the Convention and the Constitution of Egypt.

The speaker called upon the Committee to take into account in its conclusions the efforts made by the Government, and in particular the tripartite discussions that had been conducted. The Committee was also called upon to note that the draft Labour Code contemplated the question of a strike, an issue that should not be regulated in the legislation of trade unions. The country had experienced obstacles but the situation had improved, politically, economically and socially.

La membre gouvernementale de la Suisse a regretté l'absence d'effet donné par le gouvernement aux demandes répétées de mettre la loi sur les syndicats en conformité avec la convention et a souligné l'importance qui s'attache à l'indépendance des syndicats et à leur diversité. La pluralité syndicale assure une représentation de toutes les tendances. Exprimant l'espoir que le gouvernement mettra fin aux discriminations antisyndicales, l'oratrice l'a encouragé à modifier le Code du travail, en accord avec les partenaires sociaux, afin de mettre en œuvre les commentaires de la commission d'experts. Elle a également rappelé que la négociation collective doit pouvoir s'exercer à tous les niveaux et réitéré l'espoir que le gouvernement mettra rapidement la loi sur les syndicats en conformité avec la convention.

An observer representing the International Trade Union Confederation (ITUC) expressed concern about the draft law on trade union organizations proposed by the Government, which repressed freedom of association and violated several provisions of the Convention. Although the information provided by the Government was a step forward, the core fundamental problem remained unaddressed. The draft law imposed a model of trade unionism which replicated the current model. Particularly, section 13 provided for three types of trade union organizations: trade union committees, general unions, and national federations. The draft law also imposed conditions with regard to the number of council members, membership requirements, election rules and procedures, as well as the objectives and activities of the unions. Moreover, the draft law differentiated between the ETUF and other unions. While the former retained its recognized legal personality, the latter would need to be re-registered, in violation of Articles 2 and 11 of the Convention. The Supreme Constitutional Court of Egypt and an Administrative Court had recognized the right to freedom of association as a constitutional right, which entailed the right for unions to establish their own constitutions and the prohibition of interference by the Government or its administrative bodies. Instead of complying with the rulings of the courts, the Government relied on the State Council Advisory Opinion of 21 December 2016, which had instructed the Ministry of Manpower and Immigration not to register independent trade union organizations and had been widely used to attack independent trade unions. In particular, several unions had been instructed by employers and the authorities to stop their activities and vacate their premises, and could no longer collect the monthly contributions of the workers.

La miembro gubernamental de Cuba tomó nota de la información proporcionada por el Gobierno según la cual: i) el nuevo proyecto de ley sobre organizaciones sindicales tiene en cuenta los comentarios de la Comisión de Expertos sobre la necesidad de asegurar la conformidad de la legislación nacional con las disposiciones del Convenio, y ii) el comité legislativo establecido en el seno del Ministerio de la Mano de Obra y Migración ha finalizado la preparación de un nuevo proyecto de Código del Trabajo y sesiones de diálogo se están realizando con organizaciones de empleadores y de trabajadores, así como con organizaciones de la sociedad civil para discutir dicho proyecto. La oradora alentó al Gobierno a que continúe tomando medidas en cumplimiento de los compromisos contraídos.

The Worker member of Germany, speaking also on behalf of the Worker members of Finland, France, Italy, Spain and Sweden, stated that security forces in Egypt were operating with the utmost harshness. Despite the reprisals, local strikes had occurred in the recent past. Examples included: in May 2016, a shipyard protest in Alexandria where 20 strikers had been arrested by the military police and brought before a military court; in December 2016, a strike in the chemical industry where 200 strikers had been arrested by the police and released after a few hours; and in February 2017, a partial strike of the nursing staff in a hospital where 36 persons had been suspended and subject to an arrest warrant for “work obstruction”. Their only offence was that they had attempted to organize freely outside the state system of control and had demanded higher wages in the face of rising inflation. Furthermore, the speaker highlighted that the state-controlled and supervised ETUF was an extended arm of the Government, supervised by the Minister of Labour in terms of organizational, financial and personnel matters. The ITUC, the European Trade Union Confederation (ETUC) and the German Confederation of Trade Unions (DGB) did not cooperate with the ETUF as it was not considered to be a free trade union. While ETUF enjoyed a state-assured monopoly, the formation of independent and free unions was systematically hampered. The envisaged legislation on the registration and recognition of trade unions would not only perpetuate but also exacerbate the situation. The already registered ETUF would be recognized, whereas all other unions would, in light of the excessive requirements, be de facto deprived of their right to exist. She called on the Government to put an end to the constant legal and practical impediments to free trade unions and eventually fulfil its obligations under the Convention.

El miembro gubernamental de la República Bolivariana de Venezuela indicó que valoraba el compromiso del Gobierno a continuar cumpliendo con los convenios de la OIT ratificados. En su informe de 2017, la Comisión de Expertos ha tomado nota con interés del proyecto final de ley sobre organizaciones sindicales, el cual fue aprobado por el Consejo de Ministros y sometido al Parlamento para su adopción. El orador apreció lo expresado por el representante gubernamental con respecto al hecho de que en dicho proyecto se han tomado en cuenta los comentarios de la Comisión de Expertos y confió en que el Gobierno continúe adoptando ulteriores medidas para cumplir con el Convenio, teniendo presente el espíritu de pluralismo que incluso se refleja en la participación de la delegación tripartita acreditada en esta Conferencia Internacional del Trabajo. Asimismo, estimó que la Comisión debería tener presente la buena disposición y esfuerzos del Gobierno hacia el cumplimiento del Convenio. Por último, confió en que las conclusiones de la Comisión sean objetivas y equilibradas para que el Gobierno pueda considerarlas y valorarlas en el marco de la aplicación del Convenio.

An observer representing the International Transport Workers’ Federation (ITF) recalled the statement of the Worker members that the draft law on trade union organizations did not come close to ensuring full freedom of association rights. The lack of consultation with the independent unions during the drafting process had rendered any semblance of genuine social dialogue void. The new provisions appeared to ensure that those trade unions that were already recognized would continue in their status, while new independent unions would have to go through a fresh registration process. Real trade union pluralism could not be achieved with those provisions, especially given the onerous membership requirements included in the draft proposals for forming unions. The ITF affiliates in Egypt continued to face difficulties. A recent letter from the Government had confirmed that public sector employees were banned from dealing financially and administratively with trade unions, federations, or independent committees not affiliated to the only recognized national union federation. The letter specified that independent unions were illegal for the purpose of the Trade Union Act. In a subsequent letter, the Minister of Labour and the Public Transit Authority had called on the Minister of Local Development to issue the necessary instructions to all sectors under its purview to not accept the stamp of the independent unions on any official documents or national identification documents. As a result, ITF affiliates had reported consistent state interference in their activities, which had prevented them from collecting membership fees, and thus threatened their very existence. The leader of the Dock Workers’ Federation had been deducted five days’ pay because of a social media post calling for the reinstatement of a statutory monetary supplement. Real trade unions representing the real interests of the workers needed to be able to function in full freedom. The Government was urged to comply with the observations of the Committee of Experts and to urgently bring its legislation into conformity with the Convention.

The Government member of Mauritania stated that the information provided by the Government had proven that progress was under way despite the political challenges currently faced by the country. Following the parliamentary elections, the new draft law on trade union organizations had been prepared in consultation with the social partners and had been sent to the ILO for comments. In April 2017, the Government had sent the final version of the draft law to the ILO. Moreover, according to the Parliamentary committee, another round of consultations would be held next July 2017, and the draft law would be adopted in October 2017.

Another observer representing the International Trade Union Confederation (ITUC) indicated that the Egyptian Democratic Labour Congress had been established on 28 January 2014 and had submitted its accreditation

to the Ministry of Manpower. However, Circular No. 6-4-2014 from the Council of Ministries had been issued calling all the governmental institutions and administrations to stop the collaboration with any independent union, and to recognize only the Confederation of Trade Unions that was supported by the Government. All related information could be found in the complaint that had been submitted to the ILO in 2013. She also stated that many independent trade unions had been harassed and unionists had been persecuted or threatened, such as the unionists of the Maritime Union who had been convicted by military courts under Case No. 2759/2016. Lastly, the speaker indicated that in the course of this International Labour Conference, 32 persons had been arrested and had lost their right to be paid because of being accused to be calling upon workers to strike.

The Government member of Algeria welcomed the information provided by the Government on the measures taken to ensure compliance with the Convention. These measures included the preparation of a draft law on trade union organizations, consultations in this regard with the social partners, as well as the consideration of the relevant technical comments of the ILO. All those steps illustrated the commitment of the Government. With this new draft law, the Government sought to address the discrepancies between the Trade Union Act and the Convention, in particular with regard to the principles of non-interference in the internal affairs of trade unions and trade union pluralism. The Government and the social partners should therefore be encouraged to continue to move forward and avail themselves of the technical assistance of the ILO.

The Government member of Sudan commended the important steps taken by the Government despite the difficult situation in the country that experienced political challenges. Labour legislative reforms had been conducted by the Government, in particular with regard to the drafting of a labour law on trade union organizations. The draft legislation had been submitted to the ILO for comments. The speaker welcomed the social dialogue initiated by the Government which was an indication of its respect of freedom of association. The Committee should take into account the positive steps taken by the Government.

Le membre employeur de l'Algérie a affirmé que le gouvernement, qui avait coopéré avec le BIT et fait d'énormes progrès en matière de réforme législative, devait être encouragé et soutenu. Il convient aussi d'appuyer les mesures prises par le gouvernement, en concertation avec les partenaires sociaux, afin de lever les points qui posaient problème dans le projet de loi sur les syndicats et mettre en place une législation conforme aux conventions de l'OIT ratifiées. Toutes les initiatives prises par les autorités égyptiennes sont des avancées importantes qui méritent soutien et encouragement.

The Government member of Libya stated that the Government had proved its commitment to fully apply the Convention by amending its legislation on trade unions. The new draft law on trade union organizations offered the adequate protection framework to workers, particularly as it had been drafted in collaboration with the ILO. The speaker expressed nonetheless his surprise at the inclusion of the Government in the list of cases to be discussed before the Committee, given the positive steps already taken by the Government. He urged the Committee to take into account the Government's commitment to fully comply with the Convention.

The Government member of the Russian Federation, expressed his deep gratitude to the Government representative for the exhaustive information provided on the steps taken to achieve full compliance with the Convention. He expressed satisfaction with regard to the tripartite social dialogue in Egypt. The cooperation of the Government with the ILO and the efforts to take into account the comments of the ILO on the draft law on trade union organizations were commended. This had led to notable and visible progress, despite the multiple challenges faced by the Government, and this progress would certainly continue. The discussion before the Committee had to be used to express approval and encouragement for the efforts made by the Government to comply with international labour standards, in particular in the area of freedom of association.

The Worker member of Italy, speaking also on behalf of the Worker members of Belgium, Spain and the United Kingdom, recalled that the mutilated body of Giulio Regeni had been found near Cairo on 3 February 2016. He had been a 28-year-old student in sociology at the University of Cambridge, whose research had focused on the organization of unions in Egypt. His family still did not know who had ordered his abduction, torture and murder nor the reason. Much uncertainty remained due to the absence of cooperation between the Egyptian and the Italian authorities. There was evidence that Mr Regeni had been tortured for seven days and that he had had a slow death. The Italian paper "La Repubblica" had reported that officers from the National Security Agency had been directly implicated in the murder. As a result, the Public Prosecutor of Rome had requested to the Prosecutor of Cairo the possibility of questioning these agents. This solicitation had remained unanswered. That case was not isolated. For the past three years, non-governmental organizations had reported 1,124 killings, in addition to cases of deaths in detention, individual and collective torture, medical negligence in detention, and other forms of state violence. Despite the evidence to the contrary, the Government denied the involvement in these crimes and refused to address

them. The murder of Giulio Regeni had pointed at a serious deficit in Egypt, which had also been the engine of Tahrir Square: the fundamental human right of workers to organize in order to change their status, become free, and achieve in peace a more just society. The case of Mr Regeni had become a symbol for all Italians and the Government should be aware that justice would be pursued.

The Government member of Ghana recalled that the Government was undertaking a review of new draft legislation. The major stakeholders, including workers, employers, civil society and the ILO had been included in the review, which had taken into consideration the comments made by the Committee of Experts with regard to consolidating the provisions on freedom of association, ensuring trade union pluralism and including under the scope of the new draft Labour Code certain vulnerable categories of workers, such as domestic workers. The speaker hoped that the Government would progress without delay on this review to ensure compliance with the Convention.

The Government member of Zimbabwe stated that the Government's comprehensive presentation had helped shed light on the case. From the submissions of the Employer and Worker members of Egypt, it was clear that all tripartite partners were involved in the ongoing reforms. The parties had been consulted and were in agreement with regard to the draft law on trade union organizations. The tripartite partners were therefore encouraged to continue their collaboration on the matter. The speaker agreed with the submission of the Government representative questioning the criteria for listing countries to appear before the Committee. The Government had demonstrated its commitment and willingness to give effect to ratified Conventions and to engage, despite difficult circumstances. The Employer and Worker members of Egypt had acknowledged that social dialogue existed in the country. The Office was called upon to continue offering technical assistance, which would be instrumental in expediting the labour law reform.

The Worker member of the Syrian Arab Republic expressed support for the draft law on trade union organizations, which would soon be brought before the Egyptian Parliament. He commended the comments made by the Office on the draft law and requested the Committee to take into consideration the complex situation in Egypt in recent years. The ILO should continue to provide technical assistance to countries, like Egypt, which had achieved tangible progress towards compliance with the Convention.

The Government representative wished to clarify, with regard to doubts expressed by the Worker members in relation to some of the achievements highlighted, that some of the comments appeared to relate to the Trade Union Act, or an earlier version of the draft law on trade union organizations, which had been revised in the meantime, in light of ILO comments. It was important to recall that since 2011, Egypt had undergone major upheavals and it had been able to make progress only after the calm since mid-2013, with achievements such as the holding of presidential elections, the adoption of the Constitution and the resumption of work by the House of Representatives, the body mandated to adopt legislation. Many interventions appeared to have been based on hearsay only, and not on a study of the actual situation.

Egypt had made progress with the draft law on trade union organizations so as to address flaws in the current law. The new law was based on trade union freedom and had been prepared through tripartite engagement and with the acceptance of many ILO comments. The draft law abolished any distinction between different trade union organizations, and the Government would take all measures needed to finalize the law so as to provide protection to trade unions.

In response to the statement made by the Worker member of Italy, the speaker noted that the incident referred to had also shaken the Egyptian people. Although the statement concerned a criminal offence which should not be discussed before the Committee, he stated that procedures were under way between the public prosecutor in Egypt and his counterpart in Italy, and that a coordination meeting had been held on 17 May together with a judicial investigation team from Rome. The speaker also referred to the case of an Egyptian citizen who had become a victim of a crime in Italy, and in relation to which similar investigations and coordination were taking place.

Finally, the speaker wished to emphasize that Egypt saw no obstacles to achieving freedom of association and aimed at adopting the draft law on trade union organizations, with the technical support and cooperation from the ILO. The Government had put in place procedures to achieve a system of free and strong trade union organizations by the end of the year. The support of the ILO over the past few years had helped to accelerate the achievements made, in a transparent and open manner. The law would be adopted and serve the public interest of Egypt, in full conformity with its Constitution and the international Conventions ratified by Egypt.

Les membres travailleurs, tout en remerciant le représentant gouvernemental pour les explications et précisions apportées, ont réagi à certains points. Ils ne considèrent pas que l'émiettement du mouvement syndical

soit une bonne chose, mais entre le syndicat unique (comme c'est le cas en Egypte actuellement) et l'émiettement dont a parlé le représentant gouvernemental, le chemin est long. Il est admis que sur la base de la convention des seuils de représentativité puissent être instaurés si ces seuils sont raisonnables, mais là n'est pas le débat. Les circulaires ministérielles déjà évoquées ont été édictées suite à l'avis du Conseil d'Etat. Cet avis considère qu'au titre de la législation actuelle les syndicats indépendants sont illégaux. Or, de l'aveu même du gouvernement, cette législation est contraire à la convention.

Le gouvernement prétend que la législation en question a connu des modifications et que les remarques des membres travailleurs ne seraient plus valables. Il est toutefois regrettable qu'il n'ait pas jugé utile de transmettre à la présente commission le projet de texte dans sa dernière version, afin que ses membres soient pleinement éclairés.

Le respect total et inconditionnel de la liberté syndicale implique de prendre des mesures concrètes pour respecter et faire respecter cette liberté: i) à court terme, il appartient au gouvernement de retirer les circulaires ministérielles qui reviennent à interdire les syndicats indépendants. Un Etat qui souhaite réellement garantir la liberté syndicale n'a pas besoin qu'une loi soit votée pour en assurer l'exercice. Il suffit de s'abstenir de prendre des mesures qui entraînent sa limitation; ii) à moyen terme, la loi en préparation devra être conforme à toutes les dispositions de la convention et remédier aux critiques concernant la législation actuelle. Plus particulièrement, cela implique que la nouvelle législation garantisse l'expression d'un pluralisme syndical, en veillant à ce qu'aucun syndicat ne puisse être favorisé au détriment des autres. En outre, elle devra garantir la liberté des travailleurs de s'affilier à l'organisation de leur choix, sans qu'aucun critère ou restriction non admis par la convention ne leur soient imposés. Le gouvernement devrait s'abstenir de prendre des dispositions ayant pour conséquence de porter atteinte à l'indépendance et à l'autonomie financière des organisations, telles que l'instauration d'un contrôle sur leur comptabilité. Il en va de même du respect du droit à l'élaboration des statuts et règlements administratifs, sans ingérence de la part des autorités.

A cette fin, le gouvernement pourrait continuer à solliciter l'assistance technique du BIT. Enfin, compte tenu des différentes informations portées à la connaissance de la commission d'experts et relayées dans cette enceinte, une mission de contacts directs est fortement recommandée.

The Employer members highlighted their commitment to freedom of association as it related to both employers' and workers' organizations. Freedom of association was the foundation for democracy and crucial for a climate of stable labour relations conducive to investment. Taking into account the importance of the issues raised, the discussion before the Committee had contributed to a better understanding of the case at hand. They appreciated the Government's commitment and believed that the Committee's conclusions should focus on supporting processes aiming at the drafting and adoption of a final law on trade unions. The Employer members encouraged the Government to continue to involve the social partners in social dialogue and to report on its efforts to the Committee of Experts so that it could acknowledge progress. They were supportive of processes in which the Government engaged with the ILO with regard to the finalization of the draft law on trade union organizations in line with the Convention.

Conclusions

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

The Committee regretted a number of long-standing discrepancies between the national legislation and the provisions of the Convention. The Committee also regretted that despite repeated requests from the Committee of Experts, the Government failed to provide a copy of the draft Labour Code and the draft Law on Trade Union Organisations and Protection of the Right to Organise.

Taking into account the discussion, the Committee called upon the Government of Egypt to:

- **ensure that the draft Law on Trade Union Organizations, presently before the House of Representatives for adoption, is in conformity with the Convention, in particular with respect to the concerns relating to the institutionalization of a single trade union system;**
- **transmit a copy of this draft legislation to the Committee of Experts;**

- ensure that all trade unions in Egypt are able to exercise their activities and elect their officers in full freedom, in law and in practice, in accordance with the Convention.

The Committee called on the Government to accept an ILO direct contacts mission to assess the progress in respect of the abovementioned conclusions and requested that this information, as well as a detailed report from the Government, be transmitted to the Committee of Experts for examination before its next session in November 2017.

Conclusions

La commission a pris note des informations que le représentant gouvernemental a fournies oralement et de la discussion qui a suivi.

La commission a regretté le nombre de divergences déjà anciennes entre la législation nationale et les dispositions de la convention. Elle a également regretté le fait que, malgré les demandes répétées de la commission d'experts, le gouvernement n'a pas communiqué copie du projet du code du travail ni du projet de loi sur les organisations syndicales et la protection du droit d'organisation.

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

- s'assurer que le projet de loi sur les organisations syndicales, qui se trouve actuellement devant la Chambre des représentants pour adoption, est conforme à la convention, en particulier en ce qui concerne les préoccupations liées à l'institutionnalisation d'un système de syndicat unique;
- communiquer copie de ce projet de législation à la commission d'experts;
- garantir que tous les syndicats en Egypte peuvent mener leurs activités et élire leurs dirigeants en toute liberté, en droit et dans la pratique, conformément à la convention.

La commission a prié le gouvernement d'accepter une mission de contacts directs de l'OIT pour évaluer les progrès accomplis à la lumière des conclusions susmentionnées, et a demandé que ces informations ainsi qu'un rapport détaillé du gouvernement soient communiqués à la commission d'experts pour examen à sa prochaine réunion en novembre 2017.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión lamentó que persistan desde hace tiempo un cierto número de discrepancias entre la legislación nacional y las disposiciones del Convenio. La Comisión también lamentó que, a pesar de las reiteradas solicitudes formuladas por la Comisión de Expertos, el Gobierno no haya comunicado ninguna copia del proyecto de Código del Trabajo ni del proyecto de ley sobre las organizaciones sindicales y la protección del derecho de sindicación.

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

- garantice que el proyecto de ley sobre las organizaciones sindicales, pendiente de aprobación por la Cámara de Representantes, esté en consonancia con el Convenio, en particular en lo que se refiere a las preocupaciones relativas a la institucionalización de un sistema de sindicato único;
- transmita una copia de este proyecto legislativo a la Comisión de Expertos;
- garantice que todos los sindicatos de Egipto pueden llevar a cabo sus actividades y elegir a sus representantes libremente tanto en la legislación como en la práctica, de conformidad con lo dispuesto en el Convenio.

La Comisión pidió al Gobierno a que acepte una misión de contactos directos de la OIT para evaluar los progresos realizados con respecto a las conclusiones mencionadas anteriormente y solicitó que esta información, junto con la memoria detallada del Gobierno, se trasmitan a la Comisión de Expertos para su examen antes de su próxima reunión, que se celebrará en noviembre de 2017.

The Government representative of Egypt indicated that his Government fully opposed and objected to the totality of the conclusions because they did not reflect the content of the discussion which had taken place before the Committee and did not reflect reality. He asked for the opinion of the Legal Adviser on the way to proceed when a government has objections to the conclusions.

The Worker member of Egypt indicated that an attempt was taking place to politicize the Committee's conclusions to the detriment of Egypt. The conclusions did not reflect the fact that a draft law had been presented to the House of Representatives.

The Legal Adviser indicated that the question raised concerned the procedure to be followed for the adoption of the Committee's conclusions on individual cases when the government concerned wished to express objections to the proposed conclusions. It was essential to recall that in discharging its supervisory function, the Committee on the Application of Standards drew on the Standing Orders of the Conference but had also developed its own working methods and long-standing practices over the years. The conclusions were delivered based on carefully balanced views exchanged in order to encapsulate consensus. It could happen, and had indeed happened in the past, that the government concerned expressed its disagreement with the conclusions. In these cases, the Government's disagreement was always faithfully reflected in the Record of Proceedings. This long-standing and constant practice gave satisfaction to governments that their objections had been faithfully reproduced.

The Government representative of Egypt thanked the Legal Advisor for his reply. He explained that his Government was against the conclusions which were inaccurate and counterfactual. They contained no reference to the new draft legislation, although the draft law had been presented on two occasions before it was submitted to Parliament and the ILO had expressed its views as recently as last May. He repeated that the conclusions were inconsistent with reality: not a single point was accurate. He would have accepted them, had they reflected events that had occurred, but as they were factually inaccurate, he felt he must object.

Another Government representative indicated that the question he wished to raise with the Legal Advisor was not related to the Committee's practice but to the fact that the Chairperson had asked the room whether there was any objection prior to the adoption of the conclusions. He asked whether, in the event of an objection as in this case, the Chairperson could still go ahead and declare that the conclusions had been adopted by consensus.

The Legal Adviser answered that the Chairperson could proceed on the basis of a very large majority in circumstances where objections were expressed. The main duty of the Chairing Officer was to conduct the debate according to the Standing Orders of the Conference. He could therefore proceed to adopt conclusion despite legitimately expressed disagreement by the government concerned as long as all statements and facts were faithfully reflected in the Record of Proceedings.

The Worker member of Egypt indicated that, according to the conclusions, the ILO had not received a copy of the draft law. He questioned how this could be true, as an ILO official had visited the country, and had obtained and commented on a copy of the law on which the agreement of the social partners had been obtained. In the particular circumstances of his country, it was incomprehensible that the Committee would express disappointment. With the social partners, legislation had been developed that could contribute to peace and open a new era for the people of Egypt, and although the trade unions may have disagreed with certain things, there was overall agreement. Yet where the Government had hoped that the ILO would extend its support, it had expressed disappointment: the conclusions suggested that nothing had happened, although enormous progress had been made through very hard work. The conclusions disregarded that progress.

El Presidente de la Comisión al tiempo que tomó nota de las intervenciones e indicó que éstas aparecerían reflejadas íntegramente en las actas de la Conferencia, solicitó al Gobierno que se acercase a la Secretaría con miras a seguir tratando el caso.

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

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

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

Guatemala (ratificación: 1952)

Guatemala (ratification: 1952)

Guatemala (ratification: 1952)

El Gobierno ha proporcionado informaciones por escrito contenidas en el documento D.10.

Además, ante la Comisión, **una representante gubernamental** reiteró las informaciones comunicadas por escrito y manifestó el compromiso de su país en el cumplimiento de las normas y principios fundamentales en el trabajo, inclusive a través del Memorándum de Entendimiento y la Hoja de ruta para resolver las cuestiones relativas al Convenio contenidas en la queja presentada en virtud del artículo 26 de la Constitución de la OIT. Destacó que para ello, se cuenta con el involucramiento directo del Presidente de la República. Además, manifestó que estaba acompañada por autoridades de los tres poderes del Estado, quienes reafirmaron su compromiso en el cumplimiento de la Hoja de ruta, lo cual demuestra el apoyo al más alto nivel. Reiteró su preocupación por la pérdida de vidas humanas generada por la violencia en el país, incluyendo las de algunos sindicalistas e indicó que, se están implementando cambios profundos y estructurales en el país. En ese sentido, señaló que el Ministerio de Trabajo y Previsión Social sostiene reuniones periódicas con autoridades del Ministerio Público y la Comisión Internacional contra la Impunidad en Guatemala. Se ha fortalecido la Unidad Fiscal Especial de Delitos contra Sindicalistas recientemente ampliada a 19 personas y 3 agencias fiscales. Además indicó que, en 2016, el Ministerio de Trabajo y Previsión social inscribió un total de 84 organizaciones sindicales y que, durante el 2017, se suman 26 sindicatos inscritos y que, con el apoyo de la OIT, se prevé fortalecer la Comisión de tratamiento y resolución de conflictos en materia de libertad sindical y negociación colectiva, así como que se han intensificado los procesos de sensibilización, como parte de la campaña de libertad sindical y negociación colectiva, teniendo planificado un proceso de capacitación con el sector textil y maquila, con apoyo de la Oficina del Representante del Director General de la OIT. Indicó, asimismo, que la reciente entrada en vigencia de las modificaciones al Código del Trabajo ha fortalecido la Inspección General de Trabajo, otorgándole capacidad sancionatoria, y que, para hacer más transparente su accionar, se ha creado la Unidad de Probidad y Transparencia, brindando a la población un servicio de calidad y eficiencia. Reiteró el compromiso de su Gobierno de continuar mostrando avances concretos, cuyo reconocimiento permita cerrar el caso de su país en la reunión del Consejo de Administración del mes de noviembre de 2017. Concluyó manifestando la preocupación de su Gobierno por la utilización simultánea de varios mecanismos de control para tratar las mismas alegaciones relativas a un país, en contra del cual existe una queja ante el Consejo de Administración. Consideró que se trata de una duplicación de los mecanismos y por ende debilita el funcionamiento y la credibilidad de los órganos de control de la OIT.

Una Magistrada de la Corte de Constitucionalidad manifestó que la Corte de Constitucionalidad actúa de manera independiente y permanente, y que su labor primordial es la defensa de los derechos humanos garantizados y protegidos tanto en la Carta Magna, como en los tratados internacionales que, a la luz de la misma, forman parte del bloque de constitucionalidad. La Corte ha observado los estándares internacionales en materia de derecho laboral emitiendo fallos y tutelando los derechos de los trabajadores. De 147 amparos sobre derechos laborales presentados en 2016, 109 favorecieron a los trabajadores. Respecto del derecho a la libre sindicalización, destacó que se ha garantizado en múltiples fallos que durante el tiempo de la formación del sindicato el patrono no puede, sin autorización judicial, ejecutar despidos contra los trabajadores protegidos.

Un Magistrado de la Corte Suprema de Justicia se refirió a la existencia de Juzgados, Tribunales de Sentencia y Sala de la Corte de Apelaciones de Mayor Riesgo, en los cuales pueden ser dilucidados los procesos por delitos cometidos en contra de la vida de sindicalistas, atendiendo la recomendación de la Comisión de Expertos de crear tribunales especiales. Informó que dichos tribunales han emitido tres sentencias condenatorias en casos relacionados con los sindicalistas. Además, señaló que de marzo a la fecha se registraron tres sentencias condenatorias, una absolutoria, cuatro personas ligadas a proceso penal, dos órdenes de aprehensión ejecutadas y una extinción de la persecución penal. Manifestó el compromiso de la Corte en relación a las responsabilidades que le competen en la Hoja de ruta y recordó que el Ministerio Público en cualquier momento puede realizar la solicitud

correspondiente para que la Cámara Penal de la Corte Suprema de Justicia, evalúe las circunstancias y pueda asignar procesos a conocimiento de los juzgados de mayor riesgo.

El Viceministro de Gobernación destacó el compromiso de su Ministerio de seguir mostrando avances en el cumplimiento de sus obligaciones derivadas de la Hoja de ruta, tal como lo demuestra la aprobación, publicación y vigencia del protocolo de acción inmediata para la protección de sindicalistas, el cual se implementa con la participación de los líderes sindicales. Además, informó que se ha implementado una campaña de difusión del número telefónico para la protección de sindicalistas (1543) y, para fortalecer los mecanismos de protección, se ha incrementado el presupuesto en favor de policías nacionales civiles, así como los espacios de coordinación y comunicación con los trabajadores para garantizar el cumplimiento de los compromisos de la Hoja de ruta y agilizar el esclarecimiento de actos de violencia.

El Diputado Presidente de la Comisión de Trabajo reiteró el compromiso de los legisladores en relación a la promoción y cumplimiento de los derechos en materia laboral y destacó que el compromiso de la Comisión de Trabajo del Congreso de la República manifestado en la Hoja de ruta, se materializó a través de la aprobación del decreto núm. 7-2017, que confiere facultades sancionatorias a la Inspección General de Trabajo. Con relación a la iniciativa de ley núm. 5199 en materia de libertad sindical y derecho a la huelga, indicó que se ha fijado fecha específica para recibir los acuerdos de los trabajadores y empleadores con el fin de que presenten una propuesta consensuada, después de ocho meses de consultas y tres prórrogas solicitadas por trabajadores y empleadores. Concluyó manifestando que seguirá promoviendo el diálogo social con los diferentes sectores, con el fin de crear, modificar o reformar la legislación en materia laboral, para cumplir con los convenios internacionales para el desarrollo integral del país.

The Worker members considered that Guatemala had consistently failed to act in response to serious observations and recommendations by the ILO supervisory mechanisms. They regretted that the current situation was not substantially different from that of 2012 which had motivated the complaint submitted under article 26 of the ILO Constitution concerning non-observance of the Convention. Since then, 28 additional trade unionists had been murdered and the environment of almost complete impunity had continued unabated. The question of violence and impunity against trade unionists in Guatemala had been examined many times by the Committee and the inaction by the Government called for continued examination, regardless of the process currently taking place at the Governing Body. The Committee of Experts had noted “with *deep concern* the persistent allegations of acts of anti-union violence” and had expressed “its particular *concern* at the lack of progress in the investigations of murders in which evidence had already been found of a possible anti-union motive”. Of the 70 cases of murder brought before the Committee on Freedom of Association, only 11 had led to convictions at that time. Even so, the Office of the Public Prosecutor and the courts had insisted that the motive for the violent murders subject to these 11 convictions had not been based on their trade union activity. Current and past administrations in Guatemala had never seemed to find, in any case, a relationship between the union activity and the motives of the assassinations. The Office of the United Nations High Commissioner for Human Rights and the International Commission against Impunity in Guatemala had also noted with deep concern the lack of progress in the investigations of such cases. Furthermore, in terms of investigations of those cases, the Government was still falling short of performing actions as basic as collecting the testimony from relatives, witnesses or ballistic analysis aspects. Guatemala had also failed to protect trade unionists who were being harassed and threatened for undertaking their union activities. The Worker members regretted that the protocol of security measures for trade unionists, which had been recently put in place by the Government, would be nothing more than a commitment of good intentions if there was no action on the ground. There was a need to see fast and urgent action to implement the protocol and more funds had to be allocated for this purpose, as had also been stressed by the Committee of Experts. They noted that a recent legislation had finally been passed restoring the labour inspectorate’s capacity to impose sanctions in case of violation of trade union rights. This positive outcome had only been reached due to a bipartite agreement between the most representative employers’ and workers’ organizations, which proved that social dialogue was possible in Guatemala and was the only way forward to address the immense challenges facing the country. Yet, the Government still failed to understand the importance of including social partners in decision-making. Recently, a Bill had been introduced to Congress seeking to bring legislation into conformity with the Convention without proper consultation with the trade unions. The unions could therefore not accept the Bill, especially as it contradicted a number of clear recommendations from the Committee of Experts. In particular, the Bill was seeking to amend section 390(2) of the Penal Code in a way that would retain the risk of imposing penal sanctions on workers carrying out a peaceful strike. The Government had had an important chance to show its commitment to the roadmap when the Conflict Resolution Committee on Freedom of Association and Collective Bargaining was set up. Sadly, that mechanism had become a wasted opportunity due to the lack of political will. Very little resources had been allocated to that initiative. Moreover, the Committee of Experts had noted that there was no complementarity with judicial mechanisms for the protection of freedom of association. Additionally, the Public Prosecutor’s Office had admitted that it was dealing

with nothing less than 1,950 complaints for disobedience of court reinstatement orders of workers dismissed as retaliation for forming unions. Impunity was such that employers in the private and public sectors simply did not abide by court orders. The Government had not provided any details on how many employers had been punished for infringing the law. Furthermore, the Government had increased the obstacles for union registration or the renewal of the credentials of existing trade union leaders. The Government had even failed to launch an awareness-raising campaign on freedom of association, as agreed in the roadmap. A mass media campaign would be particularly useful in the *maquila* sector, where there had been several documented cases of violations of freedom of association and the impossibility to form trade unions. The Government had even used appearances in the media to attack the right to freedom of association and collective agreements in the public sector. The Worker members would continue to monitor closely the compliance of the roadmap. The issues raised had been before the ILO supervisory system for over 20 years. It was their firm hope that the issues related to impunity, legislative changes and union registration would be resolved. Finally, they acknowledged the positive role played by the Special Representative of the ILO Director-General in Guatemala.

Los miembros empleadores recordaron que este mismo tema está siendo objeto de análisis ante el Comité de Libertad Sindical a través del caso núm. 2609 y ante el Consejo de Administración mediante el seguimiento dado a una queja presentada en virtud del artículo 26 de la Constitución de la OIT. Recordaron asimismo que el caso trata de: i) derechos sindicales y las libertades civiles; ii) problemas de carácter legislativo; iii) el registro de las organizaciones sindicales; iv) la resolución de conflictos en materia de libertad sindical; v) la campaña de sensibilización en materia de libertad sindical, y vi) el sector de la maquila. Destacaron que el documento D.10 presentado por el Gobierno contiene informaciones detalladas y actualizadas en relación a dichos temas, e hicieron referencia a varios de los puntos que están contenidos en dicho documento. Indicaron que casi la totalidad de los casos reportados de violencia antisindical son muy antiguos, y que en esas condiciones se hace muy difícil llevar a cabo las investigaciones. Enfatizaron que, no obstante lo anterior, las instituciones del Estado están funcionando. El Estado está haciendo su mejor esfuerzo y los resultados se están produciendo. En particular, el hecho que todos los representantes de las ramas del poder público hayan estado presentes ante la Comisión demuestra su compromiso ante la misma. Destacaron que resulta importante que siga funcionando la Comisión tripartita sobre asuntos internacionales de trabajo y que se sigan haciendo campañas de difusión y trabajos de sensibilización. Manifestaron interés por conocer más detalles acerca del rechazo que habría sido manifestado por los trabajadores en relación a una propuesta del Gobierno de reforma del procedimiento de inscripción sindical. Asimismo, recogieron con mucho interés lo indicado por el Gobierno en el documento presentado en cuanto a los requisitos necesarios para constituir los sindicatos de industria y las modificaciones en relación con la nacionalidad extranjera para ser miembros de los comités ejecutivos de los sindicatos. En relación a los comentarios de la Comisión de Expertos en materia de huelga, reiteraron que consideran que el derecho de huelga no se encuentra regulado en el Convenio y que, por lo tanto, no existe base para discutir este tema en la Comisión, que las conclusiones de este caso no deberían hacer referencia al derecho de huelga y que el Gobierno no está obligado a seguir las recomendaciones de la Comisión de Expertos en relación a este tema específico. Afirmaron que, en materia de huelga, existe plena libertad en el marco nacional para que pueda establecerse una legislación conforme a las propias circunstancias y, en ese sentido, destacaron los avances que se pueden producir por iniciativa del Congreso y especialmente por voluntad tripartita. Hicieron referencia a los comentarios de la Comisión de Expertos sobre las posibles sanciones de carácter penal previstas en la sección 390, apartado 2 del Código Penal, cuestionando que puedan considerarse pacíficos actos de sabotajes, daños o destrucciones a la propiedad privada, a las empresas o las instituciones afectando a su producción y sus servicios. Dado el alto número de quejas ante los órganos de control de la OIT en temas de libertad sindical, manifestaron interés en que se pueda profundizar la utilización de los mecanismos de mediación y resolución de conflictos, aunque, en todo caso, corresponde al Estado mismo determinar la manera en que decide diseñarlos y desarrollarlos. Destacaron que el sector de la maquila es el principal exportador y generador de empleo formal y directo en el país en el cual se promueve el cumplimiento de la legislación y de los derechos fundamentales en el trabajo a través de la organización de empleadores más representativa, el Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras. Indicaron que existe un código de conducta que se basa en los convenios fundamentales del trabajo, que certifica a más de 300 empresas y vincula a más de 250 000 trabajadores y que se siguen sistemas de auditoría independientes, muchos de ellos internacionales. Manifestaron que, el hecho que las empresas textiles reciben en promedio 5 auditorías anuales para cada uno de sus clientes, para así lograr estar certificadas y continuar con la renovación de contratos de carácter comercial, debería llevar a la Comisión a que considere este aspecto del caso como definitivamente resuelto. Concluyeron destacando el compromiso del sector empresarial en continuar con la campaña de sensibilización en materia de libertad sindical y en una búsqueda cada vez mejor del fortalecimiento institucional de las distintas dependencias públicas y privadas del país.

El Miembro trabajador de Guatemala lamentó las permanentes y graves violaciones a la libertad sindical que desde hace años se viven en Guatemala, que no sólo afectan profundamente a las relaciones de trabajo, sino que también cuestionan la vigencia de la democracia y los derechos humanos en el país. Afirmó que los números no

merecen discusión alguna: 84 sindicalistas asesinados en los últimos años, considerando sólo los casos que se encuentran actualmente en la Fiscalía Especializada del Ministerio Público, y 251 denuncias de agresiones graves contra dirigentes sindicales y defensores de derechos laborales entre 2015 y 2016. Actualmente, hay miles de órdenes de readmisión para trabajadores despedidos por intentar organizarse sindicalmente. Según los registros de los tribunales de justicia, en la mayoría de los casos dichas órdenes de readmisión no se cumplen y, en una total violación y burla a la ley, en algunos casos, los trabajadores son readmitidos y nuevamente despedidos. Existen múltiples trabas ministeriales para la inscripción de nuevos sindicatos y de nuevos directivos, para la realización de trámites administrativos sindicales y para la homologación de los pocos pactos colectivos que logran acordarse. El Presidente de la República cada año emite una circular por la cual prácticamente prohíbe la negociación colectiva en el sector público, al limitar los ajustes salariales bajo la excusa de la contención del gasto y la austeridad. Muchos de los trabajadores que han presentado hace más de quince meses sus solicitudes de homologación de pacto colectivo, todavía no cuentan con una resolución por parte de las autoridades del Ministerio de Trabajo. Por el contrario, muchos cuentan con previos en donde se ordena la eliminación de artículos que los trabajadores ya han venido gozando desde años anteriores. Señaló que existe una feroz campaña antisindical, impulsada desde los sectores empresarial y estatal, con la intención de declarar lesivos los pactos colectivos para el país así como de criminalizar a la dirigencia sindical. Pretende, asimismo, hacer ver a las organizaciones sindicales como las responsables del desgobierno, la corrupción y la crisis económica que sufren la mayor parte de los y las guatemaltecas. Consideró, que no es de extrañar, por tanto, que en el informe anual de la Confederación Sindical Internacional (CSI) se señale que Guatemala es uno de los diez peores países en el mundo en cuanto a la violación al derecho de la libertad sindical. Las personas que trabajan se enfrentan a las peores formas de violencia, incluyendo intimidación, amenazas, persecución, secuestros, violencia física y hasta asesinatos por el simple hecho de querer organizarse sindicalmente. Pero, además, la situación se agrava por la impunidad imperante para los responsables de estos abominables hechos como queda patente en el informe que presentó el Ministerio Público, en el mes de marzo pasado, sobre el estado de las investigaciones de los 84 asesinatos de sindicalistas. El documento no hace más que corroborar la incapacidad técnica y la falta de voluntad política en investigar los asesinatos de los y las compañeras sindicalistas. La gran mayoría de los casos no avanza y cuando registran novedades, se trata en general de absoluciones o cierres de investigaciones ignorando el vínculo sindical. Lamentó que a cuatro años de firmada la Hoja de ruta entre el Estado de Guatemala y la OIT, programada para cumplirse en un año, los avances son escasos y poco sustantivos. No se ha producido un cambio significativo en la situación de la libertad sindical y de la negociación colectiva. Se conforman comisiones, mesas de trabajo y espacios similares en los que a pesar de que los sindicalistas ponen su mejor voluntad, no hay cambios sustantivos. Aún siguen pendientes los ajustes legales recomendados por la Comisión de Expertos. La propuesta que ha hecho el Gobierno, no sólo no cumple con las recomendaciones, sino que en algunos puntos, implica retrocesos en materia de libertad sindical. Se aprobó una reforma del Código del Trabajo sobre las facultades de los inspectores del trabajo para aplicar sanciones a los incumplidores de la legislación laboral, pero en el último momento, los diputados incluyeron un texto que impide el ingreso de los inspectores en buena parte de los centros de trabajo del país. Por último, tras reiterar el compromiso de los trabajadores para realizar todas las aportaciones a su alcance para hacer cumplir la Hoja de ruta y, en general, los derechos de las personas que trabajan y de las organizaciones sindicales, solicitó a la Comisión que reclame al Gobierno acciones concretas para garantizar los derechos previstos en el Convenio e insistió en la necesidad de establecer una comisión de encuesta.

El miembro empleador de Guatemala agradeció la información facilitada por el Gobierno, y celebró el hecho de que la delegación gubernamental esté integrada por todos los poderes del Estado y los funcionarios públicos del más alto nivel responsables del tema. Ello demuestra el compromiso del Gobierno con la OIT y sus mecanismos de control para solucionar las demandas que se vienen formulando desde hace años. Este compromiso también debe ser asumido por los interlocutores sociales. El sector empleador así lo viene haciendo desde hace muchos años, participando en los foros de diálogo social con el objetivo de dar cumplimiento a las observaciones de la Comisión de Expertos. Se refirió a los distintos temas tratados en el informe de la Comisión de Expertos. Respecto de los derechos sindicales y libertades civiles, tomó nota de las informaciones del Gobierno que dan cuenta de una serie de acciones para dar protección a los líderes sindicales y resolver casos de violencia en su contra. Observó que la gran mayoría de estos casos provienen de muchos años atrás, lo cual complica significativamente su resolución judicial. No obstante ello, se obtuvieron resultados que dan muestra de que no existió una persecución antisindical en Guatemala. En fecha reciente estos hechos se dan de manera aislada y se inscriben dentro del clima de grave violencia que vive el país. Consideró poco equilibrados los comentarios de la Comisión de Expertos al decir que constatan «ausencia de progresos en las investigaciones relativas a homicidios respecto de los cuales ya se han identificado indicios de posible móvil antisindical». Segundo, respecto de los problemas de carácter legislativo, los Expertos desde hace décadas vienen pidiendo al Gobierno la discusión tripartita sobre varias normas con el objeto de adecuarlas al Convenio. Con la facilitación del Representante del Director General de OIT en Guatemala, los trabajadores y empleadores discutieron este conjunto de reformas, que afectan el Código del Trabajo, el Código Penal y la ley que regula estos derechos para los trabajadores del Estado. Se alcanzaron acuerdos

importantes, respecto del Código Penal y se espera lograr más acuerdos próximamente. El decreto núm. 7-2017, fruto también del diálogo social y con el auspicio del Representante del Director General, resolvió el tema del poder sancionatorio de los inspectores del trabajo, que era de vieja data. Si bien el Congreso de la República no recogió en su totalidad el ejercicio tripartito, se cuenta nuevamente con el compromiso de empleadores y de trabajadores para insistir ante ese órgano en las reformas que fueron dejadas de lado. Respecto a estas cuestiones el país avanzó como no lo había hecho nunca antes. En lo que atañe a la resolución de conflictos en materia de libertad sindical y negociación colectiva, reiteró el firme compromiso de los empleadores en la participación de foros bipartitos o tripartitos tendientes a la resolución de conflictos laborales, particularmente la Comisión de Tratamiento de Conflictos ante la OIT en materia de libertad sindical y negociación colectiva. Estaba al tanto que los resultados a la fecha no fueron totalmente satisfactorios y quizás no hubo la mejor de las voluntades de todas las partes. Se requirió tripartitamente la evaluación del funcionamiento de la Comisión para hacer más eficiente su labor, según lo recomendado por los Expertos en su informe. En cuanto al sector de maquila, indicó que la industria textil cuenta desde 1997 con un Código de Conducta que se basa en los convenios fundamentales del trabajo por medio del cual se han certificado en el cumplimiento de normas más de 300 empresas y beneficiado hasta la fecha a más de 250 000 trabajadores, y tal cumplimiento es verificado por compañías de auditores independientes. Asimismo, las empresas de este sector son constantemente controladas y fiscalizadas por inspectores del Ministerio de Trabajo y Previsión Social, así como por auditores de cumplimiento laboral de las marcas internacionales con las cuales mantienen relaciones comerciales. Las empresas de la industria de vestuario y textiles reciben un promedio de cinco auditorías laborales anuales por cada uno de sus clientes, para lograr estar certificadas y así obtener contratos. Esto ha permitido que los derechos de los trabajadores, particularmente el de asociación, estén plenamente garantizados, quienes libremente pueden decidir entre asociarse o no en sindicatos. Finalmente, expresó su preocupación de que la situación bajo análisis esté dando lugar a dos mecanismos de control dentro de la OIT, lo que no obra en beneficio de la transparencia de estos métodos y puede perjudicar los esfuerzos de Guatemala para cumplir con los requerimientos de la OIT.

El miembro gubernamental de Panamá hablando en nombre del Grupo de los Estados de América Latina y el Caribe (GRULAC) reconoció la voluntad política del Gobierno para fomentar una cultura de cumplimiento y respeto de los derechos laborales incluyendo el de sindicalización, impulsando la generación de trabajo decente y la promoción del diálogo social en el país, en coordinación con la OIT. Alentó a que se prosigan los esfuerzos del Gobierno para acelerar los avances del cumplimiento de la Hoja de ruta y a que redoble sus esfuerzos por esclarecer los hechos ocurridos en contra de dirigentes sindicales y así proporcionar las garantías necesarias para proteger la libertad sindical. En el marco de la reunión del Consejo de Administración de la OIT en marzo de 2017, el GRULAC había tomado nota de las acciones tomadas por el nuevo Gobierno para avanzar en el cumplimiento de la Hoja de ruta y cronograma y había apoyado el punto de decisión aprobado por el Consejo de Administración. El GRULAC exhortó a todos los sectores para continuar trabajando de forma conjunta y de manera constructiva en la implementación de las medidas adoptadas y otras futuras que se acuerden tripartitamente, valiéndose del diálogo social y participando activamente en el mismo, con vistas a lograr soluciones duraderas y la plena aplicación del Convenio en el país. El GRULAC reiteró su compromiso con los derechos fundamentales en el trabajo, en especial la libertad sindical y la negociación colectiva. Respaldando la asistencia técnica del Representante Especial del Director General de la OIT en Guatemala, y su importancia para la implementación plena de la Hoja de ruta, solicitó a la Oficina a continuar prestándola. Finalmente, el GRULAC reiteró su preocupación por la utilización simultánea de mecanismos de control para tratar las mismas alegaciones relativas a un país que ya está bajo consideración del Consejo de Administración. La innecesaria duplicación de mecanismos puede llegar a debilitar el funcionamiento de los órganos de control de la OIT. Guatemala ha demostrado voluntad política para mejorar su sistema de relaciones laborales y prever un futuro mejor para el ejercicio de los derechos fundamentales en el trabajo. Consideró que el fortalecimiento del diálogo social y de la confianza mutua entre los interlocutores sociales y el Gobierno, con el respaldo de la OIT y de las organizaciones internacionales de empleadores y de trabajadores, son elementos muy valiosos para continuar asistiendo a un país que coopera con los mecanismos de control de la OIT. Instó a que se valoren objetivamente los avances alcanzados por el Gobierno, esperando que este caso pueda ser finalizado pronto.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina and Montenegro, recalled the commitment undertaken by Guatemala under the trade pillar of the EU–Central America Association Agreement, to effectively implement the fundamental ILO Conventions. That case referred to very serious allegations on freedom of association that were being closely examined by the Governing Body under the article 26 procedure. They reiterated the need to avoid as much as possible duplicating procedures and efforts. For the sake of consistency, they recalled their views expressed at the last Governing Body in March 2017: (1) they acknowledged the commitment of the Government to ensure respect of the rule of law in the country and its increased engagement with the ILO, as well as the advances made regarding social dialogue through the recent adoption of a new law on labour inspectorate sanction powers; (2) they reiterated their call for a new law on freedom of association and the right to organize to be adopted before the next Governing

Body, in full conformity with the Convention and after thorough consultations with the social partners; and (3) they expected rapid, concrete and substantial progress on the roadmap, including investigations of murders of union officials, strengthening of prevention and protection mechanisms, implementation of reinstatement orders and development of the awareness campaign.

Un observador representante de la Internacional de los Servicios Públicos destacó que las violaciones a la libertad sindical en Guatemala no se limitan a la obstaculización de las actividades de los dirigentes sindicales, sino que, además, existe una gravísima injerencia del Estado en la autonomía de las organizaciones sindicales, violando de ese modo el Convenio. Dicha injerencia ha llegado a su punto máximo a través de la judicialización de los pactos colectivos firmados libremente por las organizaciones sindicales y el Estado en su rol de empleador. Se ha denunciado penalmente a dirigentes sindicales por participar en los procesos que esas negociaciones han conllevado. La campaña pública de desprestigio y estigmatización en contra del sindicalismo que se ha profundizado debe cesar de manera inmediata. El Estado debe jugar su rol de promoción y desarrollo de la libertad sindical. Consideró que el Estado ha quedado, en esta materia, al servicio de las cámaras empresariales que elaboran la estrategia legal para la Procuraduría General de la Nación. La OIT debe exigir al Estado de Guatemala que cese de manera inmediata sus actos de injerencia y persecución de los dirigentes sindicales. La violación a la libertad sindical llega a tal punto que todos los dirigentes están siendo judicializados con resoluciones de jueces que amparan a ministerios, instituciones y sindicatos para que se penalice la acción sindical y se irrespete los acuerdos alcanzados. Asimismo, los pactos en el sector público están siendo objeto de tardanza de homologación por parte del Ministerio de Trabajo. Denunció también la destitución de dirigentes en el sector público con el objeto de intimidar a los trabajadores y disolver los sindicatos. Consideró que Guatemala necesita urgentemente una comisión de encuesta antes de que todos los dirigentes terminen condenados penalmente por ejercer sus derechos, o peor aún que sean víctimas mortales en total impunidad. Esto deriva de la cultura del odio que los medios de prensa antisindicales se han encargado de difundir en contra de la acción social y sindical. Recordó que el diálogo es la vía para resolver estos temas.

La membre gouvernementale de la Suisse a indiqué que son pays soutenait la déclaration prononcée au nom de l'UE. Des relations de travail solides et durables, basées sur le dialogue social et la confiance, constituent l'un des facteurs clés pour le développement durable. La Suisse soutient les recommandations de la commission d'experts et les conclusions du Conseil d'administration. Elle appelle le gouvernement et les partenaires sociaux à mettre en œuvre sans tarder l'ensemble de la feuille de route. La persistance de la violence et du harcèlement à l'encontre des syndicalistes ainsi que l'impunité sont préoccupantes. Il est à espérer que les procédures en cours seront menées à bien et suivies de sanctions efficaces et que le gouvernement adoptera dans les meilleurs délais une législation en conformité avec la convention. Enfin, la Suisse encourage le Guatemala à poursuivre ses efforts pour promouvoir le dialogue social, dans le climat de confiance nécessaire. Elle salue la coopération de l'OIT à cet égard.

El miembro trabajador de España hablando en nombre de las organizaciones sindicales españolas Unión General de Trabajadores (UGT) y Comisiones Obreras (CCOO), así como de las organizaciones de trabajadores de Alemania, Bélgica, Francia, Italia, Noruega y Suecia, expresó su solidaridad con todos aquellos sindicalistas, y ciudadanos en general, que ponen en juego su integridad física e incluso su vida por defender los derechos humanos y los derechos fundamentales del trabajo, en especial en Guatemala, donde al menos 84 sindicalistas fueron víctimas de la represión sindical y la impunidad de ésta en el país. Indicó que tanto la Comisión de Expertos, como el Comité de Libertad Sindical y esta Comisión, han examinado las denuncias por graves violaciones de este Convenio en Guatemala y han instado al Gobierno a adoptar las medidas necesarias en la legislación y en la práctica con miras a corregir dichas violaciones. Refiriéndose a las solicitudes de la Comisión de Expertos en su observación de 2016, señaló que la respuesta del Gobierno a estos requerimientos ha sido insuficiente y que éste se encuentra lejos de revertir la situación de grave incumplimiento de este Convenio, así como del Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98). En este sentido, lamentó que en Guatemala se sigan produciendo agresiones físicas, amenazas y asesinatos de sindicalistas, y que continúa sin existir una tutela judicial que permita investigar de manera efectiva tales conductas delictivas. Afirmó que el Gobierno continúa obstaculizando la inscripción y registro de organizaciones sindicales, la ejecución de las sentencias sobre despidos antisindicales y el desarrollo de la negociación colectiva. El Gobierno además pretende llevar a cabo una reforma del Código Penal para criminalizar el ejercicio pacífico del derecho a la huelga. Con base a tales hechos, solicitó a la Comisión que invite al Consejo de Administración a nombrar una comisión de encuesta encargada de examinar la no aplicación del Convenio por parte del Gobierno de Guatemala.

El miembro gubernamental de Honduras reconoció las continuas muestras de voluntad política del Gobierno para fomentar el cumplimiento y respeto de los derechos laborales, incluyendo el de sindicalización y le alentó a que redoble sus esfuerzos para esclarecer los hechos ocurridos en contra de dirigentes sindicales y proporcionar así las garantías necesarias para proteger la libertad sindical. Recordó la importancia del diálogo

tripartito y solicitó a las partes que continúen trabajando de forma conjunta y de manera constructiva, con vistas a lograr soluciones duraderas y la plena aplicación del Convenio en el país.

The Worker member of the United States, speaking also on behalf of the Canadian Labour Congress and the Central Workers Union Confederation of Brazil, made reference to the increased citation of ILO standards in trade agreements. Governments often include commitments to honour the ILO Conventions that this Committee supervises. We must point out that the increasing citation of ILO standards in such agreements is accompanied by the complete failure of our Governments to use these standards to protect freedom of association in the context of international trade. Guatemala and the United States are two such Governments, among many. With respect to the Central America and Dominican Republic Free Trade Agreement (CAFTA–DR), which required the parties to protect freedom of association, Guatemala had persistently failed to comply with the Convention, and continued to receive trade benefits. The CAFTA's arbitration panel had heard arguments touching almost entirely on the application of the Convention by Guatemala. The results of the dispute settlement were not yet public, more than nine years since the submission of the workers' petition. The Conference Committee had also expressed serious concerns in relation to the present case, which was also examined in the Committee on Freedom of Association and under the article 26 procedure. Since 2007, workers filing complaints had documented violations of Convention No. 87 and updated cases annually showing that the Government had failed to act over the last ten years despite proof that union leaders were offered bribes to quit their jobs and to convince workers not to join unions; and that workers were fired for joining unions or not disbanding unions. The Government did not investigate, prosecute, and punish employers who violated freedom of association. New violations of cases of dismissal of union leaders and members continued to this day. In 2015, an employer with 1,200 workers had refused to bargain with the union chosen freely by over 66 per cent of its workforce and had signed an agreement with another group representing fewer than 3 per cent of workers. One more current example, among many: starting in July 2016 with the formation of a union in the food sector, the employer had fired 150 union leaders and members. There was a judicial order for a specific employer to reinstate the workers but as in over 2,200 such orders, there had been neither compliance nor enforcement.

El miembro trabajador de Colombia señaló que en Guatemala los asesinatos de afiliados o dirigentes sindicales no son penalizados de manera efectiva ni tampoco evitados. La impunidad es imperante. El año pasado, la Comisión recomendó al Gobierno investigar todos los actos de violencia contra dirigentes sindicales y sindicalistas, pero la mayoría de los casos aún no cuenta con sentencia o se atribuye a causas ajenas al sindicalismo. Esta misma Comisión le pidió también hace un año presentar un proyecto de ley que adecuara la legislación de Guatemala a lo dicho por los órganos de control de la OIT, pero el Gobierno si bien reitera su «compromiso» de adecuación normativa, hace de manera reiterada caso omiso a tal responsabilidad, manteniendo en sus legislaciones internas, obstáculos a la libertad sindical así como disposiciones contrarias al Convenio. Tras reiterar la solidaridad de los trabajadores colombianos con las trabajadoras y los trabajadores guatemaltecos, el miembro trabajador de Colombia, sugirió a la Comisión requerir del Gobierno que brinde más y mejor protección a los dirigentes sindicales, y que tome las medidas necesarias para investigar los crímenes cometidos contra sindicalistas, revelar el verdadero ánimo que éstos han revestido, y penalizar a los autores materiales e intelectuales con penas ejemplarizantes.

The Government member of the United States congratulated the Government on the enactment of legislation that restored sanction authority to the Ministry of Labour. This was an important step in addressing serious concerns about the effectiveness of labour inspections. The next step would be to ensure the effective implementation of the legislation. He urged the Government to allocate additional resources to the labour inspectorate to ensure sufficient and effective inspections throughout the country. He also urged the Ministry to promptly enact complementary inspection protocols that would provide specific guidance to investigators in investigating complaints related to freedom of association and collective bargaining and ensure that violations were remedied. He further urged the Government to improve compliance with labour court orders. Several other freedom of association issues of concern had been well-documented in the conclusions of the ILO supervisory bodies. He hoped that a tripartite Bill, developed in consultation with the ILO and that would take into account all of the Committee's recommendations, would soon be enacted and effectively implemented. He also hoped that the Government in consultation with the trade unions and the ILO would address the issue of delays occurring in the registration of labour unions. Anti-union discrimination persisted, especially in the *maquila* sector, where no specific measures to address trade union rights existed. He urged the Ministry of Labour to work closely with the Ministry of Economy, the Tax Authority, and the Social Security Institute to develop and apply strategies to protect freedom of association and collective bargaining rights in this sector, including joint inspections and implementation of existing laws that required the removal of Government benefits in cases of non-compliance. Finally, he remained concerned about the low rates of convictions in cases of murdered trade unionists. He encouraged the effective application of existing instruments intended to improve criminal investigations, and increased information sharing between unions and investigative bodies.

Un observador de la IndustriALL Global Union explicó que su organización representa a más de 50 millones de trabajadores en los cinco continentes. Observó con preocupación la incapacidad del Gobierno para hacer cumplir el Convenio y el aumento de violencia antisindical en el país. Hizo notar que, según el reciente índice global de los derechos que la Confederación Sindical Internacional (CSI) publicó, Guatemala figura entre los diez peores países para los trabajadores, en donde los sindicalistas son hostigados, amenazados, sujetos a violencia física, persecuciones e inclusive asesinados, simplemente por querer ejercer su derecho de libre asociación. Una organización afiliada a la Federación Sindical de Trabajadores de la Alimentación Agro-Industria y Similares de Guatemala (FESTRAS) denunció violaciones cometidas por empresas hacia dos sindicatos, sin que el Gobierno haya actuado. En el caso de un sindicato del sector textil legalmente constituido, éste encuentra resistencia para lograr su pleno funcionamiento y poder ejercer su derecho de negociar colectivamente. Sus miembros y dirigentes son hostigados diariamente sin que el Ministerio del Trabajo intervenga. Otro sindicato, a más de cinco años de su constitución, sigue siendo víctima del despido de sus dirigentes, hostigamiento y, a pesar de todas las victorias en los tribunales que respaldaron su derecho de existencia, la empresa sigue negándose a negociar un convenio colectivo con el sindicato. Solicitó a la Comisión una clara e inequívoca recomendación para que el Gobierno tome las medidas necesarias para garantizar que las empresas operando en el país cumplan plenamente con los convenios ratificados, respetando los derechos de todos los trabajadores.

