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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

Informe de la Comisión de Aplicación de Normas

Contents

	<i>Page</i>
A. Discussion of cases of serious failure by member States to respect their reporting or other standards-related obligations, including submission to the competent authorities of the instruments adopted by the International Labour Conference	1
B. Information and discussion on the application of ratified Conventions (individual cases).....	11
Minimum Age Convention, 1973 (No. 138).....	12
Plurinational State of Bolivia (ratification: 1997).....	12
Abolition of Forced Labour Convention, 1957 (No. 105)	22
Cambodia (ratification: 1999)	22
Forced Labour Convention, 1930 (No. 29).....	29
Eritrea (ratification: 2000).....	29
Hours of Work (Industry) Convention, 1919 (No. 1)	
Weekly Rest (Industry) Convention, 1921 (No. 14)	
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)	
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	38
Haiti (ratifications: 1952, 1952, 1952 and 1958)	38
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	46
Honduras (ratification: 1956)	46
Labour Inspection Convention, 1947 (No. 81)	
Labour Inspection (Agriculture) Convention, 1969 (No. 129)	63
Republic of Moldova (ratifications: 1996 and 1997)	63
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).....	71
Serbia (ratification: 2005)	71
Labour Inspection Convention, 1947 (No. 81) and	
Labour Inspection (Agriculture) Convention, 1969 (No. 129)	78
Ukraine (ratification: 2004)	78
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	87
Algeria (ratification: 1962)	87
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	105
Bahrain (ratification: 2000)	105
Forced Labour Convention, 1930 (No. 29).....	117
Belarus (ratification: 1999)	117

Minimum Wage Fixing Convention, 1970 (No. 131).....	128
Plurinational State of Bolivia (ratification: 1997).....	128
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).....	139
Bostwana (ratification: 1997).....	139
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	148
Malaysia – Malaysia Peninsular (ratification: 1957) Sarawak (ratification: 1964)	148
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)....	157
El Salvador (ratification: 1995)	157
Equal Remuneration Convention, 1951 (No. 100).....	169
Georgia (ratification: 1993)	169
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	177
Greece (ratification: 1962)	177
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	188
Japan (ratification: 1965).....	188
Employment Policy Convention, 1964 (No. 122).....	197
Libya (ratification: 1971)	197
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	206
Brazil (ratification: 1952).....	206
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).....	226
Mexico (ratification: 1950).....	226
Myanmar (ratification: 1955).....	244
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	255
Nigeria (ratification: 1960).....	255
Worst Forms of Child Labour Convention, 1999 (No. 182).....	264
Samoa (ratification: 2008).....	264
Appendix I. Table of Reports on ratified Conventions due for 2016 and received since the last session of the CEACR (as of 8 June 2018).....	265
Appendix II. Statistical table of reports received on ratified Conventions (article 22 of the Constitution) Reports received as of 8 June 2018.....	277
Index by country.....	283

Index by countries

	<i>Page</i>
Algeria (ratification: 1962)	87
Bahrain (ratification: 2000).....	105
Belarus (ratification: 1999)	117
Plurinational State of Bolivia (ratification: 1997).....	12
.....	128
Bostwana (ratification: 1997).....	139
Brazil (ratification: 1952).....	206
Cambodia (ratification: 1999).....	22
El Salvador (ratification: 1995).....	157
Eritrea (ratification: 2000).....	29
Georgia (ratification: 1993).....	169
Greece (ratification: 1962)	177
Haiti (ratifications: 1952, 1952, 1952 and 1958)	38
Honduras (ratification: 1956).....	46
Japan (ratification: 1965)	188
Libya (ratification: 1971)	197
Malaysia – Malaysia Peninsular (ratification: 1957) Sarawak (ratification: 1964).....	148
Mexico (ratification: 1950)	226
Republic of Moldova (ratifications: 1996 and 1997)	63
Myanmar (ratification: 1955).....	244
Nigeria (ratification: 1960)	255
Samoa (ratification: 2008).....	264
Serbia (ratification: 2005)	71
Ukraine (ratification: 2004).....	78

	Page
A. Discussion sur les cas de manquements graves de la part 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	1
B. Informations et discussion sur l'application des conventions ratifiées (cas individuels)....	11
Convention (n° 138) sur l'âge minimum, 1973	12
Etat plurinational de Bolivie (ratification: 1997)	12
Convention (n° 105) sur l'abolition du travail forcé, 1957	22
Cambodge (ratification: 1999)	22
Convention (n° 29) sur le travail forcé, 1930	29
Erythrée (ratification: 2000)	29
Convention (n° 1) sur la durée du travail (industrie), 1919	
Convention (n° 14) sur le repos hebdomadaire (industrie), 1921	
Convention (n° 30) sur la durée du travail (commerce et bureaux), 1930	
Convention (n° 106) sur le repos hebdomadaire (commerce et bureaux), 1957	38
Haïti (ratifications: 1952, 1952, 1952 et 1958)	38
Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948.....	46
Honduras (ratification: 1956)	46
Convention (n° 81) sur l'inspection du travail, 1947	
Convention (n° 129) sur l'inspection du travail (agriculture), 1969	63
République de Moldova (ratifications: 1996 et 1997)	63
Convention (n° 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976.....	71
Serbie (ratification: 2005)	71
Convention (n° 81) sur l'inspection du travail, 1947,	
et convention (n° 129) sur l'inspection du travail (agriculture), 1969	78
Ukraine (ratification: 2004)	78
Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948.....	87
Algérie (ratification: 1962)	87
Convention (n° 111) concernant la discrimination (emploi et profession), 1958.....	105
Bahreïn (ratification: 2000)	105
Convention (n° 29) sur le travail forcé, 1930	117
Bélarus (ratification: 1999)	117
Convention (n° 131) sur la fixation des salaires minima, 1970.....	128
Etat plurinational de Bolivie (ratification: 1977)	128

Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948	139
Botswana (ratification: 1977)	139
Convention (n° 19) sur l'égalité de traitement (accidents du travail), 1925	148
Malaisie – Malaisie péninsulaire (ratification: 1957)	
Sarawak (ratification: 1964)	148
Convention (n° 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976	157
El Salvador (ratification: 1995)	157
Convention (n° 100) sur l'égalité de rémunération, 1951	169
Géorgie (ratification: 1993)	169
Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949	177
Grèce (ratification: 1962)	177
Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948	188
Japon (ratification: 1965)	188
Convention (n° 122) sur la politique de l'emploi, 1964	197
Libye (ratification: 1971)	197
Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949	206
Brésil (ratification: 1952)	206
Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948	226
Mexique (ratification: 1950)	226
Myanmar (ratification: 1955)	244
Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949	255
Nigéria (ratification: 1960)	255
Convention (n° 182) sur les pires formes de travail des enfants, 1999	264
Samoa (ratification: 2008)	264
Anexe I. Tableau des rapports dus en 2016 sur les conventions ratifiées et reçus depuis la dernière session de la CEACR (au 8 juin 2018) (articles 22 et 23 de la Constitution)	269
Annexe II. Tableau statistique des rapports reçus sur les conventions ratifiées (article 22 de la Constitution) Relevé des rapports reçus au 8 juin 2018	279
Index par pays	286

Index par pays

	<i>Page</i>
Algérie (ratification: 1962).....	87
Bahreïn (ratification: 2000).....	105
Bélarus (ratification: 1999)	117
Etat plurinational de Bolivie (ratification: 1997)	12
.....	128
Botswana (ratification: 1977).....	139
Brésil (ratification: 1952).....	206
Cambodge (ratification: 1999)	22
El Salvador (ratification: 1995).....	157
Erythrée (ratification: 2000).....	29
Géorgie (ratification: 1993).....	169
Grèce (ratification: 1962).....	177
Haïti (ratifications: 1952, 1952, 1952 et 1958).....	38
Honduras (ratification: 1956).....	46
Japon (ratification: 1965)	188
Libye (ratification: 1971)	197
Malaisie – Malaisie péninsulaire (ratification: 1957) Sarawak (ratification: 1964).....	148
Mexique (ratification: 1950)	226
République de Moldova (ratifications: 1996 et 1997).....	63
Myanmar (ratification: 1955).....	244
Nigéria (ratification: 1960).....	255
Samoa (ratification: 2008).....	264
Serbie (ratification: 2005)	71
Ukraine (ratification: 2004).....	78

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	1
B. Informaciones y discusión sobre la aplicación de convenios ratificados (casos individuales).....	11
Convenio sobre la edad mínima, 1973 (núm. 138)	12
Estado Plurinacional de Bolivia (ratificación: 1997).....	12
Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105)	22
Camboya (ratificación: 1999)	22
Convenio sobre el trabajo forzoso, 1930 (núm. 29).....	29
Eritrea (ratificación: 2000)	29
Convenio sobre las horas de trabajo (industria), 1919 (núm. 1)	
Convenio sobre el descanso semanal (industria), 1921 (núm. 14)	
Convenio sobre las horas de trabajo (comercio y oficinas), 1930 (núm. 30)	
Convenio sobre el descanso semanal (comercio y oficinas), 1957 (núm. 106).....	38
Haití (ratificaciones: 1952, 1952, 1952 y 1958).....	38
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87).....	46
Honduras (ratificación: 1956)	46
Convenio sobre la inspección del trabajo, 1947 (núm. 81)	
Convenio sobre la inspección del trabajo (agricultura), 1969 (núm. 129)	63
República de Moldova (ratificaciones: 1996 y 1997).....	63
Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144).....	71
Serbia (ratificación: 2005)	71
Convenio sobre la inspección del trabajo, 1947 (núm. 81)	
y Convenio sobre la inspección del trabajo (agricultura), 1969 (núm. 129).....	78
Ucrania (ratificación: 2004).....	78
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87).....	87
Argelia (ratificación: 1962).....	87
Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)	105
Bahrein (ratificación: 2000).....	105
Convenio sobre el trabajo forzoso, 1930 (núm. 29).....	117
Belarús (ratificación: 1999)	117
Convenio sobre la fijación de salarios mínimos, 1970 (núm. 131).....	128

Estado Plurinacional de Bolivia (ratificación: 1977).....	128
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)	139
Botswana (ratificación: 1977).....	139
Convenio sobre la igualdad de trato (accidentes de trabajo), 1925 (núm. 19)	148
Malasia – Malasia Peninsular (ratificación: 1957)	
Sarawak (ratificación: 1964).....	148
Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144).....	157
El Salvador (ratificación: 1995)	157
Convenio sobre igualdad de remuneración, 1951 (núm. 100)	169
Georgia (ratificación: 1993).....	169
Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)	177
Grecia (ratificación: 1962).....	177
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)	188
Japón (ratificación: 1965).....	188
Convenio sobre la política del empleo, 1964 (núm. 122)	197
Libia (ratificación: 1971)	197
Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)	206
Brasil (ratificación: 1952)	206
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)	226
México (ratificación: 1950)	226
Myanmar (ratificación: 1955)	244
Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)	255
Nigeria (ratificación: 1960).....	255
Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182).....	264
Samoa (ratificación: 2008).....	264
Anexo I. Cuadro de las memorias debidas en 2016 sobre los convenios ratificados y recibidas desde la última reunión de la CEACR (hasta el 8 de junio de 2018) (artículos 22 y 35 de la Constitución).....	273
Anexo II. Cuadro estadístico de las memorias recibidas sobre los convenios ratificados (artículo 22 de la Constitución) Memorias recibidas hasta el 8 de junio de 2018	281
Índice por países.....	289

Índice por países

	<i>Página</i>
Argelia (ratificación: 1962).....	87
Bahrein (ratificación: 2000).....	105
Belarús (ratificación: 1999).....	117
Estado Plurinacional de Bolivia (ratificación: 1997)	12
.....	128
Botswana (ratificación: 1977).....	139
Brasil (ratificación: 1952).....	206
Camboya (ratificación: 1999).....	22
El Salvador (ratificación: 1995).....	157
Eritrea (ratificación: 2000).....	29
Georgia (ratificación: 1993).....	169
Grecia (ratificación: 1962).....	177
Haití (ratificaciones: 1952, 1952, 1952 y 1958).....	38
Honduras (ratificación: 1956).....	46
Japón (ratificación: 1965).....	188
Libia (ratificación: 1971).....	197
Malasia – Malasia Peninsular (ratificación: 1957) Sarawak (ratificación: 1964).....	148
México (ratificación: 1950).....	226
República de Moldova (ratificaciones: 1996 y 1997).....	63
Myanmar (ratificación: 1955).....	244
Nigeria (ratificación: 1960).....	255
Samoa (ratificación: 2008).....	264
Serbia (ratificación: 2005).....	71
Ucrania (ratificación: 2004).....	78

A. Discussion of cases of serious failure by member States to respect their reporting 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 de la part 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 indiqué qu'il est indispensable de tenir cette séance spéciale, car elle met en lumière le grand nombre de pays qui ne respectent pas leurs obligations constitutionnelles. Ces manquements mettent en péril le bon fonctionnement du système de contrôle de l'OIT. Cette séance donne l'occasion d'inviter les pays qui ne respectent pas leurs obligations à le faire. Sur l'ensemble des rapports demandés aux gouvernements, seulement 38,2 pour cent ont été reçus dans les délais, contre 39,9 pour cent l'année dernière. Par conséquent, il convient d'encourager les gouvernements à soumettre leurs rapports dans les délais afin de ne pas perturber le bon fonctionnement de la procédure de contrôle. La diminution du nombre de rapports reçus par rapport à l'année dernière se confirme puisque, pour la dernière session de la commission d'experts, ils ne représentent plus que 67,8 pour cent contre 71,1 pour cent pour la session précédente, soit 3,3 pour cent de moins. Par ailleurs, 15 pays n'ont pas fourni les rapports dus depuis deux ans ou plus et 13 pays n'ont pas fourni de premier rapport depuis deux ans ou plus. Les premiers rapports dus à la suite d'une ratification sont d'une grande importance puisqu'ils permettent une première évaluation de l'application des conventions concernées. En outre, 43 pays n'ont pas répondu aux observations et aux demandes directes formulées par la commission d'experts. Ces manquements ont un impact négatif sur le travail des organes de contrôle. Ils invitent les gouvernements en défaut à transmettre toutes les informations demandées. La réalisation des études d'ensemble repose également sur les rapports fournis par les Etats Membres de l'OIT. Il est donc primordial qu'ils transmettent leur rapport pour avoir un aperçu global de l'application, en droit comme en pratique, des instruments de l'OIT, même dans les pays n'ayant pas ratifié les conventions concernées. Les membres travailleurs ont constaté que 38 pays n'avaient fourni aucune information au cours des cinq dernières années aux fins des études d'ensemble rédigées par la commission d'experts. C'est regrettable, car ces Etats auraient ainsi contribué à enrichir l'étude d'ensemble. Les membres travailleurs se sont déclarés préoccupés par ces chiffres et ont demandé que les initiatives positives, déjà prises par le Bureau afin d'assurer un meilleur suivi pour les pays qui ont gravement manqué à leurs obligations constitutionnelles, soient renforcées pour inverser la tendance négative observée cette année.