El miembro empleador de Chile subrayó que, al igual que el año pasado, la Comisión analiza el cumplimiento por parte de Guatemala del Convenio y que de la lectura de las conclusiones formuladas por dicha Comisión, así como de los últimos comentarios de la Comisión de Expertos, se desprende que es un caso de franco progreso. Destacó la información suministrada por el Gobierno respecto del decreto núm. 7-2017 que establece un procedimiento de inspección destinado a sancionar los incumplimientos laborales y fomentar una cultura de cumplimiento de los derechos y obligaciones laborales. Destacó asimismo que la Comisión de Expertos haya observado con interés el contenido del proyecto de ley núm. 5199, sometido por el Gobierno al Congreso de la República el 27 de octubre de 2016, reconociendo que el mismo recoge parte sustantiva de las observaciones históricas de dicha Comisión. En relación con los comentarios de la Comisión de Expertos sobre graves actos de violencia contra dirigente sindicales y sindicalistas, destacó lo mencionado por el CACIF en esta misma instancia el año pasado, en cuanto a que sin desmerecer las denuncias de violencia de los dirigentes sindicales, el clima general de violencia afecta a todo el país, por lo que es necesario mejorar cuanto antes la celeridad y eficiencia en la aplicación de justicia. Lo expuesto es de especial relevancia porque la información oficial proporcionada por el Ministerio Público y los tribunales excluyen en sus sentencias, como móvil de las muertes violentas, la actividad sindical o la defensa de los derechos laborales de las víctimas. Al respecto, consideró importante precisar que para el empresariado guatemalteco resulta fundamental que el Estado garantice la paz social, la protección y respeto de los derechos fundamentales de todos sus ciudadanos, y muy en especial del derecho a la vida. Pese a lo expuesto, se observa con preocupación que la Comisión de Expertos inste al Gobierno a crear tribunales especiales para tratar con mayor rapidez los crímenes y delitos en contra de los miembros del movimiento sindical, porque, de ser adoptada, dicha propuesta podría terminar generando tratos especiales y diferenciados para un grupo de la población, en circunstancias que las cifras oficiales no dan cuenta de que los crímenes y delitos cometidos en contra de sindicalistas se deban a las actividades que realizan. Asimismo, afirmó que es muy delicado que la Comisión de Expertos estire en extremo su mandato en el marco del Convenio, proponiendo la creación de tribunales especializados con competencias penales. Por último, concluyó esperando que el país persevere en sus esfuerzos por agilizar la aplicación de una justicia eficiente y oportuna que proteja a todos sus ciudadanos, con independencia de la actividad que realicen, velando a su vez por el debido respeto de la libertad sindical y la protección del derecho de sindicación.

Un miembro gubernamental de Panamá adhirió a la declaración del GRULAC y respaldó el documento D.10 presentado por el Gobierno. Destacó la gestión del Gobierno así como de las autoridades de los tres poderes del Estado para alcanzar avances requeridos por los actores sociales del país. Asimismo, exhortó al Gobierno a que se alcancen progresos para proteger la libertad sindical por ser ésta sinónimo de paz laboral.

Le membre travailleur du Burkina Faso a rappelé qu'au Guatemala les violations de la liberté syndicale avaient entraîné la mort de dizaines de personnes et souligné que toute violation des droits humains est condamnable, quel que soit le pays dans lequel elle se produit. Il convient de saluer la mémoire de tous ceux et celles qui tombent, chaque jour, pour la défense de la liberté, de l'intégrité et de la dignité humaine. Ces Hommes de qualité se retrouvent tant parmi les organisations des travailleurs que des employeurs, ainsi que parmi les gouvernements. Tout en invitant le gouvernement à respecter strictement les normes, l'orateur a appelé les membres de la commission à faire en sorte que l'OIT, et notamment le BIT et la CIT, soit une instance crédible dans sa façon de traiter les questions, et à joindre leurs actes à la parole.

El miembro empleador de Honduras recibió con agrado la información facilitada por el Gobierno en atención a pedidos que la OIT viene haciendo desde hace muchos años. Le complació la información relativa a las propuestas de reforma al Código del Trabajo, éstas fortalecerán el derecho de asociación y serán indudablemente un instrumento de paz social. Apoyó las observaciones remitidas por el CACIF a la Comisión de Expertos. Resaltó el trabajo realizado por el Representante Especial del Director General de la OIT en Guatemala en seguimiento al Memorándum de Entendimiento suscrito en 2013 y a la Hoja de ruta. Constató que en la actualidad las investigaciones penales se realizan con mayor celeridad y determinación y observó que, de la información facilitada por la Comisión Internacional contra la Impunidad en Guatemala (CICIG), se desprende la ausencia de un clima de violencia antisindical. Concluyó opinando que la OIT debería constatar los avances significativos realizados, por medio del fortalecimiento institucional y del diálogo social.

La representante gubernamental destacó que en relación al fortalecimiento de los mecanismos de protección a sindicalistas se ha incrementado el presupuesto en casi 400 millones de quetzales, se han fortalecido los espacios de coordinación y comunicación con los trabajadores y se ha iniciado un proceso para fortalecer la Comisión de tratamiento y resolución de conflictos en materia de la libertad sindical y negociación colectiva. Manifestó que la integración de ex fiscales del Ministerio Público al equipo del Ministerio de Gobernación y el uso de nuevas tecnologías y herramientas de investigación, ha permitido agilizar el esclarecimiento de actos de violencia. Destacó que en 2016 y 2017 se han inscrito más sindicatos que en años anteriores, y que se ha generado un espacio de diálogo, en el cual se ha acordado una serie de temas a tratar, entre los que se encuentra la reforma del procedimiento de inscripción sindical, tema propuesto por organizaciones sindicales. Al mismo tiempo, recordó que Guatemala cuenta con normas para la inscripción de sindicatos y con requisitos específicos que deben de cumplirse para que el Ministerio proceda a su reconocimiento. Expresó su satisfacción por el hecho de que la Comisión de Expertos haya observado con interés el proyecto de ley núm. 5199 sometido al Congreso de la República el 27 de octubre de 2016, porque recoge la mayor parte de las anteriores observaciones de la Comisión. Ratificó el respaldo al diálogo social y manifestó que está en plena disposición de participar en las discusiones que sean requeridas por los mandantes, tomando en consideración que el Congreso de la República, a través del presidente de la Comisión del Trabajo, ha fijado fechas específicas para recibir los acuerdos, luego de haber transcurrido ocho meses, durante los cuales el Congreso otorgó varias prórrogas, en respuesta al tiempo adicional solicitado por empleadores y trabajadores, sin contar con los más de diez meses concedidos por el Ministerio de Trabajo en 2016 para que se pronunciaran al respecto, habiéndose recibido con mucho lamento, carta escrita y firmada por los trabajadores en la que indican que no participarían en el proceso de construcción de la propuesta de ley. No obstante lo anterior, expresó su confianza en que dicho proyecto de ley sea aprobado en la mayor brevedad posible, y que éste incluya los elementos señalados por la Comisión de Expertos. En relación a los pactos colectivos, subrayó que la administración y el control de la calidad del gasto son una prioridad para el Gobierno y que, en lugar de limitar la negociación colectiva, se busca que los recursos públicos provenientes de los impuestos de la ciudadanía, sean considerados previamente a la negociación y bajo medidas presupuestarias racionales y transparentes. Reiteró la preocupación y consternación por la pérdida de vidas humanas generada por la violencia en el país, incluyendo la de los sindicalistas y subrayó que se han esclarecido casos concretos en los que las víctimas eran sindicalistas y en los que se determinó, con pruebas científicas, que no hubo móvil sindical. Concluyó reiterando la disposición, voluntad y compromiso del Gobierno e invitó a seguir dialogando de manera transparente, con honestidad y con la verdad.

Los miembros empleadores agradecieron al Gobierno las detalladas explicaciones y valoraron positivamente las actuaciones que viene realizando el Gobierno para lograr mejoras en relación con los asuntos tratados. Se refirieron al informe presentado el pasado mes de marzo por el Representante del Director General en Guatemala al Consejo de Administración, destacando la manera en la que se están involucrando los interlocutores sociales. Respecto de los nueve indicadores fijados como base del seguimiento de la Hoja de ruta, recordaron que la Comisión tripartita de asuntos internacionales está trabajando con el fin de identificar problemas y buscar soluciones conjuntamente con los interlocutores sociales y manifestaron el deseo de que estas revisiones sigan realizándose con regularidad. De igual manera, destacaron que en el pasado mes de marzo el Presidente de la República había mantenido una reunión con los trabajadores y empleadores con el objeto de establecer una línea de acción para continuar con este proceso y expresaron el deseo de que el Presidente siguiese vinculado a estos efectos. La Comisión de Trabajo del Congreso ha prestado

apoyo a los titulares y a los parlamentarios en su conjunto para sensibilizarlos en los principios y derechos fundamentales del trabajo. También se han realizado campañas de sensibilización a la libertad sindical con los empleadores y éstas se han extendido a distintos sectores para dar salida a los objetivos de la Agenda 2030. Por otro lado, se han celebrado tres reuniones con periodistas, columnistas y formadores de opinión. En lo que se refiere a los organismos judiciales, se han producido acercamientos para hacer un reglamento de tribunales de trabajo y previsión social así como un reglamento de cumplimiento de sentencias y, se aspira a tener, con la Corte Suprema de Justicia, un desarrollo sobre el Código Procesal Laboral. Destacaron asimismo los acuerdos bipartitos llevados a cabo por los interlocutores sociales y subrayaron la importancia de que el Gobierno acoja estos acuerdos y les dé fuerza para que se siga profundizando en el entendimiento entre los interlocutores sociales. Señalaron algunas acciones urgentes que llevar a cabo, como una mayor investigación, esclarecimiento y condena por los homicidios contra activistas y dirigentes sindicales, el aumento significativo del porcentaje de sentencias de readmisión, la inscripción de organizaciones sindicales, la utilización de la Comisión de Resolución de Conflictos de la mejor manera y, por último, la ampliación de la campaña masiva de sensibilización. En el mes de marzo, el Consejo de Administración adoptó en sus conclusiones mantener un diálogo social constructivo para darle plena aplicación a la Hoja de ruta. Este lineamiento debe ser recogido por esta Comisión que debe integrarlo también como conclusión. También debería incluirse en las conclusiones el respaldo del diálogo entre los interlocutores sociales tanto a nivel nacional como a nivel internacional y la promulgación de la legislación lo más pronto posible. Los miembros empleadores finalizaron con algunas referencias puntuales: en cuanto a las libertades sindicales y derechos de sindicalización, consideraron que falta profundizar en relación con las causas de la violencia, incluso por los propios expertos porque pareciera que no existiera una motivación sindical. En materia legislativa, recordaron que los asuntos referidos a la huelga no deben ser incorporados a las conclusiones de la Comisión y que el Gobierno no tiene obligación de atenderlos. En relación al registro de las organizaciones sindicales, manifestaron que las propias organizaciones sindicales deben tener responsabilidades y compromisos constructivos en el diálogo con el Gobierno para lograr avances en el registro ya que los trabajadores han rechazado específicamente propuestas del Gobierno en relación con la mejora del sistema de registro. Por ello, solicitaron que los trabajadores pudieran unirse a una propuesta conjunta para hacer mejoras al sistema de registros en Guatemala. En cuanto a los mecanismos de resolución de disputas en materia de libertad sindical, consideraron que le corresponde al Gobierno determinar las modalidades de los mismos. En cuanto a la campaña para fortalecer la libertad de asociación y la negociación colectiva también consideraron que corresponde al Gobierno fijar su implementación. Respecto de las maquilas consideraron que no hay especificidades concretas de la forma en la que se está infringiendo el Convenio y que debía considerarse resuelto este tema. En efecto, se han realizado muchas actividades en el marco de los Códigos de Conducta existente en el sector. Además, las acciones específicas de carácter sectorial no entran dentro del marco del Convenio. Asimismo, el número de sindicatos existentes en un sector no puede ser un indicador único ya que la libertad de asociación es positiva y negativa y en ese marco de referencia debe entenderse. Por último, reiteraron que este caso debe ser manejado precisamente ante el Comité de Libertad Sindical en el caso núm. 2609 y ante el Consejo de Administración.

The Worker members noted with concern that despite some isolated achievements, not enough progress had been observed in Guatemala. The Government had failed to implement the conclusions adopted last year by the Committee, including those related to the need to investigate violence motivated by the trade union activities of the victims and to punish perpetrators. It was clear that not enough financial and human resources had been allocated to the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor. Without resources, it was unlikely that the protocol for the implementation of immediate and preventive security measures for trade union members could be properly implemented. In terms of legislative changes, the latest Bill submitted to Congress to bring legislation into conformity with the Convention did not fully resolve the issues raised by the Committee of Experts. The Conflict Resolution Committee on Freedom of Association and Collective Bargaining had not been able to fully operate. The Ministry of Labour had introduced new obstacles for the registration of trade unions. The levels of non-compliance with court orders for cases of anti-union dismissals were unacceptable. Finally, there had been no intention so far to reach out to the broader Guatemalan society through the mass media. On the contrary, the Government had attacked a number of collective bargaining agreements in the public sector. Public sector unions were being stigmatized by the Government as if they were working against the national interest. Therefore, the Worker members urged the Government to: (1) continue to provide prompt and effective protection for all trade union officers and members who were at risk; and redouble its efforts in combating impunity, by making sure that the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor was provided with appropriate financial and human resources; (2) through ILO assistance and consultation with the social partners, review the Bill submitted to Congress to bring legislation into conformity with the Convention; (3) undertake, in consultation with the social partners, an evaluation of the terms of reference and operation of the Conflict Resolution Committee; and include in this process, an examination of the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association in the country, together with an analysis of their effectiveness; (4) eliminate the various legislative obstacles to the freedom to establish trade unions and, in consultation with social partners, and with the support of the Special Representative

of the Director-General in Guatemala, revise the procedure for processing applications for registration; and (5) disseminate the awareness-raising campaign on freedom of association in the mass media and cease immediately to stigmatize and denigrate through the media the existing collective agreements in the public sector.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por la representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota de las persistentes alegaciones de actos de violencia antisindical, incluidas agresiones físicas y asesinatos, y de los insuficientes progresos realizados para combatir la impunidad.

A la luz de la discusión, la Comisión pidió al Gobierno de Guatemala que:

- continúe investigando, con la participación del Ministerio Público, todos los actos de violencia perpetrados contra dirigentes sindicales y sindicalistas, a fin de determinar y comprender las causas profundas de la violencia, entender si las actividades sindicales la motivan, establecer las responsabilidades y castigar a los autores;
- siga fortaleciendo el funcionamiento de la Comisión de Resolución de Conflictos, también en relación con la complementariedad entre la Comisión de Resolución de Conflictos y los mecanismos judiciales para la protección de la libertad sindical;
- elimine los diversos obstáculos legislativos para el libre establecimiento de organizaciones sindicales y, en consulta con los interlocutores sociales y con el apoyo del Representante Especial del Director General, revise el tratamiento de las solicitudes de registro;
- siga brindando protección rápida y efectiva a todos los dirigentes sindicales y sindicalistas que están amenazados, con el fin de asegurar que quienes gozan de protección no deban asumir personalmente ningún costo dimanante de los sistemas de protección establecidos;
- asegure el funcionamiento efectivo de la Unidad Fiscal Especial de Delitos contra Sindicalistas de la Fiscalía de Derechos Humanos del Ministerio Público, mediante la asignación de los recursos necesarios;
- dé más visibilidad a la campaña de sensibilización sobre la libertad sindical en los medios de comunicación, y asegure que no exista estigmatización de ningún tipo contra los convenios colectivos vigentes en el sector público;
- siga adoptando las medidas necesarias para aplicar plenamente la Hoja de ruta adoptada el 17 de octubre de 2013 en consulta con los interlocutores sociales, y
- continúe colaborando con el Representante Especial del Director General en Guatemala con miras a la puesta en práctica del Memorando de Entendimiento y de la Hoja de ruta.

La Comisión pidió al Gobierno de Guatemala que informe a la Comisión de Expertos, antes de su próxima reunión de noviembre de 2017, sobre los progresos realizados.

Conclusions

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

The Committee noted the persistent allegations of acts of anti-union violence, including physical aggression and murders, and the insufficient progress in combating impunity.

Taking into account the discussion, the Committee called upon the Government of Guatemala to:

- continue to investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to identifying and understanding the root causes of violence, understanding whether trade union activities was a motive, determining responsibilities and punishing the perpetrators;
- continue to strengthen the operation of the Conflict Resolution Committee, including in relation to the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association;
- eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the Director-General, review the handling of registration applications;
- continue to provide rapid and effective protection to all trade union leaders and members who are under threat so as to ensure that protected individuals do not personally have to bear any costs arising from those schemes;
- ensure the effective operation of the Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor by allocating the necessary resources;
- increase the visibility of the awareness-raising campaign on freedom of association in the mass media and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector;
- continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners;
- continue to engage with the Special Representative of the Director-General in Guatemala in pursuing the implementation of the Memorandum of Understanding and the roadmap.

The Committee called upon the Government of Guatemala to report progress to the Committee of Experts before its next meeting in November 2017.

Conclusions

La commission a pris note des déclarations orales faites par le représentant gouvernemental et de la discussion qui a suivi.

La commission a pris note des allégations persistantes d'actes de violence antisyndicale, notamment d'agressions physiques et d'assassinats, et de l'insuffisance des progrès accomplis pour combattre l'impunité.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a demandé au gouvernement du Guatemala:

- de continuer à enquêter, avec le concours du ministère public, sur tous les actes de violence commis contre des dirigeants et des membres de syndicats, afin d'identifier et de comprendre les causes profondes de la violence, de comprendre si ces actes sont motivés par les activités syndicales, de déterminer les responsabilités et de sanctionner les auteurs de ces actes;
- de continuer à renforcer le fonctionnement de la Commission de règlement des conflits, notamment en ce qui concerne la complémentarité entre la Commission de règlement des conflits et les mécanismes judiciaires de protection de la liberté syndicale;
- de supprimer les différents obstacles législatifs à la libre constitution d'organisations syndicales et, en consultation avec les partenaires sociaux et avec l'appui du représentant spécial du Directeur général, de revoir le traitement des demandes d'enregistrement;

- de continuer à offrir une protection rapide et efficace à tous les dirigeants et membres de syndicats qui font l'objet de menaces, de sorte que les personnes protégées ne doivent supporter personnellement aucun frais lié aux systèmes de protection établis;
- de garantir le bon fonctionnement de l'unité du ministère public chargée d'enquêter sur les crimes commis contre les syndicalistes en la dotant des ressources nécessaires;
- d'accroître la visibilité, dans les principaux médias, de la campagne de sensibilisation sur la liberté syndicale, et de veiller à ce que les conventions collectives en vigueur dans le secteur public ne soient en aucun cas stigmatisées;
- de continuer à prendre les mesures nécessaires pour mettre pleinement en œuvre la feuille de route, adoptée le 17 octobre 2013, en consultation avec les partenaires sociaux;
- de continuer à collaborer avec le représentant spécial du Directeur général au Guatemala afin de poursuivre la mise en œuvre du mémorandum d'accord et de la feuille de route.

La commission a demandé au gouvernement de faire rapport des progrès accomplis à la commission d'experts avant sa prochaine réunion, en novembre 2017.

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

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

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

Kazakhstan (ratification: 2000)

Kazakhstan (ratification: 2000)

Kazajstán (ratificación: 2000)

A **Government representative** stated the 2015 Law on Trade Unions and the 2015 Labour Code were intended to strengthen the organizational basis of the trade union movement and expand its role in defending the rights and interests of workers. The Constitution and the Law on Trade Unions prohibited both unlawful interference by the State in the affairs of public associations and any acts that prevented a trade union from being founded or carrying out its activities. Discrimination against citizens on the grounds of their membership of a trade union was forbidden in Kazakhstan. Trade unions were founded on the basis of equality among their members. All trade unions were equal before the law. Trade unions operated independently and adopted their own by-laws, decided on their own structure, determined their own priorities for action and formed their own trade union committees. Under the legislation, trade unions acted independently of state bodies at all levels and of employers and their associations, and were neither controlled by nor accountable to them; trade unions had the right to work with international trade unions and other organizations active in defending the rights and freedoms of workers and to conclude cooperation agreements. Today, there were two national trade union centres in the country, with a membership of nearly 3 million workers. This was almost half of all employed workers in the country. In addition, the country had 38 sectoral, 23 regional and 404 local trade unions, and 20,000 primary trade union organizations.

Regarding the work under way to address the observations made by the Committee of Experts in respect of the 2016 recommendations of the Conference Committee, a roadmap on the development of a concept note for a draft law had been adopted; a special working group with the participation of all social partners had been formed to improve legislation on trade union activities; this group had already formulated basic approaches and amendments to current legislation in line with the Committees' observations and recommendations. In September 2016, Kazakhstan hosted an ILO direct contacts mission (DCM). The mission had welcomed the willingness of Kazakhstan to continue working to bring national legislation into conformity with the Convention and acknowledged the openness and transparency displayed by the Government during the discussion of issues raised. The mission noted the positive progress in relation to the proposed amendments to the Law on Trade Unions and

the Labour Code. During the DCM and the subsequent mission by the International Trade Union Confederation (ITUC), national approaches to amending legislation were discussed. To date the following measures have been taken. First, regarding the procedures for founding trade unions, the working group, taking into account international practice, and the growing number of small and medium-sized enterprises in the country, drafted a bill to reduce the number of founding members from ten to three. Second, in relation to the trade union registration procedure, the speaker recalled that the current legislation provided for a two-step process: (1) primary registration, within two months after the founding; and (2) confirmation of trade union status within six months following registration. The working group proposed to replace the current complicated two-stage registration procedure with just a one-stage procedure. Third, with regard to the restriction on the right to strike, the working group had proposed to amend section 176 of the Labour Code, which established a total ban on strikes at enterprises classified as “hazardous production facilities” so as to allow strikes at such facilities, provided that minimum service would ensure that the main equipment could continue working uninterrupted and industrial safety was ensured. The conditions and criteria for classifying an enterprise as a hazardous production facility were set out in sections 70 and 71 of the Law on Civil Protection. All the proposed legislative amendments had been approved by national trade unions and employers’ associations. The concept note for a draft law was examined and approved on 26 May 2017 by the interdepartmental committee on legislative activities that reported to the Government. A draft law was being prepared for submission to Parliament.

The Government was also planning to consider amendments to the Law on Trade Unions, with regard to the trade union affiliation system, as well as the Law on the National Chamber of Entrepreneurs (NCE), with regard to the Government’s membership in the NCE. In September 2016, during the DCM, as well as in early 2017, the Government had requested technical assistance of the Office in this regard. It was now awaiting its official reply to begin examining, with the ILO support, the second package of legislative amendments. The Government would take all the necessary steps to ensure that the national legislation met all the requirements of the Convention.

The Employer members pointed out that despite the very clear direction provided by this Committee in 2016 and the commitment of the Government, and notwithstanding the long-standing concerns expressed by the Committee of Experts in its observations adopted in 2006, 2007, 2008, 2010, 2011, 2014, 2015 and 2016, it appeared that the Government had still not taken action on the serious issues related to the workers’ and employers’ organizations freedom of association, in particular, the freedom to establish and join organizations of their own choosing without prior authorization. They stressed their deep concern at the Government’s continued failure to ensure that the Law on the National Chamber of Entrepreneurs of 2013 provide employers’ organizations full autonomy and independence without the interference of the Government. The establishment of the NCE by this Law constituted a serious obstacle to the employers’ organizations’ freedom of association. They expressed their deep and continued concern that the five-year transitional period provided for by the Law resulted in the interference with the freedom and independence of employers’ organizations, and the broad ranging duties and responsibilities of the NCE. They further noted with deep concern the Government’s failure to amend this Law to ensure that employers’ organizations had full autonomy and independence. Taking into account the findings of the DCM and the Government’s commitment to improve the situation, the Employer members were of the view that the Government needed to take some preliminary steps to remediate the situation immediately. Action to be taken by the Government to remove obstacles to the freedom of association of employers’ organizations could include: (1) removing the all-encompassing mandate of the NCE to represent employers’ needs; and (2) deleting the provision in the Law on the NCE on the accreditation of employers’ organizations by the NCE, which put employers’ organizations in a subordinate position vis-à-vis the NCE and allowed the NCE to arbitrarily refuse accreditation of an employers’ organization. The Employer members also expressed their concern with regard to the barriers to freedom of association of workers’ organizations, namely with respect to their registration. Expressing their deep commitment to the principles of freedom of association and the right of workers and employers to establish and join organizations of their own choosing, they urged the Government to take action, with the ILO assistance, to address the concerns raised by this Committee without any further delay. Finally, in light of the repeated comments of the Committee of Experts on this case, the Employer members recalled their disagreement with the Committee of Experts’ views concerning Convention No. 87 and the right to strike and further recalled that “the scope and conditions of this right were regulated at the national level” and that there was no consensus on this issue in this Committee.

Les membres travailleurs ont rappelé que ce cas a été discuté lors de la précédente session de la CIT et déclaré que la constante dégradation de la situation en matière de liberté syndicale au Kazakhstan est préoccupante. Le gouvernement ne semble pas avoir entendu les signaux forts envoyés par la Commission de la Conférence lors de sa précédente session. La mission de contacts directs qui s’est rendue dans le pays en septembre 2016 n’a pas permis de convaincre le gouvernement de mettre fin aux persécutions dont font encore l’objet certains leaders syndicaux. Certains signaux politiques positifs ont bien été envoyés mais ne se traduisent pas dans les faits. Ainsi, après avoir accordé l’enregistrement à la Confédération des syndicats indépendants (KNPRK) à l’issue d’une

procédure d'enregistrement anormalement longue, le gouvernement a révoqué son enregistrement, rendant ainsi illégale et pénalement répréhensible toute activité syndicale de cette organisation. Le gouvernement procède en outre à des arrestations de leaders syndicaux, introduit des procédures judiciaires et prononce de lourdes peines à leur encontre. Ces pratiques d'intimidation visent à réduire à néant les capacités d'action des organisations syndicales. Ces faits graves ont fait l'objet d'une plainte devant le Comité de la liberté syndicale et démontrent l'ampleur du travail à réaliser pour la défense de la liberté syndicale. C'est tout l'objet de la convention qui n'est pas respecté dans le pays. Les manquements dans l'application de la convention ont pour la plupart déjà été abordés précédemment. En ce qui concerne l'interdiction faite au personnel pénitentiaire et aux sapeurs-pompiers de constituer ou d'adhérer à une organisation syndicale, le gouvernement affirme que seul le personnel qui a un statut de militaire ou de policier tombe sous cette interdiction. Il ne faudrait pas que le gouvernement use de cette justification afin de contourner et d'abuser de l'exception à la liberté de constitution et d'association reconnue pour la police et les forces armées. Les fonctions exercées par les pompiers et le personnel pénitentiaire ne justifient pas leur exclusion des droits et garanties prévus par la convention compte tenu du principe de l'interprétation restrictive des dérogations à la liberté de constituer des organisations, comme cela a été souligné dans l'étude d'ensemble de 2012 sur les conventions fondamentales. S'il peut être accepté que la constitution d'une organisation syndicale fasse l'objet d'un enregistrement, ce dernier ne peut pas être la condition de l'exercice d'activités syndicales légitimes. Or, suite à l'entrée en vigueur de la nouvelle loi sur les syndicats, le Kazakhstan a imposé l'enregistrement ou le réenregistrement des organisations syndicales et considère les activités syndicales d'une organisation non enregistrée comme illégales. Or les procédures d'enregistrement sont parfois à ce point longues qu'elles portent atteinte à la liberté syndicale. Il convient néanmoins de saluer la volonté affichée du gouvernement de simplifier la procédure d'enregistrement, et il est à espérer que cette simplification garantira également une réelle liberté de constituer des organisations. En ce qui concerne l'obligation pour les organisations syndicales locales ou sectorielles de s'insérer dans la structure d'une organisation syndicale de niveau supérieur, il est fondamental de rappeler que les travailleurs ont le droit de décider librement et en toute autonomie de s'associer ou non à une structure syndicale de niveau supérieur ou en devenir membres. Les seuils pour la création de ces organisations de niveau supérieur sont actuellement trop élevés et constituent une entrave à leur constitution. Pour être conformes à la convention, ces seuils devraient être fixés à un niveau raisonnable. La loi sur la chambre nationale des entrepreneurs contient également des restrictions à la liberté d'association et d'organisation des organisations d'employeurs, ce qui contrevient à la convention. Ces différentes atteintes à la liberté syndicale mettent en péril l'une des valeurs fondatrices de l'OIT, à savoir le dialogue social. L'article 3 de la convention implique par ailleurs le droit des organisations d'organiser leur activité et de formuler leurs programmes d'action. Force est toutefois de constater que la législation nationale restreint cette liberté d'action pour un certain nombre d'organisations tombant sous la catégorie des organisations qui mènent des «activités industrielles dangereuses». Le caractère flou de cette notion et la possibilité pour une grande majorité des entreprises de déclarer leurs activités comme étant «industrielles dangereuses» ne permettent pas de déterminer avec précision quelles activités sont précisément visées par cette disposition. Cette incertitude implique, dans la pratique, que la plupart des actions menées par les syndicats peuvent être considérées comme illégales. Un leader syndical a été emprisonné et condamné, pour la première fois, sur base de l'article 402 du Code pénal qui réprime pénalement la poursuite d'une grève déclarée illégale par un tribunal. Il convient d'insister fortement sur le fait qu'un travailleur ayant participé à une action syndicale de manière pacifique n'a fait qu'exercer un droit essentiel et, par conséquent, ne doit pas être passible de sanctions pénales. De telles sanctions ne sont envisageables que si, à l'occasion de l'action syndicale, des violences contre les personnes ou les biens, ou d'autres infractions graves de droit pénal sont commises, et ce exclusivement en application des textes punissant de tels faits. La mise en place d'un service minimum doit être effectivement et exclusivement un service minimum et ne doit pas être un obstacle à toute liberté d'action syndicale. Il est également essentiel que les partenaires sociaux puissent participer à la définition du service minimum. Or la législation demeure contraire à ces principes et prévoit une interdiction pour les organisations syndicales d'accepter une aide financière directe d'organisations internationales. Les projets et activités de coopération conjoints seraient quant à eux tout à fait autorisés en pratique. Les informations transmises par la CSI font néanmoins état du refus des autorités d'enregistrer des organisations syndicales pour la seule raison de leur affiliation à des organisations syndicales internationales, sans qu'il ne soit question d'un financement direct. La législation n'est donc toujours pas conforme à l'article 5 de la convention. Comme observé par la commission d'experts, soumettre la réception de fonds en provenance de l'étranger à l'approbation des pouvoirs publics est contraire à la liberté d'organisation de la gestion du syndicat. Interdire purement et simplement la réception de financement d'organisations internationales est, de l'avis des membres travailleurs, également contraire à cette liberté d'organisation. Au vu des éléments abordés ici, le gouvernement est fermement appelé à cesser toute ingérence dans les affaires des organisations représentatives et à garantir l'indépendance et l'autonomie de ces organisations afin de garantir un dialogue social serein dans le pays.

The Employer member of Kazakhstan recalled that the recommendations of the ILO supervisory bodies were binding on his country as the legislation placed international law above the national legislation. In this respect, he thanked the social partners and this Committee for their common goal of making the world a better place. His

organization, the NCE, actively contributed to this endeavour through, for example, developing, in accordance with international standards, a concept for national social corporate responsibility in the sphere of labour, socio-economic development, employment and security. The NCE, one of the social partners, had signed a general tripartite agreement for 2015–17, 16 regional agreements and six branch agreements (14 branch agreements were being drafted). The NCE shared the responsibility for ensuring freedom of labour and productive employment. The issue of compliance with the Convention had been discussed by the NCE. In this respect, he pointed out that there were no cases of Government interference in the activities of the NCE or its member associations, as the legislation in force prohibited all interference in the activities of public organizations. Out of 53 members of the NCE presidium, only three represented the Government. In a way, the Government depended on the NCE as no law could be adopted without its expert opinion. The NCE was created taking into account international experience. Its structure was based on the continental model, in particular, that of France, Germany and other democratic States. In accordance with the Law on the NCE, the Government transferred over 50 of its functions to the NCE and its member associations. Pursuant to the recommendations of the Committee and the 2016 DCM, the NCE advised the Government to repeal the provision allocating three seats to the Government in the presidium of the NCE. To conclude, he underlined that the NCE was an independent and autonomous organization, which strived, with the ILO technical assistance, to one day become an example of full compliance with international standards.

The Worker member of Kazakhstan indicated that work had been carried out to address the comments of the Committee of Experts. In particular, in the framework of consultations with the Government, the social partners, including the Federation of Trade Unions of the Republic of Kazakhstan (FPRK), made proposals for the amendment of the Law on Trade Unions. On this basis, a law to amend certain legislation had been drafted. Pursuant to the draft, the minimum number of founding trade union members would be reduced from ten to three and the second stage of the registration procedure during which the union was required to confirm its status would be repealed. The FPRK was aware that two member organizations of the KNPRK had not been re-registered; three FPRK member organizations had not been re-registered either. Furthermore, taking into account the comments of the Committee of Experts on the right to strike, section 176 of the Labour Code would be amended so as to provide for the minimum services at the enterprises classified as hazardous to ensure the safety and to maintain the functioning of the main equipment. The speaker recalled that the FPRK, together with the Confederation of Labour (KTK), had taken an active part in the development of the Labour Code and the Law on Trade Unions. The legislation allowed for systemic reform of trade unions, and strengthening and expansion of the social partnership framework. Collective agreements and the sectoral agreements, having the status of legal acts, played a key role in regulating labour relations, determining decent wages, ensuring safe working conditions and increasing social benefits and guarantees. The FPRK was grateful to the ILO for the technical assistance provided so far in the form of seminars, conferences and summer schools. The FPRK was concerned at the situation of trade union leaders, Mr Eleusinov and Mr Kushakbaev, who had received harsh penal sentences and, together with the KTK, called on the Government to demonstrate lenience in their respect.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Montenegro, Bosnia and Herzegovina and Norway, firmly believed that compliance with ILO Conventions was essential for social and economic stability in any country and that an environment conducive to dialogue and trust between employers, workers and governments contributed to the creation of a basis for solid and sustainable growth and inclusive societies. The EU was actively engaged in the promotion of universal ratification and implementation of the core labour standards, as part of the Action Plan on Human Rights and Democracy, adopted in July 2015. The speaker welcomed the EU–Kazakhstan Enhanced Partnership and Cooperation Agreement, which included commitments to effectively implement the ILO fundamental Conventions. The Committee had discussed this case in 2016 and, on that occasion, had made a series of requests to the Government to amend the Law on Trade Unions, which limited the rights of workers to form and join trade unions of their own choosing, as well as provisions of the Labour Code, the Constitution and the Criminal Code. The speaker welcomed the fact that an ILO DCM had visited the country. However, he expressed deep concern over recent developments in the country related to trade unions, notably the cancellation of the registration of the KNPRK, as well as the imprisonment of two trade union leaders. His group called on the Government to ensure that trade unionists could exercise their rights without impairment as guaranteed by Convention No. 87. In this regard, Kazakhstan needed to take effective measures to ensure that the workers’ right to establish and join organizations of their own choosing was fully respected, and notably to amend the Law on Trade Unions. The speaker encouraged the Government to consider suspending any deregistration procedures until the Law had been amended and to ensure that trade unionists could exercise their rights without any hindrances. The Government’s intention to amend the Labour Code regarding the right to strike was noted with interest and it was hoped that the Government would take the necessary measures to amend the Labour Code and the Criminal Code in consultation with the social partners, so as to ensure that the right to strike was also fully respected in the country. The Government was also encouraged to take the necessary measures in line with the Committee of Experts’ comments to: (1) authorize workers’ and employers’

organizations to receive financial assistance from international organizations of workers and employers; (2) ensure the autonomy and independence of free and independent employers' organizations in Kazakhstan, by amending the Law on the National Chamber of Entrepreneurs. The Government was further encouraged to continue to cooperate with the ILO in order to proceed with the reforms needed and to comply with ILO Conventions. The speaker finally expressed his group's full commitment to cooperation and partnership with Kazakhstan.

An observer representing the International Trade Union Confederation (ITUC) said that he represented the KNPRK, which had been recently liquidated, in spite of a two-week hunger strike, which was found to be illegal by the court and stopped by the police. Fines of €12,000 were imposed for the damage caused by the strike and, on 20 January 2017, Mr Amin Eleusinov, Chairperson of the Union of Oil Workers of the Oil Construction Company (OCC), and Mr Nurbek Kushakbaev, Vice-President of the KNPRK, were detained and taken under arrest on criminal charges. Both leaders had been sentenced to two and two-and-a-half years in prison and prohibited from engaging in trade union activities after their release. Mr Kushakbaev was convicted for having called for an illegal strike. Ms Larisa Kharkova, the Chairperson of the KNPRK, was also subject to criminal prosecution with the threat of imprisonment. The Committee needed to adopt conclusions on the basis of which work could be undertaken to restore the fundamental rights in the world of work for each employee and each organization in Kazakhstan.

The Government member of the United States recalled that in the last two years, this Committee reviewed Kazakhstan's implementation of the Convention and urged the Government to amend its legislation, including specific provisions that set onerous registration rules on unions and inhibited the freedom and functioning of independent trade unions. While positive steps had been taken by the Government to heighten its engagement with the ILO and welcoming the 2016 DCM, he notes that serious failure to comply with the Convention continued. In this regard, he recalled that in January 2017, the Committee of Experts reiterated the need to modify certain provisions of the Law on Trade Unions and the Law on the NCE to ensure the full autonomy and independence of employers' organizations. He expressed deep concern at the dissolution of the country's largest independent trade union, the KNPRK; the lodging of charges against Ms Kharkova, the KNPRK Chairperson, and the imprisonment of two labour activists, Mr Eleusinov and Mr Kushakbaev, both of whom had been imprisoned apparently for exercising their basic worker rights. He urged the Government to take steps to support freedom of association and specifically to: (1) make the necessary changes in the labour legislation in accordance with the recommendations of the ILO supervisory bodies; (2) allow all workers' and employers' organizations, and in particular the KNPRK, to register and operate in a manner that is consistent with Kazakhstan's international obligations; and (3) drop the charges and release those labour officials and activists who had been arrested and imprisoned for exercising their right to freedom of association. He looked forward to the swift resolution of these issues and encouraged the Government to expeditiously avail itself of ILO technical cooperation to that end.

La membre travailleuse de la France a déclaré que les militants syndicalistes indépendants au Kazakhstan sont constamment harcelés, intimidés et persécutés. Ils sont soumis à des interrogatoires de police, placés sous surveillance et arrêtés au motif de leur activité syndicale. En 2011, la police a mis fin dans le sang à une grève de plusieurs mois à Zhanazoen, faisant 17 morts et de nombreux blessés. Sept syndicalistes indépendants avaient alors été emprisonnés au motif d'avoir exercé leur droit fondamental de grève. Des dizaines de personnes avaient alors été inculpées et leurs procès s'étaient déroulés dans un climat de tension extrême. Depuis lors, le climat répressif s'est intensifié et on constate une attaque organisée et systématique des syndicats. Des responsables syndicaux du secteur pétrolier, y compris Amin Eleusinov, représentant syndical dans la compagnie pétrolière LLL, et Nurbek Kushakbaev, vice-président de la KNPRK, ont été récemment arrêtés parfois pour avoir simplement mentionné dans un discours la possibilité d'une grève. L'article 24 de la Constitution nationale reconnaît pourtant le droit de grève. L'accès au procès a été refusé aux journalistes et aucun élément formel d'enquête n'a été trouvé. Il s'est avéré par la suite que lesdits responsables avaient été placés sous écoute téléphonique depuis 2015. Leurs conditions de détention sont inhumaines: placement en quarantaine pendant un mois entier; interdiction de s'asseoir sur un lit ou de s'allonger, ceci aux fins d'user psychologiquement le détenu en vue d'obtenir une fausse confession visant à casser le mouvement syndical. La présidente de la KNPRK, Larisa Kharkova, a subi des interrogatoires policiers quotidiens et a été mise sous surveillance sur des bases fallacieuses, impactant de facto le temps de son activité syndicale et sa liberté de mouvement. Le 7 avril 2017, le vice-président de la KNPRK a été condamné à deux ans et demi de prison et frappé de deux années de plus d'interdiction de toute activité publique à sa sortie de prison, ainsi qu'à une amende équivalente à 75 000 euros et à environ 2 400 euros de frais de justice. Ces cas ne sont malheureusement qu'une poignée d'exemples. Le Comité de la liberté syndicale a alerté sur le fait que ces méthodes constituent une attaque sérieuse contre les droits syndicaux et une infraction sérieuse à la liberté syndicale. Le Kazakhstan doit immédiatement mettre fin à ce climat antisyndical, respecter ses engagements internationaux et mettre en œuvre les recommandations de l'OIT en matière de liberté syndicale. L'oratrice a conclu en demandant la libération immédiate des syndicalistes arrêtés dans le cadre de leur activité syndicale ainsi que l'arrêt des

poursuites judiciaires à leur encontre et l'annulation de leur condamnation. Ce cas est très grave et demande une attention spéciale.

La miembro gubernamental de Cuba agradeció las informaciones brindadas por el Gobierno e indicó que en el informe de la Comisión de Expertos se menciona la elaboración de un proyecto de ley que busca perfeccionar las relaciones sociales en el ámbito de las actividades sindicales, en cumplimiento con el Convenio. Destacó que dicho informe consigna que en el país existe pluralismo sindical, lo que demuestra la voluntad del Gobierno con el cumplimiento del Convenio. Asimismo, hizo hincapié en que, tal como fue sugerido por la misión de contactos directos, se brinde la asistencia técnica que el Gobierno requiera.

An observer representing IndustriALL Global Union indicated that Kazakhstan remained a country with a very poor record of trade union and human rights. The recent developments in the country showed how the authorities of the country undermined the ability of workers to organize and collectively bargain for their rights, despite the fact that in addition to ratification of the ILO Conventions, the Constitution of Kazakhstan recognized the right to freedom of association and the right to strike. After the Zhanaozen massacre in 2014, Kazakhstan had adopted a new Law on Trade Unions. The Committee of Experts had commented repeatedly that this Law limited the “free exercise of the right to establish and join organizations” and “the right of workers to freely decide whether they wish to associate or become members of a higher level trade union structure”. After the adoption of this Law, the registration of the KNPRK had been revoked and workers had seen their organizations dismantled for unclear and unjustified reasons. Trade unions at sectoral level had faced similarly lengthy and burdensome registration procedures. When union activists and workers from the Oil Construction Company had organized a peaceful mass protest, including a hunger strike, against the dissolution of the union of their choice, the local authorities and management had suppressed the protest. The Chairperson of the Oil Construction Company Workers’ Trade Union, Mr Eleusinov, and one labour inspector, Mr Kushakbaev had been arrested on 20 January 2017. On 7 April, Mr Kushakbaev had been sentenced to two-and-a-half years in a corrective labour colony for his appeals to strike. The judge had also satisfied the Oil Construction Company’s demand to collect 25 million Kazakhstani Tenge (KZT) (US\$80,000) from Mr Kushakbaev for alleged harm caused to the company by workers’ hunger strikes, although there was no disruption of work. Mr Yeleusinov had been sentenced to two years of imprisonment and would have to reimburse KZT8 million (over US\$25,000). Upon his release, he would be forbidden to conduct any civil or union activity for five years. At the same time, the Oil Construction Company management had started massive layoffs of employees who had participated in the protests. This company formed part of KazMunaiGas, the largest state oil and gas company in Kazakhstan, infamous for their involvement in Zhanaozen massacre. The speaker expressed her deep concern about the repression of trade union activists. These were blatant violations of the ILO Conventions on freedom of association. The abovementioned Court decisions based on employers’ lawsuits represented a dangerous precedent of a further criminalization of trade union work in Kazakhstan. The escalating crack-down on trade unions called for special attention from the ILO and the international community.

The Government member of Turkmenistan welcomed the legislative measures taken by the Government with a view to fulfilling its international obligations under ratified Conventions. The Government collaborated with the ILO in a constructive manner, including through consultations with ILO experts with a view to creating the conditions for complying with the provisions of the Convention.

The Worker member of the United States recalled that thousands of workers in Kazakhstan’s oil and gas industry went on strike to protest unsafe work conditions and low pay. In December 2011, the country’s law enforcement brutally repressed the strikes by opening fire on unarmed protesters and criminally prosecuting strikers. Six years later, exercising the right to strike in Kazakhstan, a right guaranteed by the Constitution, remained extremely dangerous. The 2015 Labour Code, while recognizing the right to strike, sharply circumscribed it. Workers in a number of industries were prohibited from striking. A recent Human Rights Watch report had found that Kazakhstan courts routinely declared strikes illegal and that it was extremely difficult, if not impossible, for workers to meet the onerous requirements in order to strike legally. For example, before striking, workers must engage in cumbersome mediation procedures with their employer. In at least one instance, a company had unilaterally terminated the mediation process and faced no liability, despite the union’s complaints to the authorities. Workers and union leaders faced serious liability for engaging in an illegal strike. The 2014 Criminal Code criminalized “calls to continue a strike that had been ruled illegal by a court”. This offence carried a maximum prison sentence of three years. Courts had also subjected strikers to significant administrative fines of up to 33 per cent of an average worker’s annual salary. In addition, the Labour Code allowed employers to discipline workers who participated in an illegal strike, even before the declaration of the strike illegal by a court. In January 2017, about 300 employees of an oil company began a hunger strike to protest the court mandated liquidation of the KNPRK. The workers notified municipal authorities in advance and continued to perform their jobs. Still, the company petitioned a court to declare the strike illegal. The court took advantage of the 2016 amendments to the

Code of Civil Procedure which had established extremely short time frames for the consideration of illegal strike cases. In just two days, the court declared the hunger strike illegal. The strikers were detained and imposed significant fines. The court subsequently found that the strikers must reimburse the company for supposed losses from the strike, resulting in additional hefty fines. Union leaders were also arrested, convicted and imprisoned in connection with the strike. These leaders were still in prison. Kazakhstan's current limitation on strikes and criminalization of participation in strikes was in violation of the Convention and must be remedied.

La membre gouvernementale de la Suisse a déclaré que son gouvernement soutient la déclaration faite par l'UE et rappelé que l'indépendance, l'autonomie et la liberté des partenaires sociaux sont essentielles pour réaliser un dialogue social effectif et pour contribuer au développement économique et social. En droit et dans la pratique, toute restriction au droit des travailleurs et des employeurs de constituer des organisations de leur choix et de s'y affilier constitue une mesure préoccupante. La liberté de s'organiser et de s'affilier s'applique à tous les niveaux de structure syndicale et la Suisse encourage le gouvernement à suivre les recommandations de la commission en vue de garantir la liberté syndicale en droit et dans la pratique.

An observer representing the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) recalled that the issue of freedom of association in Kazakhstan had been acute for several years and needed to be considered in the context of the general atmosphere that existed in the country since 2011 when the longest labour conflict in the post-Soviet era had ended in the city of Zhanaozen, resulting in many injured and fatal cases amongst the oil workers claiming increments to their wages. Had the Government complied with the Convention, this strike would not have ended with acts of provocation and the use of armed force but with signing an agreement. The General Prosecutor's Office recognized that the police forces exceeded their authority and illegally used weapons, which resulted in the deaths and injuries of people. An investigation had found that a number of police officers were found guilty of beatings and brought to justice. There could not be freedom of association in Kazakhstan until these events were given a clear assessment by the State; until the legitimacy of the demands and actions of oil workers were recognized; and until the verdicts against trade unionists were dropped. The establishment of the principle of freedom of association was not only a means to improve working conditions, but also a means of ensuring peace and was a prerequisite for continued progress. However, the Government refused to comply with the provisions of the Convention. The reform of the labour legislation that followed the Zhanaozen events was designed to further restrict the rights of workers, and to destroy any opportunities for the activities of independent trade unions that were not under the control of the State. One should not forget about those who tried to realize this right in Zhanaozen during seven long months in 2011, those who died for this right and those who were still waiting for the cancellation of sentences and the restoration of justice. The recently opened criminal cases and the recent arrests of trade union leaders, unprecedented pressure on them and their families to obtain confessions on trumped-up charges was a continuation of the general course chosen by the authorities back in 2011. The speaker concluded by indicating that these constituted systematic and large-scale repressions, which had been going on for more than six years and affected thousands and tens of thousands of workers.

The Worker member of Norway, speaking on behalf of trade unions in the Nordic countries, expressed his deep concern at the lack of progress on amending the Law on Trade Unions, despite the fact that the Committee urged the Government to bring it into full conformity with the Convention in 2015 and 2016. In that regard, he recalled that certain provisions of the Law make it difficult to exercise trade unions' rights, and that formalities prescribed in the Law were applied to delay and discourage the establishment of trade unions. He urged the Government to ensure, both in law and in practice, that workers had the right to freely join and establish trade union organizations, and to organize their activities free of interference by public authorities. He further urged the Government to enforce the Committee's recommendations, to amend the Law to ensure its conformity with the Convention.

The Government member of Canada, while acknowledging the strides Kazakhstan had made since independence in developing its economy and improving the standard of living of its people, noted with significant concern the observations of the Committee of Experts. This was the third consecutive year that the Government had been called to appear before the Conference Committee to speak to its implementation of the Convention. In view of the considerable challenges regarding the exercise of freedom of association rights, including difficulties with the trade union registration process, she urged the Government to resist pressure to restrict personal rights and freedoms, and to take concrete measures to protect labour rights by amending and enforcing labour legislation in line with ILO labour standards, including Convention No. 87. She encouraged the Government to seek technical assistance from the Office in this respect. Canada remained committed to working with the Government towards these ends as a partner.

El miembro trabajador de Honduras expresó su preocupación por lo que sucede en Kazajstán en tanto continúa violentándose el Convenio y, en particular, en cuanto a la criminalización del derecho a la huelga. Destacó que la OIT debería apuntar su mirada a este país para que no se sigan violentando los derechos de los trabajadores y alentó al Gobierno a que se concierten acuerdos entre todos los sectores a fin de que vuelva la paz y la armonía.

The Worker member of the Russian Federation indicated that the worsening of the situation of workers in neighbouring countries sometimes constituted an example for his Government. Many of these States, including the Republic of Kazakhstan, were, together with the Russian Federation, part of the Single Eurasian Economic Community, where the harmonization of the legislations of the participating countries was in progress. In 2016, concerns were voiced about the deliberately complicated procedure of registration of trade unions in Kazakhstan. The attention of this Committee had been drawn to the inconsistency of certain provisions of the national legislation with the ILO fundamental Conventions. His delegation also called on the Government to make efforts to bring the legislation regulating the activities of trade unions in line with the requirements of the Convention. Regretfully, these concerns were justified. The situation over the past year had deteriorated significantly. In fact, one of the national trade union centres, affiliated to the ITUC, the KNPRK, had already been dismantled. State bodies had exerted direct and systematic pressure on trade unionists and leaders, including through arrests and imprisonment for the exercise of their legitimate trade union activities. Mr Eleusinov and Mr Kushakbaev were arrested and brought to justice. Despite the content of official accusations, their imprisonment was in fact directly related to their legitimate trade union activities. Ms Kharkova was under criminal prosecution on far-fetched grounds and faced imprisonment. Such measures were used to prevent the development of an independent trade union movement in Kazakhstan, to stop workers from trying to collectively defend their labour, social and economic rights. In 2011, the authorities of Kazakhstan shot at a peaceful protest action by the workers of the transnational oil and gas company in Zhanaozen, killing 16 people and imprisoning dozens of participants. The speaker deeply regretted that the Government had not assumed its responsibility for this event and continued to show disdain for its own international obligations and called on the Committee to consider including this case in a special paragraph of its report.

The Government representative thanked the delegates for the attention paid to the Government's statement, the comments made, and calls and wishes expressed. The Government regretted that the events many speakers referred to had taken place and understood the concerns expressed in this regard. In replying to questions raised during the discussion, he indicated that, unfortunately, six following trade union associations saw their registration withdrawn by the decisions of the courts: the KNPRK, headed by Ms Kharkova, its two branch trade unions, one branch trade union of the FPRK, one branch trade union of the KTK; and an independent trade union "Decent Work". The reason for deregistration of all six unions was the same: they all had failed to confirm their status within the allocated six-month period. All they needed to do was to involve in their ranks at least one affiliate organization in nine of the country's 16 regions. Unfortunately, they could not get such support from the workers. While the Government was working on abolishing the "two-step" registration procedure, 467 trade union associations had successfully passed this procedure. The Government and the Ministry of Labour had always had good working relations with the KNPRK. The latter actively participated in all working groups on the development of the current Law on Trade Unions and its amendments. Its Chairperson, Ms Kharkova, had regularly participated in the meetings of the Republican Tripartite Commission, the highest tripartite body in the country, and was a signatory of the General Agreement on Social Partnership between the Government, trade unions and employers' associations for 2015–17. Moreover, during the ITUC mission to Kazakhstan in August 2016 to discuss the KNPRK ITUC membership, the Government supported the KNPRK. Thus, the Ministry of Labour regretted the situation and conducted a number of consultations with the justice authorities in this respect. The Ministry of Labour was ready to assist, together with the justice authorities, in the re-registration of the abovementioned trade unions, should they so desire. To date, two of the six mentioned trade unions had passed the first stage of registration. Concerning the financing of trade unions, while the Constitution forbade "direct" financing of trade unions by international organizations (for example, by paying salaries, purchasing cars and offices), there were no prohibitions for trade unions to participate and carry out international projects and activities (such as seminars, conferences, etc.) jointly or with the assistance of international workers' organizations. All trade union associations had always received such help. Regarding the cases of prosecution of three trade unions leaders, while understanding the concern expressed, as a representative of the executive branch of the Government, he could not comment on the decisions of the judiciary. He assured that his Government would continue its work to improve the legislation and practice on the basis of the comments and requests expressed during the discussion.

Les membres travailleurs ont fermement encouragé le gouvernement à mettre fin aux différents manquements concernant la manière dont il est donné effet à la convention comme le fait de priver les organisations syndicales du choix de la structure qu'elles adoptent, et demandé au gouvernement de modifier la législation et la pratique en vue de: procéder à l'enregistrement de la KNPRK et de ses organisations membres dans les plus brefs

délais; abandonner de manière inconditionnelle toutes les charges qui pèsent sur les leaders d'organisations syndicales et leurs membres qui organisent et participent à des actions syndicales pacifiques; respecter l'interprétation restrictive des dérogations à la liberté de constituer et d'adhérer à des organisations syndicales et permettre aux juges, pompiers et agents pénitentiaires de former et de rejoindre des organisations syndicales; retirer les critères restrictifs et les procédures d'enregistrement qui limitent la liberté syndicale; respecter l'indépendance et l'autonomie des organisations syndicales et mettre un terme à l'affiliation obligatoire d'un syndicat sectoriel, territorial ou local à un syndicat formé à un niveau supérieur; réduire le seuil d'affiliation qui permet de constituer une organisation représentative; respecter la liberté d'organisation de la gestion des organisations représentatives et lever l'interdiction de recevoir une aide financière d'organisations internationales de travailleurs ou d'employeurs; s'assurer que le service minimum est effectivement et exclusivement un service minimum et que les organisations de travailleurs peuvent participer à la définition de ce service; et clarifier quelles sont les organisations qui effectuent des «activités industrielles dangereuses» pour lesquelles les actions sont illégales. Pour mettre en œuvre ces recommandations, les membres travailleurs ont exhorté le gouvernement à accepter de recevoir une mission tripartite de haut niveau.

The Employer members expressed their appreciation for the information provided by the Government and urged it to: (1) ensure that in the new legislation workers had the right to join and establish organizations and that trade union registration procedures were simplified; (2) in an effort to make progress to ensure that employers' organizations' freedom of association rights were respected, remove the all-encompassing mandate of the NCE to represent all employers' interests and delete the provisions in the Law on the NCE regarding the accreditation of employer organizations by the NCE; and (3) allow trade union and employers' organizations to benefit freely from and participate in joint cooperation projects and activities with international organizations. Finally, they encouraged the Government to welcome a high-level tripartite mission in order to ensure that these goals were met.

Conclusions

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

The Committee noted the grave issues in this case concerning this fundamental Convention referring in particular to the revocation of the registration of the voluntarily unified KNPRK, as well as the infringement of the employers' freedom of association by the Law on the National Chamber of Entrepreneurs (NCE). The Committee also noted the serious obstacles to the establishment of trade unions without previous authorization in law and in practice. The Committee was concerned over the persistent lack of progress since the last discussion of the case by the Committee in June 2016 despite an ILO direct contacts mission visiting the country in September 2016.

Taking into account the discussion, the Committee called upon the Government of Kazakhstan to:

- **amend the provisions of the Trade Union Law of 2014 consistent with the Convention, on issues concerning excessive limitations on the structure of trade unions which limit the right of workers to form and join trade unions of their own choosing;**
- **amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of free and independent employers' organizations, without any further delay. In particular remove the provisions on the broad mandate of the NCE to represent employers and accredit employers' organizations by the NCE;**
- **allow trade unions and employers' organizations to benefit from and participate in joint cooperation projects and activities with international organizations;**
- **amend legislation to lift the ban on financial assistance to national trade unions and employers' organizations by international organizations;**
- **take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents;**

- amend legislation to permit judges, firefighters and prison staff to form and join a workers' organization;
- ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.

The Committee calls on the Government to effectively pursue ILO technical assistance to address these matters.

The Government should accept a high-level tripartite mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

La commission a pris note des graves problèmes suscités par ce cas concernant cette convention fondamentale et qui ont trait en particulier à la révocation de l'enregistrement de la KNPRK librement constituée, ainsi qu'à l'atteinte à la liberté d'association des employeurs par le biais de la loi sur la Chambre nationale des entrepreneurs (CNE). La commission a également pris note des sérieux obstacles pour la création d'organisations syndicales sans autorisation préalable en droit comme dans la pratique. La commission a exprimé sa préoccupation devant l'absence persistante de progrès depuis la dernière discussion de ce cas par la commission, en juin 2016, malgré l'envoi d'une mission de contacts directs dans le pays en septembre 2016.

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

- modifier les dispositions de la loi sur les syndicats de 2014 d'une manière conforme à la convention, s'agissant des restrictions excessives imposées à la structure des syndicats qui limitent le droit des travailleurs de constituer des organisations de leur choix et de s'y affilier;
- modifier les dispositions de la loi sur la Chambre nationale des entrepreneurs de telle sorte que soit assurée sans plus de délai l'autonomie et l'indépendance totales des organisations libres et indépendantes d'employeurs. Doivent être en particulier supprimées les dispositions relatives au mandat global de la CNE par lequel elle représente les employeurs et accrédite leurs organisations;
- permettre aux syndicats et aux organisations d'employeurs de bénéficier des activités et projets de coopération menées conjointement avec des organisations internationales et d'y participer;
- modifier la législation en supprimant l'interdiction pour les organisations nationales de travailleurs et d'employeurs de recevoir une aide financière d'organisations internationales;
- prendre toutes les mesures nécessaires pour faire en sorte que la KNPRK et ses affiliés soient en mesure d'exercer pleinement leurs droits syndicaux et jouissent de l'autonomie et de l'indépendance nécessaires pour s'acquitter de leur mandat et représenter leurs mandants;
- modifier la législation pour permettre aux juges, aux pompiers et au personnel pénitentiaire de constituer une organisation de travailleurs et de s'y affilier;
- veiller à ce qu'il soit rapidement donné suite aux demandes d'enregistrement de syndicats et qu'elles ne soient pas rejetées à moins de ne pas remplir les critères clairs et objectifs définis dans la loi;

La commission prie le gouvernement de solliciter activement l'assistance technique du BIT pour s'atteler à ces sujets.

Le gouvernement devrait accepter une mission tripartite de haut niveau avant la prochaine Conférence internationale du Travail afin d'évaluer les progrès réalisés pour donner effet à ces conclusions.

Conclusiones

La Comisión tomó nota de la declaración oral formulada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota de las graves cuestiones que plantea este caso en relación con este Convenio fundamental, en particular, en lo que se refiere a la revocación del registro de la KNPRK voluntariamente unificada, así como a la vulneración de la libertad de asociación de los empleadores por la Ley sobre la Cámara Nacional de Empresarios (NCE). La Comisión tomó nota asimismo de los graves obstáculos para establecer sindicatos sin autorización previa que existen en la legislación y en la práctica. La Comisión también expresó preocupación por la falta constante de progresos desde la última discusión del caso en la Comisión, en junio de 2016, a pesar de la misión de contactos directos de la OIT que visitó el país en septiembre de 2016.

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

- modifique las disposiciones de la Ley sobre los Sindicatos, de 2014, para ponerla de conformidad con el Convenio en aquellas cuestiones relativas a las limitaciones excesivas de la estructura de los sindicatos que limitan el derecho de los trabajadores a constituir los sindicatos que estimen convenientes y afiliarse a ellos;
- modifique las disposiciones de la Ley sobre la Cámara Nacional de Empresarios a fin de que, sin más dilación, se garantice la plena autonomía e independencia de las organizaciones de empleadores libres e independientes de Kazajstán. En particular, le pidió que suprima las disposiciones sobre el amplio mandato de la NCE para representar a los empleadores y acreditar a las organizaciones de empleadores;
- autorice a los sindicatos y las organizaciones de empleadores a beneficiarse de los proyectos y actividades de cooperación con organizaciones internacionales y a tomar parte en ellos;
- modifique la legislación para eliminar la prohibición de la ayuda financiera a los sindicatos y las organizaciones de empleadores nacionales por parte de las organizaciones internacionales;
- adopte todas las medidas necesarias para garantizar que la KNPRK y sus afiliados puedan ejercer plenamente sus derechos sindicales, y que se les conceda la autonomía y la independencia necesarias para cumplir su mandato y representar a sus mandantes;
- modifique la legislación a fin de autorizar a los jueces, bomberos y personal penitenciario a constituir una organización de trabajadores y afiliarse a ella, y
- vele por que las solicitudes de registro sindical se tramiten con celeridad y no sean denegadas salvo en caso de que incumplan criterios claros y objetivos establecidos en la legislación.

La Comisión pidió al Gobierno que continúe aceptando la asistencia técnica de la OIT a fin de abordar estas cuestiones.

El Gobierno también debería aceptar una misión tripartita de alto nivel de la OIT antes de la próxima Conferencia Internacional del Trabajo con el fin de evaluar los progresos realizados en lo que respecta al cumplimiento de estas conclusiones.

Social Security (Minimum Standards) Convention, 1952 (No. 102)

Convention (n° 102) concernant la sécurité sociale (norme minimum), 1952

Convenio sobre la seguridad social (norma mínima), 1952 (núm. 102)

United Kingdom (ratification: 1954)

Royaume-Uni (ratification: 1954)

Reino Unido (ratificación: 1954)

A Government representative of the United Kingdom shared information about the welfare system in the United Kingdom. As the United Kingdom had just held a general election, information could only be provided on the existing welfare law. Further information would be provided in the Government's report on the application of the Convention in time for the next session of the Committee of Experts in 2017.

In relation to the key findings on Articles 16, 22, and 62 of the Convention concerning the adequacy of benefits, she indicated that her Government believed that its welfare safety net was adequate and that it balanced the requirements of a sustainable and affordable welfare system that supported the most vulnerable in society. Contribution-based benefits for unemployment and sickness represented one part of the overall welfare system that included a mixture of income-related and social assistance benefits, such as housing benefit and tax credits. The main rates of contributory Jobseekers Allowance and contributory Employment Support Allowance provided an income supplement to those who were not in work. Additional support was available for those on low incomes and with limited capital. Additionally, the welfare system was based on the circumstances of those in receipt of benefits and targeted at those most in need. When assessing the adequacy of the welfare system, it was important to consider the support system as a whole.

The Committee of Experts had made comments on the inclusion of Child Tax Credits (CTCs). The CTCs were not actually a form of social assistance, but social security. They were in the scope of the Convention and should therefore be included by the Committee of Experts in the relevant calculations when next considering compliance with the Convention. It was worth noting that many of those claiming contribution-based Jobseekers Allowance and Employment Support Allowance were also claiming other benefits such as Housing Benefit or Personal Independence Payment. Regarding the request of the Committee of Experts to undertake an actuarial study, she indicated that the Government regularly undertook assessments of the benefits it provided, including of the various income-related and social assistance benefits available for those on low incomes and with limited capital. Those studies indicated that working age contributory benefits along with income-related and social assistance benefits for those of working age accounted for almost 3 per cent of the GDP of the United Kingdom in 2016. She concluded by reiterating that detailed explanations on the welfare system in the United Kingdom would be provided in response to the comments made by the Committee of Experts.

Les membres travailleurs ont rappelé que la sécurité sociale est l'une des principales institutions qui ait vu le jour durant le XX^e siècle et représente, pour les travailleurs, l'une de leurs plus grandes réalisations et un acquis extrêmement précieux en ce qu'elle concrétise l'esprit de Philadelphie et représente un outil de lutte contre la pauvreté qui constitue un danger pour la prospérité de tous, où qu'elle existe. La sécurité sociale constitue un acte de civilisation affirmant qu'une société réellement moderne ne peut accepter que des femmes et des hommes puissent être livrés sans protection au risque et au besoin. Le cas du Royaume-Uni indique à quel point ces notions et principes doivent être rappelés et soulignés, y compris dans les pays les plus industrialisés, où la sécurité sociale a représenté, et représente toujours, un acquis majeur pour mettre les travailleurs à l'abri des aléas de la vie, notamment en leur assurant un revenu lorsqu'ils sont privés d'emploi. A vrai dire, l'importance des régimes de sécurité sociale n'est pas contestée. Ce qui fait plus souvent débat, ce sont les modalités et les moyens utilisés pour réaliser les objectifs assignés et dans quelle mesure ceux-ci sont atteints.

A cet égard, la convention n° 102 est un instrument particulièrement original qui a établi une définition internationalement acceptée du principe même de la sécurité sociale moyennant la fixation d'objectifs à atteindre et non pas uniquement des moyens à mettre en œuvre. Il s'agit donc d'une obligation minimale de résultat du chef des Etats, et la convention permet de mesurer les progrès effectués sur base des résultats concrets obtenus. Une autre caractéristique importante de cette convention est qu'elle est dotée d'une grande souplesse et offre un large éventail d'options et de clauses de souplesse, permettant une mise en œuvre progressive en fonction du développement économique. En outre, chaque pays a la possibilité de combiner prestations contributives et non contributives, régimes publics et professionnels, de sorte à assurer la protection minimale garantie. Elle a servi de modèle à l'élaboration du Code européen de sécurité sociale, instrument du Conseil de l'Europe, intégrant les normes

minimales consacrées par la convention comme base initiale et dont l'application est contrôlée par la commission d'experts, ce qui témoigne de l'indépendance, l'impartialité et l'objectivité de celle-ci.

Le système de sécurité sociale du Royaume-Uni s'articule autour de trois niveaux: des prestations basées sur les cotisations, des prestations basées sur le revenu et, enfin, différents crédits d'impôts et prestations d'assistance sociale en fonction des ressources offrant une protection supplémentaire contre la pauvreté. Ce dernier aspect de la protection sociale a subi récemment une réforme qui a abouti à ce que l'ensemble des crédits d'impôts et prestations d'assistance sociale en fonction des ressources ont été fusionnés en un régime dénommé «crédit universel», considéré comme une prestation de l'assistance sociale plutôt qu'une prestation de sécurité sociale qui ne relèverait pas du champ d'application de la convention. S'il est vrai qu'un Etat Membre est libre de déclarer à l'égard de quelles prestations fournies par le système national de sécurité sociale il accepte les obligations découlant de chaque partie de la convention ratifiée, cette souplesse n'autorise pas le gouvernement à soutenir que les prestations d'assistance sociale ne relèvent pas du champ d'application de la convention, car l'article 67 de la convention a précisément été intégré pour évaluer si le taux de telles prestations est suffisant pour répondre aux exigences de ce texte. La commission d'experts a constaté que, en ne tenant pas compte des prestations servies par le crédit universel, le Royaume-Uni viole la convention en ce qui concerne les indemnités de maladie, les prestations de chômage et les prestations des survivants. Le deuxième point de l'observation porte sur le fait que les prestations basées sur les cotisations n'atteignent pas le seuil du risque de pauvreté d'EUROSTAT. Le gouvernement semble s'en accommoder puisque, dans la réponse qu'il adresse à ce propos, il estime qu'il maintient un filet de sécurité «approprié». Or une politique qui vise à maintenir le niveau de vie élémentaire des personnes qui reçoivent des prestations et qui ne travaillent pas en dessous du seuil de pauvreté absolu a pour effet d'utiliser la sécurité sociale comme un moyen de coercition économique à l'emploi. Cette politique appartient à une ère révolue qui est incompatible avec une vision moderne de la sécurité sociale dont un des objectifs est précisément de prévenir ou de réduire la pauvreté.

Certes, les remarques mentionnées ont été émises dans le cadre du Code européen de sécurité sociale, mais cette remarque a toute sa pertinence dans le cadre de notre discussion, et il convient d'inviter le gouvernement à procéder aux calculs nécessaires pour établir le coût en termes de pourcentage du PIB qu'engendrerait un relèvement de ces prestations, de sorte que le Royaume-Uni puisse satisfaire à ces obligations. Il convient d'observer que le régime du crédit universel risque de s'avérer insuffisant pour assurer aux personnes concernées un revenu décent car, selon les dernières estimations, la réforme entraînera une diminution de revenus pour un plus grand nombre de foyers (3,2 millions) et bénéficiera à moins de foyers que prévu (2,2 millions). Il s'agit d'un signal d'alarme à prendre au sérieux. Les nouvelles formes de travail et la multiplication des situations précaires doivent conduire à un renforcement de la protection sociale et non pas à un affaiblissement de ses dispositifs. Le gouvernement est dès lors invité à prendre les mesures nécessaires, de sorte à éviter que ce pays, qui a été le deuxième à avoir ratifié la convention n° 102, ne devienne aujourd'hui un piètre exemple de son application.

The Employer members welcomed the Government's announcement that it would report more fully on the application of the Convention in time for the next meeting of the Committee of Experts, including information on the ongoing revision of the social security system. They welcomed the inclusion of this technical Convention among the individual cases to be discussed by the Conference Committee. The Convention had been adopted by the International Labour Conference in 1952 and had been ratified by the Government in 1954. The United Kingdom had accepted Parts II–V, VII and X of the Convention. The Committee of Experts had considered the application of the Convention by the United Kingdom seven times since 1995, including in its most recent observations in 2016. This was the first time that the application of the Convention by the United Kingdom was examined in the Committee.

The Convention was lengthy and complex, which could also be said about the comments adopted by the Committee of Experts. The Employer members wished to emphasize that the role of the Committee of Experts was to make observations on the application of ratified Conventions – in the case at hand, exclusively on Convention No. 102. The Committee of Experts' reference to other binding or non-binding instruments (including the European Social Code of Social Security and the European Social Charter) as well as to the assessment of the Committee of Ministers of the Council of Europe had created confusion as to the standards against which the Government was being assessed. They understood that there was an agreement between the ILO and the Council of Europe. However, the application of the European Code of Social Security was subject to a reporting mechanism to the Council of Europe. The mandate of the Committee of Experts in relation to the foundational work of this Committee was the basis on which Conventions had to be assessed. The assessment of the requirements of Conventions should be assessed in a clear and transparent manner. However, the manner in which the current observations of the Committee of Experts were drafted created confusion, partly because the Committee of Experts had referred to the Code and the Convention interchangeably without providing an explanation about “the Code” and why it was referenced.

They expressed the hope that the Committee of Experts, in order to ensure that the ILO supervisory system was transparent and user-friendly, would take these points into consideration.

Concerning the obligations pursuant to the Convention, the Employer members noted that two main issues had been identified by the Committee of Experts which required further response from the Government. The first was whether non-contributory benefits fell outside the application of the Convention, and whether social assistance benefits fell within or outside the scope of the Convention. The second issue was whether or not the level of benefits fell below the minimum obligation under the Convention. Depending on the outcome of the first issue, an analysis of the second was necessary. It would be helpful to know which minimum wages applied to be able to regard more fully the obligations under the Convention. In addition, the Employer members noted that the Government, in designing social benefit levels, had sought to find a balance between effective benefits on the one hand and incentives to work on the other. They had understood that the Committee of Experts had appeared to be critical of this motivation as being outdated and unreasonable. The position of the Employer members was that striving to maintain a balance between effective benefits and incentives within a sustainable system was in fact a legitimate and reasonable goal for the Government. The Convention was a flexible instrument and, in the view of the Employer members, allowed for such considerations to be made. They concluded by stating that they looked forward to additional information and data provided by the Government before the next session of the Committee of Experts to enable a clearer understanding of the compliance with the Convention.

The Worker member of the United Kingdom stated that current social security benefits in the United Kingdom had failed to meet the minimum requirements of the Convention. Recognizing that the Conference Committee's consideration of the record on social security in the United Kingdom was not best timed in light of its proximity to the general election, she clarified that underlying the technical issues raised in this case were inadequacies in the existing social security provisions in the United Kingdom.

She drew attention to four areas of concern. First, the current social security benefits did not provide an adequate safety net for the most vulnerable in society, and failed to even meet the lowest EUROSTAT at-risk-of-poverty threshold of 40 per cent of median equalized income in the United Kingdom and in the European Union as a whole. The findings of the Committee of Experts had indeed been supported by the latest national statistics, which had confirmed that 70 per cent of working-age adults in working families were in poverty. In addition, the value of out-of-work benefits had also failed to keep pace with earnings, with unemployment benefits falling from about 20 per cent of average earnings in the 1970s to less than 15 per cent at present. Second, although the Committee of Experts in their conclusions focused on out-of-work benefits, the United Kingdom was currently experiencing record levels of in-work poverty with more than 7 million people, including 2.6 million children, facing poverty despite being in a working family. Third, she stated that no attempt was being made to improve social security provision. Instead, recent government proposals had sought to cut the level of protection in future years with many working-age benefit rates due to be frozen until 2020 and support for families with children set to be reduced. In this context, she drew attention to the introduction of Universal Credit in the United Kingdom, which would be significantly less generous than existing tax credits, with cuts to the proposed level of work allowances. Fourth, the social security system had failed to keep pace with changes in the labour market of the United Kingdom, in particular the growth in insecure forms of work such as zero-hours contracts, agency working and the emergence of online platform work (so-called "gig economy"). Those in insecure work were significantly more likely to qualify for in-work benefits due to their low rates of pay but such workers faced serious difficulties in accessing benefits due to the fluctuating nature of their working hours.

She also drew attention to the concern that the current tax system in the United Kingdom might create incentives for employers to increase their reliance on forms of insecure work in order to reduce costs and avoid liability for employment-related taxation, in the form of national insurance contributions. Employers might also reduce their tax liabilities by employing individuals on a self-employed basis or even misclassifying workers as self-employed. She also addressed the question of the interpretation of ILO Conventions raised by the Employer members, by referring to the mandate of the Committee of Experts as agreed by the social partners in February 2015 and March 2017. The agreement confirmed that the Committee of Experts could undertake an impartial and technical analysis of how the Conventions were applied in law and practice by member States, while being cognizant of different national realities and legal systems.

In conclusion, she called on the Government to take all steps necessary to comply with the Convention, including increasing the levels of benefits. The Government, in consultation with national social partners, should carry out a review of existing social security arrangements with a view to alleviate poverty levels, assess whether existing rules incentivize the use of insecure work and ensure that all working people benefit from effective social protection. The findings of such a review should be communicated to the Committee of Experts.

The Employer member of the United Kingdom requested the Committee to take into account the current situation in the United Kingdom as a result of the elections that had been held only one day prior to the discussion of the case in the Committee. Following the dissolution of the Parliament and until the formation of a new Government, civil servants could not take any action or make any announcements that showed affiliation to a political party (so-called “Purdah” rules), which necessarily restricted what the Government could do with regard to the case before the Committee. In the future, the Committee should consider the existence of national elections to form a government when selecting countries for supervision, due to the clear risk of prejudice to the country concerned, especially those countries that had rules similar to the “Purdah” rules. The Employer members of the United Kingdom had not sought the supervision of this case.

Moreover, given that the Committee of Experts had agreed to examine the European Code of Social Security, urgent clarification was required as to whether the social partners were expected to make future observations not only on the application of the Convention, but also the Code. Clarification was also required regarding the status of the Technical Notes prepared by the Office concerning the state of application of social security provisions of the international treaties on social rights ratified by the United Kingdom. The observation of the Committee of Experts included references to the European Code of Social Security and the European Social Charter, in accordance with the arrangements made between the ILO and the Council of Europe. However, the mandate of the Conference Committee was limited to supervision of ILO Conventions and Recommendations only, and the Government had been placed on the shortlist with respect to the Convention only. It was not the Committee’s mandate to supervise the observation of the Committee of Experts in respect of the European Code, which was the role of the Council of Europe. While understanding the logic of a coherent analysis of the European Code and the Convention, the dual observation made by the Committee of Experts rendered the supervision of the application of the Convention challenging.

At the time of the entry into force of the Convention in 1955, the Employers’ group had highlighted that the option of choosing branches of social security was incompatible with the principle of specific and comparable obligations in the ILO Constitution, and that there should be different Conventions for each branch of social security. With more than 60 years having passed, supervising obligations set in 1955 against national circumstances in 2017 was clearly unsatisfactory. He therefore questioned the up-to-date status of the Convention and whether it should be the subject of the Standards Review Mechanism process.

The Committee of Experts had observed that current sickness benefits, unemployment benefits, and survivors’ benefits fell below the permitted level prescribed in the Convention. He understood that the Government had disagreed on this point, insisting that social assistance benefits were not social security benefits and therefore should not be included in the calculation of overall protection levels. There was thus a clear conflict of interpretation, the Experts appeared to concede that social assistance benefits fall out of the calculation, which was of concern because the Experts should not determine the meaning of the provisions of the Convention and then apply them. While anticipating that the Government would consider the Committee of Experts’ comments, which provided non-binding guidance, and this Committee’s conclusions in respect of Convention No. 102 only, he emphasized that the Government could balance its social security scheme in a manner determined at the national level while respecting its international obligations.

The Worker member of Australia indicated that the most significant shift in the world of work was the rise of precarious employment in the last two decades. In 2011, it was estimated that half of all jobs worldwide were considered precarious. The exponential rise in precarious employment provided a series of challenges for social security schemes. For example, where the scheme was based on a model of full-time, permanent work, it could exclude precarious workers when they were unemployed, sick, disabled or in retirement. Even when precarious workers were formally protected, the lack of continuity in employment might result in inadequate coverage or limited benefits during unemployment and retirement. Gaps in social protection of this character led to further precariousness, as workers were forced to enter unregulated forms of employment in order to survive. This was not consistent with the obligations under the Convention.

It was therefore vital for governments to review social security arrangements to ensure that the social safety net provided the support necessary for workers in precarious or insecure employment. The level of insecure work in the United Kingdom suggested that some analysis and review should be undertaken to ensure that these workers were protected by the social safety net. The number of workers in the United Kingdom in positions where they could lose their jobs at short or no notice had grown by almost 2 million in the past decade. More than one in ten workers now faced precarious employment conditions. Half of the biggest group of precariously employed workers, the self-employed, were in low pay and took home less than two-thirds of the median earnings. Two million self-employed people now earned below £8 per hour. The social partners in the United Kingdom should therefore undertake a

review of the social security system to ensure that the growing numbers of insecure workers were adequately catered for by the social security system.

La membre travailleuse de la France a considéré fondamental de rappeler les dispositions du préambule de la Constitution de l'OIT et de la Déclaration de Philadelphie qui affirment qu'une paix universelle et durable ne peut être fondée que sur la base de la justice sociale, et que la pauvreté, où qu'elle existe, constitue un danger pour la prospérité de tous. La commission d'experts a considéré que le niveau des prestations de chômage est bien en dessous du taux minimum garanti par la convention. Une recherche indépendante menée par la Fondation Joseph Rowntree a démontré que les bénéficiaires de la prestation de chômage vivent avec un revenu bien inférieur au standard minimum permettant de vivre dans des conditions acceptables, de couvrir les besoins essentiels et de participer à la vie de la société. Les dernières statistiques officielles montrent que 70 pour cent des adultes en âge de travailler dans des familles au chômage vivent dans la pauvreté (évaluée à moins de 60 pour cent du revenu médian après la prise en compte des coûts de logement). Les jeunes adultes ont des niveaux de prestations particulièrement bas. En 2016, une personne en âge de travailler et célibataire demandant l'allocation chômage recevait 39 pour cent du revenu nécessaire à un niveau de vie minimum. Cette allocation a baissé de 41 pour cent depuis 2010. Les couples avec enfants reçoivent quant à eux 61 pour cent du revenu standard minimum, soit 62 pour cent de moins qu'en 2010. Les prestations de chômage, dans leur niveau et modalités, ont été modifiées par des réformes d'austérité qui ont participé à la paupérisation de la population. La presse a fait état de plus de 2 000 banques alimentaires au Royaume-Uni, lesquelles ont apporté trois repas par jour à 1,1 million de personnes en situation de pauvreté extrême, dont 436 938 enfants. Ce nombre de gens dépendant des banques alimentaires a augmenté et prouve que le niveau de pauvreté a augmenté, en partie notamment à cause de ce système de calcul de la prestation de chômage qui réduit les allocations à peau de chagrin. Cumulée aux règles drastiques encadrant l'octroi des prestations de chômage (par exemple l'obligation de trente-cinq heures de recherche d'emploi par semaine au Job Center, ou bien l'interdiction d'arriver avec plus de dix minutes de retard au rendez-vous du Job Center sous peine de voir sa prestation supprimée), la situation des chômeurs est d'une immense précarité. Les politiques d'austérité en complète contradiction avec les dispositions de la partie IV de la convention contredisent également les textes fondateurs de l'OIT qui stipulent que «la pauvreté, où qu'elle existe, constitue un danger pour la prospérité de tous» et que «la lutte contre le besoin doit être menée avec une inlassable énergie au sein de chaque nation et par un effort international continu et concerté dans lequel les représentants des travailleurs et des employeurs, coopérant sur un pied d'égalité avec ceux des gouvernements, participent à de libres discussions et à des décisions de caractère démocratique en vue de promouvoir le bien commun».

An observer representing the International Transport Workers' Federation and the AFL-CIO emphasized that, in current times, the protection provided for in the Convention was needed more than ever. The number of self-employed people in the United Kingdom had grown by 26 per cent over the last decade to 4.8 million, with 1.7 million estimated to receiving earnings lower than the national minimum wage. An ever-increasing number of workers were misclassified as independent contractors, as many companies in the gig economy did not recognize the existence of employment relationships with their workers, thus depriving them of their rights, including those relating to social security entitlements. National courts had recognized this in some cases, finding that workers had wrongly been classified as self-employed. The British tax authority also stated that it would take all necessary steps to ensure that companies who wilfully misclassified their workers would pay the appropriate social security contributions. He called upon the Government to clarify the law so as to deter the misclassification of workers in the gig economy by strengthening remedies and enforcement against misclassification, as well as establishing a strong statutory presumption of employee status. In terms of social protection, rather than redesigning the social security system to accommodate ever-increasing flexibility for employers, the Government should minimize insecurity at work. Even if platform-based drivers were classified as "workers", they were often considered self-employed for tax purposes. Additionally, in terms of Universal Credit, it was unclear whether a "worker" would be considered as a self-employed independent contractor or as an employee. The Government had to act urgently to ensure that platform workers were adequately covered by the social security system. In this respect, he called on the Government to conduct a tripartite review of the social security system and to consider novel solutions, including the strengthening of government-managed or worker-negotiated portable benefits, in order to ensure that workers in the gig economy were given the social protection they deserved.

The Worker member of Sweden, speaking on behalf of the trade unions in the Nordic countries, agreed with the observation of the Committee of Experts that the level of social security in the United Kingdom was significantly low and did not meet the minimum rates required by the Convention. There was a wealth of evidence that those on sickness benefits in the United Kingdom fell well below a minimum income standard required to provide individuals with a decent standard of living. The social security system provided for different forms of benefits for those unable to work due to sickness, subject to different qualification criteria. There were serious problems with these benefits: (i) the level of statutory sick pay was low; (ii) those in low-paid and insecure work were at risk of losing out on the Statutory Sick Pay; (iii) the entitlement was income related and employed workers had to earn £113 per week to

qualify; (iv) those employed in insecure work, including zero-hours contracts and agency work often lost out because they earned not enough to qualify; and (v) the Statutory Sick Pay only applied from the fourth day of sickness.

She deplored that, despite the concerns that the existing level of benefits contributed to high poverty levels, the Government had introduced further cuts in 2017. Workers receiving the Employment and Support Allowance that were expected to be able to return to work within a rather short time, had had their benefits cut by nearly 30 per cent since April 2017. While the Convention provided for the progressive increase in the level of social security, the development in the United Kingdom seemed to go in the opposite direction. Regarding the comments made by the Employer members of the United Kingdom about the status of the Convention, she recalled that although the Convention had been adopted in 1952, the case at hand had proven that the Convention and its application were very much needed for leading a life in dignity in case of illness. She therefore urged the Government to adjust the national legislation to meet the requirements set out in the Convention.

The Government representative thanked the Conference Committee for its careful consideration of the issues raised by the Committee of Experts as well as the information submitted by her Government. She affirmed that her Government had taken due note of all the comments and questions made, and undertook to address these, as appropriate, in the report to the Committee of Experts

The Employer members noted that the submissions of the Government had been brief in light of the national circumstances surrounding the recent elections. They encouraged the Government to provide the required information to the Committee of Experts, including the requested statistics to enable it to better analyse the situation concerning the application of the Convention by the United Kingdom. They looked forward to further consider the application of the Convention, once this information had been submitted.

Les membres travailleurs ont souhaité revenir sur certaines positions exprimées durant la discussion, selon lesquelles la convention serait devenue «obsolette», en indiquant que, si chaque pays qui ne respecte pas une convention invoquait cet argument, aucune convention ne serait respectée. En outre, ils ont considéré utile de rappeler que la recommandation n° 202 sur les socles de protection sociale adoptée en 2012 réaffirme l'importance de la convention n° 102 et indique, dès son préambule, que ces normes conservent toute leur pertinence et continuent d'être des références importantes pour les systèmes de sécurité sociale tout en encourageant à davantage de ratification de cette convention à jour. Comme cela a encore été réaffirmé durant la dernière réunion du mécanisme d'examen des normes d'octobre 2016, il a été à nouveau recommandé d'encourager la ratification de ce texte. Quant au mandat de la commission d'experts, celui-ci est décrit en détail dans son rapport, et les employeurs et travailleurs en ont reconnu l'étendue. Dans le cas du Royaume-Uni, la commission d'experts s'est contentée de rappeler l'existence de l'article 67 de la convention et le sens de cette disposition sur la base des documents préparatoires. Il ressort de cet examen que la signification à donner à cette disposition ne peut souffrir d'aucune discussion. Le seul point qui doit retenir l'attention est la violation de la convention par le Royaume-Uni et l'invitation qui doit être faite au gouvernement de prendre les mesures nécessaires pour respecter la convention. Cela passe par une révision du régime actuel de sécurité sociale en concertation avec les partenaires sociaux, avec comme objectif de réduire sensiblement les niveaux de pauvreté via une augmentation des prestations de sécurité sociale; et de s'assurer que le système actuel n'entraîne pas une augmentation des formes de travail précaires, mais plutôt garanti à tous les travailleurs une protection sociale effective et efficace. Il est primordial que le gouvernement accorde toute la priorité à ce dossier, car la question de la pauvreté et l'état de dénuement ne peuvent être laissés sans réponse. Il en va de la cohésion sociale et de l'équilibre de l'ensemble de la société.

Conclusions

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

The Committee encouraged the Government of the United Kingdom to transmit to the Committee of Experts the additional information requested, including the relevant statistics, in order to enable the Experts to make a fresh evaluation of the application of the Convention in the country.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi.

La commission a encouragé le gouvernement du Royaume-Uni à transmettre à la commission d'experts les informations supplémentaires demandées, y compris les statistiques pertinentes, afin de permettre aux experts de procéder à une nouvelle évaluation de l'application de la convention dans le pays.

Conclusiones

La Comisión tomó nota de la información comunicada por la representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión alentó al Gobierno del Reino Unido a transmitir a la Comisión de Expertos la información adicional solicitada, incluidas las estadísticas pertinentes, a fin de que los expertos puedan realizar una nueva evaluación de la aplicación del Convenio en el país.

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

Convention (nº 111) concernant la discrimination (emploi et profession), 1958

Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)

Bahrain (ratification: 2000)

Bahreïn (ratification: 2000)

Bahrein (ratificación: 2000)

A **Government representative** stressed the Government's keenness to positively interact with all comments and its commitment to the application of international labour standards. The Constitution of Bahrain stated, in its article 18, that people were equal in human dignity and equal in rights and duties to the law, without distinction as to race, origin or language, religion or creed. From this point of view, the legislator had been keen to define the rights and duties of all individuals governed by the laws without any discrimination. For example, the Labour Law in the Private Sector No. 36 of 2012 regulated the relationship between employers and workers in general and did not distinguish between a national and a migrant worker or between men and women. It was also expressly prohibited for employers to discriminate with regard to wages for reasons of gender, origin, language, religion or creed.

Bahrain had a distinct system for managing the labour market and regulating the relationship between employers and workers, based on partnership and transparency with the parties of production, and had taken the following pioneering initiatives in the region to promote the rights of workers according to international labour standards: (i) the right of an expatriate worker to move from one employer to another without the consent of the employer; (ii) the introduction of a flexible work permit system, which allowed any expatriate worker working in an unfair situation to apply independently for a personal permit to work without being associated with an employer, in accordance with the established regulations, thus avoiding any exploitation and guaranteeing access to all aspects of legal care and protection; (iii) the introduction of a national referral system to combat trafficking in persons, which ensured monitoring of any case or complaint relating to trafficking in persons, as well as providing support to the victims and safeguarding their legitimate rights; (iv) the right of all workers to benefit from the system of insurance against unemployment without distinction between their categories or nationalities; (v) recognition of the right of representation for all workers in trade unions regardless of their nationality, the right to strike to defend their legitimate interests, full-time trade union activities and the protection of trade unionists from dismissal because of their trade union activity; (vi) application to domestic work of the basic provisions of the Labour Law concerning labour contracts, protection of wages, annual leave, end of service indemnity and exemption from litigation fees for domestic workers; and (vii) implementation of the Decent Work Agenda in cooperation with the ILO.

Many international reports had praised Bahrain's pioneering steps in terms of labour market regulation, and labour-exporting countries had expressed recognition during official meetings for the care and protection enjoyed by expatriate workers in the Bahraini labour market. The speaker pointed out that the comments of the Committee of Experts did not address the existence of serious violations or breaches but were limited to some formal points, which did not conflict with the existing trends and policies in the country. The comments concerned the lack of a comprehensive definition of discrimination in the Labour Law and the Legislative Decree No. 48 of 2010 regarding the civil service, the lack of a definition of sexual harassment at work in the Labour Law, and the need for procedures to protect expatriate workers.

With regard to the Committee of Experts' comments on the lack of a comprehensive definition of all forms of discrimination in line with the Convention, the speaker stressed that actual violations had not been monitored. However, the Government was ready to cooperate with the ILO and examine the possibility of developing a comprehensive definition of discrimination in these two laws in the light of international labour standards in accordance with specific constitutional and legislative mechanisms and procedures. All national laws were in conformity with the Convention. Section 39 of the Labour Law was very explicit and clear in the definition and prohibition of discrimination. Section 168 of that law as well as Act No. 17 of 2007 on vocational training did not differentiate between workers in determining obligations of the employer regarding vocational training. There were a number of mechanisms available to workers in the private sector to submit complaints in accordance with the protection of their interests and their rights to work, such as the mechanism for settling individual and collective disputes in the Labour Law. The worker was entitled to file an administrative complaint alleging discrimination or to resort to the judiciary. As for public sector employees, the law required the formation of an internal committee in all government agencies to handle complaints filed by employees subject to the civil service law. If they were not settled, the civil servant could file a complaint with the Civil Service Bureau about any measure taken by the employer and had the right to appeal the decision to the courts.

Secondly, regarding the Committee of Experts' comments on the need to legally prohibit sexual harassment at work and to provide for remedies and deterrent sanctions, the Government representative indicated that sections 81 and 107 of the Labour Law and paragraph 33 of the Schedule of the Violations and Penalties in the Legislative Decree regarding the civil service, laid down the penalty of dismissal if a worker or employee violated public morals or honour. The Supreme Council for Women (SCW) monitored any violation of women's rights. There had been no monitoring of cases of sexual harassment in the workplace, and he believed that the Worker and Employer members of Bahrain shared this position. Should the Organization or any other party have information on any such case, the Government was fully prepared to study and respond to it firmly.

Thirdly, with regard to the Committee of Experts' comments concerning the protection of migrant workers, the speaker stated that national labour legislation provided legal protection in terms of regulating labour relations in line with international labour standards. The Ministry of Labour and Social Development and the Labour Market Regulatory Authority (LMRA) did not tolerate any practices of exploitation of migrant workers in the labour market. Many support services had been put in place for migrant workers in the event of abusive practices by employers, such as mechanisms for submitting individual complaints to the Ministry of Labour for the purpose of amicable settlement and direct call centres in the LMRA, which operated in several languages and could inform the worker about the work permit status via various electronic means so as to ensure employers' compliance with their licences. At the same time, expatriate workers had the right to asylum. The Government had issued awareness publications in 14 different languages to be distributed to expatriate workers prior to their arrival and had established a special unit, the first in the region, to support and protect expatriate workers, which operated in seven languages and included a shelter centre that provided integrated services for migrant workers who were victims of exploitation by employers. The concerned bodies were also in contact with foreign embassies to resolve any outstanding problems and help them to correct the situation of expatriate workers. A grace period had been implemented in 2016, during which the Government had allowed expatriate workers to correct their legal status before the competent authorities.

Regarding the freedom of movement of expatriate workers, the Government representative indicated that the freedom of movement regime had been in place in Bahrain since 2009. Between 2015 and 2016, approximately 60,000 migrant workers had moved from one employer to another. Section 25 of the LMRA Law No. 19 of 2006 and Ministerial Decision No. 79 of 2008 regarding the procedures for the transfer of foreign workers to another employer were explicit and clear in this matter. Workers had the right to move from one employer to another without obtaining the employer's consent, while complying with the conditions and periods stipulated in the Ministerial Decision. The addition by the employer of a clause in the employment contract prohibiting the worker's transfer before a certain period of time, did not nullify the right of the worker to move to another employer. Rather, the procedure required the observance of such period and the employer who claimed to be harmed could resort to the judiciary as a result of the worker's non-compliance with the contract of employment. However, no such cases had been registered at present.

The speaker recalled that the Governing Body had decided in March 2014 to close the complaint procedure under article 26 of the ILO Constitution, in view of the historical consensus of the tripartite partners who had signed the Supplementary Tripartite Agreement of 2014 under the auspices of the ILO, in particular with respect to financial settlements for the remaining cases of dismissals, and insurance coverage for the period of interruption. He expressed his Government's appreciation for the role played by the Organization in the signing of the two tripartite agreements. The Government, via the national tripartite committee, which included representatives of the Bahrain Chamber of Commerce and Industry (BCCI) and the General Federation of Bahrain Trade Unions (GFBTU), had made every effort to settle 98 per cent of the cases, by reinstating the dismissed workers to their jobs in the public

and private sectors while preserving all their rights and pension benefits. One hundred and fifty-six of 165 unemployed persons on the list annexed to the Supplementary Tripartite Agreement of 2014 had been reinstated in their former or similar jobs or sometimes paid financial compensation. As for the few remaining cases, the national tripartite committee had found that they were either cases of dismissal unrelated to the events of February and March 2011 or that the workers had been convicted on criminal charges unrelated to work. Lastly, it was ensured that no worker would be harmed because of the interruption of payment of insurance contributions, in accordance with the 2014 Supplementary Agreement. The majority of large companies, at their own initiative, had generously covered all insurance contributions during the period of absence from work.

The Employer members recalled that the Government had ratified this fundamental Convention in 2000 and that the Committee of Experts had presented four observations on this case in 2008, 2009, 2012 and 2016. In June 2011, a complaint had been filed under article 26 of the ILO Constitution by some Workers' delegates at the Conference concerning the non-observance by Bahrain of the Convention. According to the allegations, in February 2011, suspensions and various forms of sanctions had been imposed on workers and trade union members, as a result of peaceful demonstrations demanding economic and social changes. The complaint alleged that the dismissals had taken place on grounds of workers' political opinion.

Subsequently, a Tripartite Agreement and a Supplementary Tripartite Agreement had been signed in 2012 and 2014, respectively, by the Government, the GFBTU and the BCCI. At its 320th Session (March 2014), the Governing Body had invited the Committee of Experts to examine the application of the Convention by the Government, and to follow up on the implementation of the reached agreements. According to the Tripartite Agreement of 2012, the national tripartite committee that had been put in place to examine the situation of the dismissed workers, should continue its work. Under the Supplementary Tripartite Agreement of 2014, the Government, the GFBTU and the BCCI had agreed to: (i) refer to a tripartite committee those cases that had not been settled which related to financial claims or compensation and, in the absence of consensus, refer to the judiciary; (ii) ensure social insurance coverage for the period of interrupted services; and (iii) reinstate the 165 dismissed workers back to the public service sector, to major corporations owned by the Government and to a select list of private companies. The Government had not furnished any information to the Committee of Experts in respect of measures taken to implement the reached agreements. In this regard, the Employer members, having noted the information provided, urged the Government to report to the Committee of Experts on the specific measures taken to implement the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014 to ensure the application of the Convention.

Furthermore, they referred to the comments of the Committee of Experts concerning the absence in national law of a definition of discrimination enumerating all prohibited grounds listed in the Convention, the limited protection against discrimination granted by the Labour Law, and the lack of a prohibition of discrimination in the Legislative Decree regarding the civil service. The Employer members, welcoming the commitment expressed by the Government in this regard and encouraging collaboration with the ILO, urged the Government to draft, with technical assistance from the Office, a definition of discrimination in line with the prohibited grounds set out in the Convention. They also encouraged the Government to ensure the inclusion of a prohibition of discrimination in the Legislative Decree regarding the civil service, and to ensure the protection of equality of opportunity and treatment in employment. Welcoming the indication that existing legislation prohibited all forms of discrimination, they requested the Government to provide copies of the relevant laws and regulations.

With reference to the comments of the Committee of Experts concerning the absence of a legal definition and prohibition of sexual harassment, the Employer members noted the Government's indication that sections 81 and 107 of the Labour Law and paragraph 33 of the Schedule of the Violations and Penalties in the Legislative Decree regarding the civil service penalized sexual harassment with dismissal, and that the issue was being monitored by the SCW. Emphasizing that the Convention prohibited discrimination based on sex and that national legislation should therefore prohibit sexual harassment at the workplace, the Employer members urged the Government to provide additional information in this regard, in particular on the operation of the mentioned provisions in practice, the manner of presenting complaints, and the monitoring by the SCW.

As regards the comments of the Committee of Experts concerning protection of migrant workers, such as domestic workers, against discrimination in employment, the Government had referred to measures taken in relation to mobility and trafficking of migrant workers and freedom of association. They encouraged the Government to provide additional information, more responsive to the Committee of Experts' comments, as to how migrant workers were protected against discrimination in employment in line with the Convention. The Employer members encouraged the Government to engage with the ILO to work towards full compliance with the Convention.

Les membres travailleurs ont observé que certains commentaires de la commission d'experts concernant l'application de cette convention fondamentale portant sur la discrimination étaient particulièrement préoccupants. Ils ont souligné que les différences de traitement injustifiées sous-entendent que tous les êtres humains ne sont pas égaux, ce qui porte directement atteinte à la dignité. Comme toutes les sociétés sont confrontées à la discrimination, il est essentiel de mettre en œuvre, partout dans le monde, les dispositifs nécessaires à son élimination, comme le requiert la convention.

En février 2011, le pays a connu des manifestations réclamant des changements économiques et sociaux dans le contexte du «Printemps arabe». Il ressort d'une plainte déposée à la 100^e session de la Conférence internationale du Travail, en juin 2011, que des suspensions et des sanctions ont été infligées à des personnes ayant participé à ces mouvements. En 2012 et 2014, ont été respectivement conclus un accord tripartite et un accord tripartite complémentaire instituant un comité tripartite qui avait notamment pour objectifs: i) de réintégrer les travailleurs licenciés; ii) de statuer sur les indemnisations financières en suspens; et iii) d'assurer une couverture en matière de sécurité sociale pendant la période d'interruption de service. Il convient de rappeler que la liberté d'expression est indispensable pour maintenir la vitalité de la société et la réalisation du progrès humain. Par conséquent, personne ne peut être discriminé ni subir un traitement défavorable uniquement en raison de son opinion politique, a fortiori lorsque cette opinion est contraire à l'opinion dominante. La constitution du comité tripartite témoignait d'une volonté partagée par les différentes parties prenantes de trouver une solution acceptable par tous. Malheureusement, le gouvernement n'a communiqué aucune information sur la mise en œuvre concrète de ces accords. Ces informations doivent être fournies, et les accords doivent être intégralement exécutés. Pour éviter qu'une telle situation ne se reproduise, des mesures législatives, telles que l'inclusion de l'opinion politique dans la liste des motifs de discrimination interdits, doivent être adoptées.

En ce qui concerne la législation nationale, il est essentiel qu'elle définisse précisément la notion de discrimination, qu'elle énonce l'ensemble des motifs interdits, qu'elle couvre tous les secteurs de l'économie et toutes les catégories de travailleurs – y compris les travailleurs agricoles et les travailleurs domestiques – et qu'elle interdise expressément la discrimination directe et la discrimination indirecte, dans tous les aspects de l'emploi et de la profession, y compris l'accès à la formation professionnelle et les conditions d'emploi. La législation actuelle est insuffisante au regard des dispositions de la convention pour lutter efficacement contre toutes les formes de discrimination. En outre, aucune information n'a été communiquée sur la manière dont le gouvernement assure une protection adéquate des travailleurs contre la discrimination, notamment via l'inspection du travail ou les tribunaux (nombre de cas traités, sanctions prononcées, etc.). Il convient aussi de remarquer que des secteurs entiers, comme l'éducation, font l'objet d'un traitement distinct et se voient privés des libertés les plus essentielles telles que la liberté syndicale.

S'agissant du harcèlement sexuel, les membres travailleurs ont souligné qu'il s'agit d'une forme de discrimination particulièrement grave mettant en cause l'intégrité et le bien-être des travailleurs et que les moyens qui lui sont consacrés doivent être à la hauteur du problème. Le gouvernement renvoie aux dispositions du Code pénal. Or, comme le souligne la commission d'experts, les poursuites pénales ne suffisent pas pour éliminer le harcèlement sexuel. Il doit être expressément interdit par la législation sociale qui doit prévoir des sanctions dissuasives et des compensations adéquates.

Les travailleurs migrants représentent 77 pour cent de la main-d'œuvre du pays et sont dans une situation particulièrement vulnérable, ce qui implique qu'il est primordial qu'ils puissent bénéficier d'une protection contre la discrimination fondée sur les motifs énumérés par la convention. Il convient de saluer les efforts accomplis par le gouvernement concernant le droit désormais reconnu à ces travailleurs de changer d'employeur sans obtenir l'autorisation préalable de leur précédent employeur, ainsi que la possibilité d'introduire des recours individuels sans avoir à supporter les frais de justice. Toutefois, il serait souhaitable de faire en sorte que les règles adoptées à cette fin n'aient pas pour effet d'accroître leur dépendance vis-à-vis de l'employeur en leur imposant des conditions et des restrictions supplémentaires. Le gouvernement doit également communiquer des informations sur les points suivants: i) les activités de l'Autorité de régulation du marché du travail concernant les demandes de transferts, selon le sexe, la profession et le pays d'origine des travailleurs, ainsi que les cas de refus et les motifs invoqués; et ii) les mesures de sensibilisation des travailleurs migrants quant aux mécanismes leur permettant de faire valoir leurs droits.

Se référant à la demande directe de la commission d'experts, les membres travailleurs ont également insisté sur la question de l'égalité des chances entre hommes et femmes, notamment sur l'interdiction faite aux femmes par la législation d'accéder à certaines professions. Ces interdictions vont au-delà de ce qui est nécessaire pour protéger la maternité. Par ailleurs, certaines actions menées par le Conseil suprême aux affaires féminines mentionnées dans le rapport du gouvernement, telles que l'adoption du Plan national pour la promotion des femmes, doivent être saluées alors que d'autres continuent à véhiculer stéréotypes et préjugés sur les aspirations et aptitudes

professionnelles des femmes. Tout en se déclarant conscients des liens étroits entre la situation actuelle et des raisons historiques et sociales qu'il n'est pas aisé de modifier, les membres travailleurs ont souligné que seule une action politique volontariste et déterminée, comportant des choix forts, peut permettre de modifier profondément les structures actuelles. Ils ont également invité le gouvernement à prendre les mesures nécessaires pour élaborer un plan national visant à éliminer la discrimination fondée sur la race, la couleur, la religion, l'opinion politique, l'ascendance nationale et l'origine sociale tel que prévu par la convention.

Les membres travailleurs ont souligné le rôle de pionnier que le Bahreïn a souvent joué dans la région, notamment en ce qui concerne les programmes nationaux du travail décent ou la sortie progressive du système de *kafala*. Afin de poursuivre la marche vers davantage de respect des droits humains et de justice sociale, ces acquis doivent être maintenus et renforcés, et les efforts nécessaires pour mettre en œuvre la convention doivent être accomplis.

The Employer member of Bahrain referred to the Government's keenness to launch continuous initiatives to protect and guarantee the right of workers to enjoy an appropriate healthy environment, access to justice and equal treatment, regardless of nationality or category. He commended the valuable cooperation between the Government and the social partners to give concrete expression to the principles of labour market transparency and the migrant workers' freedom to change employers. A new flexible work permit system had been established, allowing migrant workers to obtain work permits on an individual and direct basis without being linked to an employer, as well as to have access to employment insurance without discrimination based on nationality. Migrant workers' freedom to join unions was also guaranteed by the said system. Moreover, domestic workers were now covered by the Labour Law's basic provisions, including by the principles concerning labour contracts, protection of wages and annual leave.

The BCCI, in its capacity as a party to the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, had followed all developments and progress made in implementing the agreements, such as the reinstatement of 98 per cent of the dismissed workers. The speaker welcomed the efforts made by the ILO and its Governing Body in supporting the implementation of the agreements and the cooperation between the social partners. The involvement of Bahrain's employers in the efforts made with a view to reinstating the dismissed workers was commendable. Employers had covered insurance premiums during the unemployment period, an initiative beyond the letter of the above-referred Agreements. The national employer representatives, through their intensive meetings and constructive dialogue in the national tripartite committee formed to follow up the implementation of these agreements, had contributed to overcoming the difficulties generated by the settlement of all the dismissal cases which occurred in 2011. There had been no accounts of discrimination against workers returning to their jobs.

As concerns the Committee of Experts' observations on the issue of migrant workers, he emphasized the absence of cases of discrimination among workers of different nationalities or categories. The private sector had succeeded in achieving rapid growth by providing jobs for migrant workers with stable working conditions and without discrimination. As for sexual harassment at the workplace, the existing legal instruments addressing this issue were sufficient to provide protection to any individual. The BCCI had committed itself to allowing migrant workers to move freely from one employer to another, in accordance with existing law.

The speaker encouraged the Government and the national workers' representatives to continue holding fruitful tripartite meetings, which would bring about further initiatives and actions promoting decent work opportunities, achieving equality and combatting discrimination in accordance with national legislation and international labour standards. He welcomed the resumption of development cooperation programmes between the Government and other stakeholders.

The Worker member of Bahrain underlined the importance of social dialogue. The collaboration between the GFBTU and the International Trade Union Confederation (ITUC) had been crucial to defend the rights of workers and showed that the ILO was the best agency to promote social justice and achieve equality of workers in Bahrain. The efforts of the Director-General of the ILO, who had reaffirmed the right of workers to proper representation, were highly commended. With regard to discrimination, five elements were to be highlighted.

First, a project entitled "1912" initiated in 2009 that planned the reinstatement of university graduates, had been interrupted in 2011, following the undue dismissal of 63 university graduate girls based on their political views, and at the same time recruited other graduates based on their loyalty to the Government. Second, the Government had been facing obstacles to the implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, on the basis of which the complaint filed in 2011 under article 26 of the ILO Constitution had been withdrawn. On 28 May 2017, after two years of hiatus, and following repeated calls of the

GFBTU, the national tripartite committee established to implement the Tripartite Agreements at the national level had been restored. Also on the same day, the Deputy Minister of Labour gave the GFBTU representative a list of dismissed workers to be reinstated in their jobs, which demonstrated that the tripartite agreement had not been finalized. Third, workers in the public sector were facing instances of discrimination. A Government Decree of 2002 was still in force, despite the repeated calls for its repeal. It deprived thousands of employees from the public sector of their right to organize. Fourth, since the complaint filed in 2011, the Government had dissolved free trade unions and had imposed parallel trade unions at the local and international levels. The GFBTU had been hindered from meeting with international experts when meetings were planned internationally. For instance, the Government had attempted to modify the composition of the delegation of Bahrain to the International Labour Conference. Despite the supervision of the ILO, many programmes had been impeded. The Decent Work Programme in Bahrain had been frozen by the Government. Fifth, the GFBTU had called for the rectification of the imbalanced labour market and the implementation of the 2012 and 2014 Tripartite Agreements. Legislation that protected against discrimination based on gender and nationality was welcomed as it upheld the rights of workers, especially migrant workers. In the food industry, there had been cases of girls forced to engage in prostitution and cases where the workers were paid only in food.

The speaker expressed doubts as regard the possibility for migrant workers to file a complaint and denounced the absence of appropriate legislation, and the lack of implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014. The Government was called upon once again to implement the agreements. The Government had delayed this implementation, despite the supervision of the ILO. The decision adopted by the Ministry of Labour providing for the reinstatement of workers had still not been applied. The ILO staff in Beirut were not allowed to enter Bahrain to participate in activities planned by the ILO, in addition to banning workers from organizing at their workplace, which led to a further deprivation of their rights.

Employer organizations targeted workers who tried to establish trade unions at the workplace under the GFBTU umbrella and forced other workers to establish trade unions under the other Federation placed under Government supervision.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia Herzegovina, Montenegro, Norway and Serbia recalled the engagement of the EU in promoting the universal ratification and implementation of the ILO fundamental Conventions, as part of its Strategic Framework on Human Rights and Democracy. The case had already been discussed by the Governing Body of the ILO, following a complaint filed by Workers' delegates under article 26 of the ILO Constitution. Pursuant to the allegations presented in the complaint, suspensions and other sanctions had been imposed on trade union leaders and members, in retaliation for the peaceful demonstrations of February 2011 that had called for economic and social changes. In March 2012, a Tripartite Agreement had been reached under the auspices of the ILO and a national tripartite committee had been created. Updated information had to be provided regarding the settlement of the cases covered by the tripartite agreement, in particular in relation to the reinstatements and financial compensation of the workers that had been dismissed. Moreover, the Labour Law did not cover domestic workers and similar jobs, which were mainly held by migrant workers. The same law did not provide a clear and comprehensive definition of discrimination in employment and occupation. The Government was urged, in line with the observation of the Committee of Experts, to include a definition of discrimination covering all workers in all aspects of employment and prohibiting both direct and indirect discrimination, on the basis of all the grounds covered by the Convention. Civil servants also had to be protected against discrimination, including through the amendment of the Legislative Decree regarding the civil service. Furthermore, migrant workers were particularly exposed to discrimination in employment and occupation, and within this specific group, domestic workers, mostly women, were especially vulnerable. As domestic work was often viewed as a private matter, there were no precise legislative and administrative provisions regulating the relationship between domestic workers and their employers, which exposed them to abuses. The Government was urged to continue its efforts to raise awareness, and to take additional measures to protect migrant workers and ensure their access to complaint mechanisms. The speaker noted with strong interest the process initiated by the Government with a view to abolishing the *kafala* system. The Government was called upon to ensure that any regulation of the right of migrant workers to change employer did not impose conditions or limitations that would increase the migrants' dependency on their employers. Lastly, although prohibited in the Penal Code, sexual harassment in the workplace was not regulated under the Labour Law. Given the sensitivity of the issue, the higher burden of proof and the limited range of behaviours covered by the Penal Code, the Government was called upon to include additional provisions in the labour or civil law, to prevent sexual harassment in the workplace, provide remedies to victims and establish dissuasive sanctions for perpetrators.

The Government member of Kuwait, speaking on behalf of the Gulf Cooperation Council (GCC), noted his appreciation for the efforts of the Government to guarantee the rights of workers regardless of their category or nationality, and to create an environment of justice and equality, free of discrimination. He welcomed the practical

initiatives launched by the Government in collaboration with the other partners of production, such as: the labour market management system in cooperation with social partners; the conditions allowing migrant workers to freely change employers and allowing those subject to exploitation or unfair working conditions to obtain work permits without ties to a specific employer; the inclusion of all workers in insurance plans against unemployment, without discrimination on the basis of nationality; the freedom to join trade unions guaranteed by law to all without discrimination; the inclusion of domestic workers' working conditions in the Labour Law; and the other achievements praised in the report of the Committee of Experts. The speaker also expressed appreciation for the efforts made by the Government to settle the files of the persons dismissed in February and March 2011, its commitment to implementing the Tripartite Agreements of 2012 and 2014, and the reinstatement of the dismissed workers with the support of the social partners. In addition to this remarkable achievement, and as a result of fruitful social dialogue and of the Supplementary Tripartite Agreement of 2014, the continuation of pension rights and the obligations of companies to pay for employees' premiums throughout the dismissal period had been secured. The Government had undertaken several initiatives to protect migrant workers, such as ensuring access to complaint mechanisms and to the judiciary without fee, and providing protection in the private sector under the Labour Law. On behalf of the GCC, the speaker welcomed these efforts to combat discrimination, achieve equality and justice for workers, and regulate the labour market, and trusted that this progress would continue. Reaffirming support for continued tripartite dialogue and initiatives promoting decent work opportunities, equality and non-discrimination in accordance with national legislation and international labour standards, he called upon the ILO to intensify its development cooperation programmes and thereby contribute to strengthening the commitment of GCC member States to the application of international labour standards.

The Employer member of the United Arab Emirates noted with great satisfaction the steps taken by the Government in protecting workers and providing them with decent working conditions. The measures adopted by the Government to implement the Convention included the enactment of the Labour Law. The provisions on the relationship between employers and workers did not distinguish between a national and a migrant worker or between men and women, and prohibited discrimination in regard to wages. Furthermore, all workers benefited from the system of insurance against unemployment, without discrimination on account of nationality. The Government had also created a number of complaint mechanisms, available to workers in the private and public sectors.

With regard to sexual harassment, section 107 of the Labour Law provided for the dismissal of workers or employees who violated public morals. This legislation afforded protection against sexual harassment, by word or deed. Turning to the protection of migrant workers, the Government had created a special unit, the first in the region, to support and protect migrant workers according to international standards. The unit included a shelter centre, where integrated services were provided to migrant workers who had been victims of abuse. On the implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, the Government had, according to its indications, succeeded in settling more than 98 per cent of the cases of dismissals in the aftermath of the events of February and March 2011. Moreover, the Government had ensured the reinstatement of the workers concerned without prejudice to their acquired rights and pension benefits, and most major companies had voluntarily covered all insurance contributions during the period of absence from work. This initiative had benefitted the workers and had contributed to the rebuilding of trust between workers and employers.

The speaker concluded that these steps reflected the genuine will of the Government to establish a working environment that protected the dignity of workers and enabled employers to cooperate with all parties. The measures adopted to combat discrimination evidenced the efforts undertaken by the Government to offer to migrant workers working conditions equal to the ones of nationals. The Committee of Experts was called upon to acknowledge the Government's progress in the implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, as well as the prohibition of discrimination in employment and occupation in the country.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, was pleased to note that the delegation from the GFBTU had arrived in Geneva, following the lifting of its travel ban. Seventy per cent of the workforce of Bahrain was composed of migrant workers, who were exploited and deprived of their main economic and social rights. As underlined by the Committee of Experts, the Labour Law excluded domestic workers from the scope of the non-discrimination provisions. This was not acceptable and made domestic workers even more vulnerable to exploitation. She deplored the remaining limitations on the possibility for migrant workers to change employers. The very low number of requests for transfers of employers accepted by the LMRA shared by the Government was concerning. Thousands of workers had not been paid salaries for many months, a situation that had deeply affected the workers concerned and their families abroad, waiting for remittances. The previous year, thousands of migrant workers had engaged in a strike over non-payment of their salaries, and more recently, large numbers of construction workers had protested over unpaid wages. According to the GFBTU, there was no major progress on the issue of wage arrears. The Migrant Workers Protection Society (MWPS), had been supplying food and emergency kits to the affected workers living in labour camps. The speaker fully supported the

recommendations of the Committee of Experts and urged the Government to take urgent action to ensure the payment of wages. In the absence of effective measures of protection against discrimination, including access to remedies, Bahrain's labour legislation had to ensure the legal protection of all workers, and in particular of migrant workers. The Government should exert pressure on companies to ensure their compliance with the legislation in force to protect the rights of all workers. The Government was urged to implement the Tripartite Agreement of 2012, as well as the Supplementary Tripartite Agreement of 2014, and to reinstate the workers dismissed during the peaceful demonstrations.

The Government member of Egypt appreciated the steps taken by the Government, notably the enacted legislation, the measures adopted concerning sexual harassment, such as the establishment of the SCW, and the measures taken to ensure the protection of migrant workers against discrimination in employment. He encouraged the Government to undertake more efforts to ensure compliance with the Convention and make use of the technical assistance of the Office in this regard.

Le membre travailleur de la Tunisie a déclaré qu'il partageait l'opinion des membres travailleurs et du membre travailleur du Bahreïn en ce qui concerne les violations de la convention. En l'absence de législation nationale appropriée, la ratification de la convention par le Bahreïn n'a aucune valeur. Les lois visant à mettre en œuvre la convention dans la pratique ne répondent pas aux exigences de la convention. Sur le terrain, des travailleurs sont discriminés en raison de leur nationalité, de leur sexe, de leur appartenance religieuse, de leurs opinions, de leur statut dans le pays ou de leurs rapports avec le pouvoir en place. Les travailleurs étrangers et les femmes sont victimes de discrimination. Les travailleurs paient au prix fort la chute des prix du pétrole qui a entraîné une augmentation des impôts et de l'inflation. S'agissant des libertés individuelles et de la liberté syndicale dans le pays, si l'on peut parler librement, la situation s'est dégradée depuis 2010. Des cas de détention et de renvois de syndicalistes ont été signalés.

The Government member of Bangladesh noted the Government's efforts to address the comments of the Committee of Experts and to improve working conditions, particularly with regard to the protection of workers from sexual harassment. The Government's initiatives to ensure a transparent labour market management system, including the free movement of expatriate workers, were welcome. Moreover, it was encouraging that all workers, including domestic workers, were covered by the Government's unemployment insurance scheme. He also appreciated the progress made by the Government and the social partners at the national tripartite committee in addressing the issues contained in the complaint. The continuation of the ongoing social dialogue should be encouraged, as it was crucial for the enforcement of national legislation, the promotion of decent work and the fight against all forms of discrimination. The speaker encouraged the ILO to provide technical assistance to the Government with a view to achieving sustainable compliance with international labour standards. He hoped that the Conference Committee would take into account the significant efforts undertaken to address the issues raised by the Committee of Experts.

The Worker member of the United Kingdom, speaking also on behalf of Education International, recalled that, after the Arab Spring marches of 2011, the leaders of the Bahrain Teachers Association had been accused of political activism and arrested, and the union itself had been dissolved. Its President, Mr Mahdi Abu Dheeb, had been imprisoned and only released after five years, following significant international pressure, with a travel ban imposed against him, preventing him from speaking freely. She emphasized that discrimination was still firmly in place. Unions of teachers and other public sector unions remained banned. Many teachers involved in the peaceful protests had been discriminated against and dismissed. Contrary to previous statements, 120 teachers who had lost their jobs and livelihood had still not been reinstated. There might be many more as the current illegality of the Bahrain Teachers Association entailed a general fear of speaking out. Instead of reinstating the dismissed teachers, the Government had recruited around 9,000 teachers from other Arab States. In contrast to the usual practice, the Government applied a different treatment to these expatriate teachers, granting them a fast-tracked route to employment and a lighter workload and employing them on more favourable terms and conditions. There was also clear evidence of systemic discrimination against Shia public sector workers in terms of recruitment and conditions of employment. In her view, the situation had not improved since the Committee's previous discussion of this case. The steps agreed upon through tripartite discussions had not been taken by the Government, and Bahraini teachers still faced continued discrimination in their access to employment and conditions of work, and in the exercise of their fundamental right to freedom of association.

The Government member of Pakistan welcomed the steps taken by the Government and its constructive engagement with the supervisory mechanisms of the ILO. While the Committee of Experts underlined that the Labour Law did not cover all forms of discrimination and did not provide sufficient protection against sexual harassment, it did not point out any serious violation regarding these two points. According to the explanations provided by the Government, however, the national legislation defined and prohibited discrimination based on all

the grounds enumerated in the Convention and ensured protection against sexual harassment. The speaker appreciated that the Government allowed the free mobility of expatriate workers, combatted human trafficking, covered all workers under insurance schemes and included domestic workers under the main provisions of the Labour Law. Moreover, irrespective of their nationality, all workers had the right to join trade unions and go on strike to defend their legitimate interests. The speaker also welcomed the efforts made in collaboration with the social partners and the work done by the national tripartite committee to resolve more than 98 per cent of the cases of dismissals related to the events of February and March 2011 as well as the initiatives taken by the major companies with regard to insurance contributions. Finally, he encouraged the Government to continue social dialogue and invited the ILO to provide more technical assistance in the region to support member States on their efforts to comply with labour standards.

The Worker member of the United States stressed that following the popular uprisings of 2011, the Government had revoked the citizenship of hundreds of workers and activists, in clear violation of the Convention, by way of ministerial orders. In 2014, the Government had amended the citizenship laws, to grant the Ministry of Interior the authority to revoke the citizenship of individuals who failed their “duty of loyalty” to the State. While the newly stateless activists could appeal the decision, Human Rights Watch reported that the court system had failed to provide fair trials and impartial verdicts. The revocation of the citizenship of political dissidents by the Government had had significant consequences for trade unionists. Workers who had lost their citizenship had also lost their jobs, their housing, their children’s right to education, and access to social security and other government benefits. Children born after the Government had revoked their parent’s citizenship had also lost their right to Bahraini citizenship. Moreover, in October 2015, the Government had issued a legislative royal decree that had deprived these persons and their beneficiaries of their pensions with immediate effect.

The speaker provided the examples of two activists whose citizenship had recently been revoked, in order to illustrate the situation. Habib Darwish had remained in the country, awaiting the decision from the court of appeal, at constant risk of deportation and unable to obtain a work permit. The Government had accused him of causing “damage to the security of the State”. Although he had worked for his employer for 25 years, during which he had been contributing to his pension fund and to social insurance, he was prohibited from accessing his retirement fund. Hussain Kheirallah, had been allegedly immediately forced to leave the country and transferred to Lebanon, without being given an opportunity to say goodbye to his family, which had made him lose access to social insurance and to his pension fund. Mr Kheirallah believed the Government had revoked his citizenship because of the following: (1) he reported that he was tortured after providing first aid to demonstrators; (2) he believed the Government wanted to send a message to Bahrainis of Persian descent; and (3) in retaliation for his union activism. Because of their political opinions, their union activism, or their ethnicity, many workers had lost their retirement savings, nationality, jobs, housing, and in some cases their families.

The Government representative indicated that he disagreed with the statement of the Worker member of Bahrain concerning the establishment of a trade union by the Government and denied that the Government had imposed any new trade union. Concerning the construction company that had faced financial difficulties leading to wage arrears, wages had been paid without discrimination between local and migrant workers. This payment had occurred after an agreement had been eventually signed between the private company concerned and the Ministry of Finance. The news regarding the payment of wages would soon be published in the newspapers.

With regard to sexual harassment, the Committee of Experts mentioned that this issue was only regulated in one provision of the Penal Code. However, sexual harassment was also regulated under sections 81 and 107 of the Labour Law and paragraph 33 of the Legislative Decree regarding the civil service. These provisions provided that the worker found guilty of sexual harassment should be dismissed. A copy of these laws was at the disposal of the Committee.