La Constitution de l'OIT impose aux Etats Membres d'indiquer les organisations représentatives d'employeurs et de travailleurs auxquelles les copies des rapports sur les conventions ratifiées ont été communiquées. Le rapport de la commission d'experts indique que deux pays n'ont pas respecté cette obligation. Les membres travailleurs rappellent à ces deux Etats que le tripartisme est le fondement de l'OIT et qu'il est essentiel que les partenaires sociaux soient impliqués dans le contrôle de l'application des normes internationales du travail dans leur pays. S'agissant des cas de défaut grave de soumission, ce sont des cas dans lesquels les gouvernements

n'ont pas soumis les instruments adoptés par la Conférence aux autorités compétentes depuis au moins sept sessions de la commission d'experts. Cette obligation est pourtant essentielle en vue d'assurer, au niveau national, une participation tripartite au processus normatif de l'OIT. A cet égard, 31 pays se trouvent cette année en défaut grave de soumission. C'est pourquoi les membres travailleurs ont invité l'ensemble des pays Membres convoqués à la présente séance à prendre bonne note des manquements graves à leurs obligations constitutionnelles et à y remédier dans les plus brefs délais. En conclusion, les membres travailleurs ont demandé au Bureau de donner un nouvel élan au processus en sollicitant les réponses et les rapports des Etats par le biais d'un dialogue entre les organes de contrôle de l'OIT et les Etats Membres, qui constitue toujours un exercice vital pour l'application effective des normes internationales du travail.

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 therefore crucial for an appropriate and effective supervision of ILO standards. The number of reports under article 22 of the ILO Constitution which had been received by 1 September 2017 remained low, and the number of instances in which no information had been supplied in reply to comments made by the Committee of Experts continued to be high. They regretted that, despite all efforts, it had not been possible to achieve visible progress on these long-standing issues. Submissions by workers' and employers' organizations could add to the factual basis and provide a reality check, but could not replace government reports. While the Office, within its existing financial and human resources capacities, should continue to provide assistance to governments in meeting these obligations, reporting was ultimately a government responsibility. It was the decision of governments to ratify Conventions, and ratification entailed reporting obligations. The Employer members noted with concern that none of the reports due had been sent for the past two or more years by 15 countries. Furthermore, 61 of the 95 first reports due had been received by the time the Committee of Experts' session had ended, and 13 member States had failed for two or more years to supply a first report, albeit the basis for a timely dialogue between the Committee of Experts and the member State on the application of the ratified Convention. They encouraged the governments concerned to request technical assistance from the Office and submit the first reports without delay. The Employer members welcomed the decision taken by the Committee of Experts, following a proposal made by the Employer members, to institute the practice of launching "urgent appeals" on cases corresponding to certain criteria of serious reporting failure and to draw the attention of the Conference Committee to these cases, so that governments could be called before the Conference Committee and, in the absence of a report, the Committee of Experts might examine the substance of the matter at its next session. With respect to reports under article 19 of the ILO Constitution, 38 countries had not sent reports on unratified Conventions and Recommendations for the past five years, despite their importance for the comprehensiveness of General Surveys. As to the submission of instruments adopted by the Conference to the competent authorities, the Employer members noted with concern that 31 member States had failed to meet this constitutional obligation, while welcoming the efforts made by the Democratic Republic of the Congo, Guinea, Jamaica and Mozambique to overcome the delays in submission.

The obligation of member States to communicate copies of the reports supplied to the ILO to the representative employers' and workers' organizations was key for the implementation of tripartism at the national level. The social partners had submitted 1,325 observations under article 23, 330 of which (compared to 314 last year) had been communicated by employers' organizations. The Employer members trusted that the Office would step up efforts to encourage governments to respect this obligation and continue to provide technical assistance and capacity building to the social partners. Employers' organizations, with the invaluable support of the International Organisation of Employers (IOE), were working to contribute to the supervisory system in a more effective manner by submitting up-to-date and relevant information to the Committee of Experts. The Employer members highlighted that member States needed to take their reporting obligations seriously. Part of the discussion on cases of serious reporting failure touched upon the question of the high number and relevance of existing ILO standards. The present efforts to streamline reporting, including extending the possibilities for e-reporting, would help facilitate reporting and increase the reporting rate. Nonetheless, more fundamental steps were needed. A significant consolidation, concentration and simplification of ILO standards was a prerequisite for effective reporting. This had already been achieved to a significant extent in the field of maritime labour standards, and the work of the Standards Review Mechanism would hopefully lead to similar progress in other areas.

Un représentant gouvernemental de l'Angola a indiqué que les rapports ont été soumis au Conseil des ministres. Cependant, ce dernier exige que les rapports soient traduits en portugais. L'orateur saisit cette occasion pour demander l'assistance technique du Bureau afin de remédier à ce problème.

A Government representative of the Bahamas stated that her Government would request ILO technical assistance so that the situation concerning the obligation to submit instruments to the competent authority could be rectified.

Un représentant gouvernemental de Bahreïn a indiqué que le gouvernement avait envoyé au BIT une réponse écrite concernant les observations de la commission d'experts relatives au défaut de soumission des instruments aux autorités compétentes. Il souligne que le Royaume de Bahreïn a respecté ses obligations à ce sujet, conformément aux exigences constitutionnelles et aux règlements intérieurs relatifs à la soumission des instruments aux autorités compétentes (le Conseil des ministres). Il prie la commission d'en tenir compte. S'agissant de la soumission des instruments à l'Assemblée nationale, l'orateur indique que le gouvernement examinera cette question et prendra les mesures nécessaires, conformément à la législation nationale.

Un représentant gouvernemental de la République démocratique du Congo a indiqué que les observations de la commission d'experts avaient été prises en compte lors de la préparation des différents rapports du gouvernement. Ces rapports seront envoyés au BIT avant la fin des travaux de la Conférence. Afin d'éviter tout retard d'envoi d'informations en réponse aux commentaires de la commission d'experts, le gouvernement sollicite l'assistance technique du BIT pour renforcer les capacités du personnel chargé de préparer les rapports.

Una representante gubernamental de El Salvador expresó su agradecimiento respecto a la cooperación técnica recibida de la OIT para la formulación del protocolo de procedimientos institucionales para la sumisión de convenios y recomendaciones de la OIT. Indicó que el primer documento de dicho protocolo ya ha sido concluido. Por más de cuarenta años, esta obligación relativa a las normas internacionales del trabajo ha estado ausente de los procesos, costumbres y normas de las instituciones competentes, por lo que se ha iniciado una revisión para determinar las competencias correspondientes a fin de llevar a cabo dicho proceso. En un corto plazo su Gobierno iniciará los primeros pasos para someter a las autoridades competentes los convenios y recomendaciones correspondientes, lo que permitirá cumplir con sus obligaciones al respecto en un futuro próximo.

Une représentante gouvernementale des Emirats arabes unis a indiqué que son pays est soucieux de s'acquitter de ses obligations envers l'OIT et qu'il soumet régulièrement les rapports demandés. Etant donné que les questionnaires sont longs et complexes et qu'ils exigent de recueillir des informations et des données auprès de nombreuses instances, ceci a provoqué un retard dans l'envoi des rapports dans les délais impartis. Tout en espérant que les questionnaires seront dorénavant simplifiés, le gouvernement fera tout son possible pour transmettre les rapports demandés dans les délais.

Un représentant gouvernemental d'Haïti a indiqué que son pays est conscient du retard accusé dans l'envoi de rapports sur les conventions ratifiées. Suite aux différentes catastrophes naturelles et à la crise électorale, le pays avait d'autres priorités au cours de ces dernières années, telles que la reconstruction et la relance économique. Le gouvernement réitère son engagement de respecter ses obligations internationales. A cet effet, des mesures et des dispositions ont été mises en place par le ministère du Travail en vue de faire renouer le pays avec le cycle de l'envoi de rapports. Vu le nombre important de rapports qui sont pendants, le gouvernement renouvelle sa demande au BIT pour bénéficier de l'assistance technique en la matière.

A Government representative of Ireland indicated that her country fully supported the work of the ILO and acknowledged the importance of reports submitted under article 19 of the ILO Constitution. Regretting the Government's failure to supply reports on unratified Conventions and Recommendations, she stated that procedures had been put in place to address the matter and prevent any recurrence. The report concerning social protection floors would be submitted in the course of the present month. To illustrate the value attributed to the ILO's reporting processes, she highlighted the efforts made to prepare the report on the effective and sustained suppression of all forms of forced labour, as part of the follow-up to the Declaration on Fundamental Principles and Rights at Work, which was being used as a basis for the well-advanced work towards the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930. In this regard, following the conclusion of consultations with the social partners and other stakeholders, the stage of seeking government approval for ratification had been attained.

A Government representative of Kiribati indicated that her Government had been experiencing staff turnover for the past few years. Technical assistance from the ILO had been received, and one staff member from the Government had been trained at the International Training Centre of the ILO in Turin. She hoped that her Government would have the capacity to report as required.

A Government representative of Liberia reaffirmed the sustained commitment of her country to the obligations under articles 19 and 22 of the ILO Constitution. The Government was working actively to submit the outstanding reports in due course, in consultation with the relevant stakeholders, and with the technical assistance of the ILO.

A Government representative of Malaysia indicated that challenges were faced that caused non-compliance with the obligations referred to, not only at the regional level (Malaysia–Peninsular Malaysia, Malaysia–Sabah,

Malaysia–Sarawak), but also at the federal level. Steps had been taken to foster engagement between the agencies and ministries involved in matters relating to labour standards, such as workshops and meetings, and to address the issues regarding reporting obligations. Technical assistance had been requested from the ILO Regional Office for Asia and the Pacific, based in Bangkok, Thailand, and the ILO project office to consult on a Decent Work Country Programme. His Government was committed to complying with obligations related to international labour standards and would expedite the supply of reports on the application of ratified Conventions during the required period between 1 June and 1 September.

A Government representative of Jamaica indicated that her Government would make the necessary arrangements to complete outstanding reports with the technical assistance of the ILO. Internal procedures were being conducted to submit eight reports in the very near future.

A Government representative of Malawi stated that her Government was working to ensure that all the comments raised by the Committee of Experts were responded to. The necessary action was being taken to that effect. In this respect, some reports had already been submitted to the Office during the current session of the International Labour Conference.

Una representante gubernamental de Mozambique señaló que durante el período de 1999 a 2017, su Gobierno había sometido a la Asamblea de la República los convenios y recomendaciones adoptados en la OIT. En cuanto a las observaciones del párrafo 34 del Informe General, su Gobierno se encuentra preparando la información correspondiente que sería proporcionada al día siguiente.

Una representante gubernamental de Nicaragua manifestó el compromiso de su país en lo que respecta al cumplimiento de sus obligaciones en materia de envío de memorias y, en general, en cuanto a la realización de los principios de la OIT. En lo que se refiere a la omisión de envío de la primera memoria sobre la aplicación del Convenio sobre el trabajo marítimo (MLC, 2006), la demora se debe a que actualmente las autoridades competentes se encuentran en un proceso de concertación y consulta que incluye la participación de los interlocutores sociales y otras partes interesadas. Una vez concluido dicho proceso, se realizará el envío de la memoria correspondiente.

A Government representative of the Netherlands (Curaçao) indicated that the Government of the Netherlands was in contact with the Government of Curaçao to ensure the timely submission of the information requested. He reiterated his Government's commitment to ILO Conventions and to related reporting obligations.

A Government representative of Pakistan indicated that, thanks to ILO technical assistance, the exercise of submitting the outstanding 36 instruments to the competent authority had been completed. The relevant report would be communicated to the competent Ministry in due course, and subsequently sent to the Federal Cabinet for approval.

A Government representative of Serbia indicated that her Government apologized for not submitting the first report on the application of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), ratified in 2014. The report should have been submitted in 2016. The underlying reason had been the serious lack of capacity, including administrative capacity, of the institutions responsible for preparing the report. A general election had been held since the ratification of the Convention, followed by changes in Cabinet, including inter-institutional staff movements. The Ministry of Construction, Transportation and Infrastructure had temporarily not been in a position to prepare the report. Improvements in the situation had occurred since November 2017, and the preparation of the first report on the application of the Convention had been resumed in April 2018. The report would be submitted by 1 September 2018.

A Government representative of Singapore stated that seven out of 16 reporting requests had been responded to. The Government would fulfil the remaining reporting requests by the end of the year and was committed to continue meeting its constitutional obligations.

A Government representative of South Sudan underlined her Government's commitment to meet its constitutional obligations. She highlighted the need for ILO technical assistance to be able to meet the reporting requests.