Concerning discrimination, section 39 of the Labour Law prohibited discrimination in wages based on sex, origin, language, religion or creed, and there were no cases of discrimination in practice. The Government had taken note of all the interventions. All interventions made in the Committee would be taken into consideration by the Government to improve the situation of the labour market and promote decent work in Bahrain. The Government was committed to respect the conclusions adopted by the Committee, to improve the definitions contained in the Labour Law and to ensure compliance with the Convention, in particular with respect to the definition of discrimination and sexual harassment, the protection of migrant workers and the free movement of the labour force.

The Government welcomed the decision of the Governing Body that information be provided to the Committee of Experts on the application of the Convention and the implementation of the Tripartite Agreements of 2012 and 2014. The Government was committed to provide information in this respect in its report of 2018 and to

achieve results with the ILO technical assistance. The Ministry of Labour and Social Development was discussing and coordinating with the ILO Regional Office in Beirut in this regard.

In conclusion, the speaker hoped that the Committee would take into consideration the achievements made by the Government and emphasized that the Government was fully ready to cooperate with the Conference Committee and the Committee of Experts in providing all the information requested.

Les membres travailleurs ont souligné que les explications et les précisions apportées par le représentant gouvernemental renforcent leur conviction selon laquelle le gouvernement est décidé à faire respecter la convention. Toutefois, des actions concrètes sont indispensables. Il est en effet essentiel que le gouvernement mette intégralement en œuvre les accords de 2012 et de 2014, selon un calendrier précis, et qu'il communique des informations sur les mesures prises en ce sens. Il doit également procéder aux modifications législatives nécessaires afin de couvrir tous les motifs de discrimination énumérés par la convention et d'interdire la discrimination indirecte. Le gouvernement doit également communiquer des informations sur l'application de la législation et prendre les mesures nécessaires pour l'étendre à tous les secteurs. En particulier, les discriminations existant entre le secteur privé et le secteur public doivent cesser. Une attention particulière doit être accordée aux travailleurs migrants afin de ne pas leur imposer des conditions discriminatoires qui accroîtraient leur dépendance. Davantage d'informations devraient être communiquées par le gouvernement sur les actions menées auprès des travailleurs migrants pour les informer de leurs droits et sur les activités de l'Autorité de régulation du marché du travail en matière d'immigration.

Les membres travailleurs ont incité le gouvernement à élaborer un plan d'action national ayant pour but de lutter contre toutes les formes de discrimination, en recourant à l'assistance technique du BIT. Ils ont également sollicité l'envoi d'une mission de contacts directs, compte tenu du contexte décrit dans plusieurs interventions au sein de la présente commission. Le gouvernement devrait s'inspirer de la maxime suivante: «Le chemin le plus droit, le plus court et le plus sûr, celui dont jamais un gouvernement ne devrait s'écarter, est l'égalité devant la loi.»

The Employer members welcomed the Government's commitment to ensure compliance with the Convention. Regretting the Government's inactivity in reporting the measures taken to implement the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, they encouraged the Government to report to the Committee of Experts in this respect. Certain issues required legislative attention in terms of drafting new or amending existing provisions. The Employer members encouraged the Government to ensure that the definition of discrimination protected workers both in the private and public sectors, included all prohibited grounds for discrimination required by the Convention and provided protection of equality of opportunity and treatment in employment including for women. They also encouraged the Government to ensure that sexual harassment was adequately prohibited in national labour legislation and to provide clarifications as to the existing complaint mechanism in the field.

Conclusions

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

The Committee noted the Government's stated commitment to ensure compliance with Convention No. 111. The Committee noted with concern the Government's failure to provide information to the Committee of Experts in regard to measures related to implement the Tripartite Agreements of 2012 and 2014.

Taking into account the discussion, the Committee called upon the Government of Bahrain to:

- report on the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014 in connection with the Government's efforts to comply with Convention No. 111 to the Committee of Experts for its November 2017 session;
- ensure that legislation covers all recognized prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, in both direct and indirect forms, and undertake measures to ensure that discrimination in employment and occupation is prohibited in law and practice;
- ensure that migrant workers as well as domestic workers are included in the protection of anti-discrimination law;

- ensure equality of opportunity and treatment of employment of women;
- ensure sexual harassment is prohibited in the Labour Code and provide information regarding how complaints of this nature may be advanced to the Committee of Experts for its November 2017 session.

In this regard, the Committee calls upon the Government to accept an ILO direct contacts mission to address the Committee's recommendations. The Committee requested that the Government reports in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

Conclusions

La commission a pris note des informations orales fournies par le représentant gouvernemental et de la discussion qui a suivi.

La commission a noté la volonté affirmée par le gouvernement de garantir le respect de la convention n° 111. Elle a noté avec préoccupation que le gouvernement n'a pas fourni d'informations, pour examen par la commission d'experts, sur les mesures visant à mettre en œuvre les accords tripartites de 2012 et de 2014.

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

- faire rapport sur les mesures prises pour mettre en œuvre les engagements que prévoient les accords tripartites de 2012 et de 2014 dans le cadre des efforts accomplis par le gouvernement pour appliquer la convention n° 111, pour examen par la commission d'experts à sa session de novembre 2017;
- garantir que la législation couvre tous les motifs reconnus de discrimination directe ou indirecte interdits qui sont énumérés à l'article 1, paragraphe 1 a), de la convention, et prendre des mesures pour garantir que la discrimination dans l'emploi et la profession est interdite en droit et dans la pratique;
- garantir que la législation antidiscrimination protège les travailleurs migrants ainsi que les travailleurs domestiques;
- garantir l'égalité de chances et de traitement des femmes dans l'emploi;
- s'assurer que le harcèlement sexuel est interdit par le Code du travail et fournir des informations sur la manière dont les plaintes en la matière sont traitées pour examen par la commission d'experts à sa session de novembre 2017.

A cet égard, la commission demande au gouvernement d'accepter une mission de contacts directs du BIT pour mettre en œuvre les recommandations de la commission. Elle a demandé au gouvernement de fournir des informations détaillées en vue de la prochaine session de la commission d'experts de novembre 2017, sur les mesures prises pour donner suite à ces recommandations.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota de que el Gobierno manifestó su compromiso de velar por el cumplimiento del Convenio núm. 111. La Comisión tomó nota con preocupación de que el Gobierno no ha transmitido información a la Comisión de Expertos sobre las medidas relacionadas con la aplicación de los acuerdos tripartitos de 2012 y 2014.

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

- informe a la Comisión de Expertos, para su reunión de noviembre de 2017, sobre las medidas adoptadas para cumplir los compromisos que figuran en los acuerdos tripartitos de 2012 y 2014 en relación con los esfuerzos del Gobierno para aplicar el Convenio núm. 111;

- vele por que la legislación cubra todos los motivos prohibidos de discriminación, tanto directa como indirecta, enumerados en el artículo 1, 1), a), del Convenio y tome medidas para garantizar que la discriminación en el empleo y la ocupación se prohíba en la legislación y en la práctica;
- vele por que tanto los trabajadores migrantes como los trabajadores domésticos estén cubiertos por la protección prevista en la legislación contra la discriminación;
- garantice la igualdad de oportunidades y de trato en el empleo para las mujeres;
- garantice que el acoso sexual esté prohibido en el Código del Trabajo y proporcione información acerca de la manera en que las quejas de esta naturaleza pueden presentarse a la Comisión de Expertos para su reunión de noviembre de 2017.

A este respecto, la Comisión pide al Gobierno que acepte una misión de contactos directos de la OIT para abordar las recomendaciones de la Comisión. La Comisión pidió que el Gobierno informe detalladamente, a la próxima reunión de la Comisión de Expertos, que tendrá lugar en noviembre de 2017, sobre las medidas adoptadas para aplicar estas recomendaciones.

The Government representative of Bahrain welcomed the conclusions and assured the Committee of his Government's commitment to present a report for examination by the Committee of Experts at its next session. As to the recommendation for a direct contacts mission to visit the country, the Government representative sought clarification as to the terms of reference of this visit and in which way it differed from a technical team visit which his Government had already accepted. He concluded by assuring the Committee of his Government's readiness to cooperate with the ILO.

The representative of the Secretary-General invited the representative to contact the secretariat after the closing of the session to obtain detailed information in relation to the direct contacts mission, including its terms of reference.

Employment Policy Convention, 1964 (No. 122)

Convention (nº 122) sur la politique de l'emploi, 1964

Convenio sobre la política del empleo, 1964 (núm. 122)

Sudan (ratification: 1970)

Soudan (ratification: 1970)

Sudán (ratificación: 1970)

A Government representative expressed appreciation for the work of the Committee in examining the implementation of international labour standards. The speaker confirmed his Government's commitment to comply with international labour standards and indicated that it had taken considerable efforts to comply with Articles 1, 2 and 3 of the Convention No. 122. These efforts included the development of a roadmap for the formulation of a national employment policy and the definition of its guiding principles and strategic goals in consultation with the social partners. Following the Government's request, an ILO/UNDP project had been concluded for the development of the roadmap as well as a project to strengthen technical and vocational skills of men and women, which was based on seven working papers drawn up by international experts in 2013, based on visits, meetings and roundtable workshops with the competent officials. These activities had resulted in important recommendations to guide the development of a national employment policy. In 2014, a 35-member working group of the High-Level Advisory Committee was established by Ministerial Decree No. 33 (2014) of 28 August 2014 and tasked with the development of a national employment policy, with the technical assistance from the ILO. A national expert was appointed to draw up the principal guidelines for the elaboration of the policy. The High-Level Advisory Committee, in cooperation with the ILO, had finalized a draft national employment policy by the end of 2016, which aimed to contribute to lowering the unemployment rate and alleviating poverty in Sudan, for submission to the competent authority, the Council of Ministers, for approval in January 2017. The speaker reconfirmed his Government's commitment to its international obligations and its renewed efforts to achieve the goals of the five-year Economic Reform Programme (ERP) 2015–19. Information was also provided on the following measures: microfinancing programmes; the provision of decent work opportunities to ensure productive employment in conditions of dignity; the establishment of effective employment policies in line with the needs of the labour market through improvement

of the investment and employment climate for small enterprises, in addition to self-employment projects, employment programmes in the service sector and employment-intensive projects; linking educational policies and programmes with employment policies and plans, in line with the needs of the labour market; the submission to the Minister of Labour and Administrative Reform of a final draft of a national employment policy developed in consultation with the social partners for transmission to the competent authorities; the re-nationalization of the wheat-growing sector in the Blue Nile and Northern regions leading to effective production and employment creation; the establishment of agricultural projects in the Blue Nile region resulting in the activation of more than 2,000 farms; and public-private partnerships to reactivate the textile sector, leading to the creation of jobs for over 3,000 workers. The five-year ERP, 2015–19, contained additional elements, including plans for export products and a programme to revive Sudanese cotton cultivation and agriculture in the Blue Nile region, involving 2,400 farms. The Government had adopted a comprehensive employment policy through a national dialogue process, which was expected to have a considerable impact on organizational and political structures, including on the entities responsible for implementing the necessary policies that required coordination, such as the Ministry of Finance. This led to the establishment of an Agency for Indicative Planning, which would revise some of the economic policies that had a direct impact on employment creation at the national and local levels. The speaker recalled positive developments in Sudan's foreign relations, including expectations regarding the lifting of the economic embargo next month, which would require the Government to reset its priorities, especially its investment plans, which had a direct impact on employment opportunities. Finally, the speaker expressed the hope that he had provided the Committee with the necessary clarifications.

The Employer members stated that this was the first time the Committee had examined the application of Convention No. 122 by Sudan. This priority Convention required governments to formulate an active employment policy, in consultation with the social partners. Sudan was a country in transition from a conflict to a post-conflict situation that had encountered multiple challenges and with wide disparities in development between its different regions. The country had endured military conflicts and 20 years of sanctions, natural disasters, and struggles in terms of economic growth, especially in its productive sectors; all factors that had contributed to high unemployment rates and inflation. These conditions had clearly affected the development of a national employment policy. Nevertheless, the Government had taken steps towards the development of an active national employment policy. These steps had been supported by the ILO, UNDP and other international organizations, as well as by the social partners. In respect of Articles 1 and 2 of the Convention, many measures had been taken. In 2011, the Government carried out a Labour Force Survey with the assistance of the ILO to identify indicators for the formulation of a national employment policy. Moreover, a tripartite recovery programme envisaged increased funding for education for the poor; increased microfinance funding and increased funding for agriculture and industry; and measures to promote youth employment and reduce the number of workers in the informal economy. In 2012, the Government launched the National Rural Women's Development Programme and established the Department of Women, Children and Persons with Disabilities. In 2014, the Ministry of Labour established a Coordinating Unit for Intensive Employment focusing on the creation of sustainable jobs for youth and vulnerable persons. In 2015, the Government approved the five-year ERP, 2015–19, which aimed to improve macroeconomic policies, investment opportunities and the competitiveness of national goods. In 2016, the Government had submitted a report showing the impact of these initiatives on employment. In relation to Article 3 of the Convention, the following actions were taken: (i) a tripartite National Advisory Committee for Labour Standards was established; (ii) the social partners were updating the National Jobs Charter to take new parameters into account and improve its implementation; and (iii) the social partners, in collaboration with the Government, were working to implement the Paid Training Programme, a programme to train 400,000 graduates in all sectors of economic activity. The Employer members welcomed these initiatives to promote economic growth, eradicate poverty, create jobs and encourage investment. The private sector, as a driver of employment, required an enabling environment to increase trade, facilitate export, and support diversification of the economy. This would only happen when necessary reforms were realized to combat bureaucracy, corruption and illegal practices and build a more conducive, transparent regulatory system. Given the urgency of the situation in Sudan, the Employer members called on the Government to develop a coherent national employment policy, linking all social and economic strategies together. The Government was encouraged to implement a coordinated and transparent action plan which clarified the roles and responsibilities of the social partners to enable them to work together to achieve measurable goals. They also called on the Government to build the capacities of the social partners to work together to implement the national employment policy.

Les membres travailleurs ont rappelé que la promotion de l'emploi figure dans le mandat constitutif de l'OIT. En effet, le préambule de la Constitution de l'OIT mentionne que la lutte contre le chômage est une des mesures devant être prises pour améliorer les conditions de travail. Afin de mettre cette préoccupation en œuvre, l'OIT a élaboré plusieurs instruments, dont la convention n° 122. Les articles 1 et 2 de la convention imposent aux Etats Membres d'adopter comme objectif essentiel une politique active de l'emploi visant à atteindre certains objectifs et de prendre les mesures nécessaires à la réalisation de ces objectifs. Dans le cas du Soudan, la commission d'experts a relevé que le gouvernement a communiqué des informations concernant l'application de ces dispositions,

dont une enquête sur la main-d'œuvre effectuée en 2011 et l'élaboration d'une feuille de route et des documents de réflexion portant sur l'élaboration d'une politique de l'emploi. Les membres travailleurs ont tenu à rappeler le lien indissociable entre le plein emploi productif et le travail décent. Il en résulte que, outre les objectifs quantitatifs tels que le nombre d'emplois que le gouvernement s'est fixés, il convient également d'avoir des objectifs plus qualitatifs visant à promouvoir toutes les dimensions du travail décent. Le gouvernement est donc invité à donner suite à la demande de la commission d'experts quant à la communication de plus amples informations sur l'élaboration et l'application d'une politique d'emploi active, en tenant compte des dimensions du travail décent. Concernant l'application de l'article 2 de la convention, le gouvernement a fait état d'une enquête qui a été menée en 2011 dans le cadre de l'élaboration du programme quinquennal 2015-2019 de réforme économique et qui a permis de recueillir des données intéressantes, notamment sur le chômage dans le pays et sa répartition selon les zones rurales ou urbaines et selon le sexe. Par conséquent, le gouvernement est prié de poursuivre sur cette voie de sorte à disposer de données statistiques fiables et à jour. Enfin, en ce qui concerne la consultation des partenaires sociaux sur les politiques d'emploi, le gouvernement a procédé à la mise sur pied d'un comité consultatif national pour les normes du travail. Rappelant que la notion de partenaires sociaux inclut à la fois les représentants des employeurs mais également ceux des travailleurs, le gouvernement est invité à assurer dans l'organe cité une représentation équilibrée, incluant notamment des travailleurs qui exercent dans le secteur informel et dans les zones rurales. La convention ne précise ni la forme que doit avoir cette consultation ni le moment où elle doit avoir lieu. Toutefois, il est évident que la consultation visée doit intervenir à un moment où il est encore possible pour les différents partenaires d'influer sur le cours des mesures à prendre. Par conséquent, le gouvernement est invité à donner pleinement effet à la convention en répondant aux observations de la commission d'experts et aux conclusions de cette commission.

The Employer member of Sudan indicated that the employers' organizations in Sudan had repeatedly been consulted on the development of a national employment policy and workers' organizations had participated in various meetings in this regard. Sudanese employers were now engaged in consultations regarding the Act on Private–Public Partnership. The Committee of Experts had noted the five-year plan, 2015–19, and noted that the reduction in several productive sectors had affected employment. In the past, Sudan was a successful wheat producer and the challenge was to revive this sector. Increased investment in cotton farming was called for and an injection of funds had been seen by the private sector, particularly in the Blue Nile region. Employers were vital to employment promotion in this sector. Investment policies had helped certain manufacturing industries and had created employment opportunities in some sectors. In the state of Khartoum, the private sector in the textile industry established new enterprises, which had resulted in the creation of 2,400 jobs. Increased production in the edible oil sector resulted in the launch of several new industries and a relative increase in production in established enterprises. Moreover, there had been measures taken in relation to animal husbandry and agro-industrial projects. Several projects had also been introduced in the food industry to rehabilitate enterprises. Furthermore, mills to produce processed foods at reasonable prices had been established. A review of policies on technical vocational education and training were being carried out to ensure that areas that were not needed were not retained in revised training curricula.

The Worker member of Sudan indicated that workers' organizations in Sudan had been part of the consultation process in relation to the development of a national employment policy. For instance, representatives of workers' organizations had been represented in the Higher Council for Employment and in the National Committee for the Civil Service. The speaker stated that the Government had provided support for microfinance initiatives and for the establishment of a labour bank for workers. The Government had also provided subsidies to ensure that workers' basic needs were met, in addition to providing support for housing and implementing social protection measures. In conclusion, the speaker emphasized that the Sudanese workers' organizations were closely associated with all measures aimed at the implementation of the Convention and they would continue to play their part in all efforts aimed at the socio-economic development of the country.

The Government member of Kuwait, speaking on behalf of the countries of the Gulf Cooperation Council (CCG), welcomed detailed information provided by the Government of Sudan in connection with the most recent observation of the Committee of Experts on the application of the Convention. Technical assistance provided by the ILO was also welcomed. The speaker expressed the hope that such assistance would continue in order to provide the Government and the social partners with the necessary support to fully implement the provisions of the Convention. In conclusion, the speaker called upon the ILO and the Government to continue the dialogue and collaboration in this regard.

The Worker member of Nigeria said that employment participation was at the heart of dignity, well-being and shared prosperity for people, communities and economies. Referring to the definition of unemployment as persons who were currently not working but were willing and able to work for pay, currently available to work, and had actively searched for work, it was fair to mention that Sudan's 20 per cent unemployment rate posed a serious

cause for concern. The effects of unemployment on individuals, households and communities were well known, especially in relation to poverty and inequality. The situation was worse for young people who were unable, through gainful employment, to unleash their potential and skills to better their lot and contribute to family and community well-being. It was desperation in some cases that pushed young persons to engage in dangerous journeys across the Sahara Desert and the Mediterranean Sea. The letter and spirit of the provisions of the Convention aim to help to improve opportunities for the creation of decent, gainful and productive employment through a well-articulated employment policy. The development of a roadmap by the Government demonstrated its willingness to achieve the goals set forth in the Convention. The Government was however urged not to delay the process of adopting a national employment policy.

Le membre gouvernemental de l'Algérie a remercié le représentant du gouvernement du Soudan pour les informations détaillées présentées sur l'application de la convention qui reflètent clairement la volonté politique du gouvernement et ses efforts déployés en vue d'élaborer une politique nationale de l'emploi en tenant compte des capacités et des conditions économiques et sociales du pays dans l'esprit de la convention n° 122. L'orateur a rappelé les mesures prises par le gouvernement dans l'élaboration d'une politique nationale dans un partenariat incluant des experts nationaux, les partenaires sociaux et des instances concernées, tout en soulignant l'importance de l'assistance technique du BIT. Le gouvernement a été encouragé à poursuivre ses efforts pour élaborer et mettre en œuvre une politique nationale de l'emploi visant l'élimination du chômage et la création d'emplois décents.

The Government member of Qatar expressed appreciation for the information provided by the Government of Sudan, which confirmed its commitment to apply the provisions of the Convention. The speaker wished to commend the important steps taken by the Government of Sudan, which moved closer towards the adoption of a national employment policy, in consultation with the social partners. Reference was made to the measures that had been adopted by the Government, in consultation with the social partners, and national and international investors, to create decent job opportunities through programmes aimed at promoting full and productive employment. The Government was committed to implement the Convention. The speaker hoped that the Committee would take these efforts into consideration. In conclusion, the ILO was encouraged to provide technical assistance in support of these efforts.

The Government representative thanked all the participants in the discussion and emphasized that his Government was committed to continue its cooperation with the ILO. A national employment policy would soon be adopted. A report on the application of the Convention would be submitted to the Committee of Experts in time for its next session, as well as reports on fundamental Conventions and other ratified Conventions. In response to the statements made, the speaker reiterated his Government's commitment to adopt and implement a national employment policy, in line with the Convention. In a country that had an economy largely based on agriculture, the Government would continue to take measures to reduce unemployment as part of its poverty reduction strategies. Furthermore, his Government undertook to continue consultations with the social partners, including in the High-Level Advisory Committee, as great importance was attached to social dialogue. In fact, social dialogue was as the only way to implement an effective national employment policy. Data from the labour force surveys would be used to develop indicators for various regions of the country. The speaker assured the Committee that his Government was setting up a planning unit entrusted with ensuring equitable levels of development throughout the country. In conclusion, the speaker reiterated that his Government would continue to fully cooperate with the ILO and the social partners in order to effectively implement the Convention.

Les membres travailleurs ont remercié le gouvernement pour les explications apportées et ont exprimé l'espoir que les éléments qui ont été développés durant la discussion seront traduits par des mesures concrètes. Il importe que le gouvernement donne suite à l'observation de la commission d'experts concernant la communication de plus amples informations sur l'élaboration d'une politique active de l'emploi, en tenant compte de la notion de travail décent. En application de la convention, le gouvernement est tenu d'élaborer des méthodes lui permettant de recueillir des données sur le marché du travail de sorte à pouvoir élaborer des politiques cohérentes. Ces méthodes peuvent consister en des enquêtes régulières, à l'instar de l'enquête sur la main-d'œuvre menée en 2011. Une autre piste pourrait aboutir à la mise en place d'un observatoire permanent de l'emploi chargé de récolter les données à ce propos. Enfin, s'agissant de la consultation des partenaires sociaux, le gouvernement est invité à garantir un mécanisme approprié et pertinent impliquant l'ensemble des partenaires sociaux sur un même pied d'égalité.

The Employer members thanked the Government for the information it had provided in relation to steps taken in order to adopt a national employment policy and to help mitigate the impact of the current situation in the country. They noted the information provided concerning the comprehensive economic and employment measures taken in order to declare and pursue an active employment policy designed to promote full, productive and freely chosen employment. They also took note of the information on positive employment data indicating that many initiatives were undertaken and jobs were created in the public and the private sectors. Employment happened when

investment took place; the measure of whether an employment policy was successful or not was firstly whether it encouraged or discouraged investment, and then whether it encouraged or discouraged the creation of jobs. The Employer members called on the Government to: (i) develop a more coherent strategy where all scattered initiatives were structurally linked together to reinforce each other; (ii) to develop a fair and effective governance that entailed processes, decisions and outcomes that ensured real solutions to local problems and secured sustainable development; (iii) to apply a more coordinated and transparent national action plan, where all stakeholders and social partners had clear roles and responsibilities to participate and work together to reach a more tangible and measurable goals; (iv) to build the capacities of employers' and workers' groups, through social dialogue and tripartite cooperation that will help in speeding up the process of adopting and implementing a national employment policy; and (v) to continue accepting ILO technical assistance to implement the above-noted objectives and achieve the expected results to fight poverty.

Conclusions

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

Taking into account the persistence of high unemployment and underemployment which principally affects the most vulnerable persons, women and youth, the Committee requested the Government of Sudan to:

- develop a coherent strategy, in the framework of the national policy, to promote full, productive and freely chosen employment with the participation of representatives of the most representative workers' and employers' organizations;
- continue availing itself of ILO technical assistance, so that the capacity of employers' and workers' representatives can be strengthened.

Finally, the Committee invited the Government to avail itself of ILO technical assistance to implement these conclusions and achieve full, productive and freely chosen employment.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi.

Prenant en compte la persistance d'un chômage et d'un sous-emploi élevés qui touchent principalement les plus vulnérables, les femmes et les enfants, la commission a prié le gouvernement:

- d'élaborer une stratégie cohérente, dans le cadre d'une politique nationale, pour promouvoir le plein emploi productif et librement choisi, avec la participation de représentants des organisations de travailleurs et d'employeurs les plus représentatives;
- de continuer à se prévaloir de l'assistance technique du BIT afin de renforcer les capacités des représentants des employeurs et des travailleurs.

Enfin, la commission a invité le gouvernement à se prévaloir de l'assistance technique du BIT pour mettre en œuvre ces conclusions et parvenir au plein emploi productif et librement choisi.

La Comisión tomó nota de la información proporcionada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

Conclusiones

Habida cuenta de la persistencia de una elevada tasa de desempleo y subempleo que afecta principalmente a las personas más vulnerables, mujeres y jóvenes, la Comisión pidió al Gobierno del Sudán que:

- **desarrolle una estrategia coherente, en el marco de la política nacional, para promover el pleno empleo, productivo y libremente elegido con la participación de las organizaciones más representativas de empleadores y de trabajadores, y**
- **continúe recurriendo a la asistencia técnica de la OIT con lo cual se reforzará la capacidad de los representantes de los empleadores y de los trabajadores.**

Por último, la Comisión invitó al Gobierno a recurrir a la asistencia técnica de la OIT a fin de aplicar estas conclusiones y lograr el pleno empleo, productivo y libremente elegido.

Convenio sobre la política del empleo, 1964 (núm. 122)

Employment Policy Convention, 1964 (No. 122)

Convention (n° 122) sur la politique de l'emploi, 1964

República Bolivariana de Venezuela (ratificación: 1982)

Bolivarian Republic of Venezuela (ratification: 1982)

République bolivarienne du Venezuela (ratification: 1982)

Un representante gubernamental de la República Bolivariana de Venezuela reafirmó el compromiso de su Gobierno con el cabal cumplimiento de los convenios internacionales del trabajo que han sido objeto de ratificación. Desde la última sesión de la Comisión de Aplicación de Normas, se ha reforzado el diálogo con la Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela (FEDECAMARAS). Cabe destacar que, a solicitud del Gobierno, el 13 de junio de 2017, se celebrará una reunión tripartita con los interlocutores sociales nacionales acreditados ante la Conferencia, a la que asistirá el Director General de la OIT. Lamentó que nuevamente se utilizaran las instancias de la OIT para señalar a países cuyas políticas favorecen a los trabajadores. La OIT debe velar por la transparencia de los procedimientos y por un tratamiento justo.

En su último comentario, la Comisión de Expertos constató que el Gobierno presentó indicadores que dan cuenta de una política de empleo sostenida que, desde 1999, ha estado favoreciendo a los venezolanos, entre estas estadísticas se incluyen las del empleo juvenil. También constan en dicho comentario las informaciones brindadas en junio de 2016 en el marco de la discusión ante la Comisión de Aplicación de Normas, respecto del Segundo Plan socialista de desarrollo económico y social de la nación 2013-2019 y de la ejecución de una agenda económica bolivariana. La creación del Consejo Nacional de Economía Productiva (CNEP), en la que participa la central de trabajadores más representativa del país y los empresarios más prominentes de la economía venezolana, también ha sido objeto de mención en el comentario. Con lo cual queda demostrado que en el país hay una real y verdadera política de empleo que ha contenido el desempleo, a pesar de la caída de los precios del petróleo, de la guerra económica y de los disturbios del orden público impulsados por sectores de la oposición.

Opinó que no se justificaba la inclusión en la lista de casos a ser considerados en 2017, habida cuenta de que la Comisión de Expertos no había señalado ningún incumplimiento, sino que se había limitado a pedir ejemplos o informaciones adicionales. La presentación de informaciones adicionales, en atención al pedido hecho por la Comisión de Expertos, debe realizarse en el marco de la próxima memoria regular y no ante la Comisión de Aplicación de Normas. Ante la ausencia de justificación técnica, cabría inferir que la inclusión en la lista de casos tiene un trasfondo político, lo cual es contrario a la objetividad, transparencia e imparcialidad que ha de regir en la OIT. Añadió que, pese a la insistencia de un sector de los empleadores para que su Gobierno sea convocado ante la Comisión de Aplicación de Normas, no conseguirán que éste privilegie intereses privados, capitalistas y particulares, en perjuicio de la clase trabajadora y del pueblo venezolano.

En el comentario de la Comisión de Expertos quedan reflejados alegatos e informaciones sobre la supuesta ausencia de planes de empleo, mencionándose cifras que el Gobierno desconoce y basándose en datos imprecisos, consideraciones subjetivas e informaciones infundadas que el Gobierno rechaza. Otras organizaciones sindicales minoritarias se han sumado a dar cifras sin citar las fuentes de donde las obtienen, ni los métodos bajo los cuales se establecieron los datos. Declaró que, sin perjuicio de lo manifestado anteriormente, con el mejor ánimo y respeto para con quienes integran la Comisión de Aplicación de Normas, se brindaría información actualizada sobre la política de empleo en la República Bolivariana de Venezuela.

En 1999, cuando inició el Gobierno bolivariano, la tasa de desocupación en Venezuela se calculaba en un 10,6 por ciento. En el mes de abril de 2016, la tasa de desempleo se estimaba en un 7,3 por ciento, gracias a políticas claras y contundentes. Tal y como se le indicó a la Comisión de Expertos en su momento, la tasa de desempleo masculino se estima en 6,7 por ciento, mientras que la femenina se estima en 8,3 por ciento, lo cual da cuenta de los esfuerzos por alcanzar la paridad e igualdad de oportunidades laborales entre mujeres y hombres. Resaltó que los indicadores podían ser consultados en la página web del Instituto Nacional de Estadística (INE). El Gobierno ha dirigido un cambio del modelo económico para encarar la dependencia al mercado petrolero y derrotar la guerra económica, entre las medidas ejecutadas figuran: incentivos para la exportación, eliminando restricciones administrativas y facilitando la repatriación de capitales, la apertura de un sistema de subastas para la adquisición de divisas a precios competitivos, así como el acceso a créditos por parte de los sectores productivos. Las empresas más beneficiadas han sido las pequeñas y medianas empresas (pymes). El Gobierno también les brindó asistencia a los negocios saqueados por un sector de la oposición, por medio de financiamiento que les permitirá reanudar y mantenerse en su actividad empresarial.

El plan de desarrollo, que abarca el plan de empleo, se conoce como Plan de la Patria. En ocasión de reuniones celebradas con FEDECAMARAS, sus personeros han manifestado su desacuerdo con dicho Plan, lo cual evidencia que el mismo comporta una verdadera política de empleo. Los interlocutores sociales nacionales acreditados ante la Conferencia podrán solicitar más información sobre el cumplimiento del Convenio, en ocasión de la reunión tripartita del 13 de junio de 2017. Lamentó que FEDECAMARAS así como ciertas organizaciones sindicales minoritarias, a pesar de la invitación girada por el Gobierno para discutir la convocatoria a la Asamblea Nacional Constituyente, se negaran a participar en la misma. Opinó que era contradictorio pedir diálogo social en la OIT y no acudir cuando son convocados para exponer sus opiniones y puntos de vista.

Reiteró su objeción ante la inclusión en la lista de casos, en particular por tener el Convenio sobre la política del empleo, 1964 (núm. 122) un carácter promocional y no ser vinculantes las consultas, refiriéndose a lo dispuesto en el Estudio General de 2010 sobre los instrumentos relativos al empleo respecto del contenido y de la naturaleza de las consultas. También mencionó las palabras de los miembros empleadores expresadas en 2015, ante la Comisión de Aplicación de Normas, concernientes a la ausencia de competencia de parte de la Comisión de Expertos para juzgar la validez, la eficiencia o la justificación de las medidas adoptadas de acuerdo al Convenio y coincidió con lo expuesto en cuanto al carácter promocional del mismo que no especifica el contenido concreto de la política de empleo, y que debe tenerse en cuenta el entorno político, social y económico del país. Concluyó solicitando que el debate se circunscribiera al Convenio objeto de examen.

The Worker members recalled that this was the second consecutive year that the Bolivarian Republic of Venezuela had come before the Conference Committee in relation to the application of the Convention. Although they had previously urged the Government and different sides of the political dispute in the country to resolve the impasse through social dialogue, the situation had deteriorated further. Highlighting the role of social dialogue and tripartism as a possible avenue for peace, the Worker members appealed to all parties to resist the temptation to use the economic crisis and social discontent for political purposes, which would cause greater suffering to the majority of the population. In this regard, they regretted that the Government had not responded to the Conference Committee recommendation that it accept a high-level tripartite ILO mission since 2016.

The Bolivarian Republic of Venezuela faced many challenges, including a deep economic crisis that had had a profound impact on employment generation. That state of affairs was also a consequence of past economic decisions. Between 1999 and 2014, the Bolivarian Republic of Venezuela had benefited from high oil prices, which had allowed the Government to invest in the economy and expand public policies. During that period, the Government had nationalized companies. Such measures had had a positive impact on the creation of jobs, including a decline in unemployment from 14.5 per cent in 1999 to 6.7 per cent in 2014, and had helped foster decent work and reduce informality. High oil prices had also enabled the pursuit of social policies for the poor, and poverty had been reduced from 49.4 per cent in 1999 to 32 per cent in 2013, while extreme poverty had fallen from 21.7 per cent to 9.8 per cent. However, the Government had behaved as if high oil prices would last forever.

Throughout the period of economic growth, no effective measures had been taken to end the dependence of the economy on the export of a single product. To the contrary, dependence on the hydrocarbon sector had grown dramatically; with oil accounting for 96 per cent of the country's total exports. It would be difficult to reduce the country's historical dependence on oil overnight, but efforts to break dependency had not been sufficient. It was no surprise that the economy had been seriously affected by the collapse of international oil prices at the end of 2014. The collapse of the economy had resulted in a deeper crisis; hyperinflation; currency speculation; and shortages in and hoarding of food and medicines, which in turn had impacted on the quality of employment, increased both job insecurity and informality, with negative consequences on the standard of living of the poorest groups. Some estimates suggested that the gross domestic product had contracted significantly in 2016 and that the agricultural

sector had declined, further exacerbating food shortages. The decrease in the number of jobs created had also affected workers. According to government data, unemployment had risen to 7.5 per cent in 2016. Such figures could have been even higher, as underemployment or precarious forms of employment had not been taken into account by official statistics. If workers with reduced working hour contracts had been considered in these data, unemployment would have been around 11 per cent.

With reference to the Government's comments on the Second Socialist Plan for the Economic and Social Development of the Nation 2013–19, the Worker members invited the Government to provide details on how this programme had taken account of the relationships between employment objectives and other economic and social objectives. The Committee of Experts had referred to Resolution No. 9855 of 22nd July 2016, which had been adopted under the State of Exception and Economic Emergency declared by the Government. They felt that in such context, the Government should have ensured that no worker would be temporarily placed in another enterprise without his or her consent.

With regard to the participation of the social partners, the Worker members recalled Article 3 of the Convention and several instances in which the attention of the Conference Committee had been drawn to the lack of measures to enable effective social dialogue. The economic crisis could only be overcome if the social partners joined in the decision-making process in relation to employment policy. Among the conclusions in the Report of the ILO tripartite high-level mission in 2014, the Government had been called upon to establish a tripartite round table with the participation of the ILO to deal with all matters related to industrial relations, including the holding of consultations on legislation concerning labour, social and economic matters. Reiterating the need to implement the commitments made by the Government at the Governing Body, they regretted that the Government had not fully implemented these commitments, in particular the elaboration of a concrete schedule of meetings with employers' and workers' representatives. The Worker members expected to see tangible progress, in line with the objectives that had been set out in the agreed workplan, to ensure ILO standards were implemented and monitored with the full involvement of the social partners.

Los miembros empleadores observaron que, por segundo año consecutivo, el caso objeto de examen concierne a la aplicación de un convenio prioritario que busca fomentar políticas de empleo. Aclararon que, en este caso, el problema no yace en la falta de respuestas de parte del Gobierno, sino más bien en el carácter evasivo de las mismas. En su último comentario, la Comisión aborda distintos aspectos, como son, en el caso de los artículos 1 y 2 del Convenio, la política de empleo, las tendencias del mercado laboral, el régimen laboral transitorio, el empleo juvenil y el desarrollo de las pymes, y en el caso del artículo 3, la participación de los interlocutores sociales, posiblemente el asunto de mayor relevancia. En relación a dichos temas, han presentado observaciones varias organizaciones, además de FEDECAMARAS — la organización más representativa e histórica de los empresarios — así como la Unión Nacional de Trabajadores de Venezuela (UNETE) — la organización histórica de los trabajadores —, la Confederación General del Trabajo (CGT) y la Confederación de Sindicatos Autónomos (CODESA).

En lo que atañe a las observaciones formuladas, se identifican coincidencias, por ejemplo en cuanto a la ausencia de información estadística. Agradecieron las informaciones proporcionadas por el representante gubernamental respecto del desempleo, concedieron que habían intentado obtener datos oficiales, sin éxito. Sería conveniente que el INE analizara lo dispuesto en el Convenio sobre estadísticas del trabajo, 1985 (núm. 160) que aún no ha sido objeto de ratificación por la República Bolivariana de Venezuela. Probablemente, resultaría oportuno que lo estudiara con miras a su ratificación. En efecto, el Convenio núm. 160 es instrumental para la elaboración de una política de empleo adecuada. La ausencia de información puede ser ocasionada, por la incapacidad del Gobierno de producirla, o por la voluntad de ocultarla, en ambos casos la situación dista de ser idónea.

El Banco Mundial recientemente constató la existencia, en la República Bolivariana de Venezuela, de: un déficit fiscal estimado a finales de 2016 por encima del 20 por ciento del PIB; la inflación, una de las más altas del mundo; la depreciación de la moneda, que está siendo negociada en el mercado negro; así como la reducción de las reservas internacionales a más de la mitad, 1 300 millones de dólares. Desde un punto de vista económico, el país está sufriendo un proceso de estanflación, es decir de estancamiento con inflación. En lo que concierne a la demanda, el consumo privado está completamente afectado, socavado por la disminución de ingresos reales, la escasez generalizada de bienes de necesidad básica y los costos de transacción cada vez más altos para hacer negocios. Los niveles de confianza están totalmente deprimidos y la gran incertidumbre, junto con la falta de disponibilidad de bienes de capital, han llevado a una fuerte caída de la inversión. Aunque no se tengan datos sobre la formación de capital bruto o datos precisos de la inversión extranjera directa, sí hay informes en los noticieros que dan cuenta de empresas muy representativas a nivel internacional que están saliendo del país. En lo que respecta a la oferta, la contracción también es generalizada, el control de precios, el control del margen de beneficios que pueden hacer quienes producen bienes y servicios, así como las restricciones a las compras de divisas, a pesar de las recientes medidas de liberalización, han afectado la adquisición de bienes intermedios y de bienes de capital, lo cual ha

repercutido en la industria manufacturera, la construcción, el sector agrícola, los servicios, el comercio minorista, el transporte, el almacenamiento y los servicios financieros y de seguro.

El *Economist Intelligence Unit* ha hecho un análisis reciente de las repercusiones que han tenido los anuncios de incremento del salario mínimo. En 2015, se incrementó tres veces con un rango entre el 10 y el 20 por ciento. En 2016, se incrementó cuatro veces, con rangos entre el 20 y el 50 por ciento. Pero en 2017, se ha incrementado en dos ocasiones, sin diálogo con las organizaciones representativas, la última de ellas se tradujo en un incremento del 60 por ciento, el 1.º de mayo. Citaron el análisis hecho en inglés: «*The move is highly unlikely to placate widespread anti-Governmental sentiment. The Banco Central de Venezuela (the central bank) is likely to print money to fund the increase in the minimum wage (annual growth in monetary aggregates has already risen from 160% at the start of 2017 to 216%) in late April, with a consequent rise in inflation likely to erode purchasing power. Moreover, shortages of food and other consumer items remain widespread, negating the impact of higher wages. [...] these developments indicate that inflation will continue to rise, and are in line with our current forecast that inflation will average 562 per cent in 2017, compared with 422 per cent in 2016. This will be a factor contributing to ongoing and increasing popular unrest.*».

Siguen sin atenderse las solicitudes hechas en 2016 por la Comisión de Expertos. Consideraron que era fundamental hacerle un llamado al Gobierno para que ponga en ejecución todas las acciones y políticas que se le han pedido. Dichas solicitudes están concatenadas con otras hechas en el seno de otros órganos de la OIT. Refiriéndose a la intervención del representante gubernamental, manifestaron su inquietud al escuchar que al CNEP asisten los «empresarios más prominentes» a criterio del Gobierno y no la organización más representativa de los mismos. Ello es una clara vulneración del artículo 3 del Convenio. Resaltaron la conexión existente entre dicha disposición y el caso núm. 2254 que viene analizando el Comité de Libertad Sindical y en el marco del cual se ha deplorado profundamente la persistencia de la situación en materia del diálogo social. Producto de la falta de progresos, se determinó tener una conversación directa con el Gobierno durante la Conferencia. Indicaron que aspiraban, como empleadores, a un clima de diálogo constructivo, inclusivo y genuino.

La miembro empleadora de la República Bolivariana de Venezuela indicó que el caso al año volvía a ser objeto de examen, ya que la situación en el país es insostenible, todos los indicadores han desmejorado notablemente. El Gobierno no dio efecto a las conclusiones de la Comisión de Aplicación de Normas, no realizó las consultas tripartitas para la formulación de una política de empleo, no constituyó una mesa de diálogo tripartito, ni tampoco ha aceptado la misión tripartita de alto nivel de la OIT previo a esta reunión de la Conferencia. El Gobierno dice haber sostenido reuniones con el sector empresarial, en el seno del CNEP. FEDECAMARAS no ha sido convidada a participar en el mismo. Por consiguiente, los acuerdos concluidos con empresarios o gremios de manera individual o sectorial en el Consejo, no sustituyen la participación institucional de FEDECAMARAS ni comprometen al resto del sector empresarial, en la discusión de los temas transversales o de reformas estructurales que el país requiere en materia económica.

Las medidas tomadas en el seno del Consejo Nacional de Economía no han tenido resultados positivos palpables; al contrario, de haber un verdadero diálogo, cómo se podría explicar el cierre de tantas empresas por falta de materia prima, por inviabilidad económica, o por el incumplimiento de parte del Gobierno de sus obligaciones financieras y comerciales. Hizo referencia a la fuerte caída de las importaciones y a los altos niveles de desabastecimiento de alimentos y medicinas, que alcanzan en algunos casos, entre un 80 y un 100 por ciento. Para finales de 2017, se estima una contracción acumulada del PIB, en cuatro años, por encima del 30 por ciento. Al cierre de 2016, las importaciones se habían reducido en un 45 por ciento. La capacidad productiva ha mermado en un 60 por ciento. Según las últimas estadísticas del INE sobre fuerza de trabajo, de abril de 2016, en un año, se perdieron 110 000 patronos y empleadores y 224 500 puestos de trabajo, en relación con 2015. No se cuentan con estadísticas más actualizadas, hace diecisiete meses que no se publican los principales indicadores macroeconómicos oficiales. Se estima que la población económicamente activa cayó en 198 000 personas, con una importante disminución en los segmentos de mujeres y jóvenes entre 15 y 24 años; la población económicamente inactiva aumentó en 612 000 personas.

Según las cifras de la Comisión Económica para América Latina y el Caribe (CEPAL), en 2015, ingresaron a Latinoamérica por concepto de inversión extranjera aproximadamente 134 000 millones de dólares, la República Bolivariana de Venezuela sólo recibió 2 000 millones (aproximadamente un 1,9 por ciento). No es fortuito que, en 2016, más de 45 empresas transnacionales hayan declarado pérdidas en sus balances, por sus operaciones en la República Bolivariana de Venezuela, o incluso hayan cesado definitivamente sus actividades en el país. Más allá del ámbito económico, el país se encuentra inmerso en una profunda crisis política y social, al límite de una crisis humanitaria. Muchos venezolanos mueren por falta de medicinas y 9,6 millones de venezolanos ingieren dos o menos comidas al día. La Encuesta de Condiciones de Vida (ENCOVI) de 2016 señala que al 93 por ciento de los hogares no le alcanzan los ingresos para comprar sus alimentos y que un 82 por ciento de la población vive en

situación de pobreza. El 88 por ciento de los jóvenes desearían irse del país en búsqueda de mejores oportunidades. Por ello no es de extrañar que se lleven más de setenta días de protestas ininterrumpidas en las calles. Deploró la pérdida de más de 70 vidas humanas, muy jóvenes en su mayoría. Hizo un llamado al Gobierno indicando que ya era hora de tener un verdadero diálogo social y no reuniones de carácter meramente informativo, sin agenda definida, sin acciones y ni objetivos concretos.

Mencionó que, paralelamente, continúan las amenazas e insultos proferidos contra líderes de FEDECAMARAS, a través de todos los medios de comunicación social del Estado, se les acusa de ser, entre otros, asesinos, conspiradores o golpistas. Destacó que FEDECAMARAS aceptaba participar en el diálogo convocado en fecha 13 de junio de 2017, pero no han recibido el programa de la reunión. Recientemente, el mismo Presidente de la República acusó a FEDECAMARAS de «haberse pasado del lado de los fusiles», por negarse a participar en una Asamblea Nacional Constituyente convocada por el Gobierno, que ha sido cuestionada por distintos actores, entre éstos, la Fiscal General de la República y algunos magistrados del Tribunal Supremo de Justicia, y que además ha suscitado la interposición de recursos judiciales de nulidad por inconstitucionalidad.

Enfatizó que FEDECAMARAS no mantiene un doble discurso, no participará ni avalará un proceso en el que se pretende dictar una nueva Constitución, sin la venia del pueblo venezolano. Sin embargo, sí es necesario hablar de los temas que permitan resolver los graves problemas que son de interés común y que afectan a todo el país. En especial, FEDECAMARAS desea discutir sobre la reactivación del aparato productivo, el abordaje estructural de la inflación, la recuperación del poder adquisitivo del salario, de planes para la atracción y mantenimiento de las inversiones, del cese de las ocupaciones forzosas de empresas y del respeto de la libre iniciativa empresarial.

Es indispensable y urgente asumir un proceso de verdadero diálogo social, efectivo, responsable, serio y legítimo. Asimismo, es necesario construir las bases de confianza indispensables para dicho diálogo, ya que no es efectiva una política de empleo inconsulta, sobre la mera base de incrementos salariales cada dos o tres meses, anulados por la inflación. Empleadores y trabajadores deben participar en el diseño de las políticas públicas que permitan crear las condiciones básicas para garantizar el sostenimiento de las empresas y de los empleos decentes y así poder ofrecer una vida digna a los venezolanos. Concluyó solicitándole a la Comisión de Aplicación de Normas que, de no ser aceptada por el Gobierno la misión tripartita de alto nivel que se pidió el año pasado, el Consejo de Administración en su próxima reunión estudie nuevamente la conformación de una comisión de encuesta.

El miembro trabajador de la República Bolivariana de Venezuela denunció a la organización de empleadores FEDECAMARAS por el intento de utilizar a la Comisión con fines políticos. Indicó que durante los últimos quince años FEDECAMARAS se ha negado a reconocer la Constitución de la República Bolivariana de Venezuela, los poderes públicos así como la Ley Orgánica del Trabajo, los Trabajadores y las Trabajadoras (LOTTT), instrumento que garantiza el cumplimiento de todos los convenios fundamentales de la OIT. Señaló que FEDECAMARAS lejos de utilizar una política que favorezca el empleo y el cumplimiento del Convenio, ha desarrollado una guerra económica cuyo objetivo es el desplazamiento del poder de la revolución bolivariana para apropiarse junto con las trasnacionales de las inmensas riquezas naturales del país. Al respecto, se refirió al despido de más de 9 000 trabajadores por parte de una de las empresas afiliadas a FEDECAMARAS y conocida por ser la más grande productora de alimentos del sector privado en el país. Asimismo, denunció la perpetración de actos violentos por parte de FEDECAMARAS contra medianas empresas de comercio y producción, a las que el Gobierno tuvo que conceder créditos bancarios para recuperar los puestos de trabajo que fueron destruidos. Manifestó que todas esas acciones amenazan los inmensos logros del pueblo venezolano expresados en mejores y permanentes aumentos salariales, estabilidad laboral, las cifras de desempleo más bajas en la región, educación gratuita y de calidad, así como acceso gratuito a la sanidad. Indicó que el Presidente de la República Bolivariana de Venezuela ha invitado públicamente a los empresarios venezolanos a incorporarse a la instancia nacional de diálogo tripartito, que es el CNEP, donde participan los trabajadores agrupados en la Central Bolivariana Socialista de Trabajadores (CBST), un sector de los empleadores afiliados a FEDECAMARAS y el Gobierno, con miras a elaborar políticas económicas que permitan superar el modelo productivo capitalista. Se refirió al discurso del presidente de FEDECAMARAS ante la plenaria de la Conferencia el 7 de julio de 2017, en el que éste señaló que debe establecerse un diálogo social legítimo en el país; reestructurarse el Estado y los poderes públicos, los cuales deben ser independientes; hacerse un cambio de modelo económico; enfrentar la inflación; y declaró que la constituyente convocada por el Presidente de la República Bolivariana de Venezuela es ilegítima. Manifestó que dicha declaración del presidente de FEDECAMARAS llama a la confrontación y no al diálogo. Expresó asimismo que FEDECAMARAS se niega a participar en la iniciativa de diálogo social, amplio y profundo, como es la Asamblea Nacional Constituyente. Manifestó que los trabajadores y trabajadoras venezolanos y el pueblo venezolano en general, no quieren injerencias en sus asuntos internos, y que son ellos quienes han de resolver sus problemas a través del diálogo. Concluyó que, en conjunto con el Gobierno, las organizaciones de trabajadores garantizan el cumplimiento del Convenio. En este sentido, destacó la fuerte lucha en el marco de la revolución bolivariana por conquistar múltiples derechos anteriormente negados por FEDECAMARAS. Entre tales derechos, subrayó el

aumento del salario mínimo en 34 ocasiones en dieciocho años y que benefició a 14 millones de trabajadores; la negociación de 2 177 contratos colectivos en cuatro años que ampararon a más de 8 millones de trabajadores y trabajadoras; la construcción de 1 millón y medio de viviendas para la clase trabajadora; la dotación de autobuses y taxis a los sindicatos del transporte colectivo de pasajeros; la permanente creación de nuevos puestos de trabajo en el área de la producción agrícola; el apoyo crediticio a las pequeñas y medianas industrias; el impulso de los Consejos Productivos de Trabajadores como organizaciones de la clase obrera para dirigir, planificar y monitorear los procesos productivos; y la creación del CNEP. Finalmente, con base en todas estas razones, expresó su rotundo rechazo a la queja interpuesta por la organización de empleadores FEDECAMARAS.

El miembro gubernamental de Panamá, en nombre del Grupo de los Estados de América Latina y el Caribe (GRULAC), observó que el Informe de la Comisión de Expertos de 2016 se limita a solicitar información adicional y no señala la existencia de un presunto incumplimiento del Convenio. En su Informe, la Comisión de Expertos tomó nota de las informaciones presentadas por el Gobierno sobre la adopción de diversas medidas en el marco del Convenio, tales como el Segundo Plan socialista de desarrollo económico y social de la nación 2013-2019, la implementación de acciones estratégicas denominadas «Agenda Económica Bolivariana», la creación del Consejo Nacional de Economía Productiva en 2016 como instancia de diálogo tripartito que abarca el desarrollo de áreas económicas estratégicas en el país y la Ley para la Juventud Productiva núm. 392, de 2014. Confío en que el Gobierno seguirá presentando información respecto a la aplicación del Convenio y alentó al mismo a que refuerce el diálogo social tripartito. Destacó la asistencia brindada por la Oficina en relación a la reunión tripartita solicitada por el Gobierno que se celebraría la próxima semana en el marco de la Conferencia con las delegaciones de empleadores y de trabajadores venezolanos.

La miembro gubernamental de Cuba suscribiendo la declaración del GRULAC y agradeciendo la información suministrada por el Gobierno, consideró que la Comisión de la Conferencia, al analizar este caso, debía tomar en cuenta la información proporcionada por el Gobierno en su memoria y que aparece consignada en el comentario de la Comisión de Expertos de 2016. Entre tales informaciones destacó la política de empleo, cuyos principales objetivos y líneas de acción aparecen reflejados en el Plan de desarrollo económico y social 2016-2020; los aumentos del salario mínimo básico; regulaciones de inamovilidad laboral; la adopción de un plan reforzado de protección del empleo, los salarios y las pensiones; la estrategia de promoción de la inserción laboral de los jóvenes y la creación del CNEP como instancia de diálogo tripartito que abarca el desarrollo de áreas económicas estratégicas del país. Afirmó que el Gobierno ha cumplido con sus obligaciones en materia de política de empleo, pese al clima de agresiones y guerra económica y mediática, manipuladas desde el exterior con el fin de desestabilizar la sociedad venezolana. Concluyó que no existen fundamentos para que este caso compareciera ante la Comisión de Aplicación de Normas. Considerando que conforme al artículo 22 de la Constitución de la OIT, las informaciones solicitadas al Gobierno por parte de la Comisión de Expertos pueden ser presentadas en la próxima memoria, solicitó a la Comisión de Aplicación de Normas a que garantice el cumplimiento de lo legalmente establecido.

El miembro empleador del Perú afirmó que los datos proporcionados por la representante de FEDECAMARAS evidencian que la política económica y de empleo aplicada en la República Bolivariana de Venezuela ni fomenta el empleo ni lo hace de manera productiva, lo que determina que en la práctica el trabajo no sea susceptible de elegirse libremente como establece el Convenio. Señaló, asimismo, que el Gobierno ha incumplido de manera reiterada las solicitudes de la Comisión de Expertos relativas al mandato de constituir un órgano de diálogo social que incluya a las organizaciones más representativas de trabajadores y empleadores. Por lo tanto, solicitó a la Comisión de Aplicación de Normas que instara al Gobierno a cumplir el Convenio y a aplicar todos los mecanismos disponibles por la OIT con miras a que el Gobierno consulte a las organizaciones más representativas de empleadores y de trabajadores para formular políticas económicas y de empleo.

El miembro gubernamental de Nicaragua suscribió la declaración del GRULAC y agradeció al Gobierno las informaciones proporcionadas. Reiteró su preocupación por los intentos de politizar la labor de la OIT al considerar que se había forzado la discusión del caso sin que haya fundamentos técnicos. Recordó que la Comisión de Expertos no constató ningún incumplimiento del Convenio y simplemente requirió información complementaria y ejemplos de la aplicación del mismo. Se refirió a lo manifestado por los miembros empleadores ante la 104.^a Conferencia Internacional del Trabajo (CIT), en relación al papel de la Comisión de Aplicación de Normas concerniente a este Convenio que debe limitarse a verificar la existencia de una política de empleo que tenga como objetivo el pleno empleo y el empleo productivo, y no a juzgar la validez, la eficiencia o la justificación de las medidas adoptadas. Expresó que, con base en tales declaraciones y a la luz de las informaciones aportadas por el Gobierno, no debe quedar duda de que el Gobierno ha cumplido el Convenio. Tomó nota con agrado de la reunión tripartita que con asistencia del Director General de la OIT se celebrará el 13 de junio de 2017 entre el Gobierno y las delegaciones de empleadores y de trabajadores venezolanos. Expresó su esperanza que dicha reunión permita reforzar el diálogo social tripartito en el país. Por último, invitó a la Comisión de Aplicación de Normas a hacer una

evaluación equilibrada y justa del caso e instó a la misma a no prestarse a maniobras políticas que alejan a la OIT del noble objetivo para el que fue fundada.

El miembro empleador de Honduras señaló que en el país no existe una política activa de empleo destinada a promover un empleo pleno, productivo y libremente elegido, y que el Gobierno no mantiene un diálogo social con los principales actores del país. Recordó que se trata de un Convenio de gobernanza, prioritario de la OIT y que, de 1990 a la fecha, la Comisión de Expertos ha formulado 14 observaciones sobre la aplicación del mismo. Recordó asimismo que, pese a que en 2016 la Conferencia instó al Gobierno a aceptar una misión tripartita de alto nivel, hasta la fecha el Gobierno no ha dado cumplimiento a la misma. Destacó que es necesario que la Comisión de Aplicación de Normas logre que el Gobierno acepte la conformación de dicha misión tripartita de alto nivel, o acepte la asistencia técnica de la OIT para la conformación de una mesa de diálogo tripartito y manifestó que, en caso de que el Gobierno no aceptara ninguna de estas dos propuestas en el marco de la Conferencia, debería trasladarse al próximo Consejo de Administración para que examine la conformación de una comisión de encuesta para el debido cumplimiento del Convenio.

Le membre gouvernemental de la Mauritanie a indiqué que le gouvernement avait fourni des informations concernant les importants efforts déployés pour assurer le plein emploi et, ainsi, continuer à garantir la dignité de tous les citoyens de ce pays. La commission d'experts a reçu le rapport de 2016 relatif à l'application de la convention, lequel met en exergue les acquis dans le domaine de la promotion de l'emploi. Par ailleurs, le commentaire de 2016 de la commission d'experts se limite à demander au gouvernement de communiquer des informations complémentaires. La présentation de la politique de l'emploi a été appréciée à sa juste valeur et c'est certainement pour cette raison que la commission d'experts n'a pas relevé de manquement à la convention, se limitant à demander au gouvernement de donner des exemples plus précis. Dans le souci de réunir toutes les conditions de succès de la politique de l'emploi, le gouvernement a renforcé le dialogue social. Il convient donc d'encourager les employeurs à accepter de s'associer avec les travailleurs et le gouvernement afin d'unir les meilleurs voies et moyens permettant d'atteindre les objectifs assignés à cette politique. En raison de ce qui précède, il peut en être déduit que la politique de l'emploi de la République bolivarienne du Venezuela est très solide, les conditions des travailleurs en terme salarial sont bonnes, l'emploi des jeunes connaît une dynamique toute particulière et la situation des personnes âgées et salariés retraités demeure satisfaisante.

El miembro trabajador de Honduras manifestó que, pese a cumplir con la aplicación de las leyes en materia laboral, el país es nuevamente víctima de un juego político. Destacó los grandes avances que se han logrado en lo que respecta a la protección social y defensa de los derechos laborales, y destacó asimismo el rol que ha desempeñado la CBST. Indicó que, si bien el Informe de la Comisión de Expertos no hace mención alguna al incumplimiento del Convenio, preocupan las denuncias de los sindicatos sobre algunos empleadores afiliados a FEDECAMARAS, que se vienen dedicando al sabotaje de la producción de bienes y servicios, cerrando sus empresas y echando a la calle a centenares de trabajadores. Al mismo tiempo, reconoció las acciones de otros sectores de empleadores también afiliados a FEDECAMARAS que mantienen sus empresas con altos índices de productividad, respetando la estabilidad de los trabajadores y participando con el Gobierno y los trabajadores en el CNEP.

An observer representing the International Organisation of Employers recalled that the Convention required the declaration and pursuit of an active policy designed to promote full, productive and freely chosen employment. Such a policy should aim to ensure that there was work for all who sought employment, productive work, freedom of choice in employment, and the opportunity for workers to qualify for and use his or her skills in a job for which he or she was well suited. It also required consultation with the social partners. Productive and sustainable employment was the basis for decent work, wealth creation and social justice. Employment was the result of investment and a measure of the success of an employment policy was whether it encouraged or discouraged investment and job creation.

This was the second consecutive year that the Bolivarian Republic of Venezuela had come before the Committee. The Government had not implemented the Committee's 2016 conclusions and the situation in the country had since worsened. The Bolivarian Republic of Venezuela's opposition-led Congress had reported that consumer prices had jumped 741 per cent year-on-year in February 2017. Since 2014, both overall and extreme poverty had deteriorated to the worst levels seen in at least a decade and a half. Thousands of businesses in the private sector had shut down, jobs had been lost and informality had increased. The social and economic situation in the country was dramatic and had deteriorated further. The speaker called on the Government to comply with the provisions of the Convention, both in law and in practice, by pursuing an active policy designed to promote full, productive and freely chosen employment. She recalled the role of representative workers' organizations and FEDECAMARAS, in this regard, as well as the recommendations of the ILO Government Body, ILO supervisory bodies and the Report of the high level mission that had visited Venezuela in 2014.

The Government member of the Islamic Republic of Iran observed that the measures taken by the Government demonstrated its willingness to enhance the situation and deserved due consideration by the Committee. Noting the statistics provided by the Government in its report and the measures taken to promote youth employment, he welcomed the creation of the National Council for Productive Employment to deal with the development of strategic economic areas through tripartite dialogue. The Council had already held to date over 300 meetings. Given that the Convention entailed an array of technical elements, its proper and effective application required technical assistance from the Office. To that end, the speaker called on the Office to provide further technical assistance to the Government and reiterated support for the Government's continued efforts to enhance national conditions.

El miembro trabajador de Colombia manifestó que la clase trabajadora venezolana está migrando, debido a la falta de oportunidades, alimentos y servicios médicos y recordó que en 2016, la Conferencia deploró la crisis social y económica que afectaba al país así como la ausencia de una política activa de empleo destinada a promover el pleno empleo, productivo y libremente elegido. Subrayó que la Comisión debería exigirle al Gobierno que acepte la asistencia técnica de la OIT y que se concrete la misión tripartita de alto nivel. Concluyó indicando que es inaceptable que se señale como golpistas y terroristas a quienes se atreven a protestar ante una situación inaceptable.

La miembro gubernamental del Estado Plurinacional de Bolivia se sumó a la declaración realizada por el GRULAC y destacó que en su Informe, la Comisión de Expertos no hizo alusión alguna a incumplimientos precisos del Convenio. Destacó, asimismo, que el Convenio no impone a los Estados la obligación de implementar un modelo económico y social específico, sino que alienta la implementación de políticas de empleo en el marco de la soberanía de cada Estado. En tal sentido, subrayó que las políticas públicas destinadas a efectivizar y garantizar derechos humanos progresivos, deben ser analizadas respetando el margen de apreciación soberano de cada Estado, y que el examen que realiza la Comisión de Expertos debe ser objetivo, exhaustivo, y debe limitarse a consideraciones jurídicas dentro de su mandato.

Le membre travailleur du Bénin a souligné que, selon l'observation de la commission d'experts de 2017, le gouvernement a fourni des informations à jour sur la convention, la politique de l'emploi existe grâce au plan de développement économique et social, les partenaires sociaux ont été informés de cette politique, tel que mentionné en 2015 pendant les débats qui ont eu lieu au sein de la Commission de la Conférence, et qu'ils sont écoutés au sein du CNEP. Pour toutes ces raisons, l'examen du cas de la République bolivarienne du Venezuela par la Commission de la Conférence est injustifié. Des milliers et des milliers de travailleurs sont licenciés dans d'autres pays sans que le cas ne soit examiné par cette dernière. Les employeurs de la République bolivarienne du Venezuela veulent réduire le nombre d'employés dans le pays. Ils ne peuvent cependant pas licencier un seul travailleur sans l'autorisation du gouvernement. En République bolivarienne du Venezuela, les garanties de salaire et de retraites sont augmentées par des décrets présidentiels et les conventions collectives sont négociées. Il y a des endroits dans le monde où les travailleurs sont bien moins lotis et, pourtant, la Commission de la Conférence n'examine pas ces cas. Il est donc injustifié de chercher à condamner la République bolivarienne du Venezuela. Les employeurs veulent que le pays perde tout ce que les gens ont conquis, conquête qui est admirée par de nombreux travailleurs. Les travailleurs du monde entier sont solidaires de la République bolivarienne du Venezuela.

The Government member of Pakistan appreciated the statement delivered by GRULAC and welcomed both the steps taken by the Government to enforce labour standards in the country through legislative and policy measures, and the constructive engagement with the ILO supervisory bodies. The Government's agreement to avail itself of ILO technical assistance for resolution of these issues through tripartite dialogue was commended. She noted with appreciation the timely submission of reports and information, and the fact that the Committee of Experts' latest observation did not mention non-compliance. She looked forward to the forthcoming discussions that would be held on 13 June 2017 between the Government of the Bolivarian Republic of Venezuela, employers and workers, and hoped for a positive outcome and disposal of the case.

Una observadora representante de la Organización Mundial de Trabajadores indicó que las recomendaciones de esta Comisión y del resto de los órganos de control de la OIT han sido desatendidas por el Gobierno y que la situación en el país ha empeorado. Casi 7,7 millones de personas están desempleadas o trabajan en el sector informal de la economía, el 60 por ciento de los hogares sólo hacen dos tiempos de comida y que cientos de familias hoy hurgan en la basura para subsistir en uno de los países con más riquezas en el mundo. Destacó que es necesario que se produzca un cambio en la política económica y social en el país y apoyó que se lleve a cabo la misión tripartita de alto nivel.

The Government member of Myanmar commended the Government for the timely submission of its report and noting that the Bolivarian Republic of Venezuela had a sustained employment policy in the framework of its Second Social Plan for the Economic and Social Development of the Nation, 2013–19. She encouraged objective

and constructive dialogue between the employers and the Government on compliance with the Convention, particularly on employment policy challenges. The speaker further welcomed the tripartite meeting and hoped to see fruitful results, which would eliminate the need for future examination by the Committee.

El miembro empleador de Chile recordó que era el segundo año consecutivo que se analizaba en la Comisión el incumplimiento por parte de la República Bolivariana de Venezuela del Convenio. La comunidad internacional ha sido testigo de cómo la crisis social y económica se ha profundizado de manera dramática, afectando a los trabajadores y empleadores. La ausencia de una política activa de empleo destinada a promover el empleo productivo impide estimular el crecimiento y el desarrollo económico, mejorar el nivel de vida de la población, satisfacer las necesidades de mano de obra, y resolver la grave situación de desempleo y subempleo que vive el país. Por otra parte, la ausencia de diálogo social en el país sigue repercutiendo negativamente en el empleo, porque el Gobierno sigue sin consultar a FEDECAMARAS en su calidad de organización más representativa de los empleadores, y en la formulación de una (inexistente) política de empleo. Recientemente el Gobierno venezolano ha decidido convocar a una Asamblea Nacional Constituyente, destinada a generar una nueva constitución para el país, iniciativa que desde su anuncio ha sido cuestionada por la sociedad civil, por no respetar el procedimiento para su convocatoria que prevé la constitución vigente. Y es en ese espacio en el que el Gobierno ha invitado a participar a FEDECAMARAS, pretendiendo que con el mismo se esté dando cumplimiento a la promoción del diálogo social y el deber de consulta establecidos en el Convenio. Hizo un llamado para que el Gobierno acepte la misión tripartita de la OIT y realice consultas tripartitas genuinas con vistas a implementar una política activa de empleo.

The Government member of the Russian Federation noted the Government's commitment to constructive cooperation with the ILO and social partners, including FEDECAMARAS. The Government had continuously worked on the basis of tripartite dialogue with the aim to re-establish trust and forge consensus. The Committee of Experts had not observed any failure of the Bolivarian Republic of Venezuela with respect to its obligations under the Convention, which made it difficult to understand the reasons for inclusion of the case in the list. Effective implementation of the Convention depended on the level of economic and social development of each country. It was a framework Convention that could not be analysed in terms of national-level implementation. In this view, the Committee of Experts could not judge the content of employment policies under the Convention, and repeated examination of this issue before the Conference Committee would not promote ratification of the Convention by other member States. Reiterating his concern about repeated attempts to use the ILO for political purposes, the speaker welcomed cooperation between the Government and the ILO to implement labour standards in the country and hoped that such cooperation would continue.

El miembro trabajador de la República Dominicana señaló que en la República Bolivariana de Venezuela se han sucedido gobiernos que lograron una mayor justicia distributiva a través de incrementos salariales que disminuyeron la desigualdad. Lograron también que la mujer y la juventud reivindicaran sus derechos, que disminuya el desempleo, y el acceso de muchas personas a la alfabetización y la salud. Esto causa irritación en algunos sectores que siempre se han beneficiado de la situación de desprotección que viven los trabajadores en esa región. Consideró importante las expresiones de los miembros empleadores indicando que el empresariado no estaba para intervenir en cuestiones políticas sino para generar riqueza. En este sentido, recordó que un empresario venezolano dio un golpe de Estado en 2002 que duró 48 horas, pretendiendo sustituir al Gobierno legítimamente electo. Expresó estupor por la situación de un ciudadano venezolano que fue quemado vivo por sospecharse que era simpatizante del Gobierno y reclamó el cese de ese tipo de actos.

Le membre gouvernemental du Burundi a indiqué que le commentaire de 2017 de la commission d'experts demande au gouvernement de fournir des informations détaillées spécifiques concernant certains aspects de la convention, sans mentionner son non-respect. En vertu des articles 1 et 2 de la convention, la politique de l'emploi est spécifique à chaque pays et elle prend en compte le stade et le niveau du développement économique, et est poursuivie par des méthodes appropriées aux conditions et aux pratiques nationales. La convention prévoit la consultation aux représentants des employeurs et travailleurs, en vue de tenir compte de leur expérience et de leur opinion. Ces consultations ne sont toutefois pas contraignantes et la convention ne crée pas l'obligation de négocier la politique de l'emploi. Le rôle de la commission d'experts et de la Commission de la Conférence à l'égard de la convention est de veiller à ce que les Etats Membres aient l'intention explicite de garantir un emploi plein et productif, ce que le gouvernement a bien démontré. Il ne relève pas de la compétence de la commission d'experts d'évaluer la validité, l'effectivité ou la justification des mesures adoptées conformément à la convention. Cette dernière est un instrument promotionnel qui ne précise pas le contenu de la politique de l'emploi, mais prend en compte le contexte politique, économique et social du pays. Il est regrettable qu'il s'agisse d'un cas politique clair du groupe des employeurs contre le gouvernement. L'examen du cas, à nouveau, par la Commission de la Conférence est injustifié. L'orateur a demandé finalement au gouvernement de fournir plus d'informations sur l'application de la convention dans le cadre du rapport régulier.

La miembro trabajadora del Paraguay recordó que la CGT asumió en ocasión de la anterior Conferencia el compromiso de presentar una queja contra el Gobierno, en virtud del artículo 26 de la Constitución de la OIT, por las reiteradas violaciones a la libertad sindical, la discriminación en el empleo y la protección del salario, con la intención de presionar al Gobierno para que asumiera que sin justicia social no hay paz. Desafortunadamente el Consejo de Administración decidió dividir la queja para que una parte fuera al Comité de Libertad Sindical y la otra a la Comisión de Expertos. Señaló que el Gobierno ignora las recomendaciones de la OIT, lo que agudiza la situación del país que hoy se encuentra en una crisis con el pueblo en las calles exigiendo comida, salud, medicinas empleos y seguridad. Le solicitó al Gobierno que escuche y adopte las recomendaciones de la Misión de la OIT que visitó el país, que constató la ausencia de una política de empleo ocasionada por el crecimiento de la pobreza, que se considera que afecta a un 53 por ciento de la población. La imposición de un salario mínimo, sin consulta a la clase trabajadora y sin respetar el Convenio, en un escenario con un alto índice de inflación ha provocado una disminución del poder adquisitivo.

The Government member of Egypt noting the overview provided by the Government of the measures taken under the Convention, recognized the efforts made to establish tripartite social dialogue with partners and to adopt an employment policy that would end unemployment. He encouraged the Government to continue its endeavours to comply with the Convention and to continue to avail itself of ILO technical assistance.

El miembro trabajador de Nicaragua expresó su rechazo a que se haya incluido el caso de la República Bolivariana de Venezuela en la lista de casos a tratar por la Comisión, por tener tintes políticos y estar dirigido a socavar la estabilidad del país. Es reiterada la actitud arrogante del sector empleador por sostener este caso sin fundamento. Este empresariado es parte de la guerra económica contra el Gobierno, reclama diálogo en la OIT pero no acude o pone condiciones cuando el Gobierno o los trabajadores lo convocan a dialogar para buscar soluciones a los problemas económicos. El caso no se sustenta en violación alguna, ya que incrementar el salario mínimo ante la actitud empresarial de evadir este derecho demuestra la preocupación del Gobierno en restituir el poder adquisitivo de los trabajadores. Detrás de la supuesta defensa de derechos humanos fuerzas externas generan acciones para crear condiciones que atentan contra la paz y la tranquilidad del pueblo venezolano. Es obvio el interés y deseos de la derecha extrema en querer dar un golpe de Estado y utilizan estos espacios para crear condiciones para justificar esas acciones. Aquellos que dicen que las protestas son pacíficas en Venezuela, queman y saquean comercios. Subrayó que una periodista nicaragüense fue impactada por un balazo durante las manifestaciones

El miembro empleador del Uruguay observó que los cuestionamientos a la República Bolivariana de Venezuela en la OIT han dejado de ser una preocupación exclusiva del sector empleador. Hoy en día las denuncias son también presentadas por el sector trabajador. Consideró que el sistema de control de la OIT es una oportunidad para los países miembros de mejorar las políticas que impulsan, adecuándolas a los convenios ratificados. En lo que refiere al Convenio núm. 122, la Comisión de Expertos ha solicitado al Gobierno el cumplimiento de diversas acciones definidas por la Comisión de Aplicación de Normas, que aún se encuentran pendientes de ejecución y que se deben cumplir en instancias de diálogo social. Es urgente encontrar puntos de encuentro entre los actores sociales, ya sea a través de asistencia técnica, de una misión o una comisión de encuesta. Dada la situación por la que atraviesa el país, expresó su deseo de que nada de lo que se diga en la Comisión de Aplicación de Normas fomente aún más la división, y que los representantes del Gobierno, del sector trabajador y del sector empleador, logren tomar en forma constructiva las distintas intervenciones, especialmente, aquellos aspectos que podrían mejorar el diálogo social.

Un observador representante de la Federación Sindical Mundial (FSM) observó que los países de algunas de las organizaciones que acusan al Gobierno no han ratificado el Convenio. Se acusa al Gobierno de no tener una política destinada a promover el pleno empleo, sin embargo, ningún Miembro de la OIT ha logrado ese objetivo. El Gobierno informó que ha procurado implementar una política de empleo en la medida en que sus condiciones económicas y prácticas nacionales lo permitan. Hay países en el mundo, especialmente en América Latina y el Caribe, con peores indicadores en materia de empleo. En la publicación de la OIT, *Panorama Laboral 2016*, se puede constatar que la tasa de desocupación en la República Bolivariana de Venezuela es del 7,5 por ciento, lo que la sitúa en el noveno lugar entre los veinte países de la región Latinoamericana. Consideró que se está juzgando severamente al Gobierno y se le imponen obligaciones que no forman parte de la letra del Convenio, como lograr el pleno empleo, crear de forma inmediata un órgano tripartito de diálogo social, y garantizar el empleo juvenil, el empleo en las pequeñas y medianas empresas. Las acusaciones son un pretexto para cuestionar al país por todo. Los mismos que en Venezuela toman la calle, paralizan la economía, impiden el trabajo y tratan por todos los medios de tumbar al Gobierno, son los mismos que aquí reclaman pleno empleo. La OIT no debe ser utilizada para estos fines. La crisis económica y social que vive el país no puede ser resuelta desde el exterior, sino que debe ser resuelta soberanamente por los propios venezolanos. Consideró que por esos motivos la República Bolivariana de Venezuela no debería estar dentro de los 24 casos seleccionados por la Comisión de Aplicación de Normas. Solicitó que no se sancione de ninguna forma al país en las conclusiones que adopte la Comisión de Aplicación de Normas.

Le membre gouvernemental de l'Algérie a salué les progrès tangibles réalisés par le gouvernement, notamment sa volonté politique concernant la mise en œuvre de la politique de l'emploi dans le cadre d'une politique économique et sociale coordonnée, et a noté avec satisfaction la participation des partenaires sociaux, au sein du CNEP, forum d'échange et de concertation tripartite qui traite le développement de zones économiques stratégiques dans le pays. Le gouvernement est encouragé à persévérer dans les efforts qu'il a entrepris en vue de mettre en œuvre la politique de l'emploi, dont la finalité demeure le recul du taux de chômage et le bien être des travailleurs du pays.

El miembro trabajador de Cuba observó que los artículos 1 y 2 del Convenio prevén que la política de empleo es específica a cada país, teniendo en cuenta el nivel y la etapa de desarrollo económico, político y social. Recordó que en la República Bolivariana de Venezuela ha habido una guerra económica, motivada por el rechazo a un modelo de producción distinto a los intereses del capital y con justicia social. Además, ha habido intentos de agudizar el conflicto social, suscitando disturbios del orden público. Opinó que, en este caso, trascienden elementos políticos y no técnicos, ya que tanto la letra del Convenio como los comentarios de la Comisión de Expertos no dan cabida a mucho debate. Hace más de quince años que el país figura entre las listas preliminares o definitivas de casos ante la Comisión. En esta última ocasión, la Comisión de Expertos no identificó ningún incumplimiento. Hizo un llamado a quienes integran la Comisión indicando que no se deberá permitir que, en la próxima Conferencia, se repitan hechos como éste, poniendo en peligro los mecanismos tripartitos de la OIT.

El miembro gubernamental del Ecuador se adhirió a la declaración del GRULAC y apoyando al Gobierno, recordó que la Comisión de Expertos no constató ningún incumplimiento del Convenio y simplemente requirió información complementaria y ejemplos de la aplicación del mismo. Por lo tanto, consideró que la inclusión injustificada de este caso, obedecía a una motivación política. Informó de la celebración el 13 de junio de 2017, en el marco de la Conferencia, de una gran reunión entre el Gobierno y las delegaciones de empleadores y de trabajadores venezolanos con miras a reforzar el diálogo social tripartito en la República Bolivariana de Venezuela. Indicó, no obstante, que este nuevo llamado ante la Comisión de Aplicación de Normas podría empañar y prejuzgar los resultados de dicha reunión y afectar al diálogo tripartito tan necesario en el país. Concluyó que cualquier agenda internacional de apoyo a la paz en la República Bolivariana de Venezuela, inclusive para temas laborales, debe estar diseñada conjuntamente con el Gobierno e incluir un enfoque constructivo sobre las vías a utilizar.

El miembro empleador de México indicó que el país no cumple con el Convenio y que si bien en el marco de la junta del Consejo de Administración se confió en que el Gobierno iba a impulsar un diálogo efectivo, el Gobierno no elaboró un plan de acción en consulta con los actores sociales ni constituyó la mesa de diálogo tripartito. Destacó que se necesita más que la palabra del Gobierno para garantizar que cumplirá con sus obligaciones.

The Government member of Ghana recalled that the Convention provided a foundation for laws, employment regulation and instruments to govern the world of work, including by providing a platform for ensuring freedom of association and collective bargaining. It was essential that all governments, including the Government of the Bolivarian Republic of Venezuela guarded the Convention and helped bring sanity between and among partners in the world of work. The Government had taken note of the concerns of the Committee with regards to labour market trends, youth employment and the participation of social partners, and it had begun to take actions in response to the Committee of Experts' requests. Some statistical reports had been supplied on trends, and the Government had furnished information on a 2014 youth employment act, which seemed to have provided entry to the labour market and which could go further to ensure decent work. He urged the Government to further engage with the ILO to address concerns that had been raised and meet the aspirations it has set.

El miembro empleador de España observó que por segunda vez consecutiva se analiza ante la Comisión el incumplimiento del Convenio por parte del Gobierno. Resaltó que no corresponde en la Comisión juzgar la idoneidad de las políticas de empleo del país, pero sí evaluar si el Gobierno está formulando, en colaboración con los empresarios venezolanos representados por FEDECAMARAS, esas políticas. La situación económica y social del país es dramática. La falta de una política macroeconómica equilibrada, la inexistencia de un entorno de negocios que permita al tejido productivo local generar empleo, así como la ausencia de políticas activas de desempleo, han traído consigo la paralización de importantes sectores económicos del país y provocado un serio problema de desabastecimiento, lo que está minando de manera inexorable la estructura productiva del país. Asimismo, no existe un diálogo social estructurado que permita poner en marcha las medidas necesarias para salir de la profunda crisis que vive el país. Por diecisiete años consecutivos se viene excluyendo a FEDECAMARAS, la organización empresarial más representativa del país, del diálogo social. Donde más se pone en evidencia la falta de voluntad del Gobierno de abrir un diálogo abierto constructivo, es en su falta de predisposición a aceptar una misión de alto nivel o la asistencia de la OIT para constituir una mesa de diálogo tripartito, tal como propuso esta Comisión al Gobierno el año pasado. Solicitó a la Comisión que recomiende, de no ser aceptado así por el Gobierno en el marco de la Conferencia, activar los mecanismos alternativos previstos en la OIT.

El representante gubernamental agradeció las declaraciones del GRULAC, de los miembros gubernamentales y de los trabajadores que, en su mayoría y de forma calificada, se pronunciaron a favor de su Gobierno. Reiteró que el Convenio tiene carácter promocional y sólo requiere de los Gobiernos que adopten una política de empleo, sin especificar el contenido de la misma. El pleno empleo ha de basarse en políticas amplias, teniendo en cuenta el entorno político, el nivel y la etapa de desarrollo económico y social, la inflación y el respeto de los derechos humanos; además, sus métodos de aplicación deben ser apropiados a las condiciones y prácticas nacionales. Ni la Comisión de Expertos ni la Comisión de Aplicación de Normas son competentes para juzgar la validez, la eficacia o la justificación de las medidas adoptadas en torno al Convenio. Reiteró que la Comisión de Expertos no había identificado incumplimiento alguno; pero, pese a ello, se decidió incluir a la República Bolivariana de Venezuela entre los casos a ser examinados, sin esperar que la información solicitada fuese proporcionada. Lo cual denota las motivaciones políticas y no técnicas de los empleadores, y más específicamente de FEDECAMARAS, que prevalecieron.

Recordó la oposición continua de FEDECAMARAS, quien incluso encabezó el golpe de Estado de abril de 2002, promoviendo poco tiempo después de su fracasado golpe un paro patronal que tuvo un costo de 20 000 millones de dólares y ocasionó el cierre de empresas y el desempleo de miles de trabajadores. Desde hace más de dos meses, partidos de la oposición venezolana han auspiciado protestas que, en su mayoría, han concluido de forma violenta, ocasionando a la fecha 66 lamentables muertes. Es penoso que estos actos violentos no hayan sido cuestionados y condenados por FEDECAMARAS ni por algunas organizaciones sindicales minoritarias. El Gobierno ha dado pasos concretos para convivir democráticamente en un ambiente de diálogo, concertación y paz, pero es precisamente FEDECAMARAS quien se autoexcluye. En todas las ocasiones en las que se ha figurado en la lista de casos de la Comisión de Aplicación de Normas, ha sido a petición de los miembros empleadores. Es más, en pasadas sesiones, voceros del Grupo han expresado que el Gobierno sería llamado de forma permanente, independientemente del convenio invocado.

En el marco del proceso constituyente, sólo ha acudido la CBST que es la organización sindical más representativa, la Central Unitaria de Trabajadores de Venezuela (CUTV) y personeros de la Confederación de Trabajadores de Venezuela (CTV). La Asamblea Nacional Constituyente es nuestro máximo ente legislativo, con amplios poderes para modificar el modelo económico, el cual es uno de los aspectos más controversiales en la dinámica política nacional. Es por ello que no condonamos la actitud de FEDECAMARAS que habiendo sido convocada, se niega a participar. Añadió que el llamado a la Asamblea Nacional Constituyente se mantiene, estando reservados cinco escaños para los empresarios y 79 para los trabajadores.

Concluyó manifestando la esperanza de que las conclusiones, producto de este amplio debate, sean objetivas y equilibradas, alejadas de consideraciones negativas y subjetivas contra el Gobierno. Confió que no habría necesidad de analizar nuevamente este caso en el futuro. Se compareció ante la Comisión de Aplicación de Normas con la mejor disposición y el más amplio sentido democrático, tal y como se seguirá haciendo cuantas veces sea necesario, para reafirmar que el Gobierno no privilegiará los intereses privados, capitalistas y particulares, en perjuicio de la clase trabajadora y del pueblo venezolano.

The Worker members responded to the claim of the Employer members that the increase in minimum wages had contributed to the economic crisis by inviting them to recall the reference to the Declaration of Philadelphia in this Convention, which reaffirmed the need for wage policies and programmes to ensure that a just share of the fruits of progress were provided to all and a minimum living wage was afforded to workers. Positive advances on employment policy had taken place in the Bolivarian Republic of Venezuela, particularly in the period through 2014, in which the Bolivarian Republic of Venezuela had benefited from historically high oil prices, which had enabled increased public spending on ambitious programmes. However, the present economic and political crisis could jeopardize such important achievements. Workers and the poorest in society faced higher rates of unemployment and precarious work, and thousands of workers had been pushed back into the informal economy. This crisis called for social dialogue and tripartism. Recalling that the Government had not accepted the Conference Committee's recommendation for a tripartite high-level mission, they underlined that the Government had also failed to implement a detailed timetable to re-establish tripartite dialogue to deal with economic policy and industrial relations, and had failed to give effect to the recommendation to establish a round table with participation of the ILO, following the high-level mission in 2014. The Worker members urged the Government to take concrete measures to develop and adopt an active employment policy designed to promote full, productive and freely chosen employment in compliance with the Convention, to establish a structured body for tripartite social dialogue, to take immediate action to build a climate of trust based on respect for employers' and workers' organizations, and to urgently set and implement timeframes for all commitments that had been previously made to the Governing Body, including consultation with the social partners.

Los miembros empleadores escucharon con suma atención el debate, conscientes del interés suscitado por este tema, también notaron las claras divergencias que éste evidencia. Destacaron que sí hay una situación de incumplimiento del Convenio, en dicha apreciación discrepan con lo manifestado por el representante gubernamental. Luego de dar lectura al artículo 3 del Convenio, enfatizaron que no se estaba dando efecto al mismo, ante la ausencia de participación de

organizaciones muy representativas, como son FEDECAMARAS, la CTV, la UNETE, la CGT, y CODESA. Las conclusiones de la Comisión deben reflejar dicho extremo.

Notaron con agrado que el régimen laboral transitorio ya no está en vigor, situación que no había sido hecha de su conocimiento y que generaba una enorme inquietud. Por otro lado, manifestaron su preocupación al observar que la Comisión de Expertos no había tomado debida nota de las informaciones que FEDECAMARAS había presentado en relación con ese asunto, éste debió haber sido subrayado con mayor énfasis. En el marco de la presente discusión ante la Comisión, FEDECAMARAS ha solicitado específicamente la reactivación del apartado productivo, el abordaje estructural de la inflación, la recuperación del poder adquisitivo del salario, la creación de planes para la atracción y mantenimiento de las inversiones, el cese de las ocupaciones forzosas de empresas y el respeto de la libre iniciativa empresarial.

Declararon que no podían consentir una afirmación en el sentido de que sí existe una política de empleo, por el simple establecimiento de un plan en el que no participaron terceros. En efecto, el Plan socialista de desarrollo económico y social de la nación 2013-2019 no cuenta con la participación de muchos representantes de los trabajadores ni con la de la organización más representativa de los empleadores.

Dicho asunto debe ser estudiado a la luz del Convenio sobre los métodos para la fijación de salarios mínimos, 1928 (núm. 26), del Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144) y, por supuesto, del Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87). Es indispensable que haya consultas con las organizaciones de empleadores y de trabajadores más representativas.

Hicieron un llamado vehemente al establecimiento, de manera inmediata y efectiva, de consultas tripartitas genuinas que concluyan en la formulación e implementación consensuada de una política activa de empleo. También pidieron al Gobierno que aceptara la asistencia técnica y la misión tripartita de alto nivel solicitada el año pasado. Consideraron que es urgente tomar medidas, y por ello que vieron como indispensable que las conclusiones figuren en un párrafo especial.

Conclusiones

La Comisión tomó nota de la información proporcionada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota con gran preocupación de que el Gobierno aún no ha dado curso a las conclusiones de 2016 de la Comisión.

La Comisión tomó nota de la falta de diálogo social en relación con una política activa de empleo destinada a promover el pleno empleo, productivo y libremente elegido.

A la luz de la discusión, la Comisión instó al Gobierno de la República Bolivariana de Venezuela que, con la asistencia técnica de la OIT y sin dilación:

- **formule, en consulta con las organizaciones más representativas de empleadores y de trabajadores, una política de empleo orientada a promover el pleno empleo, productivo y libremente elegido, en un clima de diálogo exento de cualquier forma de intimidación;**
- **adopte medidas concretas para poner en práctica una política de empleo que estimule el crecimiento y el desarrollo económicos, eleve los niveles de vida y ayude a combatir el desempleo y el subempleo, e**
- **institucionalice un debate tripartito, con la presencia de la OIT, para fomentar un clima de confianza basado en el respeto de las organizaciones de empleadores y de trabajadores a fin de impulsar el diálogo social y promover unas relaciones laborales sólidas y estables.**

La Comisión pidió al Gobierno que aplique el Convenio núm. 122 y dé seguimiento sin mayor dilación a las conclusiones de 2016 de la Comisión. Asimismo, pidió al Gobierno que informe con detalle antes de la próxima reunión de la Comisión de Expertos, que se celebrará en noviembre de 2017, sobre las medidas adoptadas para aplicar estas recomendaciones.

Conclusions

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

The Committee noted with deep concern that the Government has not yet addressed the Committee's 2016 conclusions.

The Committee took note of the lack of social dialogue in relation to an active employment policy designed to promote full, productive and freely chosen employment.

Taking into account the discussion, the Committee urged the Government of the Bolivarian Republic of Venezuela, with ILO technical assistance, and without delay, to:

- develop, in consultation with the most representative workers' and employers' organizations, an employment policy designed to promote full, productive and freely chosen employment, in a climate of dialogue free from any form of intimidation;
- implement concrete measures to put in practice an employment policy stimulating economic growth and development, raising standards of living, and overcoming unemployment and underemployment;
- institutionalize a tripartite round table, with the presence of the ILO, to build a climate of trust based on respect for employers' and workers' organizations, with a view to fostering social dialogue and promoting solid and stable industrial relations.

The Committee calls on the Government to comply with Convention No. 122 and to respond to the Committee's 2016 conclusions without further delay. The Committee also asked the Government to report in detail on the measures taken to implement these recommendations before the next meeting of the Committee of Experts in November 2017.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi.

La commission a noté avec une vive préoccupation que le gouvernement n'a pas encore réagi à ses conclusions de 2016.

La commission a pris note du manque de dialogue social portant sur une politique active visant à promouvoir le plein emploi, productif et librement choisi.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a prié instamment le gouvernement de la République bolivarienne du Venezuela, avec l'assistance technique du BIT et sans retard, de:

- élaborer, en concertation avec les organisations de travailleurs et d'employeurs les plus représentatives, une politique de l'emploi visant à promouvoir le plein emploi, productif et librement choisi, dans un climat de dialogue exempt de toute forme d'intimidation;
- mettre en œuvre des mesures concrètes afin de mettre en pratique une politique de l'emploi destinée à stimuler la croissance et le développement économiques, à relever les niveaux de vie et à surmonter le chômage et le sous-emploi;
- institutionnaliser une table ronde tripartite, avec la présence de l'OIT, afin d'instaurer un climat de confiance fondé sur le respect des organisations d'employeurs et de travailleurs dans le but de stimuler le dialogue social et de promouvoir des relations professionnelles solides et stables.

La commission a appelé le gouvernement à se conformer à la convention n° 122 et à donner suite aux conclusions qu'elle a adoptées en 2016 sans plus de délai. La commission a aussi prié le gouvernement de

faire rapport en détail sur les mesures prises pour mettre en œuvre ces recommandations avant la prochaine réunion de la commission d'experts, en novembre 2017.

El representante gubernamental de la República Bolivariana de Venezuela agradeció los esfuerzos realizados por la Comisión. No obstante, declaró que se oponía a las conclusiones leídas en la Comisión por considerar que en ellas se dan por ciertas informaciones sesgadas, poco veraces e infundadas y sin relación con el Convenio núm. 122. En particular, las conclusiones no tienen en cuenta lo manifestado por el Gobierno, los trabajadores y los representantes de otros gobiernos que han participado en el debate, lo que las aleja de la objetividad y la transparencia y afectan a la credibilidad de la Comisión. Por ese motivo, consideró que urge una mejora de los métodos de trabajo de la misma para evitar la formulación de conclusiones subjetivas, desproporcionadas e inaplicables.

El orador manifestó que el Gobierno seguiría cumpliendo con los convenios ratificados y desarrollando políticas en beneficio de la clase trabajadora y del pueblo venezolano, y añadió que esperaba que la OIT reconociera los resultados de estos esfuerzos. Por último, subrayó el hecho de que poco antes de la celebración de la reunión tripartita con el Director General, la Organización de Empleadores Venezolanos (FEDECAMARAS), esta Federación comunicó que no asistiría a la misma, argumentando que deseaba «un ambiente neutral y de discreción, sin intereses de naturaleza política». A este respecto, el orador destacó que la autoexclusión por FEDECAMARAS del diálogo tripartito, además de no ayudar al sector empleador venezolano, contradice las acusaciones formuladas contra el Gobierno de estar cerrado al diálogo social. Por último afirmó que, al contrario, el Gobierno se mantiene siempre dispuesto a este diálogo, e invitó a la Comisión a que incluya en las conclusiones un llamado expreso a FEDECAMARAS para que se incorpore al diálogo nacional e internacional.

The Employer members stated that they wished to put on the record without reopening the debate, that the tripartite meeting which had been convened the previous day between the Government and the social partners regrettably had not included an invitation to all workers' organizations from the Bolivarian Republic of Venezuela present at the Conference. In light of this climate of imbalance in representativeness, the employers' organization had decided to refrain from participating in the meeting.

Workers' Representatives Convention, 1971 (No. 135)

Convention (nº 135) concernant les représentants des travailleurs, 1971

Convenio sobre los representantes de los trabajadores, 1971 (núm. 135)

Turkey (ratification: 1993)

Turquie (ratification: 1993)

Turquía (ratificación: 1993)

A Government representative pointed out that Turkey was once again placed on the agenda of the Committee as a result of a misinformed decision, if not a politically motivated one. He further pointed out that the Committee of Experts had not made any comment on the application of the Convention in law and in practice for the last two reporting periods. In this respect, he regretted that the Committee of Experts had not taken note of the protective provisions of the Act on trade unions and collective bargaining agreements (Act No. 6356), nor of the amendments made in 2012 to Act No. 4688 on Public Employees' Unions. The Committee of Experts had referred only to the allegations made by the Confederation of Public Employees' Trade Unions (KESK). To respond to these allegations, the Government needed adequate time to correspond with several public institutions and to make inquiries. As always, the Government would have provided, in due course, the necessary information. The fact that the Government did not have time to do so did not justify the inclusion of this case in the short list.

Regarding the legislation in force, he recalled that the amendments made to Act No. 4688 in 2012 introduced the following changes: (i) along with the shop stewards representing the majority trade union, minority trade unions were now also allowed to appoint workplace representatives; (ii) pursuant to section 23, it was now possible to appoint a shop steward at the workplaces with less than 20 public servants; (iii) paid time off given to shop stewards to carry out their activities was increased from two hours to four hours in a week; (iv) public employers could not change the workplace of shop stewards, the minority trade unions' workplace representatives, trade union officials, trade unions' branch office officials, trade unions' provincial and district representatives, without clear and precise justifications; and (v) the Act required public employers to provide facilities to the trade union representatives to enable them to carry out their duties during and outside working hours, in a manner that did not hinder management

and provision of services. Similarly, Prime Minister's Circular No. 2003/37 also ordered public institutions to provide offices and noticeboards to trade union representatives, to the extent possible, and allot meeting and conference rooms, if available, for trade union activities, in accordance with section 23 of Act No. 4688.

Addressing the KESK allegations, he recalled that one of the cases concerned related to the transfer of Mr Celik from Ankara National Library to another workplace. Initially, by a letter sent in 2008, the Kultur Sanat-Sen Trade Union had appointed him workers' representative. However, another union member was named representative by a letter received in 2009. The latter person was still the workplace representative and attended the meetings with the administration in 2013, 2014 and 2015. In a different case, the transfer, in January 2015, of Mr Kuruuzum, Kultur Sanat-Sen Trade Union workplace representative in Antalya Provincial Directorate of Culture and Tourism, was revoked in accordance with section 18 of Act No. 4688, upon receipt of his letter in February 2015 indicating that he was a trade union workplace representative. Currently, he worked at Antalya Provincial Directorate of Culture and Tourism. In another case, the Ministry of Forestry and Water Affairs determined that Tarim Orkam-Sen Trade Union's workplace representative, Mr Sonmez, was very often absent from work without his employer's permission. He was transferred to Ankara Ninth Regional Directorate affiliated to the Ministry. However, he was reinstated to his previous job by the Ankara Third Administrative Court. In another case, a representative of the Trade Union of Public Administration Employees (BES), Mr Bektas, was transferred from Samsun Tenth Meteorology Region to Cankiri Meteorology Directorate because he had insulted, physically assaulted and threatened a colleague and disrespected his supervisor. His transfer was not related to any trade union activity. The Samsun Sixth Criminal Court of Peace found him guilty of the above acts. At no point did Mr Bektas claim anti-union acts. Furthermore, the employment contract of Haber-Sen Trade Union's workplace representative at the Directorate General of Press and Information, Mr Kaftancioglu, was terminated when he had failed an exam to determine his qualifications. He was reinstated in his previous job by a verdict of the First Administrative Court of Ankara. As the relevant institution appealed to the Court of Cassation, the case was still pending. Further on, Mr Taskesen, Yapi-Yol Sen Trade Union's workplace representative at the workplace in Kahramanmaraş was transferred to the workplace in Antakya of the same Regional Directorate in October 2014. The Administrative Court of Kahramanmaraş stayed the execution of his transfer in December 2014 and consequently repealed it in March 2015. While the case was still pending, upon his request, he was transferred to his previous workplace in January 2015 and was still working there. From the file of Mr Berberoglu, BES Trade Union workplace representative at the Izmir Guzelbahce Revenues Directorate, it appeared that he had violated the regulation on appearance and attire despite being warned on several occasions. As a result, he was transferred to another workplace of the same public institution in the same city. The Third Administrative Court of Izmir ruled that the decision was in conformity with the law. He retired from the public service in July 2016. Regarding the allegation that no office space was allocated to the BTS Trade Union in four workplaces in 2014, the speaker indicted that an investigation by the Directorate General of State Railways revealed that there was no such application by the said trade union for the allotment of an office in 2014.

He emphasized that the protection provided to workers' representatives by the Convention existed only if they acted in conformity with the existing laws. In case of any grievance, administrative and judicial remedies were in place and functioned effectively in Turkey. Regarding the observation made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) he noted that it did not refer to any discrepancy between the law and the Convention. In conclusion, he recalled that Act No. 6356 regulated the protection of trade union shop stewards. Pursuant to its section 24, an employer could not terminate the employment contract of shop stewards unless there was a just cause for termination. The shop steward concerned and his trade union had the right to apply to the competent court, which could order reinstatement without the loss of pay and benefits. Moreover, no major changes in employment, including transfer, were possible without the shop steward's consent.

The Worker members noted that this was the first time the Committee discussed the application of the Convention in Turkey. This was a pertinent moment to discuss this issue as Turkey was now governed through emergency decrees adopted by the executive with no judicial oversight. The total disregard for the rights of workers and the lack of protection afforded to their representatives was embedded in the overall assault on democratic institutions. Workers' representatives were subject to arrests, dismissals, transfers and other forms of discrimination for defending the rights of those they represented. The Worker members were shocked to hear about the July 2016 coup attempt. While defeated, this violent attack perpetrated by some officials of the military took the lives of almost 240 people who courageously defended democracy over military rule. The Worker members commended the bravery of these citizens, many of whom were trade union leaders and members, and expressed their condolences and solidarity to their families. Even when they did not agree with the politics of certain governments, the Worker members would always stand firmly against those who wanted to impose brute force against an elected government. However, the authoritarian measures the Government had taken in the aftermath of the attempted coup had given rise to equal concern. While these were first targeted against persons who were allegedly responsible for the coup attempt, soon after the drastic measures taken were extended far beyond this group turning into a purge of

oppositional voices. Workers' representatives in the public sector became a primary target for arrest, dismissal and harassment. Authorities had remanded more than 47,000 people in pre-trial detention and had closed down hundreds of associations, foundations and other institutions. In September 2016, the Minister of Justice stated that almost 34,000 convicted inmates would be released to make space in prisons. Many of those arrested and detained had absolutely nothing to do with the coup attempt or terrorist groups. They were mere trade union leaders standing up against destructive policies. For example, on 10 November 2016, the Trade Union of the Employees of the Public Health and Social Services (SES) organized a collective action against unjustified collective dismissals and the declared "state of emergency". The police intervened and many workers, including the joint leader of SES and members of the central executive committee, were detained. Even before the attempted coup, trade union leaders were subjected to arbitrary arrest. Twenty-six members and board members of the SES Muğla Branch, including Huseyin Sariefe, were taken into police custody on 11 October 2015 following a protest against a terrorist attack on a trade union rally that had killed more than 100 people. Court proceedings had been initiated against them. The Adıyaman Governorate launched an administrative investigation against BES Women's Secretary, had changed her workplace and suspended her from her office for reading a press statement on International Women's Day in 2017. Almost 150,000 public servants had been dismissed and banned from public service under emergency decrees. The grounds of dismissal were always general alleging that those dismissed were "members of, connected to, or in communication with a terrorist organization", without any individualized justification or evidence being provided. Trade union officials in public institutions had been systematically targeted by false allegations leading to their suspension and dismissal in an attempt to get rid of trade unions in those institutions. By December 2016, 11,711 KESK members were suspended from office, including Gülistan Atasyon, KESK Women's Secretary, Fikret Aslan, the President of BES, and Fikret Calagan, SES Executive Committee member. The majority of the dismissals were based on emergency decrees and workers were unable to challenge their dismissals in courts. The Worker members made an urgent appeal to the Government in relation to two colleagues who had been on a hunger strike for 93 days. KESK members, Nuriye Gülmen and Semih Özakça, had been protesting against their unfair dismissal by emergency decree. They were arrested 17 days ago and their health condition was now at a critical stage.

In addition to dismissal and arrest, trade union representatives faced other forms of discrimination, such as forceful transfers and disciplinary procedures, often linked to critical social media messages of trade union representatives, which had allegedly "insulted" government representatives. The Worker members emphasized that the scale of abuses against trade union representatives subsequent to the attempted coup was undeniably unprecedented. There were also more long-standing concerns in relation to the protection of worker representatives. Dismissals of trade union representatives before their official recognition by the Ministry of Labour were frequent given that the protection offered by the labour laws did not extend to the period during which worker representatives sought official recognition. Dismissals and other forms of discrimination had often led to the end of efforts to establish trade unions at those workplaces. In conclusion, the Worker members expressed their deep sadness at the unprecedented attacks against union representatives in all parts of Turkey, and saluted the courage of those workers who put themselves at risk to give a voice to those they represented under extremely severe conditions and hoped that the discussion would help the Government to understand the impact of its policies on trade unionists and those they represented.

The Employer members recalled that this Convention was a technical Convention that sought to protect worker representatives from any act prejudicial to them. They highlighted that, in its brief observation, the Committee of Experts had requested the Government to provide comments on the observations made by the TÜRK-İŞ and KESK containing allegations of dismissal, transfers, disciplinary measures and denial of facilities to workers' representatives. The Committee of Experts had not commented on the legislation establishing protective measures both in the private and public sectors.

The Employer members noted the elements submitted by the Government in relation to the individual cases referred to by KESK. They also noted the legislative developments mentioned by the Government regarding the protection on union representatives in the public sector, including protection against dismissal, and understood that workers' representatives enjoyed effective protection against dismissal and other prejudicial acts in the private sector and that Act No. 4688, as amended, prohibited dismissals, relocation and prejudicial treatment due to trade union activities. They considered that information was necessary in order to ensure a full understanding of the situation in the country concerning the application of the mentioned pieces of legislation and encouraged the Government to provide the requested information to the Committee of Experts without delay.

A Worker member of Turkey referred to the history of Turkish labour legislation with regard to the protection of workers' representatives or workplace union representatives. The first relevant legislation was Labour Act No. 3008 adopted in 1936, followed by the Trade Unions Acts Nos 274 and 2821, which were adopted in 1963 and 1983, respectively. Pursuant to these Acts, employers could not terminate the work contract of the workplace union representatives unless they had a justifiable reason clearly stated in writing. This protection had been

abolished with Act No. 4773 in 2002, but reinstated by section 24 of Act No. 6356. The same provision, which was still in force, also prohibited employers from changing the workplace and the main job duties of union representatives. Furthermore, if the employer terminated the employment contract of the union representative, a complaint could be filed before the court by the representative or his or her union, within one month from the date of the notification of the termination. The court could direct the employer to reinstate the representative without loss of pay or benefit. Act No. 6356 was in line with the Convention. However, these protections applied only to unions that had already organized more than 50 per cent of the workers and had been recognized as competent collective bargaining agents. At the workplaces where the organizing activities had just started, the workers participating in these activities did not benefit from the same guarantees and were generally dismissed by their employers. They could only receive compensation if they could prove that they had been dismissed on account of their trade union activities. Therefore, it was necessary to extend the scope of the current regulations to these workers.

During the military coup attempt, 248 innocent people had been killed. If the coup attempt had been successful, the democratic institutions and civil society organizations including trade unions would have ceased to exist. This was for instance evidenced by the case of the executives of the trade union All Motor Vehicle Transportation Workers' Union (TÜMTİS), who had been accused and detained on false charges. The judges in their cases had eventually been dismissed for being members of the Fetullah Gulen Terrorist Organization (FETO). All parties, including the opposition, were united and asked for the punishment of the criminals of this bloody coup. At the same time, they had concerns about the possible innocent people facing difficulties to prove their innocence before the courts. In this regard, the announcement by the Government of the establishment of a commission to provide access to the legal process for those people was welcome. Terrorism endangered the democratic values and workers' rights and freedoms. In addition to the military coup attempt, Turkey had been the target of frequent terrorist attacks, especially at its south and south-east borders. Under these circumstances, it was not easy to put labour-related issues on the agenda of the country. He looked forward to the end of the state of emergency as soon as the serious threats to democracy were overthrown.

Another Worker member of Turkey noted that, in the wake of the attempted coup, 4,800 public officials, members of the Turkish Confederation of Public Workers' Associations (Türkiye Kamu-Sen), including 39 branch executives and 50 workplace representatives, had been dismissed by an emergency decree for presumed support of the Gulenist movement. No international Conventions or national legislation had been taken into account during the dismissal process, nor had the investigations or punishment process been carried out. The right to self-defence had been ignored. The guilty and the innocent had been mixed together. A commission of seven members, mostly from the high courts, had now been established to review those dismissals; however as yet, no decision had been handed down. Clearly, problems persisted with the implementation of the Conventions and the situation was worsening. He urged the Government to implement ILO standards and respect national legislation.

The Employer member of Turkey recalled that the observation of the Committee of Experts referred to the allegations of KESK, which concerned dismissals, transfers and disciplinary measures against workers' representatives, and regretted that the Government had not responded to these claims. During the attempt to overthrow the Government, over 300 people had been killed and more than 2,000 wounded as a result of the failed coup. The speaker condemned any terrorist attack or unconstitutional effort to seize power and overthrow democracy. Workers' representatives in Turkey enjoyed effective protection against dismissal and any other prejudicial acts. In line with the Convention, these protections applied to all employees regardless of their sector of activity. The national laws and judicial practices also provided for effective and sufficiently dissuasive sanctions to prevent the violation of workers' representatives' rights. For public sector employees, the protection of worker representatives was regulated under Act No. 4688. Section 18 of this Act prohibited all kinds of dismissals, relocation and prejudicial treatment due to the trade union activities of public servants. The Act also extended this protection to the provincial and regional directors of public servants' trade unions. For private sector employees, the union representatives enjoyed a high level of protection in accordance with Act No. 6356. The employment contracts of union representatives could not be terminated without just cause. In addition, if the union representative was reinstated by a court decision, the employment contract would be presumed to have continued and the wage and benefits would be paid. It was important to examine whether, in the cases referred to by KESK, the representatives had acted in conformity with existing laws. Adequate time would be needed to respond, since the allegations involved several public institutions.

An observer representing the International Trade Union Confederation (ITUC) stated that KESK affiliates faced numerous violations of their rights, including transfers, reassignments to new workplaces, denial of promotions, filing of criminal charges and other legal proceedings against them, suspensions and dismissals, administrative investigations, fines and penalties, mobbing, detentions, arrests and violations of their freedom of speech on social media. In addition, KESK had been targeted by campaigns of discreditation. The state of emergency had been declared on 21 July 2016 on the basis of article 120 of the Constitution. Members of certain unions had

been dismissed through emergency decrees. The coup attempt was completely unrelated to the unions affiliated to KESK. While government officials claimed that the dismissals aimed at removing coup plotters from state functions, dismissals targeted opponent democratic forces and trade unions in political conflict with the Government. Thousands of public employees, members and executives of trade unions had been dismissed through an emergency decree and not granted access to justice. There were consistent and serious violations of labour rights. Scientists who had different ideologies than the ones promoted by the Government had been dismissed from academia. The system in place was authoritarian and dictatorial, and aimed at turning unions into branches of the ruling party. Such violations continued and were on the increase. The ILO should take an active role before more mass dismissals occurred. Thus, this case should be included in a special paragraph of the Committee's report.

The Worker member of the Netherlands recalled that, as set in its preamble, Convention No. 135 supplemented the Right to Organise and Collective Bargaining Convention, 1948 (No. 98), and that it sought to protect worker representatives from any act prejudicial to them, including dismissal, based on their status or activities as a worker's representative or on union membership or participation in union activities. Worker representatives at all levels, including trade union officials, could only fulfil their duties if they were free to publicly criticize company or government policies if these policies harmed the interests of workers and if they were able to organize peaceful meetings and demonstrations to express the grievances and demands of the workers and communicate these to the general public. This year's report for the recurrent discussion on fundamental principles and rights at work also referred to the importance of these civil liberties. These freedoms and rights were increasingly restricted in Turkey as the media were put under the Government's control or silenced and trade union officials were threatened with arrests on the accusation of insulting the Government or the President. Both the President and the General Secretary of the Confederation of Progressive Trade Unions of Turkey (DİSK) faced these charges and other forms of harassment. Many trade union officials had their telephones tapped, houses raided and computers confiscated and trade union industrial action in Turkey was increasingly harmed not only by dismissal of union representatives but also by violence from the police as well as from employers. Emphasizing that these intimidations precluded the effective representation of workers' interests, she urged the Government to refrain from any action contrary to the Convention and to adopt a policy of protecting and facilitating the role of workers' representatives.

An observer representing the International Transport Workers' Federation (ITF) noted that the protection afforded to worker representatives under section 24 of Act No. 6356 was rendered ineffective by serious limitations on the right to organize. Under this Act, a trade union could appoint a workplace representative only after official recognition of the trade union by the Ministry of Labour, and on the condition that employers had not objected to the Ministry's determination. In reality, an employer's objection could cause delays of up to three years, during which time the employer could dismiss union members or make them resign the union. In an ongoing dispute between ITF-affiliated union Nakliyat-İş and an international logistics firm, the company had dismissed 168 workers on grounds of redundancy at the same time the union had filed its recognition application with the Ministry. This had not been a coincidence, and numerous examples existed of such situations. Nor were union officials immune from reprisals. After a successful organizing drive in 2007, 14 leaders of TÜMTİS had been arrested on the basis of the company's complaint and sentenced to prison terms for, according to the judicial decision "founding an organization for the purpose of committing crime, violating the right to peaceful work through coercion in order to obtain unfair gain and obstructing enjoyment of union rights". Seven of those arrested remained in prison, and the branch leader Nurettin Kılıçdoğan, had been moved to a high security unit because of his status. Given that the price of joining a union was so high, the speaker wondered where future workers' representatives would come from. Freedom of association could be exercised only in a climate free of intimidation. Arrests of trade unionists, dismissals of workers and union organizers created an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities. The speaker called on the Government to provide an effective remedy to unjustified termination of employment of workers' representatives and union members, which should include their reinstatement, payment of unpaid wages, and maintenance of acquired rights. He further asked the Government urgently to review the sentences of the TÜMTİS leaders.

The Worker member of Germany, speaking also on behalf of the Worker members of France and Italy, stated that it was unquestionable that a State may, in the face of a risk of a coup or a terrorist threat, be able to declare a state of emergency. However, the proclamation of a state of emergency should never serve to violate human rights and workers' rights, but to defend or restore fundamental rights and the rule of law. Access to free and independent justice should be preserved and no one could be found guilty without a court decision. Human rights, including trade union rights, freedom of association, the right to collective bargaining and the right to strike should not be restricted. The dismissals and arrests of scientists and teachers, many of whom were trade union members or representatives, were already a reality before the coup. The proclamation of the state of emergency and its extension had escalated the situation and was used to eliminate critical views, including from teachers and employees, independent unions and their representatives in the public administration. Among the thousands of dismissed or

suspended trade unionists, many of them were trade union leaders. It was hard to believe that the mass dismissals and the mass arrests including among trade unionists and union officials were aimed at maintaining democratic order. Those persons had not learned the reasons for their redundancies. On the basis of a decree, they had found their names published on the list of names. They were dismissed without compensation and excluded from the social security system. As a result of the dismissals, they fell into economic precariousness, and were victims of stigmatization. They did not have the opportunity to prove their innocence in a transparent, independent and fair trial, and to take action against unjust dismissals or suspensions. Courts which normally would have been competent to review the dismissals of workers and public servants were not in a position to consider those cases. The Commission of Inquiry, which was set up under pressure of the Council of Europe was an important measure but did not replace access to justice. It was not sufficient to protect trade union representatives from dismissals and discrimination. In conclusion, the speaker stressed that without an adequate representation of workers, neither freedom of association, nor the right to collective bargaining, nor the right to strike could be effectively respected.

An observer representing the IndustriALL Global Union (IndustriALL) expressed deep concern regarding the impact on fundamental trade union rights and freedoms of recent developments in Turkey. A high-level mission of global and European trade unions had recognized that Turkey faced multiple challenges and threats, but had noted that measures adopted under the current state of emergency were disproportionate to the needs of security. IndustriALL demanded that the Turkish authorities stop legally unfounded collective dismissals, suspensions, intimidation and arrests; revert to legislation based on the presumption of innocence, individuality of criminal responsibility, the right to impartial and transparent trial and appeal, and respect for the rule of law and democracy; put in place the Inquiry Commission on State of Emergency Measures and ensure that its decisions were subject to judicial review and effective, timely appeal procedures, including at European level; reinstate those who had been arrested or suspended; restore freedom of expression and speech for the media and associations; and respect and implement ILO core labour standards, in particular Convention No. 135, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98. The right to strike was threatened in Turkey. Decrees had banned strikes in the glass, metal, banking and pharmaceutical sectors, contending that they threatened national security or public health. The speaker reiterated IndustriALL's support for the democratic values and freedoms set out in ILO Conventions, international and European charters, as well as for the rule of law, and called upon the ILO to monitor the implementation of these as related to trade unions in Turkey.

Le membre travailleur du Niger a souligné qu'il convenait d'analyser ce cas de manière lucide et à la lumière du contexte dans lequel les différentes violations sont commises. Si ces violations font suite à la tentative de coup d'Etat de juillet 2016, il y a lieu d'apprécier autrement les faits. Toute tentative de prise de pouvoir par les armes est condamnable, car elle ouvre la voie à tous types d'abus et de violations, y compris de la liberté syndicale. Concernant les faits en Turquie, le BIT devrait fournir son assistance technique pour renforcer le dialogue social entre le gouvernement et les partenaires sociaux. Il est à espérer que les représentants des travailleurs et des employeurs turcs soient en mesure d'indiquer, lors de la prochaine session de la Conférence, que les choses sont rentrées dans l'ordre. Ce défi est à leur portée.

La miembro trabajadora del Brasil expresó su sincera solidaridad con los trabajadores de Turquía, habida cuenta de la inestabilidad política existente en el país que puede ser perjudicial para la democracia y para el movimiento sindical. Ante las sistemáticas y reiteradas violaciones del Convenio, cabe citar al Comité de Libertad Sindical que señala que «uno de los principios fundamentales de la libertad sindical es que los trabajadores gocen de protección adecuada contra los actos de discriminación antisindical en relación con su empleo — tales como despido, descenso de grado, traslado y otras medidas perjudiciales». Ahora bien, en el caso examinado, el Estado viene cometiendo todo tipo de violaciones contra los sindicatos y sus dirigentes: persecuciones, despidos injustificados e incluso detenciones y arrestos arbitrarios. La faceta más cruel de las violaciones cometidas son las detenciones y los arrestos ya que se cercena la libertad de un ser humano. Encarcelar a una persona por sus convicciones y prácticas político sindicales constituye ciertamente una de las formas más perversas de persecución y viola los tratados internacionales de derechos humanos. Sólo en el año 2016, como mínimo 292 miembros de la KESK fueron arrestados por fuerzas de seguridad del Gobierno y todas las acusaciones tienen como punto de partida la actuación sindical. No se aseguran los derechos y garantías mínimos de los trabajadores contra actos antisindicales por parte del Gobierno, violando no sólo este Convenio sino también el Convenio núm. 87. La oradora instó al Gobierno a que revocara el estado de emergencia y sus decretos, restableciendo la normalidad democrática.

The Worker member of Sweden, speaking on behalf of the trade unions of the Nordic countries, noted that the protection of workers' representatives against prejudicial acts, including dismissals had been affected by the failed coup attempt and the declaration of a state of emergency. This was especially true for public servants. The state of emergency was still in force. The Government had enacted at least 23 decrees, mostly to dismiss public servants and increase government, police and military powers which, according to the Interior Minister's recent statement, had led to the detention of 113,000 people. In addition, more than 138,000 civil servants had been

suspended or dismissed without investigation or the possibility of legal challenge, many of them workers' representatives. By Decree No. 685 of January 2017, the Government had established, for a two-year period, a State of Emergency Procedures Investigation Commission, mandated to review the dismissals. Yet if only half of the civil servants dismissed filed an application, the Commission would need to examine more than 100 files per day to complete its work within the allotted time. The speaker called on the Committee to adopt clear conclusions requesting the Government to revert to the rule of law and to provide for an effective redress mechanism for the thousands of civil servants and workers' representatives who had been unfairly dismissed.

The Government representative recalled that 248 people were killed and more than 2,000 were injured, most of them civilians, during the 2016 coup attempt. FETO, the organization behind the coup attempt, had infiltrated the Turkish Armed Forces, the police, the judiciary, education institutions and public administration at all levels and formed a structure parallel to the State with the aim of overthrowing an elected Government and taking over the State through the use of every means, including threats, blackmail, coercion, violence and murders. If it were successful in its heinous attempt on the night of 15 July 2016, no doubt there would be many thousands of executions by the perpetrators and now we would have been talking about murders rather than dismissals. Unfortunately, Turkey was not only facing the threat of FETO but also of other terrorist organizations such as DAESH or ISIS, and PKK. Following the failed coup attempt, the Council of Ministers declared a state of emergency as of 21 July 2016 in accordance with article 120 of the Turkish Constitution. Pursuant to article 129 of the Constitution, public servants were obliged to carry out their duties with loyalty to the Constitution and the existing laws. The same was required of public servants by virtue of Public Servants Act No. 657. Section 125 of this Act stipulated that acting in cohort with the terrorist organizations or helping them or using or making available public means and resources to assist these organizations or making propaganda for these organizations was an act punishable with a dismissal. Section 137 of the Act regulated the suspension during an investigation as an administrative precaution. Fight against terrorism and against the perpetrators of the coup attempt, which aimed to abolish fundamental rights and freedoms and free democratic order established, was being conducted in conformity with the international and national law. Turkey invoked Article 15 of the European Convention on Human Rights, pursuant to which, in time of war or other public emergency threatening the life of the nation, any high contracting party may take measures derogating from its obligations under that Convention. The coup attempt posed a serious and actual threat not only to the democratic constitutional order but also to the national security. Thus, it was necessary to take extraordinary measures to eliminate the threat as a matter of urgency. Waiting months or years for the investigations to bear results was not an option in the wake of a bloody coup attempt and in the face of imminent danger to the national security and hence, known associates and members of the terrorist organizations needed to be dismissed immediately. While there were still threats of new attempts to overthrow the Government, the Government had set up a Commission to review the state of emergency decisions. This Commission will review the dismissals of public servants who claimed they were dismissed unfairly by a Decree with the Force of Law. Those who were dismissed by an administrative decision had the right to apply to administrative courts. Members of the Commission were already appointed. It would start functioning as soon as it laid down its working principles and methods. Nevertheless, the Commission would begin receiving applications before 23 July 2017. Decisions of the Commission would be open to a judicial review, last resort being the European Court of Human Rights. In conclusion he urged the members of the Committee as well as the international community to try to feel empathy towards Turkish people and emphasized that the right to organize and protection against anti-union discrimination was guaranteed by the Constitution and labour legislation. Both unions and workers had judicial means to contest discriminatory actions. Under the Penal Code, in particular, its sections 118 and 135, acts of anti-union discrimination by employers were considered as crime punishable from one to three years of imprisonment. In addition, labour legislation provided for compensation and reinstatement.

The Employer members appreciated the information provided by the Government representative and called on the Government to provide it to the Committee of Experts without further delay.

The Worker members emphasized the extreme concern about the gravity and systematic nature of the infractions against workers' representatives in Turkey. The de facto suspension of democratic institutions and the rule of law were unacceptable and were a reminder of the times when Turkey was ruled by the military. The Government needed to urgently get back on the path to democracy. The declaration of a state of emergency did not give carte blanche to ignore all international obligations. Without the rule of law and the due process, there could be no genuine protection for workers' representatives. The discussion before the Committee had demonstrated how workers' representatives had been specifically targeted in the Government's purge of the opposition. The Government was called upon to not renew the state of emergency after July 2017 and to refrain immediately from issuing any further emergency decrees leading to the arbitrary arrests and dismissals of trade union representatives. Those who were detained or imprisoned for representing and defending the rights of workers had to be unconditionally released and afforded compensation. Among them, Nuriye Gülmen and Semih Özakça who had never committed a crime, had to be released without conditions. They were the voice of many others who were

unable to speak out fearing retaliation against themselves and their families. The state of emergency had been abused to systematically dismiss and transfer workers' representatives from their workplaces. Workers' representatives who had been dismissed from their jobs or forcefully transferred had to be reinstated without any further delay. Any person suspected of having engaged in terrorist acts had to be charged criminally and judicial proceedings had to be initiated. However, these charges could not serve as a mean to victimize the entire public sector. Furthermore, the Government needed to address the lack of protection from retaliation before the formal recognition of a trade union. The legislative provisions protecting workers' representation from prejudicial acts based on their status, activities as workers' representatives, union membership, or participation in union activities had to be extended to the period during the pendency of the official recognition of the trade union. Recalling that Taner Kiliç, Chair of Amnesty International, had been recently charged with membership of a terrorist organization and was held in pre-trial detention, the Worker members called for his release and urged the Government to reinstate fundamental labour rights, including the protection of workers' representatives.

Conclusions

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

The Committee expressed concern over the allegations in relation to the dismissal and arrest of workers' representatives. The Committee also noted the Government's failure to respond to the allegations of the trade unions in its last report to the Committee of Experts.