A Government representative of Eswatini (formerly known as Swaziland) indicated that his Government sincerely apologized to the Committee of Experts for its failure to supply reports as expected. Serious constraints were being faced, such as the shortage of personnel and capacity gaps. On this matter, ILO technical assistance had been requested and was being received, including the training the previous month of one staff member from the

Government at the International Training Centre of the ILO in Turin. His Government pledged to comply with its obligations in the future.

A Government representative of Yemen indicated that his country had been in a situation of conflict since March 2015, which had widely affected the capacity of its institutions. While being committed to its constitutional obligations, he asked the Committee to take into consideration that the current circumstances and capacities did not allow for reporting.

Les membres travailleurs ont regretté que seule une partie des 69 pays invités à se présenter devant la commission aient répondu présents. Sur la vingtaine de pays ayant fourni des informations à la commission, les membres travailleurs ont pris note des difficultés rencontrées par certains gouvernements, y compris relatives aux langues. Ils constatent également le besoin de formation spécifique et prient le Bureau de s'engager auprès du Centre de Turin afin que des cours soient assurés à ceux qui en font la demande. En outre, les membres travailleurs réitèrent leur demande au Bureau d'assurer un suivi continu et attentif auprès des gouvernements en leur procurant toute l'assistance nécessaire afin qu'ils puissent s'acquitter de leurs obligations constitutionnelles. Tout en remerciant les gouvernements qui ont fourni des informations complémentaires au sujet de leurs obligations constitutionnelles, ils s'attendent à un suivi cohérent des engagements pris et lancent un appel à tous les gouvernements à fournir les informations demandées dans les plus brefs délais.

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.

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 the Cook Islands, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Haiti, Malaysia – Sabah, Saint Lucia, Solomon Islands, Somalia, Timor-Leste and Vanuatu 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 Belize, Comoros, Congo, Cook Islands, Equatorial Guinea, Gabon, Guyana, Republic of Maldives, Nicaragua, Saint Vincent and the Grenadines, Serbia and Somalia 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 Barbados, Belize, Botswana, Brunei Darussalam, Chad, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Haiti, Kyrgyzstan, Kiribati, Liberia, Malaysia, Malaysia (Peninsular Malaysia, Sabah and Sarawak), Malawi, Mozambique, Papua New Guinea, Saint Vincent and the Grenadines, Saint Lucia, Sierra Leone, Singapore, Solomon Islands, Somalia, Timor-Leste, Trinidad and Tobago, Vanuatu 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 unratified Conventions and Recommendations.

The Committee expresses the firm hope that the Governments of Afghanistan, Angola, Armenia, Belize, Botswana, Chad, Congo, Cook Islands, Dominica, Eswatini, Grenada, Guinea-Bissau, Guyana, Haiti, Ireland, Kiribati, Liberia, Libya, Republic of Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Tonga, Tuvalu, United Arab Emirates, Vanuatu and Yemen 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 Azerbaijan, Bahamas, Bahrain, Belize, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Fiji, Gabon, Guinea-Bissau, Haiti, Kyrgyzstan, Kiribati, Kuwait, Liberia, Libya, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Syrian Arab Republic, Somalia 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

The Committee recalls 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 recalls 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 expresses the firm hope that the Governments of the Plurinational State of Bolivia and Rwanda will comply with this obligation in future. The Committee decides to note these cases in the corresponding paragraph of the General Report.

Overall, the Committee expresses *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 may request technical assistance from the Office to overcome their difficulties in this respect.

Conclusions

La commission prend note des informations et des 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. La commission rappelle régulièrement que le BIT peut apporter une assistance technique pour permettre de s'acquitter de cette obligation.

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 de la Dominique, de la Gambie, de la Guinée-Bissau, de la Guinée équatoriale, d'Haïti, des Îles Cook, des Îles Salomon, de la Malaisie-Sabah, de Sainte-Lucie, de la Somalie, du Timor-Leste et de Vanuatu 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 du Belize, des Comores, du Congo, du Gabon, de la Guinée équatoriale, du Guyana, des Îles Cook, du Nicaragua, de la République des Maldives, de Saint-Vincent-et-les Grenadines, de la Serbie et de la Somalie 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 de la Barbade, du Belize, du Botswana, de Brunéi Darussalam, de Djibouti, de la Dominique, de la Gambie, de la Grenade, de la Guinée-Bissau, de la Guinée équatoriale, d'Haïti, des Îles Salomon, du Kirghizistan, de Kiribati, du Libéria, de la Malaisie, de la Malaisie (Malaisie péninsulaire, Sabah et Sarawak), du Malawi, du Mozambique, de la Papouasie-Nouvelle-Guinée, de Saint-Vincent-et-les Grenadines, de Sainte-Lucie, de la Sierra Leone, de Singapour, de la Somalie, du Tchad, du Timor-Leste, de la Trinité-et-Tobago, de Vanuatu 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'Afghanistan, de l'Angola, de l'Arménie, du Belize, du Botswana, du Congo, de la Dominique, des Emirats arabes unis, de la Grenade, de la Guinée-Bissau, du Guyana, d'Haïti, de l'Irlande, des Îles Cook, des Îles Marshall, des Îles Salomon, de

Kiribati, du Libéria, de la Libye, de la Papouasie-Nouvelle-Guinée, de la République des Maldives, de Sainte-Lucie, de Sao Tomé-et-Principe, de la Sierra Leone, de la Somalie, du Soudan du Sud, de l'Eswatini (anciennement Swaziland), du Timor-Leste, du Tchad, des Tonga, de Tuvalu, de Vanuatu et du Yémen 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'Azerbaïdjan, des Bahamas, de Bahreïn, du Belize, des Comores, de la Croatie, de la Dominique, d'El Salvador, de la Guinée équatoriale, des Fidji, du Gabon, de la Guinée-Bissau, d'Haïti, des Iles Salomon, du Kirghizistan, de Kiribati, du Koweït, du Libéria, de la Libye, du Pakistan, de la Papouasie-Nouvelle-Guinée, de Saint-Kitts-et-Nevis, du Samoa, de Sainte-Lucie, de Saint-Vincent-et-les Grenadines, des Seychelles, de la Sierra Leone, de la République arabe syrienne, de la Somalie 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

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 l'Etat plurinational de Bolivie 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.

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 Dominica, Gambia, Guinea-Bissau, Guinea Ecuatorial, Haití, Islas Cook, Islas Salomón, Malasia – Sabah, Santa Lucía, Somalia, Timor-Leste y Vanuatu 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 Belice, Comoras, Congo, Gabón, Guinea Ecuatorial, Guyana, Islas Cook, República de Maldivas, Nicaragua, San Vicente y las Granadinas, Serbia y Somalia 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 Barbados, Belice, Botswana, Brunei Darussalam, Chad, Djibouti, Dominica, Gambia, Granada, Guinea-Bissau, Guinea Ecuatorial, Haití, Islas Salomón, Kirguistán, Kiribati, Liberia, Malasia, Malasia (Malasia Peninsular, Sabah y Sarawak), Malawi, Mozambique, Papua Nueva Guinea, San Vicente y las Granadinas, Santa Lucía, Sierra Leona, Singapur, Somalia, Timor-Leste, Trinidad y Tabago, Vanuatu 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 Afganistán, Angola, Armenia, Belice, Botswana, Chad, Congo, Dominica, Emiratos Árabes Unidos, Eswatini, Granada, Guinea-Bissau, Guyana, Haití, Irlanda, Islas Cook, Islas Marshall, Islas Salomón, Kiribati, Liberia, Libia, República de Maldivas, Papua Nueva Guinea, Santa Lucía, Santo Tomé y Príncipe, Sierra Leona, Somalia, Sudán del Sur, Timor-Leste, Tonga, Tuvalu, Vanuatu y Yemen, 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 Azerbaiyán, Bahamas, Bahrein, Belice, Comoras, Croacia, Dominica, El Salvador, Fiji, Gabón, Guinea Ecuatorial, Guinea-Bissau, Haití, Islas Salomón, Kirguistán, Kiribati, Kuwait, Liberia, Libia, Pakistán, Papua Nueva Guinea, Saint Kitts y Nevis, Samoa, 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

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 del Estado Plurinacional de Bolivia y 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.

B. Information and discussion on the application of ratified Conventions (individual cases)

The Committee on the Application of Standards (CAS) has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. Conclusions should be read with the full minutes of the discussion of an individual case. Conclusions do not repeat elements of the discussion or reiterate government declarations which can be found in the opening and closing of the discussion set out in the *Record of Proceedings*. The CAS has adopted conclusions on the basis of consensus. The CAS has only reached conclusions that fall within the scope of the Convention being examined. If the Workers, Employers and/or Governments had divergent views, this has been reflected in the CAS *Record of Proceedings*, not in the conclusions.

B. Informations et discussion sur l'application des conventions ratifiées (cas individuels)

La Commission de l'application des normes a adopté des conclusions concises, claires et directes. Elles indiquent ce que l'on attend des gouvernements pour qu'ils appliquent les conventions ratifiées de façon claire et sans ambiguïté. Les conclusions reflètent des mesures concrètes visant à traiter des questions d'application. Ces conclusions doivent être lues conjointement avec le compte rendu intégral de la discussion de chaque cas individuel. Elles ne reprennent plus les éléments de la discussion et ne répètent plus les déclarations prononcées par les gouvernements lors de l'ouverture et de la clôture de la discussion et qui figurent dans le compte rendu. La commission a adopté les conclusions sur la base du consensus. La commission n'a formulé que des conclusions relevant de la portée de la convention à l'examen. Lorsque les travailleurs, les employeurs et/ou les gouvernements avaient des vues divergentes, cela a été mentionné dans les comptes rendus de la commission et non dans les conclusions.

B. Informaciones y discusión sobre la aplicación de convenios ratificados (casos individuales)

La Comisión de Aplicación de Normas ha adoptado conclusiones breves, claras y concisas. Las conclusiones identifican lo que se espera de los gobiernos para que apliquen los convenios ratificados de una manera clara e inequívoca. Las conclusiones reflejan pasos concretos para abordar las cuestiones relacionadas con el cumplimiento. Las conclusiones deben leerse junto con las actas completas de la discusión sobre cada caso individual. En las conclusiones, ya no se recogen elementos de la discusión ni se reiteran declaraciones que hayan formulado los gobiernos durante la apertura o el cierre de la discusión y que figuren en las actas. La Comisión de Aplicación de Normas ha adoptado conclusiones sobre la base de un consenso. Sólo ha formulado conclusiones que entran dentro del ámbito de aplicación del Convenio objeto de examen. Si los trabajadores, los empleadores y/o los gobiernos tenían opiniones divergentes, esto se ha reflejado en las actas de la Comisión de Aplicación de Normas, no en las conclusiones.

Convenio sobre la edad mínima, 1973 (núm. 138)

Minimum Age Convention, 1973 (No. 138)

Convention (n° 138) sur l'âge minimum, 1973

Estado Plurinacional de Bolivia (ratificación: 1997)

Plurinational State of Bolivia (ratification: 1997)

Etat plurinational de Bolivie (ratification: 1997)

Un representante gubernamental, Ministro de Trabajo, Empleo y Previsión Social indicó que el Estado Plurinacional de Bolivia comparece ante la Comisión, porque en 2014 se adoptó un nuevo Código del Niño, Niña y Adolescente con una visión mucho más protectora e integral para los niños y adolescentes. En razón de un pedido expreso de sectores de la sociedad, se reconoció excepcionalmente el trabajo independiente de niños con miras a protegerlos de una mejor manera, y sincerando una realidad que globalmente se encubre. Mediante el artículo 129 del Código del Niño, Niña y Adolescente, se fija como edad mínima para trabajar, los 14 años de edad. Excepcionalmente, las Defensorías de la Niñez y Adolescencia, podrán autorizar la actividad laboral por cuenta propia realizada por niñas, niños o adolescentes de 10 a 14 años, y la actividad laboral por cuenta ajena de adolescentes de 12 a 14 años, siempre que ésta no menoscabe su derecho a la educación, no sea peligrosa, insalubre, atente contra su dignidad y desarrollo integral, o se encuentre expresamente prohibida por la ley. Esta norma fue objeto de observaciones por la Comisión de Expertos en 2015 y 2017. Esto conllevó a la discusión ante la Comisión. En el marco de la independencia de poderes, el 21 de julio de 2017, el Tribunal Constitucional Plurinacional adoptó la sentencia núm. 0025/2017, que declaró la inconstitucionalidad del artículo 129.II del Código del Niño, Niña y Adolescente, y otros artículos conexos (artículos 130.III; 131.I, III y IV; 133.III y IV; y, 138.I del mismo). Por lo tanto, queda sin efecto la referencia a la edad excepcional de 10 años para trabajar. La sentencia mencionada es vinculante, es de cumplimiento obligatorio y tiene efecto derogatorio (conforme al artículo 203 de la Constitución Política del Estado y al artículo 78.4 del Código Procesal Constitucional). En base a estos elementos, se considera que no existe duda alguna de que las disposiciones a las que se refiere la Comisión de Expertos han sido expresamente derogadas. Está vigente la edad mínima para trabajar de 14 años, conforme el artículo 129.I del Código del Niño, Niña y Adolescente, sin excepciones, salvo aquellas previstas en el Convenio. Cabe señalar que, en la sentencia, el Tribunal Constitucional se refiere expresamente al Convenio como elemento de juicio de constitucionalidad, considerando que el Estado Plurinacional de Bolivia es respetuoso de sus compromisos internacionales. A fin de erradicar el trabajo infantil en el país de manera efectiva, además de este marco normativo, se han venido implementando acciones institucionales desarrolladas por los directores e inspectores de trabajo en base a tres estrategias: i) estrategia de prevención, mediante el desarrollo de capacidades en la aplicación de los derechos fundamentales orientada a niños y adolescentes de unidades educativas, padres de familia, maestros, trabajadores y empleadores; ii) estrategia de fiscalización, en el marco de la cual se realizan inspecciones laborales e inspecciones integrales de oficio o a instancia de parte, donde se encuentran niñas, niños y adolescentes trabajadores; iii) estrategia de acción directa en la protección de la integridad de las niñas, niños y adolescentes en situación de trabajo, en el marco de la cual se realizan audiencias para restituir sus derechos fundamentales y laborales. Además, el trabajo adolescente está regulado por la resolución ministerial núm. 442/04, la cual regula los derechos y obligaciones de los adolescentes trabajadores (entre los 14 y 18 años) y establece las garantías laborales y de protección a su salud, seguridad industrial, derechos sobre alimentación, recreación y capacitación, e impone sanciones a las infracciones que se cometan en relación al incumplimiento de las normas protectoras de los trabajadores adolescentes.