Taking into account the discussion, the Committee called upon the Government of Turkey to:

- ensure that workers' representatives in the undertaking are protected from prejudicial acts including dismissal and arrest, based on their status or activities as a worker representative in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements, in particular during emergency situations;
- respond to the allegations of the trade unions stating the dismissal, arrest and discrimination against workers' representatives following the proclamation of the state of emergency.

The Committee requested that the Government provide detailed information responsive to these conclusions to the Committee of Experts for examination at its next meeting in November 2017.

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

Conclusions

La commission a exprimé sa préoccupation à propos des allégations en lien avec le licenciement et l'arrestation de représentants des travailleurs. La commission a également noté le fait que le gouvernement n'a pas répondu aux allégations des syndicats dans le dernier rapport qu'il a remis à la commission d'experts.

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

- garantir que les représentants des travailleurs dans l'entreprise soient protégés contre toutes mesures qui pourraient leur porter préjudice, y compris le licenciement et l'arrestation, et qui seraient motivées par leur qualité ou leurs activités de représentants des travailleurs, pour autant qu'ils agissent conformément aux lois, conventions collectives ou autres arrangements conventionnels en vigueur, notamment durant des situations d'urgence;
- répondre aux allégations des syndicats faisant état de licenciements, arrestations et actes de discrimination contre des représentants des travailleurs après la proclamation de l'état d'urgence.

La commission a demandé que le gouvernement fournisse, en réponse aux présentes conclusions, des informations détaillées à la commission d'experts, qui seront examinées à sa prochaine réunion en novembre 2017.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión expresó su preocupación por las alegaciones en relación con el despido y la detención de representantes de los trabajadores. Tomó asimismo nota de que, en su última memoria presentada a la Comisión de Expertos, el Gobierno no respondió a las alegaciones de los sindicatos.

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

- garantice que los representantes de los trabajadores en la empresa gocen de protección contra todo acto que pueda perjudicarlos, incluidos el despido y la detención en razón de su condición de representantes de los trabajadores o de sus actividades como tales, siempre que éstos actúen de conformidad con las leyes o los convenios colectivos vigentes u otros acuerdos, en particular durante situaciones de emergencia, y
- responda a las alegaciones de los sindicatos relativas a despidos, detenciones y discriminación contra los representantes de los trabajadores tras la proclamación del estado de emergencia.

La Comisión pidió al Gobierno que proporcione a la Comisión de Expertos información detallada en respuesta a estas conclusiones para que sea examinada en su próxima reunión en noviembre de 2017.

Minimum Age Convention, 1973 (No. 138)

Convention (n° 138) sur l'âge minimum, 1973

Convenio sobre la edad mínima, 1973 (núm. 138)

Zambia (ratification: 1976)

Zambie (ratification: 1976)

Zambia (ratificación: 1976)

A **Government representative** stated that Zambia was pleased to engage in dialogue on the application of the Minimum Age Convention, 1973 (No. 138). With respect to the age of completion of compulsory education, he indicated that consultations were ongoing to revise the Education Act of 2011 which would define the basic school going age and link it with the minimum age for employment in Zambia. The Committee of Experts would be duly notified once the consultations and the revision of the Act were concluded.

Concerning determination of hazardous work, it was stated that Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) proscribed the employment of children and young persons under the age of 18 years in hazardous work and its section 3(2) contained a list of 31 types of hazardous work prohibited to children and young persons. A National Child Labour Steering Committee – composed of Government ministries, employers, trade unions and the civil society – had been created to oversee child labour activities, as well as the implementation of the Statutory Instrument and other relevant legislation. Monitoring of compliance with the Statutory Instrument had started and had been devolved to the District Child Labour Committees. Work was also being done to develop modalities of capturing statistics on the number and nature of violations reported and penalties imposed. Given the fact that in certain geographical areas, traditional leaders carried the authority of the community, they were also engaged in the implementation of national child labour activities. The ILO was requested to provide continuous technical assistance and capacity-building to enhance the activities of the District Child Labour Committees to reduce child labour and to strengthen the capacity of the labour inspectorate to monitor child labour, especially in the informal economy, and thus boost the efforts made to fulfil the obligations under the Convention.

In conclusion, the speaker specified the measures taken or foreseen in relation to the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), including: adoption of a comprehensive legal and institutional framework to address the challenges related to the fight against the worst forms of child labour; creation of a specialized unit at the National Prosecution Authority competent to deal with gender-based violence, prosecute all

cases of sale and trafficking of children and provide professional guidance to law enforcement agencies to ensure thorough investigation; physical presence of the National Prosecution Authority in all provincial centres to ensure timely and effective prosecution of all crimes; increase in the budgetary allocation to Public Order and Safety from 3.5 per cent in 2016 to 3.6 per cent; and elaboration of a database providing statistical information on the number of infringements reported, investigations and prosecutions undertaken and penal sanctions applied for the offences related to trafficking in children under the age of 18 years.

Les membres travailleurs ont souligné la résonance particulière que prenait l'examen d'un cas portant sur un instrument visant à encadrer le travail des enfants en ce jour de célébration de la Journée mondiale contre le travail des enfants. L'élimination du travail des enfants constitue l'une des préoccupations de l'Organisation, depuis sa création, et il faut pouvoir en tout temps continuer de lutter avec force contre l'exploitation économique des enfants. La convention oblige les Etats l'ayant ratifiée à définir un âge minimum d'admission à l'emploi ou au travail, qui ne peut être inférieur à l'âge auquel cesse la scolarité obligatoire, pas en tout cas 15 ans. La scolarité obligatoire est l'un des meilleurs moyens pour lutter contre le travail des enfants, or la législation zambienne ne fixe pas l'âge auquel cesse la scolarité obligatoire. Le fait que le gouvernement ait informé de la révision en cours de la législation pertinente est une bonne chose. Toutefois, la législation actuellement en vigueur offre déjà au ministre compétent la possibilité d'adopter un règlement fixant l'âge de scolarité obligatoire. Cette option, si elle avait été choisie, aurait permis d'éviter le long processus législatif de révision de la loi sur l'éducation et la politique sur l'éducation et ainsi d'assurer plus rapidement la conformité avec la convention. Il y a donc lieu pour le gouvernement de mettre en conformité sa législation dans les plus brefs délais pour pouvoir ensuite garantir que, dans la pratique, tous les enfants peuvent effectivement suivre un enseignement jusqu'à l'âge de 15 ans. Pour cela, le gouvernement doit être encouragé à poursuivre la réforme de sa politique d'éducation et à la mettre en œuvre de manière urgente. Si tel n'était pas rapidement le cas, le risque serait grand que des enfants se retrouvent alors prématurément dans le monde du travail. On notera à ce sujet que la commission d'experts soulève le point de la conformité de la législation depuis 2002 et que la Commission de la Conférence a également examiné cette problématique en 2008. Le gouvernement a promis à plusieurs reprises de régler rapidement cette question, mais les progrès n'ont pas pu être constatés. Il est donc grand temps que le gouvernement mette ces réformes en œuvre et le plus rapidement possible.

S'agissant de l'obligation d'établir, en concertation avec les organisations de travailleurs et d'employeurs, une liste des travaux dangereux interdits aux enfants âgés de moins de 18 ans, les membres travailleurs ont salué l'adoption en 2013 de l'instrument statutaire n° 121. Comme le souligne la commission d'experts, il est désormais nécessaire que le gouvernement fournisse des informations sur l'application pratique de ce texte. Il y a à cet égard lieu de se réjouir des premières informations fournies par le représentant gouvernemental et d'encourager le gouvernement à continuer de mobiliser tous les moyens nécessaires afin de constater et sanctionner les infractions à la législation et de collecter les informations pertinentes. A cet égard, il convient de rappeler que l'inspection du travail joue un rôle essentiel dans la lutte contre le travail des enfants en détectant les infractions et en sanctionnant les responsables de ces infractions. Le gouvernement fait état d'un renforcement des services de l'inspection mais, dans la pratique, ces efforts ne semblent pas être suffisants si l'on en juge par le chiffre de 1 215 301 enfants qui travaillent, mentionné par la commission d'experts. Selon d'autres sources, en 2013, le nombre d'enfants au travail était de 992 722 contre 825 246 en 2005. Ces différentes données révèlent une augmentation du travail des enfants et il est improbable que le gouvernement ait été en mesure depuis 2012 de réduire radicalement le nombre colossal d'enfants qui travaillent. Il serait donc utile de disposer de statistiques actualisées. Il est par conséquent urgent et indispensable que le gouvernement prenne des mesures fortes pour renforcer drastiquement toutes les initiatives déjà prises en vue de soutenir les services d'inspection de manière à leur permettre d'appréhender le phénomène du travail des enfants dans l'économie informelle.

Les membres travailleurs ont conclu en soulignant que le gouvernement ne peut plus continuer de tarder à prendre les mesures nécessaires pour mettre sa législation et sa pratique en conformité avec la convention. Il doit renforcer drastiquement ses efforts et les maintenir sur le long terme.

Les membres employeurs ont souligné que l'éradication du travail des enfants est une obligation de droit international, fondée sur un devoir moral fondamental des trois mandants de l'Organisation. Cette convention, ratifiée par la Zambie en 1973, exige de poursuivre une politique nationale visant à assurer l'abolition effective du travail des enfants et à élever progressivement l'âge minimum d'admission à l'emploi pour permettre aux adolescents d'atteindre un développement physique et mental le plus complet. La fixation de l'âge minimum d'admission à l'emploi, qui ne doit pas être inférieur à l'âge de fin de scolarité obligatoire, ni en aucun cas à 15 ans, s'accompagne de l'interdiction pour les enfants de moins de 18 ans d'être occupés à des travaux susceptibles de mettre en danger leur santé, leur sécurité ou leur moralité. La convention contient également des clauses de souplesse aux termes desquelles certaines catégories d'emploi ou secteurs d'activité peuvent être exclus.

Le travail des enfants est un phénomène lié à des facteurs historiques, économiques et culturels, qui est plus large que la seule question de l'emploi. Son éradication nécessite l'implication de toutes les composantes de la société, et les Membres de l'Organisation doivent soutenir et encourager les nombreux efforts déployés par la Zambie à cet égard. Ce cas peut être considéré comme un cas de progrès. En effet, le gouvernement envisage de réviser la loi sur l'éducation pour prévoir un âge de début et de fin de scolarité obligatoire. Il est à espérer que cette révision permettra d'assurer la conformité avec la convention. En outre, le gouvernement a adopté l'instrument statutaire n° 121 qui contient une liste de 31 types de travail dangereux interdits aux enfants et adolescents de moins de 18 ans. Enfin, s'agissant de l'inspection du travail, un certain nombre de provinces ont adopté des programmes actifs de lutte contre le travail des enfants qui consistent notamment à sensibiliser les parents, les agriculteurs et les employeurs sur la thématique du travail des enfants et des travaux dangereux. Dans le cadre de ces programmes, plus de 5 000 enfants ont été retirés du travail et placés dans des établissements scolaires. En outre, plus de 11 000 enseignants ont reçu une formation. Il y a également lieu de prendre dûment note de l'établissement du Comité directeur national interministériel sur le travail des enfants; de l'augmentation du nombre des fonctionnaires recrutés dans les districts pour renforcer l'inspection; et des contrôles menés par l'inspection qui ont permis de confirmer la réalité du travail dangereux des enfants dans les petites structures minières, l'agriculture, le travail domestique, les secteurs du commerce et, de manière générale, dans l'économie informelle.

Les membres employeurs ont considéré en conclusion que cette convention n'est pas une simple déclaration d'idéaux. Il s'agit d'un instrument réaliste et flexible que tous les pays peuvent ratifier et appliquer dans l'intérêt de la santé des enfants et également en vue d'un développement économique efficace et bénéfique à tous les mandants de l'Organisation.

The Worker member of Zambia shared the concerns raised by the Committee of Experts, while at the same time acknowledging the progress made by the Government. The challenge of child labour and child trafficking had its main roots in poverty, which affected 60 per cent of the population in Zambia. In addition, the informal economy was currently estimated at around 84 per cent, but was probably as high as 89 per cent. Poverty was mainly a rural area-steeped phenomenon in Zambia; for that reason the Committee of Experts had reported a high incidence of child labour in rural areas.

The speaker shared the Committee of Experts' view that the dangers faced by the children which were not protected from early entry into the labour market were real, exacerbating and deepening, but certainly not insurmountable. Children of less than 18 years old worked in farms, plantations and mines with serious exposure to the hazards of chemicals, pesticides and other dangers. Such hazards threatened their health and proper and full physical and physiological development. In that regard, Zambian workers were strongly opposed to child labour and were active and working with the ILO and the social partners on programmes to raise awareness on child labour, especially in rural areas.

The speaker urged the Government to focus on the policy of free primary education since education was the key to addressing the challenge of child labour. The Government needed to expand its expenditure on education. It was important to establish a comprehensive school system which should provide a clear transition from school to work so as to ensure that children were at school and not at home or in informal employment. Social welfare programmes including school feeding programmes should be expanded and learning materials should be provided in public schools. Such measures would also help to reduce absenteeism and drop-out rates. The speaker also urged the Government to ensure that teachers were well motivated, supported and mobilized in the fight against child labour. He further shared the concern raised in the report of the Committee of Experts regarding the absence of a clear definition of "basic school going age" in Zambian legislation. Such legislation should also provide for clear definitions of the terms "child", "young person" and "age for national registration". Finally, policy harmonization at the national level was essential to ensure that different state departments dealing with child welfare, including bodies in charge of health and education, worked together to address the concerns on child labour.

The Government member of Swaziland, speaking on behalf of the member States of the Southern Africa Development Community (SADC), acknowledged the efforts of the Government of Zambia to fully comply with the Convention. She encouraged meaningful and constructive social dialogue among all partners involved in ensuring full compliance with the Convention. In an effort to maximize compliance with ILO instruments, including through the alignment of national legislation with relevant labour standards, the SADC member States requested the ILO to continue providing technical assistance as part of efforts towards the socio-economic development of Zambia.

SADC member States were dedicated to promoting international labour standards through subregional means of enforcement, including regional protocols and policies, such as the SADC Employment and Labour Sector Protocol, the SADC Decent Work Agenda and the Regional Indicative Strategic Development Plan. Those regional

protocols and policies obligated SADC member States to provide updates on efforts made to comply with international labour Conventions both in law and in practice, and on how they were translated into national decent work strategic initiatives and policies.

In conclusion, the speaker expressed the hope that Zambia would be given the opportunity and space, as well as technical assistance, to finalize its consideration of the comments raised by the Committee of Experts regarding full compliance with the Convention.

The Worker member of Zimbabwe expressed concern about the state of child labour in Zambia, as observed by the Committee of Experts. A number of initiatives had been taken by the Government and development partners, including technical assistance to remedy the problem of child labour; however such initiatives had shown little success.

The speaker was particularly concerned that in spite of Zambia's impressive performance in economic growth, its human development indicators were disappointing, as observed by the United Nations Development Programme in its 2015 country report. Although Zambia was among the top five performers in business competitiveness within the SADC, it was one of the five worst performers on human development indicators, with stubbornly high levels of poverty, in spite of GDP growth. Inequality in Zambia was also high, with the richest 20 per cent of households accounting for 60 per cent of the total expenditure, while the poorest 80 per cent needed to share the remaining 40 per cent, according to UN figures. While poor households had to spend 66 per cent of their resources on food, those better off were spending only 34 per cent.

Regarding education, the UN had observed that the primary school drop-out rate was 47 per cent, a figure which implied a bleak future for a large part of Zambia's children. Children who were not attending school had to make a living by any means and thus became entrenched in child labour. Furthermore, the denial of children's rights to accessible and affordable education created a cycle of poverty, which needed to be broken by increasing the chances for a good physical, mental, cultural and social development of children so as to enable them to effectively participate in nation-building efforts when they attained adulthood. While the world community had long recognized that child labour was a danger to the well-being, preservation and prosperity of societies and humanity, countries in the region were still currently grappling with that issue.

In light of the above, the speaker demanded the Government to take immediate and concrete steps to eliminate child labour and, in its quest for economic development, to strive to provide decent work and income to workers and their families so as to enable them to send their children to school. The Government of Zambia needed to strengthen its political will, in line with the investments in social development made by their forefathers.

La membre gouvernementale de la Suisse, tout en rappelant le processus en cours de révision de la loi sur l'éducation, a encouragé le gouvernement à fixer l'âge de scolarité obligatoire de manière claire et conforme aux exigences de la convention. Il convient de saluer la création du Comité directeur national interministériel sur le travail des enfants et d'espérer que le nombre des enfants au travail va rapidement diminuer. D'autres mesures de protection devraient encore être prises, notamment dans le domaine de la lutte contre la traite des enfants. Les responsables de tels actes doivent être poursuivis en justice. Prenant note de l'augmentation du nombre d'inspecteurs du travail, l'oratrice a encouragé le gouvernement à développer une stratégie de mise en œuvre pour la protection des enfants qui travaillent dans l'économie informelle.

The Worker member of Nigeria, speaking on behalf of trade unions of the Organization of Trade Unions of West Africa (OTUWA), recalled the Committee of Experts' comments that despite the efforts made by the Government to tackle child labour, the results had not been satisfactory. Children being at work rather than at school was common in West Africa and undermined their right to a full and supportive development. In that regard, he urged the Government to continue to include stakeholders – trade unions, employers, parents and civil society organizations – in the fight against child labour. It was essential to remove children from workplaces and put them into schools and programmes supporting learning and the promotion of school attendance would be helpful to that effect. The Government should also be urged to provide for an adequate legal framework prohibiting child labour, backed up by a strong enforcement system. In that regard, it was essential to strengthen the labour inspectorate and to ensure the application of sanctions to the perpetrators.

The speaker finally pointed out that child labour was widespread in global supply chain activities and urged the Government to work with the Zambian employers' association to pursue and ensure due diligence in their supply chains. This was especially challenging in the informal economy. Therefore, it was crucial for the Government to develop and implement programmes that would support the transition from the informal to the formal economy.

The Government member of Zimbabwe supported the statements of the Government representative and of the Government member of Swaziland. The Southern African region had intensified the fight against child labour through the development and implementation of the SADC Code on Child Labour. The effort made by Zambia in fighting child labour, namely its commitment to revise the Education Act, the establishment of the National Child Labour Steering Committee, which also included civil society stakeholders, and the involvement of traditional leaders at the community level in the fight against child labour were commendable. While consultations were still ongoing with respect to the revision of the Education Act, tripartite partners in Zambia were encouraged to continue the dialogue in order to accelerate the process. The speaker requested the continuous technical support of the Office to the Government in order to develop a national database for monitoring child labour. Strengthening collaboration at the country level by the involvement of tripartite constituents would be instrumental to the elimination of child labour in Zambia.

The Government representative thanked all participants in the discussion and took note of the observations made by the various stakeholders. He noted that, according to the Committee of Experts, insufficient progress had been made but assured the Conference Committee that the Government would do its best to look into the highlighted matters, especially the need to provide more information on the efforts taken to eliminate child labour and ensure consultation and cooperation with stakeholders on any measures taken.

Les membres employeurs ont souligné que, malgré les efforts déployés pour combattre le travail des enfants dans le monde, notamment sur le plan législatif, de nombreux enfants continuent de travailler, souvent dans des conditions difficiles, en particulier dans l'économie informelle. Face à ce problème complexe, les progrès sont trop lents et il convient de rappeler qu'il est de la responsabilité collective des mandants de l'OIT de garantir que, au XXI^e siècle, les droits sociaux fondamentaux sont respectés dans l'ensemble des Etats Membres. A cet égard, les membres employeurs se sont réjouis des efforts entrepris et des multiples initiatives développées par le gouvernement de la Zambie visant à éradiquer le travail des enfants. Toutefois, des mesures préventives et curatives permanentes demeurent nécessaires, et le gouvernement doit poursuivre ses efforts et notamment:

- prendre toutes les mesures nécessaires pour adopter dans un proche avenir une version révisée de la loi sur l'éducation qui définisse l'âge de début de scolarité obligatoire dans le primaire et fixe l'âge de la fin de la scolarité obligatoire à 15 ans de façon à le faire coïncider avec l'âge minimum d'admission à l'emploi;
- fournir des informations sur l'application pratique de l'instrument statutaire n° 121, y compris des statistiques sur le nombre et la nature des infractions constatées et des sanctions imposées;
- garantir que, dans la pratique, aucun enfant de moins de 15 ans ne travaille;
- fournir une éducation gratuite et obligatoire à tous les enfants, en tenant compte des besoins particuliers des filles et des autres enfants vulnérables;
- renforcer les activités des comités de district de lutte contre le travail des enfants, tout en soutenant la capacité et en étendant le champ d'application de l'inspection du travail, notamment dans l'économie informelle.

Le gouvernement devra continuer à fournir des informations sur les mesures prises dans ces différents domaines et sur les résultats obtenus.

Les membres travailleurs ont rappelé que l'éradication du travail des enfants, à laquelle participe la convention, figure parmi les objectifs les plus importants de l'OIT. Il convient dès lors de lui accorder une grande attention et d'attendre un engagement ferme et sans faille de la part du gouvernement pour œuvrer à cette éradication dans un avenir proche. Tout en reconnaissant certains progrès, les membres travailleurs ont relevé avec stupeur et effroi que les membres employeurs ont considéré ce cas comme un cas de progrès alors que près d'un million d'enfants travaillent prématurément dans ce pays dont la population totale s'élève à 15 millions de personnes. Pour abolir le travail des enfants à court terme, le gouvernement devra mettre sa législation en conformité avec la convention en fixant à 15 ans l'âge auquel cesse la scolarité obligatoire. Pour ce faire, un règlement du ministre compétent permettrait d'éviter de devoir attendre la fin du processus législatif de révision de la loi sur l'éducation. De même, il convient de poursuivre la réforme de la politique d'éducation pour garantir à tous les enfants un accès effectif à la scolarité obligatoire jusqu'à l'âge de 15 ans. Dans le cadre de la réforme législative en cours, il y a également lieu d'accorder une attention particulière au travail des enfants dans les petites structures minières, l'agriculture, le travail domestique, les secteurs du commerce et, de manière plus générale, dans l'économie informelle. Le gouvernement est encouragé à fournir davantage d'informations sur l'application pratique de l'instrument statutaire n° 121, y compris des statistiques sur le nombre et la nature des infractions constatées et des sanctions imposées. Il devra également doter l'inspection du travail de tous les moyens humains et matériels

nécessaires ainsi que de toutes les compétences légales et opérationnelles pour lutter efficacement contre ce fléau. Le gouvernement est également prié de tenir à jour des statistiques relatives au travail des enfants et de les communiquer à la commission d'experts; ceci permettant d'avoir une vue précise et objective de l'évolution de la situation. Enfin, les membres travailleurs ont invité le gouvernement à recourir à l'assistance technique du BIT pour mettre en œuvre toutes ces recommandations.

Conclusions

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

While taking into account the legislative evolution of this case, the Committee underlined the need for the Government to continue its efforts to combat the high incidence of child labour and to pursue an education policy that is in line with the minimum accepted age for admission to employment according to Convention No. 138, which is 15 years of age for Zambia.

The Committee noted with concern that the national legislation does not define the school-going age and the age of completion of compulsory education.

Taking into account the discussion, the Committee called upon the Government of Zambia to:

- strengthen its efforts to ensure the elimination of child labour both in the formal and informal sectors of the economy, including under hazardous conditions;
- take necessary measures to ensure that the amended Education Act sets the age of completion of compulsory education at 15 years of age and is effectively implemented in practice, without delay;
- provide detailed information on the implementation of Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) in practice, including statistics on the number and nature of violations reported and penalties imposed;
- strengthen the capacity of the district child labour committees and the labour inspectorate, in particular in relation to small-scale mining, agriculture, domestic work, and the informal economy;
- monitor and pay special attention to the special needs of girls and other vulnerable persons.

The Committee requested the Government to avail itself of ILO technical assistance to ensure the full and effective application of this fundamental Convention, including the adoption of a time-bound action plan to address the issues raised during the discussion, and to report on the measures taken to the Committee of Experts for examination at its next session in 2017.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

Tout en tenant compte de l'évolution de ce cas en matière législative, la commission a souligné la nécessité pour le gouvernement de poursuivre ses efforts pour combattre l'incidence élevée du travail des enfants et poursuivre une politique éducative qui soit compatible avec l'âge minimum accepté pour l'admission à l'emploi aux termes de la convention n° 138, qui est de 15 ans pour la Zambie.

La commission a noté avec préoccupation que la législation nationale ne définit pas l'âge de début de scolarité ni l'âge de fin de la scolarité obligatoire.

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

- redoubler d'efforts pour obtenir l'élimination du travail des enfants à la fois dans les secteurs formel et informel de l'économie, y compris dans des conditions dangereuses;

- prendre les mesures nécessaires pour faire en sorte que la loi modifiée sur l'éducation fixe l'âge de fin de la scolarité obligatoire à 15 ans et qu'elle soit effectivement appliquée dans la pratique, et cela sans retard;
- fournir des informations détaillées sur l'application de l'instrument statutaire n° 121 de 2013 sur l'interdiction de l'emploi des enfants et adolescents (travaux dangereux) dans la pratique, y compris des statistiques sur le nombre et la nature des infractions signalées et les sanctions imposées;
- renforcer la capacité des comités de district de lutte contre le travail des enfants et de l'inspection du travail, en particulier dans les petites exploitations minières, l'agriculture, le travail domestique et l'économie informelle;
- observer, en leur prêtant une attention particulière, les besoins particuliers des jeunes filles et autres personnes vulnérables.

La commission a prié le gouvernement de se prévaloir de l'assistance technique du BIT afin d'assurer l'application totale et effective de cette convention fondamentale, notamment par l'adoption d'un plan d'action assorti de délais pour s'attaquer aux questions soulevées pendant la discussion, et de faire rapport sur les mesures prises à la commission d'experts en vue de leur examen à sa prochaine session de 2017.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

Al tiempo que tuvo en cuenta la evolución legislativa de este caso, la Comisión subrayó la necesidad de que el Gobierno prosiga sus esfuerzos para luchar contra la elevada incidencia del trabajo infantil y para seguir una política de educación que esté en consonancia con la edad mínima aceptada de admisión al empleo en conformidad con el Convenio núm. 138, que en el caso de Zambia es de 15 años.

La Comisión tomó nota con preocupación de que la legislación nacional no define la edad de escolarización ni la edad de finalización de la educación obligatoria.

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

- redoble sus esfuerzos para asegurar la eliminación del trabajo infantil, también en condiciones peligrosas, en los sectores tanto formal como informal de la economía;
- tome las medidas necesarias para velar por que la Ley de Educación modificada fije la edad de finalización de la educación obligatoria en 15 años y se aplique efectivamente en la práctica sin más demora;
- facilite información detallada sobre la aplicación en la práctica del instrumento legislativo núm. 121, de 2013, sobre la prohibición del empleo de niños y jóvenes (trabajos peligrosos), incluidas estadísticas sobre el número y la naturaleza de las infracciones notificadas y las sanciones impuestas;
- refuerce la capacidad de los comités de distrito sobre el trabajo infantil y de la inspección del trabajo, en particular en relación con la minería de pequeña escala, la agricultura, el trabajo doméstico y la economía informal, y
- realice un seguimiento de las necesidades especiales de las niñas y otras personas vulnerables y les preste especial atención.

La Comisión pidió al Gobierno que recurra a la asistencia técnica de la OIT para asegurar la aplicación plena y efectiva de este Convenio fundamental, incluida la adopción de un plan de acción con plazos establecidos a fin de hacer frente a las cuestiones planteadas durante la discusión, y a que informe sobre las medidas adoptadas a la Comisión de Expertos para su examen en su próxima reunión, que se celebrará en 2017.

Convenio sobre la consulta tripartita (normas internacionales del trabajo),
1976 (núm. 144)

Tripartite Consultation (International Labour Standards) Convention,
1976 (No. 144)

Convention (nº 144) sur les consultations tripartites relatives aux normes
internationales du travail, 1976

El Salvador (ratificación: 1995)

El Salvador (ratification: 1995)

El Salvador (ratification: 1995)

Una representante gubernamental enfatizó su compromiso con el cumplimiento de los convenios internacionales ratificados. Declaró que, en seguimiento a las observaciones de la Comisión de Expertos y a las recomendaciones de la misión de mediación relativas al funcionamiento del Consejo Superior del Trabajo (CST), el 1.º de mayo de 2017, el Gobierno le solicitó a las federaciones y confederaciones sindicales, legalmente inscritas, que presentaran sus propuestas de representantes del sector trabajador ante el CST. Informó que, entre el 12 y el 17 de mayo de 2017, el Gobierno recibió tres propuestas. La primera constaba de ocho miembros propietarios y sus respectivos suplentes, fue presentada por ocho federaciones y una confederación que agrupan 39 sindicatos con un total de 19 107 afiliados. La segunda constaba de ocho miembros propietarios y sus respectivos suplentes, fue presentada por 18 federaciones y dos confederaciones que agrupan 197 sindicatos con un total de 108 779 afiliados. Por último, la tercera constaba de un miembro propietario y su respectivo suplente y fue presentada por una confederación y 15 sindicatos con un total de 4 130 afiliados. Hizo referencia a la sentencia pronunciada por la Sala de lo Constitucional de la Corte Suprema de Justicia en el año 2016, en el proceso de amparo núm. 951-2013. La representación del sector trabajador en el CST queda conformada por ocho representantes propietarios y sus respectivos suplentes, cinco de éstos figuraban en la primera propuesta, dos en la segunda y uno en la tercera. Los miembros del sector trabajador, juramentados el 29 de mayo de 2017, representan 251 de los 445 sindicatos activos (aproximadamente un 56 por ciento), 131 926 afiliados de los 253 139 inscritos en los registros (aproximadamente un 51 por ciento). Observó que ninguna de las organizaciones querellantes en el caso núm. 3054 presentó propuestas para el CST. Añadió que las organizaciones empresariales solicitaron una prórroga de treinta días, a partir del 17 de mayo de 2017, para consultar a sus afiliadas. El Presidente de la República ya designó a los ocho miembros del sector gubernamental. Próximamente, se convocará la primera sesión del CST. En atención a las observaciones de la Comisión de Expertos concernientes a la promoción del tripartismo y del diálogo social, informó que los cinco entes tripartitos y las 17 instituciones autónomas están funcionando. En particular, se refirió al mandato del Instituto Salvadoreño del Seguro Social (ISSS), del Fondo Social para la Vivienda de El Salvador (FSV) y del Instituto Salvadoreño de Formación Profesional (INSAFORP). También informó respecto del proceso de nombramiento de los representantes ante el Consejo Nacional de Salario Mínimo (CNSM). Lamentó que el sector empleador representado por la ANEP no participara en el CNSM, por estar en desacuerdo con los resultados de las elecciones respecto de los representantes del sector trabajador, pese a haber sido electos sus representantes de forma democrática y legal. Concluyó reiterando el compromiso de su Gobierno con el diálogo social, el cumplimiento de los convenios internacionales y la justicia social, convencida de que las transformaciones sociales a las que se aspiran y por las que se está trabajando, sólo se podrán concretizar con la participación activa de todos los sectores sociales.

Los miembros empleadores agradecieron las informaciones brindadas por el Gobierno, recordaron que el cumplimiento del Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144), ratificado por El Salvador en 1995, no ha sido objeto de examen por la Comisión, contrariamente al Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87) que lo fue en 2015 y 2016. Aclararon que varios de los temas abordados en dichas ocasiones, han sido objeto de mención por la Comisión de Expertos en sus observaciones de 2007, 2013, 2014, 2015 y 2016. Enfatizaron que el caso era de suma relevancia para los miembros empleadores. Refiriéndose a las conclusiones de la Comisión en el año 2016, resaltaron que se le había solicitado al Gobierno reactivar el CST y asegurar la plena autonomía de las organizaciones de empleadores y de trabajadores; además, la Comisión había pedido el envío de una misión de contactos directos. Dicha misión aún no se ha concretado. A pesar de la asistencia técnica brindada, el CST aún no ha sido reactivado. El Gobierno indica que pronto el CST será reinstalado; no obstante, los miembros empleadores aún tienen dudas respecto a la nominación y la no injerencia del Gobierno. Recordaron que para ser efectivas, las consultas debían efectuarse antes de tomar la decisión, contándose con suficiente antelación con todos los elementos necesarios para formarse una

opini3n. En lo que respecta a la aplicaci3n del Convenio n3m. 144, la situaci3n en el pa3s es preocupante, ya que contin3an incumpliendo las conclusiones de la Comisi3n. Se constatan hechos que afectan a la libertad de asociaci3n del sector empleador, los cuales son contrarios a las disposiciones de los Convenios n3ms. 87 y 144. Mencionaron los actos de injerencia acaecidos en el marco de la elecci3n de los miembros del CNSM, indicando que el mismo d3a de las elecciones se emiti3 un instructivo, se notific3 el mismo y se modific3. Todo ello, en opini3n de la ANEP, de manera ileg3tima. Indicaron que seg3n la ANEP los representantes ante el CNSM, al igual que los del Instituto de Acceso a la Informaci3n P3blica (IAIP), son cooperativas que carecen de la debida legitimaci3n. Resaltaron que, en ambos casos, los miembros electos son personas o entidades vinculadas al Gobierno. Lo m3s grave es la injerencia en las elecciones gremiales de la Asociaci3n Cafetalera de El Salvador (FECAGRO). El Ministerio de Gobernaci3n a3n tiene bloqueada la entrega de las credenciales, necesarias para legalizar el cambio de juntas directivas, a m3s de 50 gremiales de la ANEP. Durante el segundo semestre de 2016, se realizaron 17 marchas frente a la sede de la ANEP. La situaci3n es sumamente preocupante. Indicaron que, en virtud de la extrema gravedad de todo lo expuesto, solicitar3n la inclusi3n de las conclusiones de la Comisi3n en un p3rrafo especial del informe. Concluyeron indicando que seg3a siendo necesario el env3o de una misi3n de contactos directos.

Les membres travailleurs ont soulign3 leur profonde pr3occupation pour la situation dans le pays, incluant la violence et la pauvret3. La mission de contacts directs demand3e par la commission lors de l'examen en 2016 de l'application de la convention n3 87 n'a toujours pas eu lieu. Il est 3 esp3rer que le gouvernement donnera suite aux conclusions adopt3es en 2016. Les autorit3s doivent notamment faire toute la lumi3re sur l'assassinat du syndicaliste Victoriano Abel Vega en 2010. Les manquements examin3s cette ann3e trouvent certainement leur origine dans les m3mes causes que les manquements constat3s dans l'application de la convention n3 87. Tout en esp3rant que l'augmentation du salaire minimum depuis janvier 2017 am3liorera le sort des populations les plus pauvres, il est regrettable qu'elle ait 3t3 suivie de r3actions qui ont aliment3 les tensions sociales dans le pays, 3 savoir des licenciements massifs dans certaines entreprises et des tentatives de remettre fondamentalement en cause la journ3e de travail de huit heures. Il convient de rappeler les obligations constitutionnelles li3es 3 la soumission aux autorit3s comp3tentes des instruments adopt3s par la Conf3rence. La convention n3 144 vise 3 encourager les consultations tripartites au niveau national concernant les questions relatives aux activit3s de l'OIT. El Salvador est depuis 2013 en d3faut grave de respect de ses obligations li3es 3 la soumission. Le gouvernement semble 3chouer 3 mettre en place des structures de consultations tripartites efficaces dans les domaines qui concernent les activit3s de l'OIT, comme requis par la convention. Ce qui importe dans le respect de cette obligation, c'est que les partenaires sociaux puissent faire valoir leur opinion avant qu'une d3cision d3finitive du gouvernement ne soit arr3t3e. Les consultations se doivent donc d'3tre pr3alables 3 la d3cision d3finitive. Le gouvernement doit donc veiller 3 ce que les 3l3ments n3cessaires soient transmis suffisamment 3 l'avance aux repr3sentants des travailleurs et des employeurs. Les Etats Membres b3n3ficient 3 cet 3gard d'une marge de man3uvre pour d3cider de la nature ou de la forme des proc3dures de consultations tripartites. Il ressort de la recommandation (n3 152) sur les consultations tripartites relatives aux activit3s de l'Organisation internationale du Travail, 1976, que les Etats Membres sont libres de proc3der aux consultations par 3crit mais que celles-ci devront 3tre accept3es comme ad3quates et suffisantes par les organisations qui participent aux proc3dures consultatives. Le Conseil sup3rieur du travail est l'organe comp3tent au Salvador pour conna3tre des questions relatives aux activit3s de l'OIT. Les derni3res informations disponibles semblent faire 3tat d'une r3solution de l'impasse dans laquelle se trouvait le fonctionnement de cet organe du fait du d3saccord qui existait entre certaines organisations syndicales. Il est 3 esp3rer que les organisations patronales d3signeront 3galement leurs repr3sentants afin de permettre au Conseil sup3rieur du travail de reprendre au plus vite ses travaux. Il est essentiel que le gouvernement s'assure que la solution trouv3e garantira 3 l'avenir un fonctionnement durable de cette institution. S'agissant du libre choix de leurs organisations repr3sentatives par les repr3sentants des employeurs et des travailleurs, pr3vu par la convention, la difficult3 dans le pays se pose particuli3rement au niveau de la nomination des repr3sentants des travailleurs au sein du Conseil sup3rieur du travail. Il semble que le conflit qui opposait diff3rentes organisations syndicales trouvait sa source dans l'exigence du gouvernement que les f3d3rations et les conf3d3rations syndicales d3gagent un consensus pour la d3signation de leurs repr3sentants respectifs au Conseil sup3rieur du travail. Cela r3duisait 3 n3ant la libert3 du choix de chaque organisation repr3sentative prise isol3ment. La solution trouv3e assure la d3signation des repr3sentants des organisations syndicales au sein du Conseil sup3rieur du travail sur la base de crit3res de repr3sentativit3. Il est 3 esp3rer que cette solution pourra 3tre ent3rin3e durablement et ne pas constituer une mesure ponctuelle visant 3 r3pondre aux demandes de l'OIT. Afin de garantir une reprise durable des travaux du conseil, il faudra pr33tablir des crit3res objectifs et pr3cis ainsi qu'un processus 3lectoral convenu, clair et permanent qui garantisse la plus grande repr3sentativit3 possible des organisations. En cas de contestation, les organisations doivent 3galement pouvoir s'appuyer sur un organe ind3pendant qui pourra trancher le conflit et b3n3ficiera de la confiance de toutes les parties. S'agissant des consultations tripartites en mati3re de soumission des instruments aux autorit3s comp3tentes, pr3vues par la convention, il appara3t que le Salvador n'a pas encore mis en 3uvre de proc3dure de consultation. Une telle proc3dure doit 3tre mise en 3uvre 3 court terme. Il est essentiel que les organisations repr3sentatives puissent faire valoir 3 temps leurs observations sur les suites que souhaite r3server leur gouvernement aux initiatives normatives

de l'OIT. La nécessité de fixer la procédure de consultation à suivre est indissociable de la question du bon fonctionnement du Conseil supérieur du travail. Il ne semble pas possible que cette procédure soit fixée sans que tous les représentants des organisations représentatives n'aient été désignés. Une solution durable doit donc être trouvée pour assurer le bon fonctionnement du Conseil supérieur du travail. L'amélioration du dialogue social pourra apaiser bon nombre de tensions dans le pays.

El miembro empleador de El Salvador indicó que a pesar de las conclusiones de la Comisión, el Gobierno ha continuado incumpliendo el Convenio. En primer lugar, recordó que la Comisión había solicitado al Gobierno que reactivara de forma inmediata el CST. Señaló que, tras cuatro años de inactividad del CST, el 11 de mayo de 2017, el sector empresarial fue convocado para designar en tan sólo cuatro días a sus representantes en el seno del CST. Al respecto, indicó que se solicitó un mes de prórroga. Informó que los nombramientos estaban listos y serían notificados por la tarde, de ese mismo día, en las oficinas del Ministerio de Trabajo y Previsión Social. Asimismo, informó de la elección de los representantes del sector trabajador ante el CST. Indicó que los medios de comunicación de su país habían publicado declaraciones de los representantes de los trabajadores elegidos, quienes manifestaban su desconocimiento de las reglas con base en las cuales se había realizado dicha elección. Denunció que tales actuaciones son contrarias al Convenio, así como a las recomendaciones de la Comisión de Expertos y las conclusiones de la Comisión, en las que instaba al Gobierno a asegurar la plena autonomía de las organizaciones de empleadores y trabajadores. Solicitó que se llevaran a cabo investigaciones al respecto por la OIT. En segundo lugar, se remitió a las conclusiones de la Comisión de 2016 en relación al aseguramiento de la plena autonomía de las organizaciones de empleadores y trabajadores. En este sentido, el miembro empleador denunció que el Gobierno había retenido las credenciales de 25 de las 50 organizaciones de empleadores, sin las cuales no pueden participar en consultas tripartitas, ya que es necesario que éstas se encuentren registradas en el Ministerio de Gobernación después de elegir una nueva Junta Directiva. Como muestra de ello, señaló el hecho de que en la reciente convocatoria de la CST, el Gobierno solicitó constancia de que las organizaciones se encontraran debidamente registradas en el Ministerio de Gobernación. Denunció también que en la elección de ternas para Comisionados del IAIP, el Gobierno entregó credenciales a asociaciones cooperativas, de forma que muchas organizaciones de empleadores no pudieron participar en la elección. Indicó además que se habían emitido de manera ilegal credenciales a un grupo de personas afines al Gobierno, con miras a que una de ellas asumiera la presidencia de la Asociación Cafetalera de El Salvador (FECAGRO), que posteriormente, con el apoyo de la Policía Nacional Civil, irrumpió de manera ilegal en las instalaciones de dicha asociación. Por último, denunció que se habían producido hechos de intimidación contra los miembros de la ANEP por parte de grupos afines al Gobierno y ataques contra sus instalaciones, y lamentó que el Gobierno aún no había aceptado la misión de contacto directo recomendada por la Comisión en 2016.

La miembro trabajadora de El Salvador indicó que en los últimos años las organizaciones sindicales han elaborado propuestas en los órganos tripartitos a fin de promover cambios estructurales, el reparto equitativo de la riqueza y el respeto de los derechos humanos y de los principios y derechos fundamentales en el trabajo frente a la injerencia corporativa. Afirmó que se habían elegido a los representantes del sector trabajador ante el CST, que se encontraba sin funcionar desde 2013. Expresó que una vez superado el impasse consideraba importante que el reglamento del CST fuera objeto de reforma para establecer los procedimientos y criterios para determinar la representatividad del sector trabajador. Afirmó que debe garantizarse una composición democrática y transparente del sector sindical y del sector patronal. Manifestó que la ANEP debe abstenerse de injerir en la representación sindical, buscando favorecer a representantes afines a ellos y pretendiendo deslegitimar a organizaciones de trabajadores, situación que ha sido puesta en conocimiento del Director General de la OIT. Instó al Gobierno a ampliar los mecanismos de actuación social y participación ciudadana para asegurar que las actuaciones colectivas se realicen de forma democrática y evitar la intervención de los oligopolios económicos. Expresó que el ejercicio pleno de la libertad sindical es indispensable para el cumplimiento del Convenio. Exigió al sector empresarial que respete el derecho a la libertad sindical y permita la creación de sindicatos, sin ningún tipo de restricción o represión a lo largo de la cadena productiva. Al respecto, subrayó que la responsabilidad por la violación de derechos humanos no sólo es de las empresas en los eslabones más bajos de la cadena productiva, sino también, y especialmente, de las grandes empresas que más se benefician de los lucros generados en la cadena productiva. Se refirió a un caso ante el Comité de Libertad Sindical relativo a la represión y criminalización de las libertades sindicales por parte del sector empresarial en el país. En dicho caso, los trabajadores habían sido despedidos y se encontraban inmersos en sendos procesos judiciales desde el año 2010 por exigir el respeto de su derecho a la huelga y a celebrar contratos colectivos. Exigió al Gobierno que interviniera con carácter urgente a fin de evitar la consumación de las medidas de privación de libertad de los sindicalistas acusados. Manifestó que esperaba que el Gobierno llevara a cabo medidas de fortalecimiento de la tutela laboral y la protección social, sin caer en falsos argumentos sobre la flexibilidad laboral como ocurre en otros países de América Latina. Expresó su confianza en que las conclusiones del caso fijaran elementos claros y tiempos precisos que permitan adoptar de forma urgente un plan para superar los problemas identificados y garantizar el pleno cumplimiento del Convenio.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Norway and Serbia, stated that the Convention was intrinsically linked with two fundamental Conventions, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In this regard, he wished to recall the commitment undertaken by the Government of El Salvador under the trade pillar of the EU–Central America Association Agreement, to effectively implement the fundamental ILO Conventions. The case of El Salvador had already been before the Committee in 2016 in relation to the application of Convention No. 87, and a discussion had taken place on the need to foster tripartite dialogue and freedom of association in the country, urging the Government to reactivate, without delay, the Higher Labour Council and ensure full autonomy for employers' and workers' organizations. He expressed concerns that, according to the Committee of Experts, there had not been any progress on these two matters. Considering that effective, inclusive and transparent tripartite consultations were essential to ensure social dialogue in a country, the speaker urged the Government to take measures to include all social partners in consultations related to employment and labour policies, in a transparent manner and before a decision was taken, so as to build trust. Expressing concerns that the High Labour Council had not been able to operate for over three years and recalling the importance of ensuring the full autonomy of employers' and workers' organizations to determine their representatives to joint and tripartite bodies, he requested the Government and the social partners to reconstitute the Council as a matter of urgency based on the criteria of representativeness of organizations. All possible ways to promote social dialogue should be explored. To this end, he reiterated the call for an ILO direct contacts mission in the near future, which could provide significant support in ensuring conformity of national law with ILO Conventions. A similar call had been issued by the Committee in 2016 to no avail. At the same time, he reaffirmed the ongoing commitment to constructive engagement with El Salvador, including through EU and Member States cooperation projects aiming to strengthen the Government's capacity to address all issues raised by the Committee of Experts.

El miembro gubernamental del Brasil, hablando en nombre del Grupo de los Estados de América Latina y el Caribe (GRULAC), agradeció las informaciones brindadas por el Gobierno relativas al cumplimiento del Convenio. El GRULAC se remitió al informe de la Comisión de Expertos, en el que se tomó nota del proceso de diálogo iniciado por el Gobierno tras la celebración de un proceso de mediación en febrero de 2016 con la asistencia técnica de la OIT. Asimismo, se tomó del dictamen de la Sala de lo Constitucional de la Corte Suprema de Justicia en el proceso de amparo 951-2013. Tomó nota de lo expresado por la representante gubernamental en relación a la elección de los representantes del sector trabajador en el seno del CST por las confederaciones y federaciones sindicales, superando con ello el principal obstáculo al funcionamiento de este ente. Tomó nota también de la designación de los representantes del sector empleador ante el CST por el Presidente de la República, de forma que dicho órgano se encuentra preparado para comenzar a funcionar. Reiteró su compromiso con la aplicación del Convenio y manifestó su confianza en que el Gobierno mantendrá sus esfuerzos para dar cumplimiento al mismo.

El miembro empleador de Colombia indicó que intervenía no sólo como miembro representante de los empleadores de Colombia, sino también como vicepresidente de los empleadores de América Latina. Indicó que durante los tres últimos años la Comisión ha venido analizando la situación en El Salvador en relación a diversos convenios. Expresó que hay una falta de consulta tripartita en la toma de decisiones respecto a muchos aspectos y destacó que las consultas deben ser previas e incluir también las memorias presentadas. Manifestó que la misión de contactos directos no se ha llevado a cabo y solicitó que se realizara. Asimismo, solicitó que el Gobierno presentara informes detallados para que pudieran ser analizados por la Comisión de Expertos en su próxima reunión. Subrayó que los representantes de trabajadores y empleadores deben ser elegidos libremente y estar representados en pie de igualdad, como establecen los Convenios núms. 87 y 144.

La miembro trabajadora del Brasil reconoció la importancia de que el CST se hubiera instituido y estuviera funcionando. Celebró la disposición del Gobierno a aplicar las recomendaciones de asistencia técnica de la OIT. Saludó la iniciativa de adecuación del salario mínimo realizada, así como la mesa de diálogo establecida entre el Ministerio de Trabajo y Previsión Social y las organizaciones de trabajadores. Expresó que el Gobierno había demostrado apertura al diálogo y le alentó a que lo intensificara.

La miembro gubernamental de Cuba se adhirió a la declaración del GRULAC. Apuntó que, en el informe de la Comisión de Expertos se consigna que en seguimiento a las conclusiones adoptadas por la Comisión en junio de 2015, se aceptó la asistencia técnica de la OIT, por medio de un proceso de mediación que se llevó a cabo en febrero de 2016. Atendiendo las recomendaciones del mediador independiente, el Gobierno continuó con el proceso de diálogo. Han sido designadas por las confederaciones y federaciones sindicales las representaciones para la activación del CST.

El miembro trabajador de Colombia indicó que no se habían realizado acciones para cumplir con las conclusiones de la Comisión de 2016. Consideró que los requisitos exigidos por el Gobierno en relación con la presentación ante el CST, carecen de fundamento por no estar previstos en el Reglamento de este órgano. El único objetivo fue obstaculizar la presentación de propuestas. Las organizaciones de trabajadores no acordaron el procedimiento ni los criterios en el marco de este proceso que fue conducido y administrado únicamente por el Ministerio del Trabajo. Expresó que los criterios utilizados en el proceso de elección, son contrarios a lo que plantea la Comisión de Expertos. Afirmó que la determinación de la mayor representatividad debe fundarse en criterios establecidos con anterioridad por el sector trabajador y no por el Gobierno. El proceso constituye una grave injerencia del Gobierno en la elección de los representantes del sector trabajador. Alegó también que se crearon en los últimos meses varios sindicatos y federaciones controladas por el Gobierno con el fin de ganar mayoría en el CST y otras instancias tripartitas. Manifestó que esperaba que el Gobierno abrirá un diálogo franco y sincero para solucionar estas situaciones.

Un observador representante de la Organización Internacional de Empleadores (OIE) reiteró su gran preocupación por la situación de acoso que viven los empleadores y que afecta a su libertad sindical. La situación se viene examinando desde hace ya tres años y lejos de mejorar ha empeorado. Subrayó que la Comisión en 2016 hizo una llamada al envío de una misión de contactos directos y que la Comisión de Expertos señaló el caso con una doble nota a pie de página. Indicó que el Gobierno había designado representantes del sector empresarial en órganos tripartitos que se encargan de temas relacionados con el trabajo, tales como la fijación de salarios mínimos. Expresó que se habían impuesto de manera unilateral grandes incrementos de los salarios mínimos, por encima de lo pactado con el sector trabajador. Denunció que el Gobierno había pasado por alto el dictamen de la Corte Suprema de Justicia en relación a las funciones de la ANEP. Observó con gran preocupación los hechos derivados de incitaciones violentas hacia la ANEP y las manifestaciones contra la Corte Suprema de Justicia por decisiones que no se consideraban favorables a los postulados del Gobierno. Llamó a un cambio de actitud que garantice el buen funcionamiento del diálogo social. Solicitó que se adoptaran medidas para garantizar el cumplimiento de los convenios ratificados por El Salvador.

El miembro trabajador de Nicaragua expresó su disconformidad con la lista presentada en este caso. Indicó que el Gobierno de El Salvador ha cumplido el Convenio, por lo que no está claro cuál es la razón por la que esta cuestión se ha incluido en la lista de casos discutidos por la Comisión. Indicó asimismo que en enero de este año se logró que el Consejo Nacional del Salario Mínimo determinara un ajuste salarial, lo que ha podido crear descontento en el sector empresarial. Afirmó que la petición de las organizaciones de empleadores de revisar la representación sindical en los espacios tripartitos, es una clara intromisión en los asuntos propios de las organizaciones de trabajadores. Al tiempo que saluda la instalación del CST, expresó que estaba a la espera de que el sector empleador designe a sus representantes para que sea efectivo el funcionamiento de esta instancia.

El miembro gubernamental de Panamá se adhirió a la declaración del GRULAC y consideró que las informaciones brindadas por el Gobierno contienen elementos importantes para consolidar los principios en que se sustenta la consulta tripartita prevista en el Convenio. Respalgó el informe rendido por la Ministra de Trabajo y Previsión Social, del cual se desprende la clara voluntad de cumplir con todas las recomendaciones de la Comisión.

El miembro trabajador de la República Dominicana afirmó que los miembros del sector trabajador, si bien habían expresado las dificultades en el funcionamiento del CST, finalmente habían logrado ponerse de acuerdo para nombrar sus representantes en el mismo. Indicó que le extrañaban las preocupaciones del sector empresarial respecto de la elección de los miembros del sector trabajador ante el CST y pidió la no injerencia del sector empresarial en tales elecciones. Expresó que las organizaciones de trabajadores han sufrido una mayor cuota de persecución en forma de despidos y asesinatos, por lo que no debe argumentarse que la violencia es sólo sufrida por el sector empresarial. Propuso que hubiese un acompañamiento técnico al CST, de manera que éste pueda funcionar como instancia de consulta tripartita.

La miembro gubernamental del Estado Plurinacional de Bolivia se sumó a la intervención realizada en nombre del GRULAC y manifestó que el Gobierno ha asumido medidas positivas, claras y concretas a efectos de no incumplir con las disposiciones del Convenio. Esto se demuestra claramente a través de la aceptación de la asistencia técnica de la Oficina para llevar a cabo un proceso de mediación, que efectivamente se realizó en febrero de 2016. Asimismo, la Sala Constitucional de la Corte Suprema de Justicia estableció que el derecho a la libertad sindical no fue vulnerado por el Ministerio de Trabajo al exhortar a las federaciones y confederaciones sindicales a presentar una nómina única. En ese contexto, la oradora acogió con beneplácito que la representación del sector laboral ya haya sido designada por las confederaciones y federaciones sindicales, que la representación gremial empresarial haya manifestado que designará a sus representantes, y que la representación gubernamental ya esté

designada. Por consiguiente, consideró que, con el funcionamiento inminente del CST, ya no existen razones que sustenten la denuncia de incumplimiento del Convenio.

El miembro empleador de Guatemala explicó que, decidió tomar la palabra ante las declaraciones del Gobierno. Expresó que éstas dejan muchas dudas sobre las intenciones con que se han obrado en conformar el CST, así como en el tratamiento que viene dando a la ANEP. Según expresado por el Gobierno, la convocatoria para constituir aquel órgano se hizo tan tarde como el 1.º de mayo de 2017. Parecería que ello se hizo a los efectos de mostrar algún resultado ante esta Comisión. Denunció la interferencia en la designación de los representantes de los empleadores ante foros de diálogo social, y los actos de violencia contra la ANEP por grupos afines al Gobierno. Espera que la Comisión no escatimara en la aplicación de las herramientas a su alcance, para que el Gobierno respete plenamente los mecanismos de diálogo social y la plena autonomía de la ANEP.

El miembro gubernamental de Honduras observó que la Constitución y la legislación nacional designan al CST como el ente encargado de llevar a cabo las consultas tripartitas en relación con las normas internacionales del trabajo. Subrayó que el CST está listo para instalarse puesto que se designó a la representación del sector trabajador, resolviéndose de esta manera el principal obstáculo para su activación; se convocó la representación del sector empleador, quien manifestó necesitar un plazo adicional de un mes; y se designó a la representación gubernamental. Exhortó al Gobierno a fortalecer su instancia nacional de diálogo tripartito a fin de seguir cumpliendo con el Convenio.

The Employer member of Turkey expressed the belief that proper functioning of social dialogue was key for sound and effective industrial relations. Political willingness and commitment to engage in social dialogue must be shown by all parties in an enabling legal and institutional framework. As indicated by the Committee of Experts, interference of the Government in the election of members for the joint and tripartite executive boards constituted a clear violation of Article 3 of the Convention. Notwithstanding some improvements reiterated by the Government, there were obvious shortcomings with regard to the operation of the Higher Labour Council. First of all, it had not been functioning for years which meant that the social partners lacked their most important platform to contribute to the decision-making process. Moreover, the social partners were not afforded the necessary timeframe or opportunities to express themselves before the adoption of social and economic regulations. Social partners must have the forthcoming regulations before them sufficiently in advance to form their respective opinions. Noting that no concrete steps had been taken to establish an enabling environment for social dialogue, he called on the Government to give priority to measures promoting and reinforcing effective social dialogue.

El miembro empleador de México se refirió a la declaración de la representante gubernamental quien consideró que el país era productivo y seguro. Señaló que ese último concepto incluye seguridad jurídica de la que forma parte la consulta tripartita. El cumplimiento de la misma no se logrará con explicaciones, ya que, en el mejor de los casos, las explicaciones constituyen anhelos o justificaciones de lo que no se está haciendo. Recalcó que la Comisión tiene que asumir sus responsabilidades y tomar medidas firmes e inmediatas para que el Gobierno haga efectiva la consulta tripartita.

La representante gubernamental recordó que el caso concernía la aplicación del Convenio núm. 144 y no la de otros convenios. Resaltó la voluntad y apertura de las y los trabajadores en todo el proceso objeto de discusión. Añadió que la convocatoria para la designación de las representaciones del sector laboral se había ajustado al espíritu de la Corte Suprema de Justicia y al de los órganos de control de la OIT. Explicó que, ante la ausencia de normativa legal nacional e internacional que permita determinar el grado de representatividad de las organizaciones, se tomó en consideración el número de sindicatos afiliados, de trabajadores representados, y de contratos colectivos celebrados. Su Gobierno coincide con lo manifestado por el sector laboral, respecto del reto de lograr que la consulta tripartita sea un ejercicio permanente para el fomento de los derechos laborales y de la asistencia técnica que requiere el CST, como, por ejemplo, la formulación de un nuevo reglamento que prevea los mecanismos, competencias y procedimientos que garanticen la representación de los sectores laborales y patronales en igualdad de condiciones. Destacó el crecimiento de la economía, la reducción del costo de la canasta básica, la reactivación del sector agropecuario y la generación de 6 000 empleos nuevos. Dichos avances no serían posibles sin diálogo social, tampoco lo serían sin la participación activa del empresariado en las políticas económicas y en las instancias de toma de decisión. En vista de las denuncias de la ANEP y de la OIE ante la Comisión, observó que no constaba ningún registro de denuncia interpuesta ante la Policía Nacional Civil ni ante la Fiscalía General de la República. Opinó que la ANEP debió haber acudido antes a las instancias competentes nacionales. Recordó que las cooperativas también son empresas, razón por la cual tienen los mismos derechos a participar en cualquier proceso de elección. Concluyó indicando que los pasos dados serían provechosos para el cumplimiento pleno de los convenios ratificados.

Les membres travailleurs ont rappelé que la convention n° 144 est la prolongation au niveau national du tripartisme caractéristique de l'OIT. Il est urgent que le gouvernement mette en œuvre, conformément à la convention, des procédures de consultations tripartites qui permettent aux organisations représentatives de faire valoir leurs observations sur les suites à réserver aux initiatives normatives de l'OIT. Ces procédures de consultations ne seront efficaces que si le bon fonctionnement du Conseil supérieur du travail chargé du suivi de ces questions est garanti. Un déblocage est intervenu récemment suite à un accord entre organisations syndicales. Il est à espérer que les représentants des organisations patronales soient désignés prochainement afin de permettre au conseil de reprendre ses travaux. Pour garantir un fonctionnement durable du Conseil supérieur du travail et éviter à l'avenir un nouveau blocage, il semble important que le gouvernement s'abstienne d'imposer un consensus aux organisations représentatives sur la désignation de leurs représentants respectifs. Chaque organisation représentative doit pouvoir désigner ses représentants sans avoir besoin de l'assentiment des autres organisations représentatives, de sorte à lui garantir la liberté de choix de ses représentants. Le gouvernement est invité à définir des critères objectifs et précis ainsi qu'un processus électoral clair et permanent pour garantir la plus grande représentativité possible des organisations; il est également nécessaire d'instituer un organe indépendant de recours. Lorsque tous ces éléments auront été mis en place par le gouvernement, il faudra qu'il veille à mettre en place des consultations tripartites efficaces. Pour cela, le gouvernement devra veiller à ce que les partenaires sociaux puissent faire valoir leur opinion avant qu'une décision définitive du gouvernement ne soit prise et que les éléments nécessaires à la prise de position soient transmis suffisamment à l'avance aux organisations représentatives. La résolution de ces différents points devra permettre d'assurer de manière durable le bon fonctionnement du Conseil supérieur du travail. Pour mettre en œuvre ces recommandations, il est demandé au gouvernement de recourir à l'assistance technique du BIT.

Los miembros empleadores reiteraron que este caso es preocupante y enfatizaron que, si bien hay que agradecer a la representante gubernamental las explicaciones brindadas, la información no es enteramente satisfactoria. Se observa un incumplimiento: del artículo 1 del Convenio núm. 144, en relación con las dudas que existen respecto al carácter «más representativo» de las organizaciones, tanto del sector empleador como trabajador; del artículo 2, por la falta de consultas efectivas en asuntos relacionados con la OIT y de un procedimiento objetivo predeterminado conocido por todos los actores; y por último, del artículo 3, en lo que respecta a la libertad de elección de los representantes. Los miembros empleadores quisieron destacar una vez más su máxima preocupación por los actos de violencia cometidos contra la sede de la ANEP, y por las múltiples manifestaciones de acoso a sus dirigentes. Por consiguiente, los miembros empleadores instaron al Gobierno a que: asegure avances concretos respecto de la libertad y autonomía de las organizaciones de trabajadores y de empleadores para designar sus representantes en los órganos de toma de decisión, en los órganos paritarios o tripartitos, en cumplimiento del artículo 3 del Convenio; reactive sin demora el CST que constituye el ámbito principal de diálogo social y de la consulta tripartita; concretice sin demora y durante el año en curso la misión solicitada por esta Comisión; y garantice la protección de la sede de la ANEP. Solicitaron además que se incluya el caso de El Salvador en un párrafo especial del informe de la Comisión.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por la representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota con preocupación de la inexistencia hasta la fecha de verdaderas consultas tripartitas con organizaciones de empleadores representativas e independientes, e instó al Gobierno a que adopte sin dilación todas las medidas necesarias para aplicar el Convenio núm. 144 en la legislación y en la práctica. Al mismo tiempo, la Comisión tomó nota de la invitación del Gobierno formulada tres semanas antes de la inauguración de la 106.^a reunión de la Conferencia Internacional del Trabajo a que se designe a representantes de los empleadores y de los trabajadores ante el Consejo Superior del Trabajo.

Teniendo en cuenta la discusión, la Comisión instó al Gobierno de El Salvador a que:

- **reactive sin demora el Consejo Superior del Trabajo (CST);**
- **vele por que se realicen avances concretos en lo que respecta a la libertad y autonomía de las organizaciones de empleadores y de trabajadores para designar a sus representantes de conformidad con el Convenio núm. 144, sin ser objeto de intimidación;**

- asegure la protección adecuada de los locales de las organizaciones representativas de los empleadores y de los trabajadores contra actos de violencia y de destrucción, e
- informe con detalle sobre la aplicación del Convenio, tanto en la legislación como en la práctica, a la siguiente reunión de la Comisión de Expertos.

Habida cuenta de que el Gobierno no ha adoptado medidas para aplicar las disposiciones del Convenio núm. 144 en la legislación y en la práctica, la Comisión solicitó una vez más que se envíe una misión de contactos directos a El Salvador antes de finales de 2017.

Conclusions

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

The Committee noted with concern the lack of genuine tripartite consultations to date with independent and representative employers' organizations and urged the Government to take all necessary measures without delay to implement Convention No. 144 in law and in practice. At the same time the Committee noted the Government's invitation three weeks before the opening of the 106th Session of the International Labour Conference to nominate employers' and workers' representatives to the Higher Labour Council.

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

- reactivate, without delay, the Higher Labour Council (CST);
- ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives in compliance with Convention No. 144, without intimidation;
- ensure adequate protection for the premises of the representative workers' and employers' organizations from violence and destruction;
- report in detail on the application of the Convention in law and practice to the next session of the Committee of Experts.

Confronted with the Government's failure to take action to apply the provisions of Convention No. 144 in law and practice, the Committee requested once again that a direct contacts mission be sent to El Salvador before the end of 2017.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

La commission a constaté avec préoccupation qu'il n'y a pas eu à ce jour de réelles consultations tripartites avec des organisations indépendantes et représentatives des employeurs, et a prié instamment le gouvernement de prendre sans délai toutes les mesures nécessaires pour appliquer la convention n° 144 en droit et dans la pratique. D'autre part, la commission a pris note de l'invitation lancée par le gouvernement, trois semaines avant l'ouverture de la 106^e session de la Conférence internationale du Travail, demandant à ce que soient désignés les représentants des employeurs et des travailleurs au Conseil supérieur du travail.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a prié instamment le gouvernement d'El Salvador de:

- relancer sans attendre le Conseil supérieur du travail (CST);

- veiller à faire évoluer concrètement et positivement la situation au regard de la liberté et de l'autonomie des organisations de travailleurs et d'employeurs de sorte qu'elles puissent désigner leurs représentants conformément aux dispositions de la convention n° 144, sans courir le risque d'être intimidées;
- protéger dûment les locaux des organisations représentatives des travailleurs et des employeurs contre les actes de violence et de destruction;
- rendre compte en détail de l'application de la convention, en droit et dans la pratique, à la prochaine session de la commission d'experts.

Le gouvernement n'ayant pas encore pris de mesures pour appliquer les dispositions de la convention n° 144 en droit et dans la pratique, la commission a demandé une nouvelle fois à ce qu'une mission de contacts directs soit envoyée au Salvador avant fin 2017.

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

Convention (n° 182) sur les pires formes de travail des enfants, 1999

Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182)

Afghanistan (ratification: 2010)

Afghanistan (ratification: 2010)

Afganistán (ratificación: 2010)

A Government representative indicated that, as recognized by the National Labour Policy, “with a crippling poverty rate of 39 per cent, many households responded to economic shocks by taking their children out of school and requiring them to generate income, thus forcing them into labour”. Therefore, the issue of child labour was not only a law enforcement matter, but also a fundamental problem which required a comprehensive understanding and a robust response mechanism. From an institutional perspective, a number of legislation, regulations and policy frameworks had been developed to provide a basis for interventions to address child labour, including in the Constitution, the Labour Law, the Law on Child Correction and Rehabilitation Centres, the Law on the Prohibition of Children’s Recruitment in the Armed Forces, the Child Guardianship Law, the Law on Redressing Child Rights Violations, and the Law on Anti-Child Trafficking and Human Kidnapping. Relevant practical tools included the Social Protection Strategy, the Street Child Labour Protection Strategy, and the National Strategy for the Protection of Vulnerable Children. National surveys had also been conducted to identify, analyse, and understand the nature and types of child labour, as well as the factors that forced children into labour. Additionally, a recruitment and work conditions procedure had been developed with a view to prevent the recruitment of children in the worst forms of labour. Similarly, pursuant to section 120 of the Labour Law, a list of harmful occupations prohibited to children under 18 years of age had been developed in consultation with the social partners. A draft action plan on the prevention of worst forms of child labour was being developed to give effect to the provisions of the Convention, in consultation with the social partners, as well as representatives from the Ministry of Public Health and other relevant agencies. The Child Protection Action Networks (CPAN) had been established in over 100 districts in 33 provinces of Afghanistan, which, during the past two years, addressed over 5,417 cases of vulnerable children, including 492 cases which prevented some of the worst forms of child labour. To address the vulnerable segments of the society, particularly children, the Department of Social Workers at the Ministry of Labour had been established, with a special emphasis on the prevention of the worst forms of child labour. Moreover, a new system aimed at reintegrating vulnerable children into their families had been established at the Ministry of Labour, through which, over 264 vulnerable children had been reunited with their families during 2014–15. The Ministry of Labour had concluded memoranda of understanding with 22 international organizations and also with the Ministry of Education to provide rapid literacy support to street children through its daily child support centres. During 2014–15, over 19,000 street children had been admitted to schools following the completion of rapid literacy training programmes.

With regard to child soldiers, the implementation of the Law on the Prohibition of Children’s Recruitment in the Armed Forces (2014), along with other associated instruments, had helped to prevent the recruitment of 496 children into the ranks of national and local police in 2017. Also, the Ministry of Interior in cooperation with relevant government agencies was effectively implementing the President Decree No. 129 which prohibited torture, mistreatment and the use or recruitment of children in police ranks. Inter-ministerial commissions tasked with the prevention of child recruitment in the national and local police had been established in Kabul and provinces. Moreover, child support centres had been set up in 20 provinces,

and efforts were under way to establish similar centres in the remaining provinces. In 2017, over 47 security officials had been prosecuted for violating human rights in security agencies. Programmes undertaken by the Afghanistan Independent Human Rights Commission had put a particular emphasis on the rights of children, including awareness raising of the harms of children recruited by armed groups. The National Directorate of Security had recently issued Order No. 0555, prohibiting the recruitment of underage persons; the Order was being implemented in all security institutions and monitored by national and international human rights organizations. Curricula for the training of security personnel were also being reviewed and updated with additional hours on child rights.

The Government was also taking measures to address the practice of *bacha bazi* (“dancing boys”) through law enforcement, awareness raising, and other dissuasive measures. Security agencies had put an emphasis on tracking, punishing and stopping any act that constituted a violation of human rights, including the exploitation of boys by men in positions of influence. In the Child Protection Law, which was to be submitted to Parliament for adoption, *bacha bazi* was considered a punishable crime. Strong actions were being taken against the exploiters as well as the families who knowingly forced their children into prostitution, including *bacha bazi*. A sharp decline in the practice was expected in the coming years with the continuation of law enforcement and awareness-raising efforts. The Government was committed to implementing the Convention to ensure effective protection for all children against the worst forms of labour, and looked forward to working with national and international partners in this regard.

The Employer members noted that Afghanistan had been in a situation of armed conflict for decades. Despite some moderate advancement, many issues remained. In its observation, the Committee of Experts had raised the issue of recruitment of children for use in armed conflict. A law had been passed in 2014 criminalizing the recruitment of children in the Government’s security forces. Since 2014, recruitment issues mostly involved the Taliban. While the Government had limited ability to address this matter, it remained responsible for everything within the country’s borders. Concerning issues of sexual exploitation and the cultural practice of “dancing boys”, various institutions and bodies had commented on this situation, demonstrating that it was a real problem. Reference had been made to a draft law, but more information was needed from the Government on the action taken to address that problem. With regard to the question of access to education, especially for girls, problems were mainly caused by the decades of conflict and the fact that the Taliban and other anti-governmental actors were restricting access for girls in territories under their control. However, it was still the Government which was responsible for everything within the country’s borders. In its direct request, the Committee of Experts had noted issues of conformity of the national legislation with the provisions of the Convention. While Afghanistan had a law on combating human trafficking, that law did not define the word “child”. Since the majority of victims of human trafficking in the country were children, there was a need to define the word “child” to specify that it applied to all persons under the age of 18, in conformity with the Convention. In relation to the prohibition of child prostitution and pornography, there was no general legal prohibition in the national legislation. That was linked to the issue of the “dancing boys”. The law only prohibited forcing underage women into prostitution. Reference had been made to a committee which had been formed to address this issue, as well as a draft law, but more information was needed from the Government in that regard. Finally, in relation to hazardous work, an issue was that labour inspectors were not authorized to impose penalties for child labour violations. That was not in conformity with the Convention. In particular, one of the key types of hazardous work involved brick factories, where there were cases of bonded child labour. The Employer members appreciated that Afghanistan was in a difficult situation and that some of the issues discussed were outside of what the Government could do under the current circumstances. However, other issues, such as the “dancing boys” and sexual exploitation of children, were within the control of the Government. Therefore, the Employer members expected that the Government would take strong and immediate measures to stop such exploitation and to ensure that the national legislation and practice fully complied with the Convention.

The Worker members expressed deep concern at the situation and the number of children involved in armed conflict. Given the high likelihood of under-reporting, the data available may not accurately reflect the actual scale of child recruitment and use by parties to the conflict. Forcible recruitment of children by non-state armed groups and by the Afghan national forces was deplorable. The Convention prohibited the use, procuring or offering of children for prostitution and required ratifying Members to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Worker members were appalled by the widespread practice of “dancing boys”, which involved the sexual exploitation of boys who were often under the age of 16 by men in power, including government officials. While the Penal Code criminalized the use, procuring or offering of a child for prostitution and the production of pornography, there appeared to be no provision that criminalized the use of a child by a client for sexual exploitation or that prohibited the use, procuring or offering of boys for prostitution. Moreover, despite the adoption in 2014 of a list of hazardous work prohibited to children, some entire Afghan families were trapped in debt bondage in the brickmaking industry. There were reports of wide use of bonded labour involving children in the agricultural sector and other informal economic activities. There were no penalties provided for in cases of violation of the provisions related to the prohibition of hazardous work by children under 18. Furthermore, the number of labour inspectors,

which currently was 18, was insufficient. In any case, labour inspectors did not have legal authority to enforce child labour laws. The Convention required ratifying Members to take effective and time-bound measures to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour. Data available indicated that about 6 million children were out of school in the country and that male secondary school participation was at 42.8 per cent while that of girls was only at 21.1 per cent. Schools also continued to be a target for violent attacks, resulting in many civilian casualties and negatively impacting children's access to education. There were also records of the use of educational facilities for military purposes by parties to the armed conflict. The Worker members were extremely concerned at the persistence of the worst forms of child labour in Afghanistan. They were aware of the situation of armed conflict in the country and the serious challenges related to the enforcement of national laws to non-state armed groups. At the same time, it was clear that the Afghan forces themselves did not shy away from abusing and exploiting children, which was horrendous and unacceptable. Despite some initiatives undertaken by the Government and the international community, the widespread use of the worst forms of child labour continued to be a pressing issue, which needed to be addressed as a matter of urgency. They called on the Government to strengthen its efforts to protect children from the worst forms of child labour and ensure that investigations and robust prosecutions of offenders were carried out and that sufficiently effective and dissuasive penalties were applied in practice in order to combat impunity.

The Worker member of Afghanistan underlined that some of the worst forms of child labour were being practiced daily in Afghanistan. The term "child slavery" was to be used instead of "child labour", reflecting the gravity of the situation in the country. Children were used by mafia groups to beg on the streets for money. They also worked in hazardous sectors such as mining and agriculture, as well as in industries such as carpet weaving and car repair workshops. The most serious issue was the use of children in war. Terrorist and other extremist groups recruited and forced children to fight as gunners or suicide attackers. As highlighted by the Committee of Experts, children had also been recruited by Afghan government security forces and killed during military operations. Therefore, the Government had the duty to eliminate any recruitment of children by its agents as a matter of urgency, and could not simply point to the actions of non-state actors. In regard to the sexual abuse of children, although the law strictly prohibited it, problems remained in practice. The cultural practice of *bacha bazi* was a gateway to the sexual abuse of boys and prostitution, which was even reported to occur in some elements of the security forces. Therefore, urgent measures were needed to be taken by the Government to eliminate this practice among its security forces and more widely in the society.

While the Constitution recognized education as a right for every citizen, access to free basic education was not ensured in practice. The situation in urban areas was marginally better than in the rural areas where poverty prevailed. Parents might sell their children into forced prostitution due to poverty. In rural areas, there were not enough schools. Clean water, toilets or books were not always available. Girls usually suffered more because of the threats to those attending school. Pressure was also placed on families by extremist groups. Due to the security situation, many schools were closed and more than 400,000 students were deprived of education in the country as a whole. The quality of education was another aspect of the problem, including the large number of unqualified teachers and poorly developed curriculum and materials for students, which left children in religious schools vulnerable to radicalization. The speaker called on the Government to pay particular attention to the problems raised and to fulfil its commitments under the Convention. Without the implementation of the measures recommended by the Committee of Experts, it would be difficult to change the critical situation for children in Afghanistan. Therefore, a strong commitment was needed from the Government.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Norway and Serbia, called for the protection and promotion of all human rights and freedoms and reiterated the EU's strong commitment to the eradication of child labour, particularly in its worst forms. The EU-Afghanistan Human Rights Dialogue included deliverables and indicators on children's rights and the implementation of the law prohibiting recruitment of child soldiers. The recent signing of the Cooperation Agreement on Partnership and Development confirmed the EU's commitment to Afghanistan's development and its support to comprehensive reform in the country. The commitment and progress made by the Government to prevent and end recruitment of children in the national forces were to be welcomed. The law criminalizing recruitment of children into the security forces had entered into force in 2014. The Government had also adopted a roadmap to accelerate the elimination and prevention of recruitment and use of children by national forces, as well as guidelines to prevent recruitment. Three additional units had also been established in different regions and were embedded in the police recruitment centre to prevent recruitment of children. Information available showed that the majority of cases of recruitment was by opposition groups and not the national forces; however, due to under-reporting, the overall number of cases was assumed to be much higher. While the challenges faced by Afghanistan were to be noted, the Government was called upon to pursue efforts to end the recruitment of children in the armed forces and police. Additional measures should be taken so as to prevent enrolment in armed groups. Child soldiers should be demobilized, thorough investigations and prosecutions should

be carried out, and dissuasive penalties should be applied. The situation of the “dancing boys” called for effective and time-bound measures, including a legal prohibition and criminalization of the practice. The Government was called upon to provide assistance for the rehabilitation and social reintegration of the victims. Finally, the Government was called upon to ensure free access to basic education for all, with particular attention to girls, who were often deprived of that right.

The Worker member of Pakistan underlined that, of the many issues discussed relating to the worst forms of child labour in Afghanistan, the most serious was the use of children as suicide attackers. Basic educational infrastructure was non-existent in many rural areas. The worst forms of child labour existed in armed conflict, but also in agriculture and in the supply chains. The Government did not demonstrate the political commitment to address the issue properly. Obligations under ratified Conventions on child labour and discrimination had not been implemented through specific labour legislation. They were only very narrowly covered in general laws. Stressing the importance of labour inspection to enforce legal provisions, the speaker questioned how the very few labour inspectors in Afghanistan could effectively cover all provinces and vast rural areas. Also, although Afghanistan had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), no functional tripartite committee existed at either central or provincial levels. Lack of respect for tripartism and the role of the social partners was also evidenced by the country’s incomplete delegations to the Conference and complaints made under other ILO procedures. Finally, the speaker considered that the absence of progress made on the draft labour policy demonstrated a lack of political will.

La membre gouvernementale de la Suisse a soutenu la déclaration prononcée au nom de l’Union européenne et a souligné que les enfants sont particulièrement touchés par le conflit armé en Afghanistan. Ils sont privés de leurs droits par la persistance des pratiques de recrutement et d’utilisation des enfants par les forces nationales de sécurité afghanes et par les groupes armés. Il est inquiétant que le nombre d’enfants victimes augmente et que les attaques d’hôpitaux et d’écoles ainsi que l’exploitation sexuelle des enfants perdurent. La Suisse soutient les conclusions et recommandations de la commission d’experts et encourage le gouvernement à prendre toute mesure pour garantir la protection et la démobilisation des enfants, la poursuite des personnes engagées dans leur recrutement ainsi que l’intégration sociale des enfants. L’importance de l’éducation de base pour toutes les filles et tous les garçons doit également être soulignée. La Suisse encourage le gouvernement à continuer ses efforts à cet égard.

The Worker member of Norway, on behalf of the trade unions of the Nordic countries, noted that children in Afghanistan had continued to be victims of grave child rights violations. This had been confirmed by the Committee of Experts and reports of other UN bodies. Children were involved in all forms of work, including military operations, street begging, domestic work, agriculture, business and other sectors. A large number of children were sexually exploited and used in prostitution. Children had been observed in the ranks of the national forces. Allegations of recruitment of children by armed groups, including those associated with the Taliban, had been received. Cases of children carrying out suicide attacks on behalf of the Taliban had also been documented. Children who were internally displaced or in isolated conflict-affected areas were particularly at risk. In Kunduz, the Taliban had used schools to provide military training to children between the ages of 13 and 17. Children had been kidnapped, forced, threatened or sold by their parents to serve in armed groups. The Government had signed an action plan with the UN in 2011 to end and prevent the use of children by national armed forces and had adopted a roadmap and guidelines for its follow-up. Proper steps needed to be taken to implement the action plan. The Nordic trade unions were deeply concerned about the situation and urged the Government to take immediate and effective measures to end forced and compulsory recruitment of children for use in armed conflict and to ensure their demobilization. The Government needed to further address the issue of children working in hazardous occupations, through investigation and strengthening of labour inspection. In this regard, the introduction and enforcement of penalties for the use of children in armed conflict and in hazardous work, as well as prostitution, were needed. The ILO and the international community were called upon to continue providing humanitarian assistance, and to assist the country in improving the security situation and in taking measures to reduce poverty and pursue compliance with the Convention.

The Worker member of Australia underlined the abhorrent commodification of children who were forced into prostitution. He referred to numerous cases that evidenced the widespread sex trafficking of children in Afghanistan. With reference to the prostitution of young boys, particularly the “dancing boys”, he denounced the involvement of public figures and men in power, as well as war criminals. That culture had spread to all sections of society. Sexual assault resulted not only in serious trauma, but also in many cases in the death of the victim. There was no specific law prohibiting the sex trafficking of minors. The speaker called on the social partners to engage with law enforcement entities, non-governmental organizations and other non-state actors to develop a comprehensive plan to eradicate the horrific practices and ensure the safety of Afghan boys and girls.

The Worker member of Canada, also speaking on behalf of the Worker member of the United States, indicated that, according to data available, 3.7 million boys and girls, representing one third of school-age Afghan children, were not enrolled in schools in 2017, due to insecurity and conflict-related violence, as well as the high levels of chronic poverty. That number was expected to grow as violence between Afghan forces and the Taliban intensified. Also, with an increasing number of Afghan refugees returning to the country, there was a threat to overwhelm already swamped education services. Children who were not going to school were at increased risk of early marriage, entering the workforce where they could be exploited, recruited into armed groups or trafficked. Documented restrictions by non-state actors that limited girls' access to education included complete bans on education for girls, restrictions of girls' attendance beyond a certain grade or explicit prohibitions of girls attending school without a female teacher. Other documented forms of violence included threats and intimidations against teachers and students, school burnings, attacks and abductions. The Convention recognized the contribution of education to preventing the engagement of children in the worst forms of child labour. The Government must therefore take measures to uphold the right to education recognized in the national Constitution. It must further ensure accountability for perpetrators of attacks on institutions, personnel and students that were in clear violation of international humanitarian and human rights law.

The Government representative appreciated the comments, recommendations and support offered during the discussion. He reiterated Afghanistan's commitment to eliminating child labour, particularly the worst forms of child labour. He emphasized that significant progress had been made, and comprehensive plans had been developed. The Government intended to form a special police unit, which would be responsible for child protection at the central and provincial levels, and would oversee cases that violated the rights of children. The Government would also undertake a review of the existing measures to ensure that the legal and policy framework adequately responded to the national situation and complied with ratified international Conventions. Stressing the progress made by the Government, with support from international partners, towards improving conditions for all Afghans, he made particular reference to the increase in the national literacy rate and in the number of children attending school in the last decade, including girls. He recalled that school burnings and the imposition of bans in Taliban-controlled areas prevented girls and children from attending school. The Government would boldly pursue its efforts towards guaranteeing human rights and would continue to work with partners to address the root causes of child labour. That was a progressive journey. While terrorism was being fought against, recent attacks demonstrated the magnitude of the conflict and its regional linkages.

The Worker members considered that Afghanistan had failed to take effective measures to secure the prohibition and elimination of the worst forms of child labour. Recruitment of children into armed conflict, child prostitution and lack of access to free basic education were rampant. The Government had sought to reassure the Conference Committee that it had taken steps to address these issues. However, more could and had to be done to comply with the Convention. With respect to the "dancing boys", the Government had indicated that explicit legal prohibition was expected to be implemented in the near future; nonetheless, this matter remained unaddressed. The Government was expected to demonstrate its commitment to fulfilling its obligations to achieve implementation of the Convention in practice. Firstly, that involved taking immediate and effective measures to put a stop, in practice, to the recruitment of children under the age of 18 by armed groups and the armed forces as well as measures to ensure the demobilization of children involved in armed conflict. Secondly, the Government should take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under the age of 18 for use in armed conflict were carried out and that sufficiently effective and dissuasive penalties were imposed in practice. Thirdly, the Government should take effective and time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration. Fourthly, it should take effective and time-bound measures to eliminate the practice of *bacha bazi* in order to remove children from one of the worst forms of child labour and to provide assistance for their rehabilitation and social integration. Finally, it should take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls. While acknowledging the difficulties that the Government had faced with armed groups operating in the country, the speaker stressed the obligations that had freely been entered into with the ratification of the Convention in 2010, which required action on the worst forms of child labour to be prioritized as a matter of urgency.

The Employer members appreciated the Government's statement that it was embarked on a progressive journey towards achieving compliance with the Convention and recognized that there was political will. However, there was still a long way to go to eliminate child labour and more clearly needed to be done in that regard. The speaker agreed with the conclusions proposed in the concluding remarks of the Worker members.

Conclusions

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

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the Committee deeply deplored the current situation where children are forcibly required by armed groups, in particular those which pledge allegiance to the Taliban, to undergo military and religious training. Furthermore, the Committee deeply deplored the situation of children, especially girls, who are deprived of education due to the situation in the country where many schools were closed, damaged and used as military or detention facilities, which prohibits children from attending them.

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

- take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and armed groups;
- take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out and sufficiently effective and dissuasive penalties are imposed in law and in practice;
- take immediate and effective measures to eliminate the practice of *bacha-bazi* (dancing boys);
- take effective and time-bound measures to provide for the rehabilitation and social integration of children who are forced to join armed groups and/or are sexually exploited and provide information on the measures taken in this regard and on the results achieved.

In this regard the Committee calls on the Government to request ILO technical assistance to address the recommendations.

The Committee called on the ILO, the international community, and employers' and workers' organizations to collaborate with the goal of eliminating all forms of child labour, including the worst forms of child labour, without delay.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi.

Tout en prenant acte de la complexité de la situation qui règne sur le terrain et de la présence d'un conflit armé, la commission a vivement déploré la situation actuelle dans laquelle les groupes armés, en particulier ceux qui ont prêté allégeance aux Talibans, contraignent les enfants à suivre une formation militaire et religieuse. De plus, la commission a vivement déploré la situation des enfants, en particulier des filles, qui sont privés d'éducation du fait de la situation dans le pays, où de nombreuses écoles sont fermées, endommagées et utilisées comme installation militaire ou lieu de détention, ce qui empêche les enfants d'aller à l'école.

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

- de prendre de toute urgence des mesures pour garantir la démobilisation totale et immédiate de tous les enfants et de mettre un terme, dans la pratique, au recrutement forcé d'enfants dans les forces armées et les groupes armés;
- de prendre des mesures immédiates et efficaces pour garantir que des enquêtes approfondies seront menées, que des poursuites seront engagées contre toutes les personnes qui ont recruté de force des enfants pour le conflit armé et que des peines suffisamment efficaces et dissuasives seront imposées en droit et dans la pratique;

- de prendre des mesures immédiates et efficaces pour éliminer la pratique du bacha-bazi (garçons qui dansent);
- de prendre des mesures efficaces dans un délai déterminé pour assurer la réadaptation et l'intégration sociale des enfants contraints de rejoindre des groupes armés et/ou victimes d'exploitation sexuelle, et de fournir des informations sur les mesures prises à cet effet et sur les résultats obtenus.

A cet égard, la commission invite le gouvernement à demander l'assistance technique du BIT pour donner suite à ces recommandations.

La commission a invité l'OIT, la communauté internationale, les organisations d'employeurs et de travailleurs à collaborer dans le but d'éliminer toutes les formes de travail des enfants, y compris les pires formes de travail des enfants, sans retard.

Conclusiones

La Comisión tomó nota de la información proporcionada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

Si bien reconoció la complejidad de la situación que persiste en el terreno y la presencia de un conflicto armado, la Comisión deploró profundamente la situación actual, en la que grupos armados, en particular los que han jurado lealtad a los Talibanes, obligan por la fuerza a niños a recibir formación militar y religiosa. Además, la Comisión deploró profundamente la situación de los niños, especialmente de las niñas, que se ven privados de educación debido a la situación del país, en donde muchas escuelas han sido cerradas o dañadas y son utilizadas como bases militares o centros de detención, lo que impide a los niños asistir a ellas.

Teniendo en cuenta la discusión, la Comisión instó al Gobierno del Afganistán a que:

- adopte medidas urgentes para velar por la absoluta e inmediata desmovilización de todos los niños, y ponga fin en la práctica al reclutamiento forzoso de niños por las fuerzas o grupos armados;
- adopte medidas inmediatas y eficaces para garantizar que se lleven a cabo investigaciones y procesos judiciales exhaustivos contra todas las personas que recluten niños por la fuerza para utilizarlos en un conflicto armado, y que se impongan penas lo suficientemente eficaces y disuasorias en la legislación y en la práctica;
- adopte medidas inmediatas y eficaces para eliminar la práctica del bacha-bazi (niños bailarines), y
- adopte medidas eficaces en un plazo determinado que faciliten la rehabilitación y la integración social de los niños que han sido obligados por la fuerza a unirse a grupos armados o explotados sexualmente, y proporcione información sobre las medidas adoptadas a este respecto y sobre los resultados obtenidos.

A este respecto, la Comisión pide al Gobierno que solicite asistencia técnica a la OIT para dar seguimiento a las recomendaciones.

La Comisión pidió a la OIT, a la comunidad internacional y a las organizaciones de empleadores y de trabajadores que, sin demora, colaboren con el objetivo de eliminar todas las formas de trabajo infantil, en particular, las peores formas de trabajo infantil.

Convention (n° 182) sur les pires formes de travail des enfants, 1999

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

Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182)

République démocratique du Congo (ratification: 2001)

Democratic Republic of the Congo (ratification: 2001)

República Democrática del Congo (ratificación: 2001)

Un représentant gouvernemental a déclaré que le gouvernement reconnaît la présence d'enfants dans certains sites miniers artisanaux et, plus précisément, dans les provinces du Katanga, du Nord-Kivu et du Sud-Kivu. Il a toutefois souhaité rappeler que la République démocratique du Congo (RDC) est un pays post-conflit qui a connu des guerres et des conflits armés pendant plus de deux décennies, lesquels ont détruit son tissu économique occasionnant ainsi la suppression de nombreux emplois, l'augmentation du nombre de travailleurs pauvres, le déplacement de populations et nombre d'abandons scolaires. Cependant, depuis 2001, des efforts ont été entrepris par le gouvernement pour éliminer les pires formes de travail des enfants. Ces efforts se sont notamment traduits par l'adoption des mesures législatives et réglementaires suivantes: i) le relèvement de la capacité de contracter à 18 ans au lieu de 16 ans (article 6 du Code du travail, tel que modifié en 2016); ii) la suppression de l'émancipation automatique du mineur par l'effet du mariage (article 352 du Code de la famille, tel que modifié en 2016); iii) une campagne de sensibilisation dans les écoles contre le mariage précoce; iv) l'adoption en 2014 d'une loi-cadre sur l'enseignement national consacrant le caractère obligatoire et gratuit de l'enseignement fondamental; v) l'adoption en 2016 d'une loi fixant les règles relatives au régime général de sécurité sociale; et vi) la nomination d'une Conseillère spéciale du Chef de l'Etat chargée de la lutte contre les violences sexuelles et le recrutement d'enfants dans les forces armées.

A l'issue du dialogue engagé avec l'ONU, le gouvernement a signé, le 4 octobre 2012, le Plan d'action pour la lutte contre le recrutement et l'utilisation d'enfants ainsi que les autres violations graves des droits de l'enfant par les forces armées et les services de sécurité. Il a également mis en place une commission interministérielle chargée de la question du travail des enfants dans les mines et sur les sites miniers. Cette commission a pour mission de conseiller les ministères et services compétents, d'assurer la coordination des différentes initiatives prises en la matière et de faire le plaidoyer auprès d'organisations telles que l'Organisation de coopération et de développement économiques (OCDE), le Fonds des Nations Unies pour l'enfance (UNICEF) ou encore l'OIT. Elle a élaboré un plan d'action triennal pour la période allant de 2017 à 2020 qui a pour objectif général de coordonner les actions sur le terrain en vue de mettre fin à la présence d'enfants dans les activités d'exploitation minière. Le plan d'action a établi également les cinq objectifs spécifiques suivants: i) faire le suivi et évaluer la mise en œuvre des actions de lutte contre le travail des enfants dans les mines et sur les sites miniers; ii) maîtriser la présence des enfants dans les mines et sur les sites miniers; iii) renforcer l'application des mesures visant le retrait des enfants des chaînes d'approvisionnement en minerai; iv) mettre en œuvre les mesures correctives proposées sur le terrain par les ministères et services compétents; et v) élaborer une stratégie de communication.

L'orateur a sollicité la mobilisation de la communauté internationale autour de la question du recrutement et de l'utilisation des enfants dans les groupes armés ainsi que dans les mines et sur les sites miniers, en vue d'établir les responsabilités et d'envisager l'adoption de sanctions à l'encontre des instigateurs de cette exploitation dont les causes sont essentiellement exogènes.

The Employer members felt appalled and saddened by the suffering of vulnerable persons, in particular children, in the country. Children were working in mines in conditions similar to slavery for identified persons or companies in the provinces of Katanga, East Kasai and North Kivu. They highlighted one case in particular where, according to the report of the Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) of January 2011, a battalion commander of the Armed Forces of the Democratic Republic of the Congo (FARDC) made use for gain, of the forced labour of children in mines in North Kivu. Despite the adoption of Act No. 09/001 of 10 January 2009, section 187 of which established a penalty of penal servitude of ten to 20 years for the enrolment or use of children under 18 years of age in the armed forces and groups and the police, it remained unclear whether this army commander had been punished, arrested or dealt with in any way by the authorities. This person was possibly still in the army benefiting from the related privileges, whereas the Government should have set an example a long time ago in this specific case.

The Employer members underlined that the adoption of the above Act was insufficient, and that it was necessary to act upon the adopted Act in order to achieve genuine progress. The Committee on the Rights of the

Child (CRC), in its concluding observations of 10 February 2009, expressed concern that the enacted laws were not always followed by the issuance of appropriate implementing decrees, that law enforcement mechanisms were weak and that no activities had been carried out to raise awareness of these laws which were, consequently, not applied or implemented. The Employer members urged the Government to effectively enforce the existing laws in relation to child labour.

While recognizing the complex situation of armed conflict prevailing in the country for over a decade, they did not consider that the international community was directing excessive requests to the Government. According to a 2011 report on trafficking in persons of the United Nations High Commissioner for Refugees (UNHCR), Congolese girls were the victims of forced prostitution in improvised brothels and in camps, and also in the vicinity of mines and markets. Moreover, 50,000 children were working in mines, and armed groups were frequently abducting and trafficking vulnerable persons, especially children. Albeit acknowledged that, as indicated in the 2010 report of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo, 1,593 cases of recruitment of children had been reported between October 2008 and December 2009, including 1,235 in 2009, the Employer members denounced that, according to the same source, 42 per cent of the total number of cases of recruitment reported had been attributed to the FARDC. Evidence showed that the FARDC and the Congolese National Police were at the epicentre of the problem, and the Government should act urgently and decisively in this respect. They called on the Government to follow up on the enactment of laws with effective measures against child labour. The Government should rehabilitate and treat the children in the country as biological descendants.

Les membres travailleurs ont souligné que ce cas a été discuté à plusieurs reprises par la commission et que, d'année en année, la RDC est le théâtre de violations effroyables perpétrées à l'encontre d'enfants innocents. Il faut donc à nouveau interpeler le gouvernement, comme en 2009, afin qu'il prenne, de toute urgence, des mesures immédiates et efficaces pour éliminer le travail forcé ou dangereux des enfants âgés de moins de 18 ans. Les dispositions législatives qu'il a adoptées – notamment la loi n° 09/001 de 2009 ou encore le décret législatif n° 066 de 2000 sur la démobilisation et la réinsertion des groupes vulnérables présents au sein des forces armées – se sont révélées inadéquates pour assurer qu'aucun enfant n'est enrôlé en tant qu'enfant soldat. Selon un rapport de l'UNICEF de 2015, environ 80 enfants ont perdu la vie dans des violences liées aux conflits armés, 60 ont été mutilés, 195 enlevés et 487 enrôlés au sein de groupes armés. Entre janvier 2012 et août 2013, la Mission de l'Organisation des Nations Unies pour la stabilisation en RDC (MONUSCO) a documenté l'enrôlement de 996 enfants au sein de groupes armés dans le pays. Dans ses observations finales de 2009, le Comité des droits de l'enfant (CRC) a conclu que l'Etat avait une responsabilité directe dans les violations des droits de l'enfant, par l'intermédiaire de ses forces armées, et qu'il n'a ni protégé les enfants ni empêché les violations. Outre les groupes armés, les Forces armées de la RDC (FARDC) sont, elles aussi, systématiquement responsables de l'inclusion dans leurs rangs d'enfants (42 pour cent des enrôlements d'enfants, selon un rapport de 2009 du Secrétaire général des Nations Unies). Les actions du gouvernement sont contradictoires car, d'une part, il entreprend des réformes visant à empêcher de nouveaux enrôlements et sanctionner les infractions et, d'autre part, il permet à la police et aux forces armées non seulement d'enrôler des enfants soldats, mais aussi d'user de violence physique et sexuelle à leur rencontre, tout en laissant les auteurs de ces crimes impunis. Les FARDC sont responsables de la moitié des meurtres d'enfants survenus en 2010, de nombreuses mutilations d'enfants et de 67 cas de violence sexuelle au cours de la même période. Malgré le cadre législatif existant, aucune poursuite pénale n'a été initiée à cet égard, garantissant ainsi une impunité totale aux auteurs de ces atrocités et donnant le signal qu'ils peuvent continuer à en commettre. Les noms des coupables, comme celui d'un ex-colonel des FARDC, sont de notoriété publique. Les Nations Unies ont recueilli de nombreux témoignages concernant des meurtres d'enfants enrôlés, des actes s'apparentant à de la torture et des traitements inhumains et dégradants. Le gouvernement dispose de suffisamment d'informations pour ouvrir des enquêtes et poursuivre les auteurs présumés de ces atrocités.

Les enfants sont également exposés aux pires formes de travail dans les mines du Katanga et du Kasai-Oriental où ils sont environ 40 000 à travailler sous le joug d'unités militaires pour extraire du minerai. Ils travaillent dans les mines jusqu'à douze heures par jour, pour un ou deux dollars, sous des températures caniculaires, sans la moindre protection et en contact avec de fortes concentrations de cobalt. La législation nationale interdit le travail forcé mais c'est le défaut d'application de ces dispositions qui pose problème, notamment en raison de l'inefficacité et de l'incompétence de l'inspection du travail. Le Plan d'action national de lutte contre les pires formes de travail des enfants d'ici à 2020 (PAN), auquel le gouvernement a souscrit en 2015, n'a pas permis d'accomplir des progrès en termes d'amélioration des activités de l'inspection du travail et du nombre d'enfants soumis à des pratiques de travail forcé. Les peines applicables en cas de recours au travail forcé ou obligatoire restent faibles et n'ont pas d'effet dissuasif. De plus, de nombreux problèmes structurels tels que la décentralisation, le manque de ressources et une mauvaise coordination continuent à se poser. La loi de 2009 portant protection de l'enfant prévoit pourtant le droit à une éducation gratuite et obligatoire pour tous les enfants mais, faute de financement public, la plupart des écoles, qui n'ont pas été fermées ou détruites, continuent de réclamer des frais de scolarité. Certains enfants sont

enrôlés de force dans leurs écoles, alors que d'autres sont victimes de violences sexuelles sur le chemin de l'école. Il y a aussi dans le pays près de 30 000 enfants des rues dont une majorité vit à Kinshasa sans abri ni protection. Selon l'UNICEF, de nombreuses jeunes filles, parfois de moins de 10 ans, se prostituent. Des milliers d'adultes en devenir sont ainsi marqués à vie et privés de toute perspective d'épanouissement physique et psychologique car le gouvernement se montre incapable «d'empêcher que des enfants ne soient engagés dans les pires formes de travail des enfants, de soustraire les enfants des pires formes de travail des enfants et d'assurer leur réadaptation et leur intégration sociale» (article 7, paragraphe 2, de la convention).

Malgré certaines améliorations, de nombreux enfants continuent à être enrôlés, et les FARDC ont systématiquement interdit l'accès à leurs camps aux enquêteurs des différentes organisations et missions internationales. En raison de ce refus, sur 50 tentatives de criblage menées par la MONUSCO pour démobiliser des enfants de moins de 18 ans, seuls cinq enfants ont pu être démobilisés. En outre, le «réenrôlement» d'enfants qui avaient préalablement été démobilisés est pratique courante. Aucun résultat concret et durable ne pourra être obtenu tant que les membres des FARDC continueront de jouir d'une telle autonomie et d'une telle impunité. Il est par conséquent primordial que le gouvernement déploie tous les efforts possibles non seulement pour mettre en œuvre les programmes visant à éradiquer le travail des enfants et à démobiliser les enfants mais aussi pour assurer que sa propre armée ne commet pas les atrocités qu'elle est officiellement censée combattre. Le gouvernement doit prendre de toute urgence des mesures pour démobiliser immédiatement et complètement tous les enfants des rangs des FARDC et mettre un terme au recrutement forcé d'enfants de moins de 18 ans dans les groupes armés. Rappelant la résolution n° 1998 du 12 juillet 2011 du Conseil de sécurité, les membres travailleurs ont appelé le gouvernement à prendre des mesures efficaces afin de s'assurer que des enquêtes approfondies seront conduites et que des poursuites judiciaires, assorties de sanctions suffisamment dissuasives, seront menées à leur terme, y compris à l'encontre d'officiers des forces armées régulières.

Le membre employeur de la République démocratique du Congo a rappelé que le patronat congolais a toujours respecté les instruments de l'OIT et veillé à leur mise en œuvre. La présence d'enfants dans les mines est surtout l'œuvre des trafiquants et des exploitants informels du secteur, lesquels sont combattus par les efforts du gouvernement. Le recrutement forcé des enfants dans les forces armées n'est plus un secret pour personne et a été largement documenté par la MONUSCO. Lorsque l'on s'interroge sur les raisons de la présence massive de ces enfants dans les mines, il faut bien comprendre que ce qu'ils produisent, notamment le coltan, est utilisé dans l'industrie des nouvelles technologies de l'information. Ceux qui les exploitent sont des groupes armés qui profitent de la guerre et non des entreprises du pays. Il n'est pas non plus possible de maîtriser les entreprises multinationales qui viennent de l'extérieur.

Le membre travailleur de la République démocratique du Congo a évoqué la crise politique que traverse le pays, due aux conflits armés opposant les forces loyalistes à celles de la rébellion, ainsi que l'instabilité et les violations des droits de l'homme qui en résultent. L'essor de l'exploitation minière artisanale dans le Katanga a fourni un moyen de subsistance à grand nombre d'individus, notamment suite à l'effondrement de la plus grande société minière publique. Les enfants récupèrent le cobalt rejeté par un grand nombre de mines industrielles implantées dans la province, le plus souvent sans la permission des entreprises, puis le minerai est nettoyé, tamisé et trié dans les cours d'eau et les lacs.

L'orateur s'est également référé à l'enquête menée par Amnesty International et l'Observatoire africain des ressources naturelles (AFREWATCH) dans cinq sites miniers du Katanga. Parmi les risques sanitaires mentionnés figure une maladie pulmonaire mortelle, connue sous le nom de «fibrose pulmonaire aux métaux durs», ainsi qu'une sensibilisation des voies respiratoires, des crises d'asthme, un essoufflement et un affaiblissement des fonctions pulmonaires. Or la majorité des mineurs travaillent de longues journées au contact du cobalt et ne disposent pas des équipements de protection les plus élémentaires. Par ailleurs, le cadre juridique existant ne prévoit aucune directive en matière de protection de la santé pour les mineurs artisanaux. En 2014, l'UNICEF a estimé qu'environ 40 000 enfants travaillaient dans l'ensemble des mines au sud du pays. Leur travail est particulièrement éprouvant sur le plan physique. Pour un salaire quotidien oscillant entre un et deux dollars, ils travaillent jusqu'à douze heures par jour, transportent des charges importantes, sous des températures élevées ou sous la pluie. Ils sont parfois battus.

Bien que la loi prévoit le droit à un enseignement primaire gratuit et obligatoire pour tous les enfants, la plupart des écoles continuent d'exiger une contribution, en l'absence de financement adéquat de la part de l'Etat. Par ailleurs, l'inspection du travail ne dispose pas des compétences nécessaires. Le gouvernement devrait veiller à la mise en place d'un système adéquat visant à éradiquer les pires formes de travail des enfants et à faire de la scolarisation au niveau primaire une priorité. Le PAN n'a pas été officiellement adopté ni validé par le gouvernement. En ce qui concerne les enfants soldats, malgré l'existence de dispositions juridiques réglementant leur démobilisation, les mécanismes de suivi posent de nombreux problèmes, faute d'un budget adéquat.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Bosnia and Herzegovina, Montenegro and Norway, reaffirmed the commitment to the promotion of universal ratification and implementation of the eight fundamental Conventions as part of the EU Strategic Framework on Human Rights, and to the eradication of child labour, especially in its worst forms. Recalling the commitment made by the Democratic Republic of the Congo under the Cotonou Agreement, the framework for cooperation with the EU, to respect democracy, the rule of law and human rights, which included the abolition of child labour and compliance with the Convention, he regretted that the Government had not submitted the report in time for its examination by the Committee of Experts, which had been bound to repeat its comments from 2011.

The speaker welcomed the efforts made by the Government, such as the adoption of the 2012 Action Plan, thereby indicating its commitment to end the recruitment and use of children in armed conflict. It was worth noting that in 2015, no case of child recruitment from the FARDC had been documented by the UN monitoring and reporting mechanism, and that, in order to prevent new cases of enrolment, the Government had adopted a new procedure in 2016 that required age verification of FARDC members. It was critical that the national forces be exemplary in this respect. However, child recruitment by armed groups continued and jeopardized the future of children, especially young girls. He also noted with deep concern the persistent phenomenon of child labour in mines and the use of children by armed groups, sometimes under reported FARDC supervision, for the extraction of minerals.

In light of the foregoing, the speaker called on the Government to take the following measures: (i) prevent enrolment of children in regular forces or armed groups, as well as forced or hazardous child labour in mines, including through measures such as awareness raising and basic education for all; (ii) ensure the demobilization of children enrolled in armed groups; (iii) ensure the investigation and prosecution of persons recruiting children either in armed groups or to work in mines; and (iv) ensure social reintegration and rehabilitation of these children and in particular child soldiers, while giving special attention to girls. Lastly, he reaffirmed the ongoing commitment to cooperation and partnership with the Democratic Republic of the Congo.

The Worker member of Canada described child labour in the mines of the Democratic Republic of the Congo as a terrible reality. According to a 2014 estimate from the UNICEF, 40,000 young boys and girls were used for dangerous mining activities, and military units recruited children for forced labour, in particular the extraction of natural resources, primarily cobalt. The country produced at least 50 per cent of the world's cobalt used in lithium-ion batteries. Moreover, the working conditions at the mining sites were atrocious. The children worked under dangerous and unsanitary conditions exposing them to fatal injuries and diseases, without breaks, and for a remuneration of US\$1–\$2 per day. Against this background, she found it scandalous that the Committee of Experts was forced to repeat its requests for information every year, including as regards inspection statistics. A key measure for the enforcement of labour legislation was the existence of a strong and independent labour inspectorate to ensure workplace compliance with laws and regulations, such as those defining minimum age and hazardous work. Labour inspectors needed to be trained and well paid so as to avoid corruption sustaining illegal practices. These were essential efforts governments could make in their commitment to combating the worst forms of child labour. While national law might be in line with the Convention, she emphasized the need for political will, good governance and commitment to enforce the law. There was no evidence of the Government's political will without labour inspection reports, data and statistics, transparency and responses to the Committee of Experts' comments. She urged the Government to find the political will to enforce its legislation so as to end the worst forms of child labour.

La membre gouvernementale de la Suisse a apporté son soutien à la déclaration de l'Union européenne. Le travail des enfants et, plus particulièrement, leur utilisation dans les conflits armés sont des phénomènes préoccupants. L'oratrice a exprimé l'espoir que le gouvernement fera rapport, dans les meilleurs délais, sur les activités engagées en vue d'assurer la protection des enfants et le respect de la convention. Elle a encouragé le gouvernement à continuer les efforts entrepris afin de poursuivre pénalement les personnes ayant pris part à de graves violations des droits des enfants et à redoubler d'efforts pour soustraire les enfants du travail dans les mines. Le gouvernement devrait également prendre les mesures nécessaires afin de garantir la démobilisation des enfants enrôlés au sein des FARDC et la cessation de tout recrutement et de faciliter leur réadaptation et leur réintégration sociale.

The Worker member of Nigeria, speaking also on behalf of the Southern African Trade Union Coordinating Council (SATUCC), stated that the Committee of Experts' observation that access to education in the eastern Democratic Republic of the Congo was hindered by armed conflict, had been confirmed by children reporting kidnappings, forced enrolments, beatings and rapes in school. The Government had failed to protect these children and was still failing to do so. Furthermore, he denounced the fact that only 29 per cent of children in rural areas and 24 per cent in urban areas were registered at birth. Inability to prove citizenship exposed non-registered children to difficulty in accessing services such as education and thus rendered them more vulnerable to recruitment into armed

conflict. Moreover, the Government needed to take urgent and robust measures to address the plight of internally displaced persons, especially in the east where almost half of the population was under 18 years of age. Internally displaced children had difficulty in accessing education, which put them at increased risk of engaging in child labour. Recalling that access to education was not only a right but also an effective tool to defeat child labour and its worst forms, he called on the Government to improve access to education by registering all children at birth, developing programmes that assisted internally displaced children, and ensuring that schools were safe and child-friendly.

La membre gouvernementale du Canada s'est déclarée profondément préoccupée par la situation en RDC et a demandé au gouvernement de prendre les mesures appropriées pour démobiliser tous les enfants des rangs des FARDC et mettre fin de manière effective au recrutement d'enfants dans les groupes armés. Le gouvernement doit également prendre les mesures nécessaires afin d'éliminer le travail forcé ou le travail dangereux des enfants dans les mines et d'assurer leur réadaptation et leur intégration sociale, en accordant une attention particulière aux filles. En application de la législation nationale, les auteurs des violations doivent être traduits en justice et purger leur peine, et ce même s'ils sont issus des forces de l'ordre. Il est par ailleurs nécessaire que le gouvernement fournisse les informations demandées par la commission d'experts sur les points suivants: les enquêtes menées, les poursuites engagées et les condamnations prononcées; les statistiques en matière d'application de la législation; le nombre d'enfants soldats soustraits et réintégrés et les actions de renforcement des capacités de l'inspection du travail qui sont prévues par le PAN. Le gouvernement devrait également améliorer la coopération avec la MONUSCO afin de mettre fin au recrutement d'enfants dans l'armée et de permettre leur démobilisation et leur intégration sociale.

The Worker member of the Republic of Korea aligned herself with the statements made by the Worker members of Canada and Nigeria. With reference to the Committee of Experts' comments on the issue of persisting child labour, especially in mines, she underlined that there were around one quarter of a million street children in the country, 70,000 of whom lived in Kinshasa. The situation of young girls was even more alarming. She indicated that many of them started a life of prostitution as early as 12. Despite having been signed in 2015, the PAN had not generated quantifiable improvements in terms of strengthening state labour inspection and reducing the number of children subjected to forced labour. She urged the Government to promptly ensure the implementation of the PAN and, in particular, to guarantee free access to basic education for all children and to pursue targeted measures for the protection of young girls. Finally, the speaker fully supported the recommendations urging the Government to take measures to eliminate forced labour and hazardous forms of child labour.

Le membre gouvernemental du Tchad a noté avec satisfaction l'adoption de la loi n° 09/001 du 10 janvier 2009, qui sanctionne l'enrôlement ou l'utilisation d'enfants de moins de 18 ans dans les forces et groupes armés et la police. L'adoption de cette loi et d'autres mesures législatives et réglementaires confirme la volonté du gouvernement de lutter de manière effective contre le recrutement d'enfants soldats sur son territoire et de leur assurer la protection nécessaire. De plus, le gouvernement s'est engagé à renforcer les capacités de l'inspection du travail, dans le cadre de la mise en œuvre du PAN. Cet engagement et ces efforts doivent être encouragés et soutenus.

Le membre gouvernemental de l'Algérie a relevé l'existence d'une volonté politique forte de la part du gouvernement de lutter contre le fléau des pires formes de travail des enfants et a souligné la mise en place par le gouvernement d'une démarche intersectorielle permettant de conjuguer les efforts et les ressources ainsi que l'adoption de mesures législatives et réglementaires, notamment depuis 2001. La commission devrait encourager le pays, en poursuivant l'accompagnement et le soutien donné, afin de permettre l'éradication des pires formes de travail des enfants à très court terme.

Une autre représentante gouvernementale a déclaré que le gouvernement avait entendu les fortes interpellations des membres de la commission mais également les encouragements à redoubler d'efforts pour lutter contre les pires formes de travail des enfants. Le gouvernement, conscient de ses responsabilités, a répondu à tous les commentaires de la commission d'experts dans un rapport qui sera déposé auprès du Directeur général du BIT lundi 12 juin. Certaines informations qui ont été reprises au cours de la discussion proviennent du rapport antérieur. Le nouveau rapport contient de nouvelles informations.

En ce qui concerne les mines, c'est depuis que la RDC est confrontée à la guerre et à la prolifération de groupes armés et qu'elle subit des influences de l'extérieur que les enfants sont devenus des victimes de travail forcé. Les guerres récurrentes dans le Nord-Kivu et le Sud-Kivu ont freiné le développement économique et engendré du chômage, de la pauvreté, la déscolarisation massive des enfants et des recrutements forcés. Ces problèmes existent dans les structures alimentant la contrebande, et non dans les entreprises qui exploitent légalement les mines, comme le ministre du Travail de l'époque avait pu le constater en se rendant sur place en 2013, suite à la publication d'un rapport de l'UNICEF. Le gouvernement ne ménage aucun effort mais, après deux décennies de guerre, il est difficile

de protéger convenablement les enfants dans une situation aussi complexe. La représentante gouvernementale a appelé la communauté internationale à entamer une large réflexion sur la question de la traçabilité du minerai.

En outre, consciente des faiblesses du système d'inspection du travail et de l'insuffisance de ses effectifs, la représentante gouvernementale a demandé l'assistance technique du BIT pour renforcer l'inspection du travail et ainsi mieux assurer le contrôle de l'application des lois. Un projet de recrutement de 1 000 inspecteurs du travail, comprenant un volet de formation en coopération avec le BIT et le Centre régional africain d'administration du travail (CRADAT), est actuellement en cours et devrait recevoir un financement cette année.

Les membres travailleurs se sont à nouveau déclarés profondément préoccupés par les pires formes de travail des enfants auxquelles les enfants de la RDC sont soumis depuis des générations. Les mesures législatives n'ont pas été suffisantes pour éradiquer ce fléau et le gouvernement doit apporter une réponse claire et cohérente en pratique. Des mesures urgentes doivent être prises pour poursuivre les recruteurs d'enfants soldats et autres auteurs d'abus et de violence et démobiliser, réadapter et réinsérer au sein de la société les enfants enrôlés. Il est aussi nécessaire de veiller à prévenir les abus dans tous les domaines où sévissent les pires formes de travail des enfants, y compris dans le secteur minier dans lequel plus de 50 000 enfants sont soumis à des travaux forcés ou en ce qui concerne les enfants des rues. Un pays qui néglige de protéger ses enfants est un pays qui n'a pas d'avenir.

Les membres travailleurs ont regretté que le gouvernement n'ait pas envoyé de rapport sur ces questions et l'ont exhorté à fournir des informations sur les mesures concrètes prises pour éradiquer de manière effective les pires formes de travail des enfants dans les plus brefs délais. Il est important de rappeler que les abus effroyables commis à l'encontre d'enfants en RDC concernent tout le monde car le minerai provenant de ces mines est utilisé dans toutes sortes d'appareils électroniques d'utilisation très courante. Les membres travailleurs ont demandé au gouvernement de: i) soustraire les enfants des pires formes de travail et assurer leur réadaptation et leur intégration sociale; ii) mettre fin au «réenrôlement» des enfants précédemment démobilisés; iii) mettre en œuvre le programme pour le désarmement, la démobilisation et la réinsertion des enfants; iv) mettre fin à l'impunité des FARDC et prononcer des sanctions dissuasives à leur encontre; v) mener des enquêtes approfondies et poursuivre les personnes qui enrôlent des enfants dans un conflit armé, y compris les officiers des forces armées régulières; et vi) répondre sans délai aux commentaires de la commission d'experts.

The Employer members pointed out that the submission by the Government, of the report under article 22 of the ILO Constitution, during the Conference in June, whereas it had been due in September 2016, was considered insufficient by the Committee. Governments should submit reports on time so as to enable the Committee of Experts to examine compliance with the relevant Convention. They expected that henceforth the Government would comply with its reporting obligation.

The Employer members reiterated their call on the Government to enforce the enacted laws. With reference to the Government's statement that there were only two inspectors in provinces as large as a medium-sized country, they believed that, if human resources for law enforcement were scarce, the revenues from those provinces and the mining should be invested in the necessary recruitment for the sake of the country and the children. While recognizing the consequences of prolonged armed conflict, they considered that efforts needed to be made to put in place a process similar to the Kimberley Process, with a view to ensuring that minerals were registered and, subsequently, marked if they reached trade, so as to detect any provenance from child labour.

Finally, the Employer members appealed to the Government to become aware of the suffering of the children and help them through their trauma, in order to eventually break the cycle and secure the future of the Democratic Republic of the Congo via its children.

Conclusions

La commission a pris note des déclarations orales du représentant gouvernemental et de la discussion qui a suivi.

La commission a noté les graves problèmes concernant cette convention fondamentale liés notamment au recrutement forcé d'enfants de moins de 18 ans dans les forces armées et au manque d'accès à l'éducation. La commission s'est en outre dite déçue que le gouvernement ne respecte pas, depuis plusieurs années, son obligation de faire rapport.

Prenant en compte la discussion qui a eu lieu, la commission a prié instamment le gouvernement de la République démocratique du Congo de:

- assurer la démobilisation immédiate et complète de tous les enfants des rangs des FARDC et mettre un terme au recrutement forcé d'enfants dans des groupes armés, en accordant une attention particulière à la démobilisation des filles;
- redoubler d'efforts pour empêcher que les enfants ne travaillent dans les mines et autres secteurs dangereux et fournir l'aide directe nécessaire et appropriée pour les soustraire de ces pires formes de travail des enfants;
- faire en sorte que des enquêtes approfondies et des poursuites soient engagées contre les auteurs de ces faits et que des sanctions suffisamment efficaces et dissuasives leur soient infligées;
- redoubler d'efforts pour prendre des mesures efficaces dans un délai déterminé pour soustraire les enfants des groupes armés et des pires formes de travail des enfants et assurer leur réadaptation et leur intégration sociale;
- fournir des informations sur le nombre d'enfants soldats soustraits des groupes armés et réintégrés dans la société.

La commission a recommandé au gouvernement de la République démocratique du Congo de solliciter une assistance technique afin d'éradiquer les pires formes de travail des enfants et de rendre compte à la commission d'experts, avant sa session de novembre 2017, des progrès réalisés par rapport aux recommandations ci-dessus.

La commission a demandé au BIT, à la communauté internationale et aux organisations d'employeurs et de travailleurs de collaborer en vue d'atteindre l'objectif d'éliminer, sans délai, toutes les formes de travail des enfants, notamment les pires formes de travail des enfants dans le pays.

Conclusions

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

The Committee noted the grave issues concerning this fundamental Convention, referring in particular to the forceful recruitment of children under the age of 18 into the armed forces and the lack of adequate access to education. The Committee also expressed disappointment over the Government's failure to comply with its reporting obligations for several years.

Taking into account the discussion, the Committee called upon the Government of the Democratic Republic of the Congo to:

- ensure the full and immediate demobilization of all children in the ranks of the FARDC and to put a stop to the forced recruitment of children into armed groups, giving special attention to the demobilization of girls;
- intensify its efforts to prevent children from working in mines and other hazardous sectors and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour;
- ensure that thorough investigations and prosecutions of offenders are carried out and that sufficiently effective and dissuasive penalties are imposed on them;
- intensify its efforts to take effective, time-bound measures to remove children from armed groups and other worst forms of child labour and to ensure their rehabilitation and social reintegration;
- provide information on the number of child soldiers removed from the armed groups and reintegrated into society.

The Committee recommended the Government of the Democratic Republic of the Congo to avail itself of technical assistance in order to eradicate the worst forms of child labour and to report progress in relation to the abovementioned recommendations to the Committee of Experts before its November 2017 session.

The Committee called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of eliminating all forms of child labour, including the worst forms of child labour in the country without delay.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por el representante gubernamental y de la discusión que tuvo lugar a continuación.

La Comisión tomó nota de las graves cuestiones relativas a este Convenio fundamental, que se refieren en particular al reclutamiento forzoso de niños menores de 18 años en las fuerzas armadas y a la falta de acceso adecuado a la educación. La Comisión también expresó su decepción por el incumplimiento por parte del Gobierno, durante varios años, de sus obligaciones de presentación de memorias.

Teniendo en cuenta la discusión, la Comisión instó al Gobierno de la República Democrática del Congo, a que:

- vele por la desmovilización total e inmediata de todos los niños alistados en las filas de las FARDC y ponga fin al reclutamiento forzoso de niños en grupos armados, prestando particular atención a la desmovilización de las niñas;
- intensifique sus esfuerzos para impedir que los niños trabajen en minas y en otros sectores peligrosos, y preste la asistencia directa necesaria y apropiada para que sean retirados de estas peores formas de trabajo infantil;
- vele por que se lleven a cabo investigaciones exhaustivas y se emprendan acciones judiciales contra los culpables y que se les impongan sanciones suficientemente efectivas y disuasorias;
- redoble sus esfuerzos para adoptar medidas eficaces y en un plazo determinado para retirar a los niños de los grupos armados y de otras peores formas de trabajo infantil, y para velar por su rehabilitación y su reinserción social, y
- proporcione información sobre el número de niños soldados que han sido retirados de los grupos armados y reintegrados en la sociedad.

La Comisión recomendó al Gobierno de la República Democrática del Congo que recurra a la asistencia técnica de la OIT con el fin de erradicar las peores formas de trabajo infantil y que notifique a la Comisión de Expertos, antes de su reunión de noviembre de 2017, los progresos realizados en relación con las recomendaciones anteriores.

La Comisión exhortó a la OIT, a la comunidad internacional y a las organizaciones de empleadores y de trabajadores a que concierten esfuerzos con el fin de eliminar sin demora todas las formas de trabajo infantil en el país, incluidas sus peores formas.

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

Convention (n° 182) sur les pires formes de travail des enfants, 1999

Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182)

Libya (ratification: 2000)

Libye (ratification: 2000)

Libia (ratificación: 2000)

A Government representative noted that Libya, since its independence in December 1951, had adopted many laws and regulations prohibiting and criminalizing child labour. Libya was applying the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), including through application of the following laws: Vagrant Young Persons Act (Law No. 5 of 1955), Penal Code (Law No. 48 of 1956), Law on the regulation of the situation

of minors (No. 17 of 1992), Child Protection Law (No. 5 of 1997), Decision No. 100 of 1998 of the Council of Ministers on the establishment of the Supreme Commission for childhood protection and Labour Relations Law (No. 12 of 2010). Under section 27 of the Labour Relations Law (No. 12 of 2010), it was not permitted for any person under 18 years of age to perform any type of work, unless work was performed for educational purposes or as part of an apprenticeship or training, from a minimum age of 16 years and on the condition that the health, safety and morals of the young person were safeguarded. Article 5 of that Law defined the young person as any natural person who had reached the age of 16 years but not yet the age of 18 years. Similar provisions were contained in section 10 of the Child Protection Law (No. 5 of 1997), which prohibited the employment of children unless this was for the purpose of an apprenticeship and based on the wish of the child. As regards the worst forms of child labour, as set out in Article 2 of the Convention, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict or other worst forms, as set out in clauses (b), (c) and (d) of section 2; it was stated that they were prohibited in Libya and punishable according to sections 406–416 of the Penal Code.