El Ministerio de Trabajo, Empleo y Previsión Social (MTEPS), a través de la Unidad de Derechos Fundamentales, ha empezado a implementar un sistema de oficinas móviles temporales en zonas alejadas donde no existen oficinas permanentes del MTEPS, con el objetivo principal de lograr la restitución de los derechos de los trabajadores. Se reciben denuncias, se realizan inspecciones, se instalan audiencias, se proporciona información y se realizan acciones de capacitación en la aplicación de los derechos fundamentales de trabajo a adolescentes, jóvenes, padres de familia y población en general. Durante las gestiones de 2016 y 2017, se establecieron 26 oficinas móviles temporales en municipios rurales del Oriente y del Chaco Boliviano. Asimismo, en el marco de la Agenda Patriótica 2025, el Plan de Desarrollo Económico y Social (PDES) y el Sistema de Planificación Integral del Estado, el Gobierno ha establecido los lineamientos generales para el desarrollo integral del país en el horizonte del «vivir bien». Una de las metas del PDES es la eliminación de las determinantes del trabajo de niños, niñas y adolescentes y la explotación laboral. Para reducir el trabajo infantil en 2025, el Gobierno se ha propuesto avanzar en ocho metas por lo menos (erradicación de la extrema pobreza, socialización y universalización de los servicios, salud, educación y deporte, soberanía productiva con diversificación, soberanía alimentaria). El trabajo infantil es consecuencia de las políticas económicas y sociales que prevalecieron en el país hasta 2005, fruto de un legado colonial

discriminatorio, de violentas dictaduras, y de políticas neoliberales en las cuales prevaleció la defensa de los intereses de las oligarquías por encima de los intereses del pueblo. Esos modelos tuvieron como resultado altos niveles de desigualdad y pobreza extrema, la cual afectaba hasta 2005 a casi el 40 por ciento de la población, y a más del 60 por ciento de la población en las zonas rurales. Hasta 2004, los niveles de acceso a la educación, la vivienda, a servicios básicos y a empleos dignos eran muy bajos. Desde 2005, el Gobierno, bajo el liderazgo del Presidente Evo Morales Ayma, ha llevado a cabo un modelo de desarrollo inclusivo con el objeto de eliminar las desigualdades históricas y erradicar la pobreza, con miras a eliminar de raíz las causas fundamentales del trabajo infantil. Con ese objetivo, se ha promovido un modelo de desarrollo integral, social, comunitario y productivo en el cual conviven y se complementan los roles de lo público, lo privado, lo comunitario y lo social para reducir la pobreza y promover el bienestar o el «vivir bien». Gracias a este modelo, el trabajo infantil ha disminuido a más del 50 por ciento desde el 2008 a 2016, de acuerdo a la encuesta de niñas, niños y adolescentes del Instituto Nacional de Estadística. Asimismo, se han incrementado exponencialmente el número de inspecciones laborales, y se han llevado adelante políticas tales como las oficinas móviles para prevenir el trabajo infantil y restituir los derechos, en coordinación con los órganos judiciales correspondientes. Asimismo, desde 2005, este modelo económico inclusivo que pone a la economía al servicio del desarrollo social ha logrado: 1) reducir la pobreza extrema del 38,2 por ciento en 2005 al 17,9 por ciento en 2017; 2) reducir la desigualdad de manera exponencial (en 2005 el ingreso del segmento más rico de la población era 128 veces más alto que el ingreso del segmento más pobre); 3) reducir el índice Gini desde 0,60 en 2005 hasta 0,48 en 2014; 4) asegurar que la tasa de desempleo (4,48 por ciento) sea una de las más bajas de la región; 5) incrementar el salario mínimo en más del 300 por ciento entre 2005 y 2018. El nivel salarial y las políticas de inversión productiva que han generado una mayor demanda interna, han sido también muy beneficiosas para el sector privado cuyas utilidades se han multiplicado por cuatro desde 2005. Todos estos avances se han reflejado en una mejora de las condiciones económicas y de vida de los padres de familia y de los niños; 6) construir más de 4 000 unidades educativas. El Estado Plurinacional de Bolivia se encuentra entre los países con niveles más altos de asistencia escolar primaria en la región. Se están implementado diversos programas a niveles nacional y local, tales como el bono «Juancito Pinto» y el «Bono Madre-Niño-Niña Juana Azurduy Padilla» que están a cargo del Gobierno central, y otros programas sociales implementados por iniciativas locales, tales como programas de desayuno escolar y programas locales de incentivos monetarios y/o en especies desarrollados a varias instancias y niveles estatales para atender necesidades laborales, educativas, de salud, ambientales, en el marco del Sistema Plurinacional de Protección Integral de la Niña, Niño y Adolescente (SIPPROINA). Gracias a todas estas inversiones públicas, desde el año 2005, se ha logrado reducir la tasa de abandono escolar en la educación primaria del 4,5 por ciento al 2 por ciento, al tiempo que se logró que más de 41 000 niños y niñas no abandonasen la escuela y que se incrementase en más de 40 000 la cantidad de jóvenes que han concluido el bachillerato, consiguiendo además un balance de género. Asimismo, se ha mejorado substancialmente la calidad de la educación. Se ha incrementado en más del 15 por ciento el número de maestros fijos (profesionalizando a más de 15 000 maestros interinos) y se ha implementado un modelo de educación inclusivo que ha sido reconocido y valorado por diferentes entidades internacionales. Además, la población goza de un mejor acceso a la salud. Se han constituido más de 1 000 establecimientos de salud, que eran solamente 2 800 en 2005, y estas infraestructuras han sido complementadas con equipamiento profesional nuevo. Todos estos avances han influido muy positivamente en la salud infantil. Entre 2008 y 2016, se ha reducido la desnutrición crónica de niños y niñas menores de 5 años en casi un 50 por ciento, lo cual ha sido reconocido como una reducción acelerada por la Organización Mundial de la Salud. Igualmente, en los últimos ocho años la mortalidad de niños y niñas menores de un año se ha reducido a menos de la mitad, gracias a la mejora de la atención prenatal y de parto. Todos estos logros son resultado de una inversión pública y social que aumentó nueve veces respecto al 2005, colocando a Bolivia como el país con la más alta inversión pública de la región, que alcanza el 12 por ciento de su PIB. Finalmente, el orador destacó que, como resultado de este modelo económico inclusivo, entre 2005 y 2017 la clase media aumentó en más de 3 000 000 de personas y el 58 por ciento de la población tiene ingresos medios que le permiten «vivir bien».

The Worker members recalled that it was the second time in recent years that the Committee had discussed this case. On both occasions, the case had been double footnoted by the Committee of Experts, which had repeatedly noted with concern the situation of child labour in the country. In its conclusions in 2015, the Conference Committee had called on the Government to undertake legislative reform in consultation with the social partners in order to increase the minimum age for admission to employment, and to allocate the labour inspectorate with more human and technical resources. The Committee had also invited the Government to avail itself of ILO technical assistance. They noted that the Constitutional Court had in the meantime declared unconstitutional section 129 of the Code for Children and Young Persons, which exceptionally authorized own account work as from the age of 10, and work in an employment relationship from the age of 12. The Plenary Chamber of the Constitutional Court had decided to declare the unconstitutionality of this provision since it was “incompatible and contradictory” with the Political Constitution of the State, the Convention on the Rights of the Child and Convention No. 138. They congratulated the Constitutional Court for this decision drawing on the international legal obligations of the Plurinational State of Bolivia. The Government should now take measures promptly in order to bring its legislation into line with the

Convention. While the Convention allowed ratifying States whose economy and educational facilities were insufficiently developed to invoke the flexibility built into Article 2(4) of the Convention to specify a minimum age of 14 years, the instrument by no means allowed ratifying States to go below this threshold. In fact, ratifying States were expected to progressively raise the general minimum age to 16 years, and to eradicate child labour. The Convention provided that the specified minimum age could not be less than the age of completion of compulsory schooling. Full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively guaranteed up to an age at least equal to that specified for admission to employment. Depriving children of opportunities for education and training condemned them to remain unskilled and thus perpetuated the poverty of a society. In recent years and to its credit, the Government of the Plurinational State of Bolivia had made education compulsory until the end of secondary school. This would in general require a child to go through 12 years of schooling, and, therefore, the age of completion of compulsory schooling would be at least 16 years. Allowing children to work as from the age of 10 would inevitably affect their compulsory schooling. Hence, the Code for Children and Young Persons was inconsistent with the national education law and was in clear violation of the Convention. The Worker members expressed their concern at the high number of children employed in the informal economy. While recognizing the results of measures taken by the Government to reduce the share of the informal economy, there were still too many children employed without protection in the informal economy. In the worst cases, they were engaged in forced begging, debt bondage, domestic services and commercial sex exploitation.

The Plurinational State of Bolivia's capacity for effective labour inspection remained weak despite the significant number of children employed in hazardous employment. There were only 90 labour inspectors in the entire country, according to the Government's report. In its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government indicated that there were only six labour inspectors specialized in the elimination of child labour. There was no indication that this number had been increased. Given the large number of children engaged in child labour, as well as the scale of the informal economy, the number of labour inspectors remained inadequate. Weak labour inspection not only reduced the possibility of the detection of violations related to child labour, but also hindered the appropriate punishment of perpetrators. The Worker members took note of the positive measures undertaken by the Government in order to eradicate child labour, such as the Inter-institutional Subcommittee for the Elimination of the Worst Forms of Child Labour, which aimed to mobilize efforts and create synergies to prevent child labour and to provide care for victims. Moreover, the Government's Economic and Social Development Plan aimed to eradicate the causes of child labour by increasing public spending on child protection. In this area, there had indeed been progress, with public expenditure increasing from 3.5 per cent in 2005 to 7.8 per cent in 2015. These policy initiatives were commendable, but still fell short of the measures required for compliance with the Convention. The system introduced by the Code for Children and Young Persons had to be reformed without any delay. The Government should also immediately implement the ruling of the Constitutional Court by undertaking legislative reform in consultation with the social partners. They sincerely hoped that this discussion would be helpful in highlighting the urgency of these issues with the Government so that further progress could be made.

Los miembros empleadores agradecieron las informaciones proporcionadas y recordaron que la discusión se refiere a un convenio fundamental y, por lo tanto, cualquier inadecuación al contenido del mismo debe ser solucionada en la mayor brevedad. Indicaron que compartían el hecho de que la Comisión de Expertos hubiese establecido el presente caso como un caso de doble pie de página. En virtud del artículo 1 del Convenio, los Estados se comprometen a seguir una política nacional que asegure la abolición efectiva del trabajo de los niños y eleve progresivamente la edad mínima de admisión al empleo o al trabajo a un nivel que haga posible el más completo desarrollo físico y mental de los menores. La OIT define el trabajo infantil como todo aquel trabajo que prive a los niños de su niñez, su potencial y su dignidad y que es perjudicial para su desarrollo físico y psicológico. Por lo tanto, se alude a un trabajo que es peligroso para el bienestar físico y mental o moral del niño y que interfiere con su escolarización. Según la Encuesta Nacional sobre Trabajo Infantil del Instituto Nacional de Estadística de 2012, 491 000 niños trabajan por debajo de la edad mínima en el país, de los cuales 437 000 realizan trabajos peligrosos. Asimismo, 309 000 adolescentes de 14 a 17 años realizan trabajos peligrosos. Estos datos, muestran la magnitud que alcanza el trabajo infantil en el país. Por otro lado, los miembros empleadores mencionaron la observación de la Comisión de Expertos en relación con: i) la reducción de la edad mínima de admisión al empleo con base en el artículo 129 del nuevo Código Niña, Niño y Adolescente, de los 14 años a los 10 años para actividades laborales por cuenta ajena y a los 12 años para quienes tengan una relación laboral por cuenta ajena; ii) el hecho de que la economía informal supera el 70 por ciento, siendo éste el ámbito que resulta más favorable al trabajo infantil, ya que se encuentra fuera del alcance de una inspección general y ordinaria, y iii) la distinción que realiza el nuevo Código Niña, Niño y Adolescente entre fijar la edad mínima a los 10 años para los niños que realizan una actividad laboral por cuenta propia, y fijarla a los 12 años para los que la realizan por cuenta ajena. Ante ello, la Comisión de Expertos solicitó al Gobierno que adoptara una serie de medidas tales como la elaboración, en consulta con las organizaciones de empleadores y de trabajadores, de una nueva ley con miras a adecuar la legislación nacional a las

disposiciones del Convenio, así como la formación y el aumento de recursos humanos y materiales de la inspección del trabajo. Asimismo, el Tribunal Constitucional en su sentencia de 2017 declaró la inconstitucionalidad de, entre otros, los artículos 129, 131, 133 y 138 del Código Niña, Niño y Adolescente por ser contrarios a lo dispuesto en el Convenio. Los tratados internacionales integran el bloque de constitucionalidad, por lo que, en tanto las señaladas disposiciones del Código Niña, Niño y Adolescente en tanto se apartan de lo dispuesto en el Convenio, son contrarias a la Constitución del país. La citada sentencia del Tribunal Constitucional exhorta al Gobierno a crear políticas públicas con miras a erradicar el trabajo infantil, las cuales deben diseñarse e implementarse en consulta con las organizaciones de empleadores y de trabajadores conforme a lo establecido en el Convenio. Los miembros empleadores concluyeron que, si bien la citada sentencia del Tribunal Constitucional deroga las disposiciones que contravienen el Convenio, ésta deja un vacío jurídico, de forma que se desconoce qué norma resulta aplicable. Por consiguiente, persiste la necesidad de que el Gobierno modifique la legislación de forma explícita para adecuar la misma al Convenio. En este sentido, solicitaron que dicha modificación se realizara en consulta con las organizaciones de empleadores y de trabajadores más representativas de conformidad con lo dispuesto en el Convenio.

El miembro trabajador del Estado Plurinacional de Bolivia destacó el elevado índice de explotación existente en el pasado como consecuencia de la aplicación del decreto supremo núm. 21060, de 29 de agosto de 1985, por el que se privatizaron las empresas estratégicas públicas. Señaló que en virtud del citado decreto, numerosas fábricas y empresas mineras cerraron y una gran cantidad de trabajadores fueron despedidos. En la actualidad, el trabajo infantil se da fundamentalmente en el sector privado (sector minero de Potosí, y sectores de la zafra y la ganadería en el Oriente Boliviano), mientras que ha sido reducido en el sector público. Asimismo, al tiempo que subrayó la importancia de trabajar de manera coordinada con el Gobierno con miras a erradicar el trabajo infantil, informó de la suscripción en 2016 de un acuerdo entre los trabajadores y el Gobierno en virtud del cual la adopción de todo proyecto legislativo debe ser consensuado con la Central Obrera Boliviana (COB). Es fundamental que se respete dicho acuerdo. Por último, felicitó al Estado Plurinacional de Bolivia, y en particular al Tribunal Constitucional, por la adopción de la sentencia por la que se deroga y deja sin efecto, entre otros, los artículos 129 y 138.I del Código Niña, Niño y Adolescente.

El miembro empleador del Estado Plurinacional de Bolivia declaró que existen dos aspectos en el incumplimiento del Convenio, uno de forma y otro de fondo. En relación con el problema de forma, la sentencia del Tribunal Constitucional, basándose en las disposiciones del Convenio, ha permitido el retorno de la legalidad en lo que respecta a la preservación de la edad mínima para acceder al empleo. Llama la atención que el Gobierno no haya podido definir una restitución de esta naturaleza, en el momento de la elaboración de la norma o, al tiempo que la comunidad internacional le presentó sus críticas. Esta conducta pone en duda la voluntad del Gobierno de aplicar y respetar los convenios internacionales, ya que da a entender que sólo observa los mismos en tanto se adecúen a su criterio ideológico, arriesgando incluso temas tan sensibles como el desarrollo humano de la niñez. En lo que respecta al problema de fondo, resulta también preocupante la inexistencia de políticas efectivas que eviten el trabajo infantil en la economía informal. Este sector representa más del 70 por ciento del movimiento económico, el cual representa un espacio de encubrimiento a formas indignas de trabajo y afecta al acceso adecuado a condiciones de trabajo decente desde los primeros años laborales. El Código Niña, Niño y Adolescente no es nada más que el vehículo para ejecutar las políticas públicas asumidas por el Gobierno. Por lo tanto, la disposición inicial que habilitaba el trabajo infantil por debajo del límite previsto en el Convenio, lamentablemente desconoció el contenido de normas internacionales que protegen los derechos de los niños y preservan sus derechos a acceder a oportunidades de desarrollo y crecimiento. Finalmente, el orador expresó su preocupación por el hecho de que se hubiera adoptado una norma que ciertamente no respondía a las carencias y necesidades estructurales de la población infantil. En este marco, el Gobierno debe comprometerse a generar la institucionalidad y condiciones necesarias para: i) suplir los vacíos normativos provocados por la sentencia constitucional; ii) establecer esquemas estatales destinados a eliminar, de manera real y eficaz, el trabajo infantil, y iii) generar mecanismos de preservación de los derechos de la infancia, permitiendo el desarrollo y crecimiento, en condiciones dignas de un universo aproximadamente de 800 000 niños.

The Government member of Bulgaria, speaking on behalf of the European Union (EU), as well as Albania, Bosnia and Herzegovina, Georgia, Montenegro, Norway, the former Yugoslav Republic of Macedonia and Ukraine, indicated that every girl and boy deserved a childhood and proper education, regardless of their ethnicity, gender, religion, and their place of residence. The elimination and prevention of child labour constituted an important priority for the EU. Respect for the rights of the child was embodied in the Treaty on the EU and the Charter of Fundamental Rights. Furthermore, core labour standards were explicitly mentioned in all recently negotiated trade agreements between the EU and partner countries. The EU and the Plurinational State of Bolivia had very close bilateral cooperation. The Plurinational State of Bolivia was the largest recipient of bilateral EU development assistance in Latin America. It also benefited from the Generalised Scheme of Preferences (GSP+), under which, in return for preferential tariffs, it had committed to ratify and effectively implement fundamental ILO Conventions

and other international instruments. This case had already been discussed by this Committee in 2015, following the adoption of the Code for Children and Young Persons that allowed children to work for an employer from 12 years of age, and in self-employment from 10 years of age. The Committee of Experts had concluded that these new provisions were not in conformity with the Convention. It had stressed that self-employed children should be guaranteed at least the same legislative protection as children in an employment relationship, particularly as many of these children were working in the informal economy under hazardous conditions. The Government had consequently been urged to: repeal these provisions; immediately prepare a new law in consultation with the social partners; and provide labour inspectors with greater human and technical resources. The Government had not taken any measures in this respect, despite the fact that child labour was a persistent phenomenon in the country, especially in rural areas and in the agriculture and mining sectors. She recognized the progress made by the Government in eradicating poverty and improving access to education, health, food and housing, and in effectively implementing human rights commitments. The Constitution, together with the Patriotic Agenda 2025 and the National Plan for Human Rights 2014–18, would provide a solid basis to better promote and protect human rights. The Code for Children and Young Persons also set out a wide range of measures for the protection of children, but the provisions allowing exceptions to the minimum age for admission to employment or work were of great concern. She referred to the decision of the Constitutional Court that declared these provisions unconstitutional, and looked forward to its swift implementation. The Government should be urged to prepare new legislation in consultation with the social partners increasing the minimum age for admission to employment or work. The Government could avail itself of the ILO's technical assistance for this purpose. The Government should also be encouraged to reinforce the labour inspection services and to continue its efforts to invest in social services in order to effectively detect child labour and protect children in both the formal and informal sectors. The EU would continue to cooperate with the Plurinational State of Bolivia to achieve the sustainable elimination of all forms of child labour.

La miembro Gubernamental del Paraguay, hablando en nombre del Grupo de los Estados de América Latina y el Caribe (GRULAC) acogió con satisfacción las informaciones suministradas por el representante gubernamental en relación con el cumplimiento del Convenio. La Agenda 2030 para el Desarrollo Sostenible, y en particular la meta 8.7 de erradicar el trabajo infantil en todas sus formas de aquí a 2025, representa una oportunidad única para acelerar la erradicación de la desigualdad y de la pobreza. La persistencia del trabajo infantil perpetúa la desigualdad y la exclusión de amplios sectores de la población, pone en riesgo el crecimiento sostenido de la región y amenaza la productividad de los futuros adultos al limitar las oportunidades de acceder a un trabajo decente. Por ello, la región ha impulsado una serie de iniciativas con el fin de acelerar el ritmo de reducción del trabajo infantil. La oradora acogió con beneplácito las acciones llevadas a cabo por el Gobierno así como la información según la cual, a través de la sentencia vinculante del Tribunal Constitucional, se han dejado sin efecto y, por ende, derogado las disposiciones objeto de la observación de la Comisión de Expertos. Observando que la legislación se ha adecuado al Convenio, el GRULAC considera que esta Comisión debería expresar satisfacción ante este caso. También debería resaltar los avances alcanzados por el Gobierno en la reducción de la pobreza y la desigualdad, causas estructurales del trabajo infantil, y alentar al Gobierno a continuar sus esfuerzos para erradicar el trabajo infantil.

La miembro trabajadora de España lamentó la adopción del nuevo Código del Niño, Niña y Adolescente que modifica el artículo 129 anterior reduciendo la edad mínima para trabajar de los niños, lo cual resulta a todas luces incompatible con el Convenio. La existencia del trabajo infantil, bajo cualquier circunstancia, es inaceptable y es una característica de sociedades donde la brecha de desigualdad se hace cada vez más grande. Las consecuencias que se producen cuando un niño o una niña están obligados a trabajar son irreversibles. Recordó el compromiso alcanzado en la Declaración de Buenos Aires sobre el trabajo infantil, el trabajo forzoso y el empleo joven, de 16 de noviembre de 2016, en la que se insta a los gobiernos, a los interlocutores sociales y a la sociedad civil en su conjunto a ser determinantes a la hora de exigir la erradicación del trabajo infantil. Por último, ante la información proporcionada por el Gobierno en relación con la existencia de una sentencia del Tribunal Constitucional que suspende la vigencia del señalado artículo del Código del Niño, Niña y Adolescente, concluyó que es necesario que se promulgue una nueva ley en concordancia con las disposiciones del Convenio, que establezca claramente los criterios de edad para acceder al trabajo y que tenga por objetivo erradicar el trabajo infantil.

El miembro Gubernamental de la República Bolivariana de Venezuela apoyó la declaración del GRULAC y valoró los avances alcanzados por el Gobierno refiriéndose en particular al Plan de desarrollo económico y social y a la sentencia del Tribunal Constitucional que declaró inconstitucional la disposición del Código del Niño, Niña y Adolescente cuestionada por la Comisión de Expertos. De acuerdo a esa sentencia, la normativa legal del Estado Plurinacional de Bolivia está ajustada al Convenio. En base a las explicaciones presentadas por el representante gubernamental, no quedan dudas de que el Gobierno seguirá con sus políticas de protección a los fines de erradicar definitivamente el trabajo infantil. Por consiguiente, el orador estimó que, en sus conclusiones, la Comisión debería tomar nota con satisfacción de los progresos en este caso.

El miembro trabajador del Uruguay al tiempo que manifestó su reconocimiento al proceso político del Estado Plurinacional de Bolivia por su inclusión social y respeto de las diferentes minorías étnicas, indicó que era inconsistente el hecho de que se haya adoptado una ley que violentara un convenio fundamental. No obstante, gracias al ejercicio de la democracia plena, dicha ley se derogó. Sin perjuicio de lo anterior, persisten todavía en el país brechas sociales que han conducido a la exclusión durante muchos años. Deben atacarse las causas de esta situación y erradicar el trabajo infantil siguiendo las líneas establecidas en el Convenio. Por último, expresó su confianza en que el Gobierno establecerá los ámbitos necesarios para llevar a cabo consultas con los interlocutores sociales a los efectos de establecer una legislación que permita otorgar una educación a los niños con miras a garantizar el desarrollo del país.

La miembro gubernamental del Ecuador se asoció a la declaración hecha en nombre del GRULAC y agradeció la información proporcionada por el representante gubernamental. En el Ecuador, la erradicación de la desigualdad y la pobreza es una prioridad, y por tanto, se asigna alta importancia a la lucha contra el trabajo infantil. El cuidado, la protección y el desarrollo de la infancia son unos de los catalizadores del desarrollo integral tan anhelado para los pueblos. Saludando los progresos y las acciones llevadas a cabo para garantizar el interés superior del niño, la oradora alentó al Gobierno del Estado Plurinacional de Bolivia a seguir trabajando arduamente sobre las causas estructurales del trabajo infantil.

The Government member of Egypt indicated that the application of the Convention was a matter of significant importance as it was one of the fundamental Conventions. He noted the Government's efforts for the effective eradication of child labour, including: amending the legislation to bring it into conformity with the Convention; the ruling by the Constitutional Court on certain provisions of the Code for Children and Young Persons; the economic measures for the eradication of poverty, which was one of the main causes of child labour; improved health care for children; and measures to improve the schooling of children. The Committee of Experts should take account of these positive measures. Technical assistance should be provided to the Government to improve the implementation of the Convention.

The Government member of the United States welcomed the ruling by the Constitutional Court that declared unconstitutional certain provisions of the Code for Children and Young Persons that allowed the employment of children under the age of 14 and contrary to the country's international legal obligations. He encouraged the Government to take all appropriate action to implement laws and practice in line with the Convention, availing itself of the ILO technical assistance.

Le membre gouvernemental de l'Algérie a noté avec satisfaction les efforts déployés par le gouvernement de l'Etat plurinational de Bolivie pour améliorer la mise en œuvre des politiques permettant de réduire les causes structurelles du travail des enfants, telles que la pauvreté, qui est passée de 38,6 à 16,8 pour cent, la lutte contre l'échec scolaire qui a été réduit de 4 à 2 pour cent entre 2006 et 2014, ou la généralisation de l'enseignement qui atteint 80 pour cent. Il convient de soutenir l'engagement et l'action menée par le gouvernement en vue d'adapter la législation nationale et de mener une politique économique et sociale ayant comme objectif la lutte contre le travail des enfants. L'orateur a considéré qu'il ne faut pas occulter les avancées obtenues dans ce domaine, mais au contraire tenir compte des efforts et des résultats atteints.