With regard to the reports of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, dated 12 January 2015 and 15 February 2016, and information contained in the latter report on the forcible recruitment of children and their use in armed conflict by armed groups that had pledged loyalty to the Islamic State in Iraq and al-Sham (ISIS), the speaker drew attention to the fact that Libya was facing its worst political crisis and escalation of violence since 2011. The legitimate Government of Libya, represented by the Presidency Council of the Government of National Accord had captured the last ISIS position in Sirte on 6 December 2016 and officially announced on 17 December 2016 that the city of Sirte, which had been under ISIS control for over a year and a half, had now been liberated.

The latest report by the United Nations Support Mission in Libya (UNSMIL), issued on 4 April 2017, stated that “local authorities had begun some rehabilitation work in Sirte as internally displaced people started to return to parts of the city” and that “a post-conflict stabilization plan for Sirte was developed under the supervision of the Presidency Council” (S/2017/283, paragraph 25). Furthermore, it should be noted that the head of UNSMIL and the Special Representative of the United Nations (UN) Secretary-General in Libya, Mr Martin Kobler, had stated in his most recent address to the Security Council on 7 June 2017 that ISIS, while still a threat, was “a shadow of what it had been just one year ago”.

ISIS’ practices against children during its rule over Sirte, including the forcible recruitment of children into their military operations, the prohibition of children from enrolment in school, and the forcing of girls to wear the veil, had found an end after the victory over ISIS in Sirte, and children had returned to their studies. In view of the acts committed by groups operating outside the law, and in particular the terrorist organisation ISIS, the Libyan State was keen to again assume its responsibilities. In spite of its modest military capabilities and the arms embargo imposed on it by the Security Council, Libya had managed to defeat ISIS and to dislodge it from the towns of Darna, Sabratha and finally Sirte.

Noting that education was a fundamental human right, the speaker stressed that education was a right for everyone in Libya, and that education was segmented into three phases, with obligatory elementary schooling of nine years, secondary school and vocational training, in addition to higher (university) education, all of which were free of charge in all parts of Libya. With regard to the Committee’s comments concerning the decrease in the number of pupils in elementary education from 1,056,566 in the period 2009–10 to 952,636 in the period 2010–11, it should be noted that such a decrease was not due to lacking school enrolment, but rather to the figures for new school entrants and pupils graduating from elementary school to the secondary stage of education. The number of elementary school students had increased again in the school year 2011–12 to a total of 1,003,865. According to a press release by the Ministry of Education issued in August 2015, the average annual number of pupils in Libya in the period 2011–15 had been 1,024,945. In spite of the exceptionally difficult situation of the educational sector in Libya in that period, most elementary and secondary schools had been open. Where schools had been destroyed or located in conflict areas or used to house refugees, other facilities had been found in some of those regions to enable students to continue their studies.

In the current school year 2016–17 all schools had opened their doors at the scheduled date, with the exception of a few damaged schools in Sirte and Benghazi, which had opened after having been confirmed as being cleared from any remaining damage. Thus, it had become possible for all elementary and secondary school students to take their final examinations for the school year 2016–17 in May 2017, with the examinations for the completion of the elementary stage scheduled to commence on 2 July 2017, and for the secondary stage on 16 July 2017. Overall, 137,947 students would take their exams for the completion of elementary or secondary stages in 2017.

The Presidency Council of the Government of National Accord accorded special importance to human rights subjects, including the rights of children, women and persons with special needs, as well as the rights to education, health and development, among other rights that corresponded with the religious and cultural identity of the Libyan people. Importance was placed on ensuring the rights of women, as partners to men, since they represented the other half of society. The Presidency Council had thus taken an important step in issuing a decree on the establishment of a unit for the empowerment of women, with the aim of strengthening their role and their participation in the state-building effort.

Finally, the speaker noted that Libya was not among the States with parties listed in the annexes to the reports of the UN Secretary-General on children and armed conflict. He emphasized the importance of continued support from the international community for the efforts of the Presidency Council of the Government of National Accord to build the institutions of the State and strengthen its authority throughout the territory, as well as support for its policies and measures to enable the military and police to play their role in an exemplary manner, and to conduct an effective programme for demobilization, disarmament and reintegration, while ensuring respect for human rights and human dignity, and moving the country forward on the path to development.

The Worker members stated that the 2017 report of the Committee of Experts drew attention to two main issues: compulsory recruitment of children for armed conflict and access to free basic education. It was recalled that Libya continued to suffer from an armed conflict and that, according to the UN Deputy High Commissioner for Human Rights, proliferation of armed groups had led to serious violations and abuses of human rights, including targeting, abduction, torture and killing of civilians and children, as well as forced recruitment and use of children by groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL). Some examples of such practices were provided.

The 2017 Human Rights Watch (HRW) country report on Libya highlighted that ongoing insecurity had led to the collapse of the criminal justice system that would otherwise punish perpetrators of child labour – courts either remained shut or operated at a reduced level and areas under ISIL control were subjected to their own interpretation of the Sharia law. Refugee and internally displaced children were particularly vulnerable to the worst forms of child labour. The 2017 UNICEF study entitled *A Deadly Journey for Children* found that women and children had paid smugglers under “pay-as-you-go” schemes, leaving many of them in debt and vulnerable to abuse, abduction and trafficking, and children whose parents had not paid enough were held for ransom. ISIL was also paying the smugglers’ fees in an attempt to attract and recruit unaccompanied child refugees, thus highlighting their potential vulnerability to radicalization. To underline the issues at stake, the speaker recalled in detail the conclusions of the Committee of Experts made under Articles 1 and 3 of the Convention.

With regard to access to free basic education, the conclusions of the Committee of Experts made under Article 7(2) of the Convention were recalled and the situation in Libya was outlined, as documented by the UN in January 2015, HRW in November 2016 and the UN Secretary-General in his 2016 Annual Report on children and armed conflict. According to those sources, explosive remnants of war had remained a major hazard for children; schools in Tripoli, Benghazi, Gandoufa and other places had been extensively damaged or destroyed by indiscriminate shelling, others had been closed and converted into makeshift shelters for internally displaced persons and some had been used by armed groups for launching attacks, particularly in the Warshafana areas and Nafusa mountains, or as a detention facility by the Darna Mujahideen Shura Council; girls had been attacked and harassed by armed groups on their way to school in Tripoli, in certain areas controlled by Ansar al-Sharia, parents were afraid to send girls to school out of fear of abductions and in Sirte and other areas controlled by groups pledging allegiance to ISIL, girls were not allowed to attend schools or permitted to do so only if wearing a full face veil; and even where schools remained standing and operating, parents refrained from sending children to school out of fear of injury during attacks. As a result, children’s access to education had been severely limited and compromised by the conflict in Libya.

In conclusion, he urged the Government to prioritize the rights of children and take practical measures to ensure that the prohibitions in law had real effect. What was needed was an effective programme to eliminate the worst forms of child labour, as well as immediate and comprehensive action, taking into account the importance of free basic education, the need to remove children from the worst form of child labour and provide for their rehabilitation and social integration.

Los miembros empleadores subrayaron que, en aproximadamente 17 países alrededor del mundo, decenas de millones de niños y niñas se encuentran luchando en guerra de adultos. Algunos son utilizados como soldados y participan directamente en hostilidades mientras que otros son utilizados para cumplir funciones de tipo logístico o para abusar sexualmente de ellos. Estos niños son secuestrados, reclutados en contra de su voluntad o deciden ellos mismos alistarse por distintos motivos ignorando las consecuencias. El Convenio núm. 182 define el reclutamiento

forzoso u obligatorio de niños para utilizarlos en conflictos armados como una de las peores formas de trabajo infantil. También representa una violación a los derechos humanos y un crimen de guerra. El Protocolo facultativo de la Convención sobre los derechos de los niños relativo a la participación de niños en conflictos armados prohíbe todo reclutamiento, voluntario u obligatorio, de niños menores de 18 años por fuerzas armadas o grupos armados. Asimismo, el Estatuto de Roma de la Corte Penal Internacional contempla como crimen de guerra, pudiendo llevar a un enjuiciamiento individual, el hecho de proceder al reclutamiento o al alistamiento de niños menores de 15 años o el hecho de obligarlos a participar activamente en las hostilidades.

La situación de Libia es grave y compleja. La situación de los niños afectados por el conflicto armado en el país es deplorable. Libia se encuentra sumido en un estado de guerra, afrontando la peor crisis política y una escalada de violencia que incluye hasta bombardeos a hospitales y escuelas. Estos luctuosos episodios se configuran cuando no existe un Estado de derecho, no hay interlocutores válidos y puede decirse que hay varios gobiernos y estado de guerra o guerrillas internas que coexisten dentro del mismo territorio. El Estado de derecho, aspecto fundamental que nunca debe perderse y un gobierno único y efectivo, es el comienzo de cualquier solución que pretenda encontrarse al caos en que está Libia. Del Informe de la Comisión de Expertos surge claramente que el reclutamiento de niños para forzarlos a someterlos a formación religiosa y militar, que incluye el uso de armas, y a mirar vídeos donde se exhiben decapitaciones, además de ser abusados sexualmente, sería por parte del «Estado Islámico en Iraq y en el Levante» (ISIL), o sea grupos armados beligerantes. En un estado de guerra es por demás difícil que el Estado como tal pueda modificar esas desastrosas conductas sin que previamente cese el estado de guerra interna y retome el dominio de su territorio. Ello, por cuanto si no puede controlar a esos grupos beligerantes, tampoco podrá controlar eficazmente la violación por parte de los mismos del flagrante incumplimiento del Convenio núm. 182, y poder brindar la seguridad en la educación de los niños. Distinto sería si fuera el Gobierno de Libia quien también estuviera adoptando esas conductas violatorias de los derechos del niño, pero ello no surge del Informe de la Comisión de Expertos.

La comunidad internacional en su conjunto debe ser consciente de la extrema gravedad de la situación por la que atraviesa Libia y de los efectos nocivos para todos sus ciudadanos, pero especialmente, y en forma por demás grave, a los niños. Al tiempo que se reconoció la complejidad de la situación que prevalece en el terreno y la presencia de grupos armados y de conflictos armados en el país, el Grupo de los Empleadores se unió al llamado de la Comisión de Expertos e instó vivamente al Gobierno a que, pese a las dificultades señaladas, procure adoptar, lo más urgente posible, medidas: 1) para garantizar la plena e inmediata desmovilización de todos los niños y para detener en la práctica, el reclutamiento forzoso de los niños menores de 18 años de edad para grupos armados; 2) inmediatas y efectivas para garantizar que se realicen investigaciones exhaustivas y enjuiciamientos enérgicos de todas las personas que recluten por la fuerza a niños menores de 18 años de edad para su utilización en conflictos armados, y que se impongan en la práctica sanciones suficientemente efectivas y disuasorias.

El Grupo de los Empleadores solicitó al Gobierno que adopte medidas efectivas y en el menor plazo posible para prever la rehabilitación e inserción social y educativa de los niños, y que comunique información sobre las medidas adoptadas a este respecto y sobre los resultados obtenidos. Ante la compleja situación en Libia y aprovechándose de la discusión tripartita en el seno de la Comisión, el Grupo de los Empleadores, lanzó un llamado enérgico a la comunidad internacional para que colabore a que el conflicto armado llegue a su fin y así la eliminación de todas las formas de trabajo infantil, incluidas las peores formas, pueda ser una realidad lo más pronto posible.

En su informe, la Comisión de Expertos también pregunta si existe una legislación que regule las sanciones penales para el tráfico de drogas, la producción o exposición de materiales indecentes, así como si se ha revisado el listado de trabajos peligrosos. Sería conveniente que se mejore la legislación y se atienda concretamente esos supuestos, más allá de la regulación genérica que existe hoy. El Grupo de los Empleadores indicó que era de desear que se reinstale a la brevedad el estado de derecho y que la comunidad internacional y la OIT hagan los mayores esfuerzos tendientes a esa regularización institucional, lo que sin duda mitigará el flagelo por el que atraviesa el país y sufren diariamente los niños.

The Worker member of Libya noted that in the period since 2011 terrorism and extremism had spread, and many military officers, journalists and civil society activists had been attacked or assassinated. ISIS and Al-Qaida had entered Libya, and different armed groups and militias had pledged allegiance to them. They had not been defeated yet and remained in a position to recruit children among their ranks. These children were then moved to camps in Turkey, near the Syrian border, where the worst forms of child labour were occurring, as indicated in the comments of the Committee of Experts, and as defined in Article 3(d) of the Convention. In Syria, they were trained for combat with the financial support of those States that supported and exported terrorism. At the same time, the Libyan armed forces became organized and trained their soldiers. With due regard to the laws in compliance with the Convention, they began to fight terrorism in Benghazi and Darna and liberated many towns and villages from the hands of the terrorists, giving people back their lives and returning children to their schools. However, there

were major problems of displacement with many vagrant children dreaming of returning to their homes. This was the reason for decreasing numbers of enrolment in primary schools and the deterioration of education since 2011. Numerous children were living in camps, with thousands of displaced in Benghazi and Tarabulus, and many dispersed in other cities.

As had been mentioned in the report of the Committee of Experts, the Government must take efforts to adopt preventive measures to ensure access to basic education and prohibit the recruitment of children by armed militias. The lack of education was one of the major problems faced by children, such as in the town of Tawarga. Children were deprived of education in their early years. After a long period of time, they had been given the means to study in the towns and camps in which they had sought refuge. However, their situation and inappropriate environment had a profound effect on their psyche. Some of them were unable to attend school. They desperately needed to be psychologically rehabilitated. Their conditions pushed them to migrate to Europe on death boats. Moreover, there was another problem which had resulted in the decrease of the number of students, in particular the forcible displacement of about 20,000 families outside of Libya since 2011, with some of them living in poor and difficult conditions.

Expressing her full support for the recommendations of the Committee of Experts, she urged the Libyan Government to take measures against child labour, including measures for the safe return of the displaced to their homes in a defined period, including to the town of Tawarga, without retaliation and with assured protection. The same had to be assured for refugees that had been displaced from Libya since 2011. The aim of such measures was to ensure that all children that had been deprived of education and their most basic rights could enjoy education and a life in dignity. The Government should also prosecute all terrorists and armed groups and militias that forcibly recruited children under the age of 18 and impose severe and dissuasive penal sanctions.

The Employer member of South Africa recalled the need to continue helping Libya to resolve the current problem through international organizations, and stated that the Government of Libya must ensure that full free basic education, rehabilitation and reintegration of all children within the territories that it currently controlled took place. It was urgent to bear in mind that the very future of Libya depended on such rehabilitation.

The Worker member of Italy supported the position expressed by the Worker member of Libya and added some comments. The line between slavery, human trafficking and smuggling was very slender and child refugees were particularly vulnerable to child labour in this process of exploitation. Many of the refugee children arriving in Italy were formerly recruited into armed groups or subjected to forced labour in Libya, which had a profound impact on their lives and future. Moreover, internally displaced and refugee children in Libya were particularly vulnerable to radicalization by groups such as ISIL who targeted them in schools and elsewhere. The problem of child labour, especially recruitment into armed militias, needed to be addressed at source. There was a need for the Libyan Government to take urgent and time-bound measures to commit sufficient resources to protect children and provide parents with the confidence that their children would be safe and secure in attending public, universal and free schools, which was an extremely urgent priority. Violence and human rights abuses were at the origin of the problems regarding child labour, and the Government of Libya had its own responsibility to address its role in ending those, as well as in the management of state detention centres for refugees and the internally displaced.

She stated that the Italian trade unions had first supported the draft and then welcomed the law adopted last April, which properly addressed the legislative gaps found in the field of protection and integration of unaccompanied minors who come to Italy, such as the equal treatment with minors having Italian citizenship in section 1 and no refoulement of minors in any case in section 3. However, the point was to ensure the protection of children when they were in Libya, where there was a role for the international community as well. The Government of Libya needed to do more in practice to take immediate and effective measures to prevent the recruitment process as a matter of urgency and to restore its criminal justice system in order to prosecute the perpetrators of child labour. It must also ensure that child refugees or internally displaced children had access to an education and received rehabilitation and social integration so that they had some prospects of a brighter future in Italy or in Libya.

The Government member of Egypt took note of the Government representative's statement concerning the relevant laws and regulations on the worst forms of child labour and the related sanctions. The Government of Libya was facing a war against terrorism, which had begun to bear fruit by eliminating terrorist organizations, as mentioned in the UN report referred to by the Government's representative. The Government had made its efforts to counter terrorism and eliminate exactions against children. The Government was thus encouraged to pursue its efforts in that area and to avail itself of the technical assistance of the ILO in that regard, in order to ensure full compliance with Convention No. 182 and other ILO Conventions in general.

La miembro trabajadora de España insistió en la importancia del acceso a la educación básica como una medida preventiva que resulta clave contra el trabajo infantil y el reclutamiento de menores en las fuerzas armadas por las milicias de los actores no estatales en Libia. Como el Preámbulo del Convenio núm. 182 lo establece, el trabajo infantil se debe en gran parte a la pobreza, y la solución a largo plazo radica en un crecimiento económico sostenido conducente al progreso social, en particular, al alivio de la pobreza y la educación universal. El trabajo infantil puede evitarse en Libia o en cualquier otra parte. El trabajo infantil se puede prevenir y la educación es un aspecto clave en lo que debería ser un enfoque multisectorial para la eliminación de esta práctica.

La situación es compleja y las divisiones políticas dominan en el país, los actores no estatales prevalecen y las Naciones Unidas reconoce uno de los tres ministerios de educación. Sin embargo, el Gobierno de Libia debería ampliar los esfuerzos para adoptar medidas de duración determinada para prevenir la participación de menores en trabajos peligrosos y, de manera general, para erradicar el trabajo infantil.

El informe de la Comisión de Expertos de 2017 y el informe de UNICEF denuncian las condiciones de vida de los menores y la vulnerabilidad de las jóvenes que se ven obligadas a vivir en centros de detención de las milicias que son campamentos. Cientos de miles de menores se ven privados de sus derechos humanos básicos, son obligados a prostituirse y son sometidos a una extrema violencia física y psicológica. Por ejemplo, en Sirte, se estima que 10 420 niños retornados (8 300 en primaria y 2 120 en secundaria) están con una necesidad urgente de educación y de apoyo psicosocial. Además, los datos obtenidos por UNICEF a través del responsable de la oficina regional de educación de Sirte en diciembre de 2016 muestran que de las 101 escuelas de la ciudad que cuentan con 35 400 alumnos (18 995 niñas y 16 405 niños), 39 de ellas están parcialmente destruidas y dos completamente destruidas.

Según el principio segundo de la Declaración de los Derechos del Niño «cada niño gozará de una protección especial y dispondrá de oportunidades y servicios, dispensado todo ello por la ley y por otros medios, para que pueda desarrollarse física, mental, moral, espiritual y socialmente en forma saludable y normal, así como en condiciones de libertad y dignidad».

Para hacer cumplir y reforzar los principios fundamentales del Convenio, es necesario que el Gobierno de Libia asegure las necesidades de educación básica en aquellas áreas del país más necesitadas, es decir, especialmente aquellas áreas afectadas por el conflicto y de más difícil acceso, incluidas aquellas poblaciones que han sido enteramente desplazadas o que han recibido una proporción considerable de desplazados internos y refugiados.

Así, se hace un llamamiento al Gobierno de Libia para cumplir con las obligaciones en virtud del artículo 7, 2), a) y c), del Convenio núm. 182 para adoptar medidas efectivas que en un plazo determinado aseguren el acceso a la enseñanza básica gratuita y, cuando sea posible, una formación profesional adecuada para todos los menores retirados de las peores formas de trabajo infantil.

The Government member of Zimbabwe noted the submissions of the Government of Libya and urged the Committee to note and appreciate the efforts made by the Government of Libya under the current circumstances. Collective action was necessary in the fight against child labour, and the tripartite constituents in Libya should prioritize social dialogue and collaborate towards the elimination of child labour. Zimbabwe appreciated the show of commitment demonstrated by the Government of Libya, and called on the ILO to offer technical assistance to Libya in that regard.

The Government member of Algeria pointed out that the spirit of the ILO fundamental and governance Conventions was embodied in the legislative and regulatory system in Libya, under which the public authorities applied laws and regulations in organizing and managing their essential services. The Government had made efforts to protect children and prevent child labour by combating all forms of child labour in the country's particular economic and security conditions. In doing so, the Government protected children from intolerance and terrorism. The international community should help, encourage and support Libya in overcoming its crisis.

The Government representative indicated that the Government of Libya sought to stabilize the country. It was well known that the Libyan dictatorship had caused problems in the country for a long time, which, with ILO and international support, would be overcome. The report of the Committee of Experts was about terrorist groups over a specific period, not the State of Libya. ISIL was using children for acts of terrorism and warfare. Migration flows through the country had also generated difficulties. Most migrants came from sub-Saharan Africa. While the Government had negotiated with the European Union with a view to resolving the crisis, hundreds of thousands of migrants remained homeless as they waited to migrate to Europe. As regards education, it was not exactly as stated in the report, which referred to situations before 2011. Since then, primary schools had been progressing in stages and the current basic education system had been progressively restored.

He stated that the economy of Libya had declined owing to the fluctuation of oil prices and problems in the oil regions, and caused financial problems in the country. The Government would address the subsequent problems in the education sector, in particular since it affected all families. He hoped that the Committee's conclusions would serve to support Libya and that the country would receive ILO technical assistance.

Los miembros empleadores tomaron nota de las declaraciones realizadas por los oradores y subrayaron que todos coincidieron en que Libia vive en un estado de conflicto y que la situación es compleja. El Gobierno informó sobre las medidas tomadas a fin de mejorar la educación y aumentar la cantidad de niños en la escuela, entre otras cosas. Las soluciones no son mágicas y no se puede arreglar la situación con una varita. La adopción de una legislación tampoco es suficiente para resolverla inmediatamente. El Grupo de los Empleadores hizo un llamado a la comunidad internacional, a los trabajadores y empleadores, así como a la OIT para que trabajen juntos en la búsqueda de una solución que garantice la desmovilización de los niños de los grupos guerrilleros y su rehabilitación e inserción social y educativa.

The Worker members acknowledged the difficulties faced by Libya in complying with its international obligations in the context of an ongoing armed conflict but highlighted the need to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. While it was the primary responsibility of the Government, the international community should provide the necessary assistance, resulting in a form of joint responsibility.

Although the Government claimed to have the legal provisions in place to address the problems identified by the Committee of Experts, it should also show the political will to commit adequate material resources to eliminate child labour in practice. To that effect, the Government was expected to recommit to its obligations to achieve the implementation of the Convention in practice and, in particular, to:

- take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age;
- take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons forcibly recruiting children under 18 years of age for use in armed conflict were carried out, and that sufficiently effective and dissuasive penalties were imposed in practice;
- take effective and time bound measures to provide for the rehabilitation and social integration of children and to provide information on the measures taken in that regard and on the results achieved; and
- take effective and time-bound measures to improve the functioning of the education system in the country and to facilitate access to free basic education for all children, particularly girls, children in areas affected by armed conflict, and internally displaced children.

In conclusion, it was reiterated that action by the Government was needed as a matter of urgency and the international community was called on to provide the necessary assistance in that regard.

Conclusions

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

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the Committee deeply deplored the current situation where children are forcibly required by armed groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL) to undergo military and religious training. Furthermore, the Committee deeply deplored the situation of children, especially girls, who are deprived of education due to the situation in the country where although mandatory and free education exists in the country, many schools were closed, damaged and used as military or detention facilities which prohibits children from attending them.

Taking into account the discussion of the case, the Committee urged the Government of Libya, with the technical assistance of the ILO, to:

- take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups;
- take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out and that sufficiently effective and dissuasive penalties are imposed in law and in practice;
- take effective and time-bound measures to provide for their rehabilitation and social integration and to provide information on the measures taken in this regard and on the results achieved.

The Committee called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of eliminating all forms of child labour, including the worst forms of child labour without delay.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi.

Tout en reconnaissant la complexité de la situation qui prévaut sur le terrain et la présence de conflits armés, la commission a vivement déploré la situation actuelle dans laquelle des enfants qui sont forcés par des groupes armés qui prètent allégeance à l'Etat islamique en Iraq et au Levant de subir une formation militaire et religieuse. La commission a en outre vivement déploré le sort fait à des enfants, tout spécialement des filles, qui sont privés d'éducation en raison de la situation du pays, bien que l'éducation obligatoire et libre existe dans le pays; beaucoup d'écoles sont fermées, endommagées, et utilisées comme locaux militaires ou d'emprisonnement, et ne sont donc plus accessibles aux enfants.

Prenant en compte la discussion qui a eu lieu sur ce cas, la commission a instamment prié le gouvernement de la Libye, avec l'assistance technique du BIT, de:

- prendre de toute urgence des mesures pour garantir la démobilisation totale et immédiate de tous les enfants et pour mettre un terme, dans la pratique, au recrutement forcé d'enfants âgés de moins de 18 ans dans les groupes armés;
- prendre des mesures immédiates et efficaces pour garantir des enquêtes approfondies et des poursuites contre toutes les personnes qui recrutent de force des enfants aux fins d'un conflit armé, et pour imposer des sanctions suffisamment efficaces et dissuasives dans la pratique;
- prendre des mesures efficaces et assorties de délais pour garantir la réadaptation et l'insertion sociale des enfants, et pour fournir des informations sur les mesures prises à cet égard et sur les résultats obtenus.

La commission a appelé le BIT, la communauté internationale et les organisations d'employeurs et de travailleurs à collaborer en vue de parvenir sans délai à l'élimination de toutes les formes de travail des enfants, y compris les pires formes de travail des enfants.

Conclusiones

La Comisión tomó nota de la información proporcionada por el representante gubernamental y de la discusión que tuvo lugar a continuación.

Al tiempo que reconoció la complejidad de la situación que prevalece en el terreno y la presencia de un conflicto armado, la Comisión deploró profundamente la situación actual en la que grupos armados que juran lealtad al «Estado Islámico en Iraq y el Levante» (ISIL) obligan a niños a recibir formación militar y religiosa. Además, la Comisión lamentó profundamente la situación de los niños, en particular las niñas, que se ven privados de educación debido a la situación que impera en el país, donde, aunque la enseñanza es obligatoria y gratuita, muchas escuelas han cerrado, han sido dañadas o se han utilizado como instalaciones militares o de detención, lo cual impide que los niños asistan a ellas.

Teniendo en cuenta la discusión del caso, la Comisión instó al Gobierno de Libia a que, con la asistencia técnica de la OIT:

- adopte medidas con carácter de urgencia para garantizar la desmovilización total e inmediata de todos los niños y para poner fin, en la práctica, al reclutamiento forzoso de niños menores de 18 años en grupos armados;
- tome medidas inmediatas y efectivas para garantizar que se realicen investigaciones exhaustivas y se emprendan acciones judiciales contra todas las personas que recluten por la fuerza a niños para su utilización en conflictos armados, y que se apliquen en la legislación y en la práctica sanciones suficientemente efectivas y disuasorias, y
- adopte medidas efectivas y en un plazo determinado para prever su rehabilitación e inserción social y para comunicar información sobre las medidas adoptadas a este respecto y sobre los resultados obtenidos.

La Comisión hizo un llamamiento a la OIT, a la comunidad internacional y a las organizaciones de empleadores y de trabajadores para que concierten esfuerzos a fin de eliminar sin dilación todas las formas de trabajo infantil, incluidas sus peores formas.

Appendix I. Table of Reports on ratified Conventions due for 2016 and received since the last session of the CEACR (as of 16 June 2017)

(articles 22 and 35 of the Constitution)

The table published in the Report of the Committee of Experts, page 615, 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.

Angola	25 reports requested
· 24 reports received: Conventions Nos. 1, 6, 14, 29, 45, 68, 69, 73, 74, 81, 87, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111, 138, 182 · 1 report not received: Convention No. 26	
Bangladesh	9 reports requested
· 8 reports received: Conventions Nos. 11, 59, 81, 87, 90, 98, 144, (185) · 1 report not received: Convention No. MLC	
Burundi	27 reports requested
· All reports received: Conventions Nos. 1, 11, 12, 14, 17, 19, 26, 27, 29, 42, 52, 62, 64, 81, 87, 89, 90, 94, 98, 100, 101, 105, 111, 135, 138, 144, 182	
Canada	6 reports requested
· All reports received: Conventions Nos. 26, 87, 108, 144, 160, (MLC)	
China - Macau Special Administrative Region	5 reports requested
<i>(Paragraph 32)</i>	
· All reports received: Conventions Nos. 6, 26, 87, 98, 144	
Congo	19 reports requested
<i>(Paragraph 26)</i>	
· 12 reports received: Conventions Nos. 6, 11, 13, 26, 95, 98, 100, 111, 119, 138, 144, 150 · 7 reports not received: Conventions Nos. 29, 81, 87, 105, 182, (185), MLC	
Croatia	31 reports requested
· 16 reports received: Conventions Nos. 11, 13, 14, 81, 87, 105, 122, 129, 132, 136, 138, 139, 159, 162, (185), (MLC) · 15 reports not received: Conventions Nos. 29, 45, 90, 98, 100, 103, 106, 111, 113, 119, 148, 155, 156, 161, 182	
Cyprus	17 reports requested
· All reports received: Conventions Nos. 11, 19, 87, 90, 94, 95, 98, 102, 114, 121, 123, 124, 128, 141, 144, 158, 160	
Democratic Republic of the Congo	21 reports requested
<i>(Paragraphs 26 and 32)</i>	
· 9 reports received: Conventions Nos. 29, 62, 81, 88, 100, 105, 111, 138, 182 · 12 reports not received: Conventions Nos. 11, 26, 87, 94, 95, 98, 119, 120, 135, 144, 150, 158	
Djibouti	25 reports requested
· All reports received: Conventions Nos. 11, 13, 26, 29, 63, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 111, 115, 120, 124, 125, 126, 138, 144, 182	
El Salvador	10 reports requested
· All reports received: Conventions Nos. 77, 78, 81, 87, 98, 99, 131, 141, 144, 156	

France	29 reports requested
· All reports received: Conventions Nos. 11, 12, 17, 19, 24, 35, 36, 42, 77, 78, 87, 90, 94, 95, 98, 102, 113, 114, 118, 124, 125, 126, 131, 141, 144, 156, 158, 159, 187	
Ghana	8 reports requested
<i>(Paragraph 27)</i>	
· All reports received: Conventions Nos. 11, 26, 90, 94, 100, 111, 182, (MLC)	
Greece	17 reports requested
· 10 reports received: Conventions Nos. 11, 19, 77, 78, 90, 95, 124, 126, 141, 160	
· 7 reports not received: Conventions Nos. 17, 42, 100, 102, 111, 122, 156	
Ireland	32 reports requested
· 31 reports received: Conventions Nos. 6, 11, 12, 19, 26, 29, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 108, 111, 118, 121, 122, 124, 138, 139, 144, 155, 159, 160, 176, 182, 189	
· 1 report not received: Convention No. MLC	
Kiribati	8 reports requested
<i>(Paragraph 27)</i>	
· 5 reports received: Conventions Nos. 29, 105, 138, 182, (MLC)	
· 3 reports not received: Conventions Nos. 100, 111, (185)	
Lao People's Democratic Republic	7 reports requested
<i>(Paragraphs 26 and 32)</i>	
· 5 reports received: Conventions Nos. 29, 100, 138, 144, 171	
· 2 reports not received: Conventions Nos. 111, 182	
Lebanon	33 reports requested
· 29 reports received: Conventions Nos. 8, 9, 17, 19, 29, 45, 58, 71, 73, 74, 81, 88, 100, 105, 115, 120, 127, 133, 136, 138, 139, 142, 147, 148, 159, 170, 174, 176, 182	
· 4 reports not received: Conventions Nos. 98, 111, 122, 150	
Malawi	13 reports requested
· 12 reports received: Conventions Nos. 11, 12, 19, 29, 100, 111, 138, 144, 150, 158, 159, 182	
· 1 report not received: Convention No. 45	
Maldives, Republic of	10 reports requested
· 8 reports received: Conventions Nos. (29), (87), (98), (100), (105), (111), (138), (182)	
· 2 reports not received: Conventions Nos. 185, MLC	
Malta	28 reports requested
<i>(Paragraph 32)</i>	
· 11 reports received: Conventions Nos. 81, 87, 96, 98, 108, 117, 119, 127, 129, 136, 148	
· 17 reports not received: Conventions Nos. 2, 11, 12, 13, 19, 29, 42, 62, 88, 100, 105, 111, 135, 138, 141, 159, 182	
Mexico	19 reports requested
· All reports received: Conventions Nos. 11, 12, 17, 19, 22, 42, 55, 87, 100, 102, 111, 112, 118, 134, 141, 159, 163, 164, 166	
Nepal	7 reports requested
· All reports received: Conventions Nos. 29, 100, 105, 111, 138, 144, 182	
Netherlands - Aruba	9 reports requested
· 6 reports received: Conventions Nos. 17, 25, 113, 114, 118, 121	
· 3 reports not received: Conventions Nos. 122, 140, 142	

Panama	15 reports requested
· All reports received: Conventions Nos. 11, 12, 17, 19, 29, 42, 81, 105, 113, 114, 125, 126, 138, 182, MLC	
Papua New Guinea	15 reports requested
<i>(Paragraph 32)</i>	
· 11 reports received: Conventions Nos. 8, 11, 12, 19, 22, 29, 42, 85, 87, 98, 158 · 4 reports not received: Conventions Nos. 105, 122, 138, 182	
Portugal	16 reports requested
· All reports received: Conventions Nos. 11, 12, 17, 18, 19, 29, 81, 102, 105, 129, 137, 138, 142, 156, 158, 182	
Rwanda	15 reports requested
<i>(Paragraph 32)</i>	
· 13 reports received: Conventions Nos. 11, 12, 19, 29, 81, 87, 89, 98, 105, 118, 122, 138, 182 · 2 reports not received: Conventions Nos. 17, 42	
Samoa	5 reports requested
<i>(Paragraphs 27 and 32)</i>	
· All reports received: Conventions Nos. 29, 105, 138, 182, (MLC)	
San Marino	22 reports requested
· 4 reports received: Conventions Nos. 87, 98, 111, 154 · 18 reports not received: Conventions Nos. 29, 100, 103, 105, 119, 138, 140, 142, 143, 144, 148, 150, 151, 156, 159, 160, 161, 182	
Sao Tome and Principe	11 reports requested
<i>(Paragraph 32)</i>	
· 10 reports received: Conventions Nos. 17, 18, 19, 29, 105, 138, 151, 155, 159, 182 · 1 report not received: Convention No. 81	
Singapore	8 reports requested
· 1 report received: Convention No. MLC · 7 reports not received: Conventions Nos. 11, 12, 19, 29, 81, 138, 182	
Slovenia	20 reports requested
· All reports received: Conventions Nos. 11, 12, 19, 24, 25, 29, 81, 102, 105, 113, 114, 121, 126, 129, 138, 156, 158, 171, 182, 187	
Sri Lanka	8 reports requested
· 3 reports received: Conventions Nos. 81, 98, 138 · 5 reports not received: Conventions Nos. 11, 18, 29, 105, 182	
Tunisia	17 reports requested
<i>(Paragraph 32)</i>	
· All reports received: Conventions Nos. 11, 12, 17, 18, 19, 29, 81, 105, 107, 113, 114, 118, 138, 144, 151, 154, 182	
Uganda	16 reports requested
<i>(Paragraph 32)</i>	
· 13 reports received: Conventions Nos. 12, 26, 29, 45, 81, 105, 111, 122, 138, 144, 158, 159, 182 · 3 reports not received: Conventions Nos. 11, 17, 19	
United Kingdom - Bermuda	8 reports requested
<i>(Paragraph 32)</i>	
· 7 reports received: Conventions Nos. 11, 12, 17, 19, 29, 42, 105 · 1 report not received: Convention No. (MLC)	

· All reports received: Conventions Nos. 11, 12, 17, 19, 29, 87, 105

Grand Total

A total of 2,303 reports (article 22) were requested,
of which 1,780 reports (77.29 per cent) were received.

A total of 235 reports (article 35) were requested,
of which 225 reports (95.74 per cent) were received.

Annexe I. Tableau des rapports dus en 2016 sur les conventions ratifiées et reçus depuis la dernière session de la CEACR (au 16 juin 2017)

(articles 22 et 35 de la Constitution)

Le tableau publié dans le rapport de la Commission d'experts, page 663, doit être mis à jour de la façon suivante:

*Note: Les premiers rapports sont indiqués entre parenthèses.
Les modifications des listes de pays mentionnés dans la première partie (Rapport général)*

Angola	25 rapports demandés
· 24 rapports reçus: Conventions nos 1, 6, 14, 29, 45, 68, 69, 73, 74, 81, 87, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111, 138, 182 · 1 rapport non reçu: Convention no 26	
Bangladesh	9 rapports demandés
· 8 rapports reçus: Conventions nos 11, 59, 81, 87, 90, 98, 144, (185) · 1 rapport non reçu: Convention no MLC	
Burundi	27 rapports demandés
· Tous les rapports reçus: Conventions nos 1, 11, 12, 14, 17, 19, 26, 27, 29, 42, 52, 62, 64, 81, 87, 89, 90, 94, 98, 100, 101, 105, 111, 135, 138, 144, 182	
Canada	6 rapports demandés
· Tous les rapports reçus: Conventions nos 26, 87, 108, 144, 160, (MLC)	
Chine - Région administrative spéciale de Macao	5 rapports demandés
<i>(Paragraphe 32)</i>	
· Tous les rapports reçus: Conventions nos 6, 26, 87, 98, 144	
Chypre	17 rapports demandés
· Tous les rapports reçus: Conventions nos 11, 19, 87, 90, 94, 95, 98, 102, 114, 121, 123, 124, 128, 141, 144, 158, 160	
Congo	19 rapports demandés
<i>(Paragraphe 26)</i>	
· 12 rapports reçus: Conventions nos 6, 11, 13, 26, 95, 98, 100, 111, 119, 138, 144, 150 · 7 rapports non reçus: Conventions nos 29, 81, 87, 105, 182, (185), MLC	
Croatie	31 rapports demandés
· 16 rapports reçus: Conventions nos 11, 13, 14, 81, 87, 105, 122, 129, 132, 136, 138, 139, 159, 162, (185), (MLC) · 15 rapports non reçus: Conventions nos 29, 45, 90, 98, 100, 103, 106, 111, 113, 119, 148, 155, 156, 161, 182	
Djibouti	25 rapports demandés
· Tous les rapports reçus: Conventions nos 11, 13, 26, 29, 63, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 111, 115, 120, 124, 125, 126, 138, 144, 182	
El Salvador	10 rapports demandés
· Tous les rapports reçus: Conventions nos 77, 78, 81, 87, 98, 99, 131, 141, 144, 156	
France	29 rapports demandés
· Tous les rapports reçus: Conventions nos 11, 12, 17, 19, 24, 35, 36, 42, 77, 78, 87, 90, 94, 95, 98, 102, 113, 114, 118, 124, 125, 126, 131, 141, 144, 156, 158, 159, 187	

Ghana	8 rapports demandés
<i>(Paragraphe 27)</i>	
· Tous les rapports reçus: Conventions nos 11, 26, 90, 94, 100, 111, 182, (MLC)	
Grèce	17 rapports demandés
· 10 rapports reçus: Conventions nos 11, 19, 77, 78, 90, 95, 124, 126, 141, 160	
· 7 rapports non reçus: Conventions nos 17, 42, 100, 102, 111, 122, 156	
Irlande	32 rapports demandés
· 31 rapports reçus: Conventions nos 6, 11, 12, 19, 26, 29, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 108, 111, 118, 121, 122, 124, 138, 139, 144, 155, 159, 160, 176, 182, 189	
· 1 rapport non reçu: Convention no MLC	
Kiribati	8 rapports demandés
<i>(Paragraphe 27)</i>	
· 5 rapports reçus: Conventions nos 29, 105, 138, 182, (MLC)	
· 3 rapports non reçus: Conventions nos 100, 111, (185)	
Lao, République démocratique populaire	7 rapports demandés
<i>(Paragraphes 26 et 32)</i>	
· 5 rapports reçus: Conventions nos 29, 100, 138, 144, 171	
· 2 rapports non reçus: Conventions nos 111, 182	
Liban	33 rapports demandés
· 29 rapports reçus: Conventions nos 8, 9, 17, 19, 29, 45, 58, 71, 73, 74, 81, 88, 100, 105, 115, 120, 127, 133, 136, 138, 139, 142, 147, 148, 159, 170, 174, 176, 182	
· 4 rapports non reçus: Conventions nos 98, 111, 122, 150	
Malawi	13 rapports demandés
· 12 rapports reçus: Conventions nos 11, 12, 19, 29, 100, 111, 138, 144, 150, 158, 159, 182	
· 1 rapport non reçu: Convention no 45	
Maldives, République des	10 rapports demandés
· 8 rapports reçus: Conventions nos (29), (87), (98), (100), (105), (111), (138), (182)	
· 2 rapports non reçus: Conventions nos 185, MLC	
Malte	28 rapports demandés
<i>(Paragraphe 32)</i>	
· 11 rapports reçus: Conventions nos 81, 87, 96, 98, 108, 117, 119, 127, 129, 136, 148	
· 17 rapports non reçus: Conventions nos 2, 11, 12, 13, 19, 29, 42, 62, 88, 100, 105, 111, 135, 138, 141, 159, 182	
Mexique	19 rapports demandés
· Tous les rapports reçus: Conventions nos 11, 12, 17, 19, 22, 42, 55, 87, 100, 102, 111, 112, 118, 134, 141, 159, 163, 164, 166	
Népal	7 rapports demandés
· Tous les rapports reçus: Conventions nos 29, 100, 105, 111, 138, 144, 182	
Ouganda	16 rapports demandés
<i>(Paragraphe 32)</i>	
· 13 rapports reçus: Conventions nos 12, 26, 29, 45, 81, 105, 111, 122, 138, 144, 158, 159, 182	
· 3 rapports non reçus: Conventions nos 11, 17, 19	
Panama	15 rapports demandés
· Tous les rapports reçus: Conventions nos 11, 12, 17, 19, 29, 42, 81, 105, 113, 114, 125, 126, 138, 182, MLC	

Papouasie-Nouvelle-Guinée**15 rapports demandés****(Paragraphe 32)**

- 11 rapports reçus: Conventions nos 8, 11, 12, 19, 22, 29, 42, 85, 87, 98, 158
- 4 rapports non reçus: Conventions nos 105, 122, 138, 182

Pays-Bas - Aruba**9 rapports demandés**

- 6 rapports reçus: Conventions nos 17, 25, 113, 114, 118, 121
- 3 rapports non reçus: Conventions nos 122, 140, 142

Portugal**16 rapports demandés**

- Tous les rapports reçus: Conventions nos 11, 12, 17, 18, 19, 29, 81, 102, 105, 129, 137, 138, 142, 156, 158, 182

République démocratique du Congo**21 rapports demandés****(Paragraphe 32)**

- 9 rapports reçus: Conventions nos 29, 62, 81, 88, 100, 105, 111, 138, 182
- 12 rapports non reçus: Conventions nos 11, 26, 87, 94, 95, 98, 119, 120, 135, 144, 150, 158

Royaume-Uni - Bermudes**8 rapports demandés****(Paragraphe 32)**

- 7 rapports reçus: Conventions nos 11, 12, 17, 19, 29, 42, 105
- 1 rapport non reçu: Convention no (MLC)

Royaume-Uni - Iles Vierges britanniques**7 rapports demandés**

- Tous les rapports reçus: Conventions nos 11, 12, 17, 19, 29, 87, 105

Rwanda**15 rapports demandés****(Paragraphe 32)**

- 13 rapports reçus: Conventions nos 11, 12, 19, 29, 81, 87, 89, 98, 105, 118, 122, 138, 182
- 2 rapports non reçus: Conventions nos 17, 42

Saint-Marin**22 rapports demandés**

- 4 rapports reçus: Conventions nos 87, 98, 111, 154
- 18 rapports non reçus: Conventions nos 29, 100, 103, 105, 119, 138, 140, 142, 143, 144, 148, 150, 151, 156, 159, 160, 161, 182

Samoa**5 rapports demandés****(Paragraphe 32)**

- Tous les rapports reçus: Conventions nos 29, 105, 138, 182, (MLC)

Sao Tomé-et-Principe**11 rapports demandés****(Paragraphe 32)**

- 10 rapports reçus: Conventions nos 17, 18, 19, 29, 105, 138, 151, 155, 159, 182
- 1 rapport non reçu: Convention no 81

Singapour**8 rapports demandés**

- 1 rapport reçu: Convention no MLC
- 7 rapports non reçus: Conventions nos 11, 12, 19, 29, 81, 138, 182

Slovénie**20 rapports demandés**

- Tous les rapports reçus: Conventions nos 11, 12, 19, 24, 25, 29, 81, 102, 105, 113, 114, 121, 126, 129, 138, 156, 158, 171, 182, 187

Sri Lanka**8 rapports demandés**

- 3 rapports reçus: Conventions nos 81, 98, 138
- 5 rapports non reçus: Conventions nos 11, 18, 29, 105, 182

(Paragraphe 32)

- Tous les rapports reçus: Conventions nos 11, 12, 17, 18, 19, 29, 81, 105, 107, 113, 114, 118, 138, 144, 151, 154, 182
-

Total général

Au total, 2.303 rapports (article 22) ont été demandés,
1.780 (soit 77,29 pour cent) ont été reçus.

Au total, 235 rapports (article 35) ont été demandés,
225 (soit 95,74 pour cent) ont été reçus.

Anexo I. Cuadro de las memorias debidas en 2016 sobre los convenios ratificados y recibidas desde la última reunión de la CEACR (hasta el 16 de junio de 2017)

(artículos 22 y 35 de la Constitución)

El cuadro publicado en el Informe de la Comisión de Expertos, página 661, debe ser puesto al día como sigue:

*Nota: Las primeras memorias figuran entre paréntesis.
Los números de los párrafos implican modificaciones en las listas de países mencionados*

Angola **25 memorias solicitadas**

- 24 memorias recibidas: Convenios núms. 1, 6, 14, 29, 45, 68, 69, 73, 74, 81, 87, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111, 138, 182
- 1 memoria no recibida: Convenio núm. 26

Bangladesh **9 memorias solicitadas**

- 8 memorias recibidas: Convenios núms. 11, 59, 81, 87, 90, 98, 144, (185)
- 1 memoria no recibida: Convenio núm. MLC

Burundi **27 memorias solicitadas**

- Se han recibido todas las memorias: Convenios núms. 1, 11, 12, 14, 17, 19, 26, 27, 29, 42, 52, 62, 64, 81, 87, 89, 90, 94, 98, 100, 101, 105, 111, 135, 138, 144, 182

Canadá **6 memorias solicitadas**

- Se han recibido todas las memorias: Convenios núms. 26, 87, 108, 144, 160, (MLC)

China - Región Administrativa Especial de Macao **5 memorias solicitadas**

(Párrafo 32)

- Se han recibido todas las memorias: Convenios núms. 6, 26, 87, 98, 144

Chipre **17 memorias solicitadas**

- Se han recibido todas las memorias: Convenios núms. 11, 19, 87, 90, 94, 95, 98, 102, 114, 121, 123, 124, 128, 141, 144, 158, 160

Congo **19 memorias solicitadas**

(Párrafo 26)

- 12 memorias recibidas: Convenios núms. 6, 11, 13, 26, 95, 98, 100, 111, 119, 138, 144, 150
- 7 memorias no recibidas: Convenios núms. 29, 81, 87, 105, 182, (185), MLC

Croacia **31 memorias solicitadas**

- 16 memorias recibidas: Convenios núms. 11, 13, 14, 81, 87, 105, 122, 129, 132, 136, 138, 139, 159, 162, (185), (MLC)
- 15 memorias no recibidas: Convenios núms. 29, 45, 90, 98, 100, 103, 106, 111, 113, 119, 148, 155, 156, 161, 182

Democrática del Congo, República **21 memorias solicitadas**

(Párrafos 26 y 32)

- 9 memorias recibidas: Convenios núms. 29, 62, 81, 88, 100, 105, 111, 138, 182
- 12 memorias no recibidas: Convenios núms. 11, 26, 87, 94, 95, 98, 119, 120, 135, 144, 150, 158

Djibouti **25 memorias solicitadas**

- Se han recibido todas las memorias: Convenios núms. 11, 13, 26, 29, 63, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 111, 115, 120, 124, 125, 126, 138, 144, 182

El Salvador	10 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 77, 78, 81, 87, 98, 99, 131, 141, 144, 156	
Eslovenia	20 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 12, 19, 24, 25, 29, 81, 102, 105, 113, 114, 121, 126, 129, 138, 156, 158, 171, 182, 187	
Francia	29 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 12, 17, 19, 24, 35, 36, 42, 77, 78, 87, 90, 94, 95, 98, 102, 113, 114, 118, 124, 125, 126, 131, 141, 144, 156, 158, 159, 187	
Ghana	8 memorias solicitadas
<i>(Párrafo 27)</i>	
· Se han recibido todas las memorias: Convenios núms. 11, 26, 90, 94, 100, 111, 182, (MLC)	
Grecia	17 memorias solicitadas
· 10 memorias recibidas: Convenios núms. 11, 19, 77, 78, 90, 95, 124, 126, 141, 160	
· 7 memorias no recibidas: Convenios núms. 17, 42, 100, 102, 111, 122, 156	
Irlanda	32 memorias solicitadas
· 31 memorias recibidas: Convenios núms. 6, 11, 12, 19, 26, 29, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 108, 111, 118, 121, 122, 124, 138, 139, 144, 155, 159, 160, 176, 182, 189	
· 1 memoria no recibida: Convenio núm. MLC	
Kiribati	8 memorias solicitadas
<i>(Párrafo 27)</i>	
· 5 memorias recibidas: Convenios núms. 29, 105, 138, 182, (MLC)	
· 3 memorias no recibidas: Convenios núms. 100, 111, (185)	
Lao, República Democrática Popular	7 memorias solicitadas
<i>(Párrafos 26 y 32)</i>	
· 5 memorias recibidas: Convenios núms. 29, 100, 138, 144, 171	
· 2 memorias no recibidas: Convenios núms. 111, 182	
Líbano	33 memorias solicitadas
· 29 memorias recibidas: Convenios núms. 8, 9, 17, 19, 29, 45, 58, 71, 73, 74, 81, 88, 100, 105, 115, 120, 127, 133, 136, 138, 139, 142, 147, 148, 159, 170, 174, 176, 182	
· 4 memorias no recibidas: Convenios núms. 98, 111, 122, 150	
Malawi	13 memorias solicitadas
· 12 memorias recibidas: Convenios núms. 11, 12, 19, 29, 100, 111, 138, 144, 150, 158, 159, 182	
· 1 memoria no recibida: Convenio núm. 45	
Maldivas, República de	10 memorias solicitadas
· 8 memorias recibidas: Convenios núms. (29), (87), (98), (100), (105), (111), (138), (182)	
· 2 memorias no recibidas: Convenios núms. 185, MLC	
Malta	28 memorias solicitadas
<i>(Párrafo 32)</i>	
· 11 memorias recibidas: Convenios núms. 81, 87, 96, 98, 108, 117, 119, 127, 129, 136, 148	
· 17 memorias no recibidas: Convenios núms. 2, 11, 12, 13, 19, 29, 42, 62, 88, 100, 105, 111, 135, 138, 141, 159, 182	
México	19 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 12, 17, 19, 22, 42, 55, 87, 100, 102, 111, 112, 118, 134, 141, 159, 163, 164, 166	

Nepal	7 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 29, 100, 105, 111, 138, 144, 182	
Países Bajos - Aruba	9 memorias solicitadas
· 6 memorias recibidas: Convenios núms. 17, 25, 113, 114, 118, 121	
· 3 memorias no recibidas: Convenios núms. 122, 140, 142	
Panamá	15 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 12, 17, 19, 29, 42, 81, 105, 113, 114, 125, 126, 138, 182, MLC	
Papua Nueva Guinea	15 memorias solicitadas
<i>(Párrafo 32)</i>	
· 11 memorias recibidas: Convenios núms. 8, 11, 12, 19, 22, 29, 42, 85, 87, 98, 158	
· 4 memorias no recibidas: Convenios núms. 105, 122, 138, 182	
Portugal	16 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 12, 17, 18, 19, 29, 81, 102, 105, 129, 137, 138, 142, 156, 158, 182	
Reino Unido - Bermudas	8 memorias solicitadas
<i>(Párrafo 32)</i>	
· 7 memorias recibidas: Convenios núms. 11, 12, 17, 19, 29, 42, 105	
· 1 memoria no recibida: Convenio núm. (MLC)	
Reino Unido - Islas Vírgenes Británicas	7 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 12, 17, 19, 29, 87, 105	
Rwanda	15 memorias solicitadas
<i>(Párrafo 32)</i>	
· 13 memorias recibidas: Convenios núms. 11, 12, 19, 29, 81, 87, 89, 98, 105, 118, 122, 138, 182	
· 2 memorias no recibidas: Convenios núms. 17, 42	
Samoa	5 memorias solicitadas
<i>(Párrafos 27 y 32)</i>	
· Se han recibido todas las memorias: Convenios núms. 29, 105, 138, 182, (MLC)	
San Marino	22 memorias solicitadas
· 4 memorias recibidas: Convenios núms. 87, 98, 111, 154	
· 18 memorias no recibidas: Convenios núms. 29, 100, 103, 105, 119, 138, 140, 142, 143, 144, 148, 150, 151, 156, 159, 160, 161, 182	
Santo Tomé y Príncipe	11 memorias solicitadas
<i>(Párrafo 32)</i>	
· 10 memorias recibidas: Convenios núms. 17, 18, 19, 29, 105, 138, 151, 155, 159, 182	
· 1 memoria no recibida: Convenio núm. 81	
Singapur	8 memorias solicitadas
· 1 memoria recibida: Convenio núm. MLC	
· 7 memorias no recibidas: Convenios núms. 11, 12, 19, 29, 81, 138, 182	
Sri Lanka	8 memorias solicitadas
· 3 memorias recibidas: Convenios núms. 81, 98, 138	
· 5 memorias no recibidas: Convenios núms. 11, 18, 29, 105, 182	

(Párrafo 32)

- Se han recibido todas las memorias: Convenios núms. 11, 12, 17, 18, 19, 29, 81, 105, 107, 113, 114, 118, 138, 144, 151, 154, 182

(Párrafo 32)

- 13 memorias recibidas: Convenios núms. 12, 26, 29, 45, 81, 105, 111, 122, 138, 144, 158, 159, 182
 - 3 memorias no recibidas: Convenios núms. 11, 17, 19
-

Total general

Se ha solicitado un total de 2 303 memorias (artículo 22),
de las cuales se recibieron 1 780 (77,29 por ciento)

Se ha solicitado un total de 235 memorias (artículo 35),
de las cuales se recibieron 225 (95,74 por ciento)

Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

Reports received as of 16 June 2017

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%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee 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%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

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 (March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals.							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%
2015	2139	829	38.8%	1482	69.3%	1617	75.6%
2016	2303	902	39.2%	1600	69.5%	1780	77.3%

Annexe II. Tableau statistique des rapports reçus sur les conventions ratifiées
(article 22 de la Constitution)

Relevé des rapports reçus au 16 juin 2017

Année de la réunion de la Commission d'experts	Rapports demandés	Rapports reçus à la date demandée		Rapports reçus pour la session de la Commission d'experts		Rapports reçus pour la session de la Conférence	
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%
A la suite d'une décision du Conseil d'administration, des rapports détaillés ont été demandés depuis 1959 et jusqu'en 1976 seulement pour certaines conventions.							
1959	995	200	20,4%	864	86,8%	902	90,6%
1960	1100	256	23,2%	838	76,1%	963	87,4%
1961	1362	243	18,1%	1090	80,0%	1142	83,8%
1962	1309	200	15,5%	1059	80,9%	1121	85,6%
1963	1624	280	17,2%	1314	80,9%	1430	88,0%
1964	1495	213	14,2%	1268	84,8%	1356	90,7%
1965	1700	282	16,6%	1444	84,9%	1527	89,8%
1966	1562	245	16,3%	1330	85,1%	1395	89,3%
1967	1883	323	17,4%	1551	84,5%	1643	89,6%
1968	1647	281	17,1%	1409	85,5%	1470	89,1%
1969	1821	249	13,4%	1501	82,4%	1601	87,9%
1970	1894	360	18,9%	1463	77,0%	1549	81,6%
1971	1992	237	11,8%	1504	75,5%	1707	85,6%
1972	2025	297	14,6%	1572	77,6%	1753	86,5%
1973	2048	300	14,6%	1521	74,3%	1691	82,5%
1974	2189	370	16,5%	1854	84,6%	1958	89,4%
1975	2034	301	14,8%	1663	81,7%	1764	86,7%
1976	2200	292	13,2%	1831	83,0%	1914	87,0%

Année de la réunion de la Commission d'experts	Rapports demandés	Rapports reçus à la date demandée		Rapports reçus pour la session de la Commission d'experts		Rapports reçus pour la session de la Conférence	
A la suite d'une décision du Conseil d'administration (novembre 1976), des rapports détaillés ont été demandés depuis 1977 et jusqu'en 1994, selon certains critères, à des intervalles d'un an, de deux ans ou de quatre ans.							
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%
A la suite d'une décision du Conseil d'administration (novembre 1993), des rapports détaillés ont été demandés en 1995, à titre exceptionnel, seulement pour cinq conventions.							
1995	1252	479	38,2%	824	65,8%	988	78,9%
A la suite d'une décision du Conseil d'administration (novembre 1993), des rapports sont désormais demandés, selon certains critères, à des intervalles d'un an, de deux ans ou de cinq ans.							
1996	1806	362	20,5%	1145	63,3%	1413	78,2%
1997	1927	553	28,7%	1211	62,8%	1438	74,6%
1998	2036	463	22,7%	1264	62,1%	1455	71,4%
1999	2288	520	22,7%	1406	61,4%	1641	71,7%
2000	2550	740	29,0%	1798	70,5%	1952	76,6%
2001	2313	598	25,9%	1513	65,4%	1672	72,2%
2002	2368	600	25,3%	1529	64,5%	1701	71,8%
2003	2344	568	24,2%	1544	65,9%	1701	72,6%
2004	2569	659	25,6%	1645	64,0%	1852	72,1%
2005	2638	696	26,4%	1820	69,0%	2065	78,3%
2006	2586	745	28,8%	1719	66,5%	1949	75,4%
2007	2478	845	34,1%	1611	65,0%	1812	73,2%
2008	2515	811	32,2%	1768	70,2%	1962	78,0%
2009	2733	682	24,9%	1853	67,8%	2120	77,6%
2010	2745	861	31,4%	1866	67,9%	2122	77,3%
2011	2735	960	35,1%	1855	67,8%	2117	77,4%

Année de la réunion de la Commission d'experts	Rapports demandés	Rapports reçus à la date demandée		Rapports reçus pour la session de la Commission d'experts		Rapports reçus pour la session de la Conférence	
A la suite d'une décision du Conseil d'administration (mars 2011), des rapports sont demandés, selon certains critères, à des intervalles d'un an, de trois ans ou de cinq ans.							
2012	2207	809	36,7%	1497	67,8%	1742	78,9%
2013	2176	740	34,1%	1578	72,5%	1755	80,6%
2014	2251	875	38,9%	1597	70,9%	1739	77,2%
2015	2139	829	38,8%	1482	69,3%	1617	75,6%
2016	2303	902	39,2%	1600	69,5%	1780	77,3%

Anexo II. Cuadro estadístico de las memorias recibidas sobre los convenios ratificados
(artículo 22 de la Constitución)

Memorias recibidas hasta el 16 de junio de 2017

Año de la reunión de la Comisión de Expertos	Memorias solicitadas	Memorias recibidas en la fecha solicitada		Memorias recibidas para la reunión de la Comisión de Expertos		Memorias recibidas para la reunión de la Conferencia	
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%
De acuerdo con una decisión del Consejo de Administración, desde 1959 hasta 1976 sólo se han pedido memorias detalladas para ciertos convenios.							
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%

Año de la reunión de la Comisión de Expertos	Memorias solicitadas	Memorias recibidas en la fecha solicitada		Memorias recibidas para la reunión de la Comisión de Expertos		Memorias recibidas para la reunión de la Conferencia	
De acuerdo con una decisión del Consejo de Administración (noviembre 1976), desde 1977 hasta 1994, las memorias detalladas fueron solicitadas según determinados criterios, a intervalos de uno, dos o cuatro años.							
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%
De acuerdo con una decisión del Consejo de Administración (noviembre 1993), se solicitaron para 1995, a título excepcional, las memorias detalladas de sólo cinco convenios.							
1995	1252	479	38,2%	824	65,8%	988	78,9%
De acuerdo con una decisión del Consejo de Administración (noviembre 1993), en lo sucesivo, las memorias se solicitaron, según determinados criterios, a intervalos de uno, dos o cinco años.							
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%
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2003	2344	568	24,2%	1544	65,9%	1701	72,6%
2004	2569	659	25,6%	1645	64,0%	1852	72,1%
2005	2638	696	26,4%	1820	69,0%	2065	78,3%
2006	2586	745	28,8%	1719	66,5%	1949	75,4%
2007	2478	845	34,1%	1611	65,0%	1812	73,2%
2008	2515	811	32,2%	1768	70,2%	1962	78,0%
2009	2733	682	24,9%	1853	67,8%	2120	77,6%
2010	2745	861	31,4%	1866	67,9%	2122	77,3%
2011	2735	960	35,1%	1855	67,8%	2117	77,4%

Año de la reunión de la Comisión de Expertos	Memorias solicitadas	Memorias recibidas en la fecha solicitada		Memorias recibidas para la reunión de la Comisión		Memorias recibidas para la reunión de la Conferencia	
De acuerdo con una decisión del Consejo de Administración (marzo 2011), las memorias se solicitan, según determinados criterios, a intervalos de uno, tres o cinco años.							
2012	2207	809	36,7%	1497	67,8%	1742	78,9%
2013	2176	740	34,1%	1578	72,5%	1755	80,6%
2014	2251	875	38,9%	1597	70,9%	1739	77,2%
2015	2139	829	38,8%	1482	69,3%	1617	75,6%
2016	2303	902	39,2%	1600	69,5%	1780	77,3%

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