El miembro empleador de Chile lamentó que el Gobierno no haya adecuado su legislación y práctica nacional al Convenio a pesar de un pedido específico de la Comisión a este respecto en 2015. Aunque el Gobierno indique que las excepciones a la edad mínima de 14 años, previstas en el Código del Niño, Niña y Adolescente, se autorizan únicamente a condición que no atenten contra derechos básicos, como el derecho a la educación, es evidente que las excepciones menoscaban ese derecho sobre todo si se considera que el período de escolaridad obligatoria tiene una duración de doce años, es decir por lo menos hasta 16 años. Adicionalmente, cabe recordar que el Código fue adoptado sin consultar previamente a las organizaciones de empleadores y de trabajadores, lo que constituye otro lamentable error. Tras la sentencia del Tribunal Constitucional, ha quedado un vacío normativo y una tarea pendiente para el Gobierno quien, en consulta con las organizaciones de empleadores y trabajadores, debe ajustar su legislación nacional al Convenio a la mayor brevedad.

El miembro gubernamental de la República Dominicana expresó su reconocimiento a la voluntad y acciones llevadas a cabo por el Estado Plurinacional de Bolivia, que evidencian el deber del Estado de garantizar el interés superior de los niños, niñas y adolescentes. Las informaciones suministradas por el Gobierno en relación con la sentencia del Tribunal Constitucional, cuyo carácter es vinculante, demuestran el compromiso del mismo. Esta sentencia da una respuesta adecuada a las recomendaciones emitidas por esta Comisión.

The Government member of Canada referred to the IV Global Conference on the Sustained Eradication of Child Labour of 2017 where the parties had committed to work towards the eradication of child labour. Already in

2015, the Government had been requested to take immediate measures to amend the provisions of the Code for Children and Young Persons concerning the minimum age for admission to employment or work for self-employment and for work in an employment relationship in order to bring them into line with the Convention. Welcoming the information provided by the Government concerning the judicial ruling declaring these provisions unconstitutional, she urged the Government to amend the Code without delay to ensure that the appropriate minimum age was clear for all constituents. The Government was also urged to strengthen its labour inspection capacity and its efforts to apply the law, and to prevent the inappropriate use of child labour, particularly in the informal economy.

Le membre gouvernemental de la Suisse a fait part de sa préoccupation face au fait que le Code de l'enfance et de l'adolescence continue à être incompatible avec cette convention fondamentale. Il est regrettable que certaines de ses dispositions, en vigueur de manière provisoire, permettent d'abaisser l'âge minimal légal d'admission au travail à moins de 14 ans. Ceci n'est pas compatible avec les conditions nécessaires pour une scolarisation adéquate et ne permet par ailleurs pas aux adolescents d'atteindre un développement physique et mental complet. Déjà en 2016, devant cette commission, le gouvernement de la Suisse avait fait part de son inquiétude face aux dispositions de l'article 129 de ce code qui permettent aux enfants de travailler à partir de 10 ans. Il y a donc lieu de réitérer l'appel au gouvernement de mettre sa législation en conformité avec la convention, de veiller à promouvoir une scolarisation et une éducation de qualité, de poursuivre la lutte contre la pauvreté et d'éliminer le travail et l'exploitation des enfants.

El miembro gubernamental de Nicaragua se adhirió a la declaración realizada en nombre del GRULAC y agradeció la información suministrada por el representante gubernamental. La erradicación de la pobreza y la desigualdad es fundamental, y, por esta razón, resulta satisfactorio que en el marco de las políticas nacionales de desarrollo económico y social, el Estado Plurinacional de Bolivia haya establecido los lineamientos generales para el desarrollo integral del país en el horizonte del «vivir bien». De igual manera, hay que destacar el esfuerzo realizado por el Gobierno para avanzar en las metas incluidas en sus pilares de erradicación de la extrema pobreza, la socialización, la universalización de los servicios, la salud y la educación, la soberanía productiva y la soberanía alimentaria en aras de erradicar el trabajo infantil en 2025. También cabe celebrar la decisión del Tribunal Constitucional, la cual dejó sin efecto las normas cuestionadas por la Comisión de Expertos, así como el desarrollo de políticas socioeconómicas que han logrado reducir varias de las causas estructurales del trabajo infantil, tales como la pobreza extrema. Finalmente, el orador alentó al Gobierno a seguir desarrollando políticas para el control, seguimiento y aplicación de medidas que ayuden a erradicar el trabajo infantil para 2025.

La miembro gubernamental de Cuba saludó la información brindada por el representante gubernamental así como los avances logrados en cuanto a la reducción de la desigualdad y la pobreza, la cual se redujo de un 38,6 por ciento a un 16,8 por ciento en los últimos años. También cabe reconocer las transformaciones de las causas estructurales, que brindan mejores condiciones a los niños y niñas y sus familias. La atención del Gobierno a la educación ha sido decisiva en los cambios estructurales y, como consecuencia, se ha duplicado el número de alumnos que asisten a la escuela. Los adelantos sociales experimentados, como reflejados en la reducción de la pobreza, la inclusión de grupos vulnerables en la vida nacional y la atención al niño, al adolescente y a la mujer, se consideran innegables. En cuanto a los temas laborales en general, el Estado Plurinacional de Bolivia ha expresado que continúa trabajando para erradicar las peores formas de trabajo infantil, dejando sin efecto las excepciones que antes se registraban. Finalmente, la oradora expresó su confianza en que se continuarán los esfuerzos necesarios para eliminar las causas del trabajo infantil, a través de un enfoque multisectorial y de protección, tomando como premisa el «interés superior del niño» y adecuando el marco normativo.

El representante gubernamental destacó que el Tribunal Constitucional en la citada sentencia ha abolido los puntos resaltados en la observación de la Comisión de Expertos, por lo que ya no resulta necesario modificar la legislación con miras a adecuar la misma al Convenio. El Código del Niño, Niña y Adolescente fija ahora la edad mínima para trabajar a 14 años, en conformidad con lo dispuesto en el artículo 2, párrafo 4, del Convenio y con la Ley General del Trabajo del Estado Plurinacional de Bolivia. Por lo tanto, no se requiere mayor desarrollo legislativo sobre la edad mínima de acceso al trabajo. Por otro lado, las políticas públicas adoptadas por el Gobierno son sólidas y han demostrado avances en la reducción de las causas estructurales que generan pobreza y en la abolición del trabajo infantil. En este sentido, en 2008 más de 700 000 niños estaban en situación de trabajo infantil y peligroso, mientras que en 2012 habían 437 000 niños. Según los últimos datos de la Encuesta de niñas, niños y adolescentes del Instituto Nacional de Estadística, actualmente hay 323 000 niños en esa situación, de manera que el número de niños en situación de trabajo infantil se ha reducido en más de un 50 por ciento en los últimos años. Todo ello, pone de manifiesto la voluntad del Gobierno de no solamente adecuarse normativamente al Convenio, sino también de transformar la situación de pobreza en la que viven los niños en el país. En cuanto a la supuesta ausencia de políticas públicas para erradicar el trabajo infantil en el sector informal, como consecuencia de las políticas desarrolladas por el Gobierno, el número de trabajadores asalariados aumentó entre 2005 y 2017 hasta alcanzar 1 500 000. Asimismo,

se ha incrementado el número de trabajadores protegidos por la seguridad social de 2 600 000 en 2005 a 4 200 000 en 2017. Además, ha aumentado la población con derecho a jubilación, que en 2006 llegaba a 660 000 personas, mientras que en la actualidad hay más de 1 600 000 personas que cuentan con ese derecho. En definitiva, las políticas económicas que se vienen desarrollando están creando una base estructural para otorgar un derecho digno a la población, que supone no solamente el acceso al trabajo sino también el derecho a la seguridad social y a la jubilación. Por último, el orador manifestó el compromiso del Estado Plurinacional de Bolivia con la adopción de los esfuerzos necesarios para la erradicación del trabajo infantil. En este sentido, la Agenda Patriótica 2025 incluye entre sus objetivos la erradicación del trabajo infantil para el 2025. Los avances logrados son importantes pero no suficientes, por lo que sigue necesario profundizar en las transformaciones que han venido realizando en aras del beneficio de los niños, niñas y adolescentes. Con base en lo anteriormente expuesto, la Comisión debería reconocer los esfuerzos desplegados.

Los miembros empleadores subrayaron que, a pesar de la sentencia del Tribunal Constitucional, no todo está solucionado, considerando que siguen habiendo inadecuaciones con las normas internacionales y especialmente con el Convenio. Así por ejemplo, se refirieron al registro de niños y niñas trabajadoras, previsto en el Convenio como instrumento para monitorear el trabajo infantil. Asimismo, pese a las enmiendas producidas a raíz de la sentencia del Tribunal Constitucional, no queda todavía claro cómo se aplicarán los artículos 132 y 133 de la ley. La falta de un proceso de consultas tripartitas con las organizaciones más representativas de empleadores y trabajadores, también constituye un problema. El Estado Plurinacional de Bolivia tiene todavía que diseñar y adoptar políticas de abolición de trabajo infantil, en consulta con los actores sociales del país, y adaptar su marco normativo al Convenio de manera más contundente, tal y como se le ha requerido desde 2015. La intervención del Estado se considera fundamental en dos áreas importantes. En primer lugar, en relación con el fortalecimiento de la inspección del trabajo, tanto en recursos humanos y materiales, como en términos de capacitación de los inspectores, en temas de trabajo infantil en general y de trabajo infantil en la economía informal, donde el trabajo infantil prevalece y donde se observan las mayores violaciones. En segundo lugar, se urge al Gobierno a que acepte la asistencia técnica de la OIT, que ya se propuso en el pasado, para que el país pueda superar los temas legislativos y se elabore un plan de erradicación del trabajo infantil, siempre en consulta con los actores tripartitos. En conclusión, considerando la gravedad del caso en discusión, los miembros empleadores pidieron que el caso se incluya en un párrafo especial en el informe de esta Comisión.

The Worker members recalled that, on the two occasions that the Committee had discussed the application of the Convention, the case had been double footnoted. On both occasions, it had been clear that the decision to lower the age for admission to employment to ten years was not in line with the Convention. While the Government had taken some positive measures to eradicate child labour and provide protection for children, legislative reform was imperative. They noted the information provided by the Government in its concluding remarks that section 129 of the Code for Children and Young Persons had been revoked by the Constitutional Court and then modified by the Government. They welcomed this decision as a positive step, and invited the Government to communicate this information to the Office and to the Committee of Experts. They called on the Government to progressively increase the minimum age for admission to employment in collaboration with the social partners. Depriving children of opportunities for education and training would keep them unskilled, and thus perpetuate the poverty of a society. If the minimum age for admission to work or employment was lower than the school-leaving age, children could be encouraged to leave school, as it would mean legally authorizing children of the age of compulsory schooling to work. The Government should therefore ensure that the minimum age for employment was set higher than the age of completion of compulsory schooling. As the limited number of labour inspectors might make it difficult for them to cover the informal economy and agriculture, where most child labour was to be found, the Worker members called on the Government to strengthen the capacity and expand the reach of the labour inspectorate. They suggested that the Government could benefit from ILO technical assistance.

Conclusiones

La Comisión tomó nota de la información suministrada por el representante gubernamental del Estado Plurinacional de Bolivia sobre las cuestiones planteadas por la Comisión de Expertos y del debate que se celebró a continuación en relación con los artículos del Código Niña, Niño y Adolescente que no están en conformidad con las disposiciones del Convenio núm. 138 de la OIT.

Tomó nota asimismo de que la sentencia núm. 0025/2017, dictada por el Tribunal Constitucional el 21 de julio de 2017, declaró la inconstitucionalidad de diversas disposiciones del Código Niña, Niño y Adolescente (ley núm. 548 de 17 de julio de 2014), tomando como referencia y como base jurídica para esto los artículos 1, 2 y 7 del Convenio núm. 138 de la OIT. Como consecuencia de dicha sentencia, se han

declarado inconstitucionales los siguientes artículos del Código: 129.II; 130.III; 131.I, III, IV; 133.III, IV, y 138.I.

El Gobierno señaló que, tras la sentencia del Tribunal Constitucional, no se necesitaban enmiendas legislativas, habida cuenta de los efectos derogatorios de la sentencia constitucional en las disposiciones mencionadas anteriormente.

Teniendo en cuenta la información suministrada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión instó al Gobierno a que:

- adapte la legislación nacional, en consulta con las organizaciones más representativas de empleadores y de trabajadores, tras la derogación de las disposiciones del Código Niña, Niño y Adolescente por el Tribunal Constitucional del Estado Plurinacional de Bolivia, en consonancia con el Convenio núm. 138, e informe a la Comisión de Expertos sobre estas medidas;
- ponga a disposición de la inspección del trabajo más oportunidades de formación y recursos humanos, materiales y técnicos, especialmente en el sector informal, con miras a aplicar más eficazmente el Convenio núm. 138 en la legislación y en la práctica;
- recurra a la asistencia técnica de la OIT para revisar el Plan Nacional de Erradicación Progresiva del Trabajo Infantil en consulta con las organizaciones más representativas de empleadores y de trabajadores, y
- presente a la Comisión de Expertos el proyecto de disposiciones finales del Código Niña, Niño y Adolescente antes del 1.º de septiembre de 2018, y proporcione información detallada sobre los progresos realizados en la aplicación del Convenio núm. 138 en la legislación y en la práctica para que la Comisión de Expertos la examine en su próxima reunión en 2018.

El representante gubernamental del Estado Plurinacional de Bolivia aclaró que la declaración de inconstitucionalidad pronunciada por el Tribunal Constitucional se refiere efectivamente al artículo 129.II del Código. Sin embargo, con respecto a los artículos 130.III; 131.I, III, IV; 133.III, IV, y 138.I, la declaración de inconstitucionalidad sólo tuvo lugar en lo que hace referencia a la excepcionalidad a la edad mínima de 10 años para trabajos ligeros. Consideró importante que se tuviera en cuenta dicha situación ya que el primer punto operativo de las conclusiones parece dar a entender, erróneamente, que todas las disposiciones antes mencionadas habían quedado sin efecto.

Conclusions

The Committee took note of the information provided by the Government representative of the Plurinational State of Bolivia on the issues raised by the Committee of Experts and the discussion that followed regarding the articles of the Code on Children and Adolescents that are not in line with the provisions of ILO Convention No. 138.

It is also noted that the Constitutional Decision 0025/2017 of 21 July 2017 declared the unconstitutionality of several of the provisions of the Code for Children and Adolescents (Act No. 548 of 17 July 2014), taking, as a reference and legal basis for this articles 1, 2 and 7 of ILO Convention No. 138. As a result of that decision, the following sections of the Code have been declared unconstitutional: 129.II; 130.III; 131.I, III, IV; 133.III, IV; 138.I.

The Government stated that following the decision of the Constitutional Court, no legislative amendments were needed, given the repealing effects of the constitutional decision on the aforementioned provisions.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:

- adapt national legislation, in consultation with the most representative employers' and workers' organizations, following the repeal of the provisions of the Code for Children and Adolescents by the Constitutional Court of the Plurinational State of Bolivia, in line with Convention No. 138 and inform the Committee of Experts on these measures;

- make available to labour inspection increased human, material and technical resources and training, especially in the informal sector, to provide a more effective implementation of Convention No. 138 in law and practice;
- avail itself of technical assistance from the ILO, to review the National Plan for the Eradication of Child Labour in consultation with the most representative organizations of employers and workers;
- submit to the Committee of Experts the final draft of provisions of the Code on Children and Adolescents before 1 September 2018; and report in detail on the progress made in the application of Convention No. 138 in law and practice to the next meeting of the Committee of Experts in 2018.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental de l'Etat plurinational de Bolivie sur les questions soulevées par la commission d'experts et de la discussion qui a suivi sur les articles du Code de l'enfance et de l'adolescence qui ne sont pas conformes aux dispositions de la convention n° 138 de l'OIT.

La commission a également noté que le Tribunal constitutionnel, dans sa décision n° 0025/2017 du 21 juillet 2017, a prononcé l'inconstitutionnalité de plusieurs des dispositions du Code de l'enfance et de l'adolescence (loi n° 548 du 17 juillet 2014) et que, pour fonder sa décision, il a pris comme référence et comme base juridique les articles 1, 2 et 7 de la convention n° 138 de l'OIT. En conséquence de cette décision, les articles suivants du code ont été déclarés inconstitutionnels: 129.II; 130.III; 131.I, III et IV; 133.III et IV; et 138.I.

Le gouvernement a déclaré que, suite à la décision du Tribunal constitutionnel, aucune modification de la législation n'est nécessaire compte tenu des effets abrogatoires de la décision du Tribunal constitutionnel sur les dispositions susmentionnées.

Prenant en compte les déclarations du gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement:

- d'adapter la législation nationale, en consultation avec les organisations d'employeurs et de travailleurs les plus représentatives, à la suite de l'abrogation des dispositions du Code de l'enfance et de l'adolescence par le Tribunal constitutionnel de l'Etat plurinational de Bolivie, conformément à la convention n° 138, et d'informer la commission d'experts sur ces mesures;
- de mettre à la disposition de l'inspection du travail une formation et des ressources humaines, matérielles et techniques accrues, en particulier dans le secteur informel, afin d'assurer une application plus efficace de la convention n° 138 en droit et dans la pratique;
- de se prévaloir de l'assistance technique du BIT pour revoir le Plan national pour l'élimination du travail des enfants en consultation avec les organisations d'employeurs et de travailleurs les plus représentatives;
- de soumettre à la commission d'experts le projet final de dispositions du Code de l'enfance et de l'adolescence avant le 1^{er} septembre 2018 et de rendre compte en détail des progrès réalisés dans l'application de la convention n° 138, en droit et dans la pratique, en vue de leur examen à la prochaine session de la commission d'experts en 2018.

Abolition of Forced Labour Convention, 1957 (No. 105)

Convention (n° 105) sur l'abolition du travail forcé, 1957

Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105)

Cambodia (*ratification: 1999*)

Cambodge (*ratification: 1999*)

Camboya (*ratificación: 1999*)

A **Government representative** stated that the Committee of Experts had played a crucial role in ensuring the fulfilment of all international labour Conventions, as well as other relevant international human rights instruments. The Government of Cambodia had also been committed to do its utmost to respect all its international obligations. As enshrined in the Constitution, both labour rights and human rights were protected in law and in practice in Cambodia. Forced labour was explicitly prohibited under section 15 of the Labour Law. Referring to the definition of forced labour under the Forced Labour Convention, 1930 (No. 29), as well as to its exceptions, the speaker highlighted that the Law on Prisons aimed at providing education, reformation and rehabilitation to prisoners to reintegrate them into society, to prevent the recurrence of offences and to offer safe and secure custody, good health and humane treatment of prisoners in accordance with international principles and the United Nations Rules for the Protection of Juveniles Deprived of Liberty. Section 68 of the Law on Prisons incorporated all international standards and best practices applied in some developed countries on the use of the prison industry. Therefore, it was inappropriate to interpret that provision to be in violation of Conventions Nos 29 and 105. Section 68 provided that low-risk prisoners who had been assessed as physically capable should be assigned to work as part of the prison's daily routine, or to perform any work in the public interest and for the benefit of the community, or assigned to participate in the prison industry, prison handicraft and prison farming programmes. The speaker expressed his grave concern at the Committee of Experts' comments and conclusions on the application of Convention No 105. Regarding the request for updated information concerning the situation of freedom of association in Cambodia and the roadmap to deal with this issue, the speaker provided assurances that such information would be provided. He stressed that, as the national elections were forthcoming, the situation was heavily politicized. Moreover, some non-governmental organizations (NGOs) and civil society had no hesitation to discredit, demonize and ultimately to destroy the Royal Government of Cambodia and the ruling party whose achievements unquestionably satisfied all Cambodian people.

The Employer members pointed out that the application of Convention No. 105 by Cambodia was being discussed by this Committee for the first time. There were only two relevant observations made by the Committee of Experts in respect of Cambodia's compliance with the Convention, one in 2015 and the other in 2017. The observations referred to the inconsistent application of the Penal Code of 2009 and reported instances of political figures and trade unionists held in custody for offences for which the Code mandated only a fine. No mention of any person subjected to conditions of forced labour while in detention was made. For a breach of the Convention to occur, however, it was necessary to point to instances of persons being subjected to banned activities. In the absence of such evidence clearly pointing to a breach of the Convention, a case should not be discussed by the Committee, nor be double-footnoted. It was not sufficient to assume that detention in itself connoted forced labour. The fact that detention may or may not have been legal was not material to the question of whether the Convention had been breached. The observations that formed the background to this case drew heavily on the 2014, 2016 and 2017 reports of the UN Special Rapporteur on the situation of human rights in Cambodia. These reports drew attention to, and expressed deep concern about, human rights issues in Cambodia. These issues were of concern to all and the Employer members were conscious of the strategic regional and global concerns and calls for pressure to be brought to bear on Cambodia in this respect. However, this Committee should not permit itself to be used as a vehicle of wider concerns, be they in respect of Cambodia or in any other situation. The mandate and the duty of the Committee was to examine cases of breaches of ratified Conventions, not to pursue issues more properly dealt with in other jurisdictions. Thus, the conclusions on this case should be limited to observing that the inconsistent application by Cambodia of the Penal Code created risks that a detained person may be subjected to pressures involving forms of forced labour. In the absence of evidence pointing to such instances, this Committee should limit itself to asking the Government for an assurance that no persons, detained or not, were or would be subjected to conditions of forced labour. That was the approach adopted by the Committee of Experts in its 2015 observation when it had requested the Government to take the necessary measures to ensure that no sanctions involving compulsory labour could be imposed as a punishment for holding or expressing political views. It was arguably not within the competence of this Committee to develop conclusions on practices that, while of concern in themselves, were not breaches of a labour standard ratified by Cambodia.

The Worker members recalled that Cambodia's serious failure to respect fundamental rights and principles at work had been examined by the Committee almost every year for the past decade, unfortunately with very disappointing results. The Committee of Experts had double footnoted this case due to its concern over the legislative and practical measures undertaken by the Government and there were no reasons to call that decision into question. Basic civil rights, including the right to free speech and the right to associate and assemble, were not guaranteed in the country. On the contrary, workers and citizens were systematically subjected to heavy criminal penalties involving compulsory labour for exercising their rights protected under the Convention. Recourse to sanctions involving forced labour or compulsory labour as a means to censor the expression of opposing views on political, social or economic matters or to punish participation in strikes was clearly prohibited under Article 1 of the Convention. The right to associate and assemble provided the means through which citizens sought to secure the dissemination and acceptance of their views and thus clearly fell under the remit of protection provided by the Convention. Yet trade union leaders and members were effectively barred from enjoying these rights. This Committee and other ILO supervisory bodies had repeatedly condemned the imprisonment of Cambodian trade unionists for expressing their views and engaging in peaceful activities, including strikes. The Worker members deeply regretted that, despite very clear recommendations to the Government, the crackdown on trade unionists continued. The number of trade unionists facing criminal charges or imprisonment in reprisal for peaceful trade union activities was steadily increasing. The Cambodian Labour Confederation alone counted at least 26 leaders and members who were currently threatened with criminal punishment for expressing their views on problematic social and economic policies. Recently passed labour laws or those that were under discussion seemed to be designed to tighten the grip on trade unionists even further. The Committee of Experts and also the UN treaty bodies, had criticized the 2016 Law on Trade Unions and the 2015 Law on Associations and Non-Governmental Organizations (LANGO), which effectively denied freedom of association rights to teachers, civil servants and domestic workers. Despite the amendments made to the draft Minimum Wage Law, the Law remained problematic particularly as it prohibited the dissemination of research on wages, which had not been submitted to the National Tripartite Council within 15 days. This restriction could have a severe impact on academic freedom, and economists and academics could be potentially restricted in their ability to disseminate, access and discuss vital research on economic and social issues. Moreover, the draft Law provided for heavy and disproportionate administrative fines with no explicit right of appeal. These fines, if unpaid, would lead to criminal proceedings. Considering the likely inability of many workers and union leaders to afford heavy fines, these provisions cumulatively would lead to the effective criminalization of the peaceful exercise of fundamental freedoms. These issues were clearly connected to last year's discussion with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In its conclusions, the Committee called on the Government to ensure that freedom of association could be exercised in a climate free of intimidation and violence against workers, employers and their respective organizations. It also requested the Government to hold consultations with its social partners in order to develop a time-bound roadmap for the implementation of the recommendations. In its engagements with the direct contacts mission which visited the country in March 2017, the Government admitted that the Law on Trade Unions was defective in many ways. It was therefore disappointing that, even though the recommendations were issued one year ago, the Government only started to hold consultations a few weeks ago. The Government should explain what caused this excessive delay and how it intended to overcome its tardiness.

The Worker members expressed their deep concern at the deteriorating political and social atmosphere, including the prosecution and imprisonment of political opponents and human rights defenders. While the offences of public defamation and insult under the Penal Code were punishable with fines only, the law had been applied in an arbitrary manner in order to punish political opponents and human rights defenders with penalties of imprisonment. The UN Special Rapporteur on the situation of human rights in Cambodia had noted that the range of provisions in the Penal Code used to curtail freedom of expression was ever-increasing and insisted that laws must be applied consistently by the Government and the courts. The Rapporteur had warned that the criminal punishment of activists may create an atmosphere of fear and intimidation that could negatively affect the right to freedom of expression, leading to self-censorship. Moreover, the clampdown on trade unions and civil society activists had coincided with the dissolution of the main opposition party, the Cambodian National Rescue Party (CNRP), by the Supreme Court. While the Law on Political Parties was amended in 2017, it retained its problematic provisions. Various offences related to the administration or management of a political party which had been dissolved, or whose activities had been suspended by a court, or whose registration had been refused, were punishable with sanctions of imprisonment for a term of up to one year, which involved compulsory labour. A total of 118 CNRP members had been banned from political activity for five years. It was impossible not to share the Committee of Experts' deep concern over the wide-scale detentions and prosecutions targeting the opposition party, civil society and trade unions. The absence of legal guarantees of freedom of expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, clearly exposed workers and citizens to the imposition of compulsory labour as a punishment for holding or expressing political or ideological views. In light of the lack of independence of the judiciary, as noted in 2008 by the direct contacts mission, this was of particular concern. The ability of the judicial system to discharge its mandate was compromised by the lack of

capacity; the judiciary was subject to political interference, which compromised its ability to exercise its functions in an impartial and independent manner. The UN Special Rapporteur had noted that access to justice was still denied to many, and expressed concern at the prevalence and excessive length of pre-trial detention. Criminal proceedings were marred by inconsistencies and irregularities; different judges applied different standards of proof. This practice stood in contradiction with the principle that everyone charged with a criminal offence had the right to know and challenge the evidence against him or her. Consistency and fairness, especially in criminal cases, required that the standard of proof must be the same in all similar cases. The general elections were imminent in Cambodia. Fundamental freedoms and the rule of law would be meaningless if they were not upheld during times of contentious debate. Freedom of expression and freedom of association were crucial to democracy, social progress and inclusive economic growth. Restricting these rights under the threat of compulsory labour constituted not only a denial of basic freedoms but represented a serious stumbling block in the country's path to democracy and prosperity.

The Employer member of Cambodia considered that anything not related to the application of Convention No. 105, such as matters relating to the Minimum Wage Law, the Law on Trade Unions, sanctions of imprisonment or any other sanction except that of forced labour, should be struck from the *Record of Proceedings* as not being relevant to the case. The discussion of this case should be limited to forced labour. As there was no evidence of a clear breach of the Convention, it was unacceptable that Cambodia was discussed by the Committee yet again. She highlighted the impact the discussion in this case could have on the decision of other governments and businesses to engage with and invest in Cambodia. The mere discussion of this case under Convention No. 105 would tell the world (or strongly imply) that Cambodia engaged in forced labour. This was not the case as there was no evidence presented to that effect. The Cambodian employers had a deep interest in the work of the Committee to address challenges to the application of Conventions. They were present to address challenges to protect their business and investment environment. Cambodia had a vibrant and dynamic economic environment that was changing and diversifying quickly. The engagement of governments and investors around the world was necessary for the growth and creation of good quality jobs in Cambodia. Every country deserved a fair and due process of review by the Committee of Experts. However, Cambodia had been unfairly sanctioned with a double footnote. The evaluation of the Committee of Experts demonstrated that there was no breach of the Convention, only possibilities which were the same for other countries with similar legislation. The Conference Committee should review only the most serious breaches of Conventions. A key outcome of the discussion in this case should be a call to review the transparency and integrity of the double-footnoting procedures.

The Worker member of Cambodia affirmed that the leaders and members of the independent trade unions still faced serious problems including murder, detention, discrimination, violence and punishment when they were trying to exercise their rights. In 2004, Chea Vichea, Ros Sovanareth and Hy Vuthy had been murdered. In 2013, during a general strike demanding a higher minimum wage for garment workers, five workers had been killed, 23 workers had been jailed for months, and more than 30 others had been injured. The right to public assemblies and strikes had been restricted and unions could only meet members in private places. The criminal charges against six union leaders for taking part in the 2013 strikes were still effective. The Government was requested to drop the charges against them, to enforce the recommendations of the Committee and provide the reports of the three committees charged with investigations of the murders and violence in the 2013 strike, with the purpose of bringing the perpetrators to justice and compensating victims. Between 2014 and 2017, union leaders and thousands of workers were faced with violence from third parties or the police when they exercised their rights in industrial actions, 26 workers had faced criminal charges and 17 of them had been jailed from two to eight months. The unions had brought these cases to the Committee in 2016 and 2017. The Committee had specifically asked the Government to resolve these cases, but there had been no progress and in one case new charges had been put up against the leaders. Following the recommendations made by the Committee, the Government had committed itself to enforce them with a roadmap of concrete actions and two consultations had been carried out. The speaker invited the Government to finalize a time-bound roadmap to amend the Law on Trade Unions and the LANGO so as to bring them into conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to amend the Penal Code and the Law on Peaceful Demonstration to bring them into conformity with Convention No. 105.

The Government member of Bulgaria, speaking on behalf of the European Union (EU) (as well as the candidate countries of the former Yugoslav Republic of Macedonia, Montenegro and Albania, Bosnia and Herzegovina, and Norway), referred to the EU's promotion of the core labour standards as part of its 2015 Action Plan on Human Rights, which featured the eradication of forced labour and the protection of freedom of association and the right to organize. Cambodia had benefited from the duty-free and quota-free access to European markets through the "Everything But Arms" (EBA) arrangement under the Generalised Scheme of Preferences. The EU was the largest market for Cambodia's exports, especially for the garment sector. In return, the EBA regime required Cambodia to comply with its obligations under the core international human rights principles and labour Conventions, to which the EU and its citizens attached great importance. The speaker recalled that the EU had

expressed its concern over the deterioration of democracy, human rights and the rule of law. The inclusion of penalties of imprisonment involving compulsory labour in provisions that had been used to target those expressing dissenting political or ideological views was also a matter of great concern. These included the relevant provisions of the Law on Political Parties of 2007 and the Penal Code related to incitement to disturb public security by speech, writing, picture or any audiovisual communication in public or to the public, publication of commentaries intended to unlawfully coerce judicial authorities, and discrediting judicial decisions. The speaker requested the Government to ensure that these provisions were used only when fully justified by the facts of the case and only in connection with violence or incitement to violence. The application of the Penal Code, the Law on Trade Unions, the LANGO and the Law on Peaceful Demonstration should not lead in practice to punishment involving compulsory labour in situations covered by Convention No. 105. No penalties involving compulsory labour should be imposed for the peaceful expression of political views or views opposed to the established system. She strongly urged the Government to cease using the judiciary as a political tool to harass, intimidate, arrest and prosecute political opponents, trade union members, members of civil society, labour rights activists and human rights defenders. It was the EU's intention to closely monitor the situation, while remaining ready to assist Cambodia in meeting obligations linked to democratization, human rights and the rule of law, and in supporting its economic and sustainable development.

The Government member of Thailand, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), reaffirmed their strong commitment to the elimination of forced labour, in keeping with the ASEAN Labour Ministers' Work Programme 2016–20, and the Work Plans of the Subsidiary Bodies. ASEAN member States looked forward to their continued cooperation with the ILO in implementing regional commitment to its goals. The speaker welcomed the progress that had been made in promoting labour rights and the Government's assurance that forced labour had been strictly prohibited both in law and in practice. He encouraged the Government to continue its efforts to promote labour rights, decent working conditions and harmonious industrial relations through social dialogue.

The Worker member of Germany speaking on behalf of the German Confederation of Trade Unions (DGB) and the Dutch, Danish, Finnish, Norwegian and Swedish trade unions, stated that the Cambodian Government was violating this Convention in law and in practice. Section 68 of the Law on Prisons provided explicitly that prisoners could be obliged to perform compulsory labour. The Government used imprisonment as a deliberate means to obstruct the activity of trade unionists and to penalize activities which were critical of the Government. Legal provisions that forbade insulting the monarchy, incitement to crime or to the disturbance of public order, defamation, bribery of witnesses or damaging national interests were systematically misused. The improper use of these provisions of criminal law was particularly problematic. Through the formulation of a very extensive scope of application, these legal provisions were used inappropriately to strategically intimidate and repress opponents of the regime. A trade union activist was sentenced in 2017 to two years' imprisonment for incitement to serious crime because he had called, in a radio interview, for the removal of trade preferences by the United States and the EU, and journalists had been charged with defamation because they had asked the inhabitants of a village about their voting behaviour. Pre-trial detention was also being used arbitrarily for long periods of time and without due legal process. The arbitrary misuse of prison sentences, which were always accompanied by compulsory labour under the existing legislation, created a climate of threats and intimidation, in which it was impossible not only for trade unionists but also for civil society as a whole to exercise fundamental rights such as freedom of expression, freedom of assembly and freedom of association – human rights which were protected as a matter of principle by the Cambodian Constitution. She called upon the Government to bring both its law and its practice into line with this Convention and to put an end to the repression of trade unionists and dissidents.

The Worker member of Indonesia, speaking on behalf of the Confederation of Indonesia Prosperity Trade Union (KSBSI) and the Korean Confederation of Trade Unions (KCTU), insisted that no worker should be charged or arrested for legitimate activities. He noted the Committee of Expert's concern that trade union members, human rights defenders and NGO representatives continued to be subjected to threats, harassment, arrest, pre-detention and prosecution on charges of defamation and public insult. Although under the Penal Code, those offences were punishable only by fines, various trade union members had received penalties of imprisonment. The speaker highlighted instances of arbitrary and repressive application of criminal laws where workers had protested unfair dismissals of trade union leaders or failure to enforce arbitral awards and court orders. On 14 February 2018, four union leaders of the Workers Friendship Union Federation were summoned to court and sent for pre-trial detention for having organized a strike. In 71 instances since the last national election in 2014, trade unionists had been taken to court by employers and authorities for such criminal offences as defamation, intentional violence and damage, or interfering with traffic during labour protests. Under the Penal Code, they could receive prison terms ranging from six months to five years. A coordinator of the agricultural association was jailed for six months under articles 377 and 378 of the Penal Code, which provided for penalties of imprisonment from six months to three years, and fines from 1 million to 6 million riels. On 6 February 2016 protest against the 2015 dismissal of 45 employees attempting

to form a branch of the Cambodian Transport Workers Federation had ended with a violent attack in which bus drivers had been arrested and 14 people injured. An officer of the Cambodia Informal Worker Association had been arrested on charges of aggravated intentional violence, obstructing public officials and obstructing a public road. On the same day, four leaders of independent trade unions, including Ath Thorn, President of the Cambodian Labour Confederation had also been charged, although none had been present. The speaker underscored the need to stop the misuse of laws to criminalize workers and trade unionists. He called on the Government to take urgent, concrete action to comply with the Committee of Expert's call to fully respect trade union rights and to ensure trade unionists' ability to act in a climate free of intimidation or violence.

Le membre gouvernemental de la Suisse a exprimé sa profonde préoccupation face aux mesures de détention, aux traitements et aux poursuites judiciaires dont font l'objet des membres du parti d'opposition, des représentants d'ONG, des membres de syndicats et des défenseurs des droits de l'homme. Ces derniers se voient sanctionnés et emprisonnés pour leurs activités à des peines d'emprisonnement, qui comportent notamment une obligation de travailler en prison. A cet égard, il a appelé le gouvernement du Cambodge à prendre les mesures nécessaires pour garantir la liberté d'opinion et d'expression ainsi que la liberté syndicale et le droit de réunion pacifique. Ces droits font partie intégrante des droits de l'homme et des conventions fondamentales du travail. Il a également encouragé le gouvernement à entreprendre tout changement législatif nécessaire pour abolir les sanctions imposant du travail obligatoire afin d'être en conformité avec la convention.

La membre travailleuse de la France a déclaré que les violations commises sous la convention relèvent d'une pratique arbitraire et contraire à toutes les valeurs d'humanisme et de respect de la dignité dus à tout être humain, pratique arbitraire étant donné que, à travers la loi LANGO, le gouvernement du Cambodge utilise des mesures extrêmement coercitives, dont le travail forcé, comme mesures d'intimidation et de rétorsion. L'exigence générale de neutralité des ONG envers les partis politiques en vertu de l'article 24 de la loi LANGO permet des interprétations arbitraires de l'administration qui visent à suspendre les activités, à imposer des amendes, ainsi qu'à annuler l'enregistrement d'une ONG. La même disposition autorise également le ministère de l'Intérieur à annuler l'enregistrement selon une allégation très vague de trouble à la sécurité publique et nationale. Ainsi, le ministère des Affaires étrangères a ordonné à l'Institut national démocratique (NDI) de fermer, et d'expulser tout son personnel étranger le 23 août 2017. Le ministère des Affaires étrangères a revendiqué son autorité en vertu de l'article 34 de la loi LANGO pour mettre un terme aux activités de toute organisation de la société civile internationale n'ayant pas d'enregistrement d'un protocole d'entente avec le ministère. L'ordre est venu après que le NDI a été accusé de fournir au Parti du sauvetage national du Cambodge un plan «mal intentionné» pour renverser le gouvernement. Par ailleurs, le 28 juillet 2017, le gouverneur du district d'Ek Phnom, à Battambang, a publié une lettre ordonnant à tous les chefs de commune du district d'Ek Phnom de rendre compte de toutes les ONG et associations opérant dans la région. La lettre indiquait que les organisations devraient obtenir la permission des autorités du district avant de mener des activités dans le district d'Ek Phnom. Les chefs communaux sont tenus de publier des rapports sur les ONG et les associations qui mettent en œuvre des activités à Ek Phnom. La lettre indiquait que les chefs de commune qui omettent de rapporter cette information seraient soumis à des sanctions, et ce sont ces sanctions que le gouvernement cambodgien utilise comme mesures d'intimidation. Dans cette loi LANGO, les chefs d'inculpation potentiels sont vagues, sujets à interprétation et donc totalement dénués de neutralité et d'objectivité. Les ONG et organisations de la société civile doivent maintenant soumettre chaque année un rapport au ministre de l'Intérieur, rapport à la fois financier et détaillant leurs activités. Cela permet au gouvernement de contrôler les comptes des associations et de questionner certains de leurs choix, voire de fabriquer de fausses preuves pour les décrédibiliser. De telles fautes inventées qui visent à museler la société civile tombent sous le coup de la diffamation ou du trouble à l'ordre public, deux offenses qui, au Cambodge, sont sévèrement punies. Un exemple frappant est celui de la longueur de la détention préventive de responsables de l'Association pour les droits de l'homme et le développement au Cambodge, 427 jours de détention préventive leur ont été infligés, pendant lesquels le travail forcé a été utilisé. Compte tenu du nombre incalculable de possibilités de tomber sous le coup de la loi LANGO, l'oratrice a appelé le gouvernement du Cambodge à s'engager pleinement pour éradiquer complètement toute forme de recours au travail forcé, tant en termes de moyen d'intimidation pour museler la libre expression, aussi bien de façon préventive, qu'en termes de punition pour toute peine, quelle qu'en soit la nature.

The Worker member of Australia recalled that her delegation had repeatedly registered its deep concern over the situation of labour rights in Cambodia, where trade union members faced ongoing discrimination, harassment, threats, pre-trial detention, arrest and imprisonment for seeking to exercise their fundamental rights despite the ratification of the Convention in 1999. The Government's persistent non-compliance with international labour standards, particularly concerning freedom of peaceful assembly, freedom of association and freedom from arbitrary arrest, required the Committee's ongoing scrutiny. The right to peaceful assembly, premised on a notification procedure of the Law on Peaceful Demonstration, had been turned into a system of permission. Arbitrary interpretations and enforcement of the law increased uncertainty and the risk of sanctions for those seeking to exercise that freedom. Concrete examples included, in 2016 and 2017, Phnom Penh City Hall's use of armed

police to bar 2,000–3,000 members of a consortium of independent unions from peacefully marching to the National Assembly for a May Day celebration; restricting NGOs such as the Cambodian Human Rights Action Committee from rallying to celebrate the Human Rights Day (10 December 2016), threatening “measures” if protestors were to disobey; and rejecting the request of 200 Khmer Krom to deliver a petition to the National Assembly (22 June 2017). Similarly, the authorities of Banteay Meanchey province had warned villagers against joining the CNRP and NGO celebrations on Human Rights Day; Battambang’s Bovil district’s provincial administration had rejected permission for the Boeung Bram community to march on Human Rights Day; Kampot authorities had denied three requests for celebrations; and Takeo authorities had forbidden the Khmer Krom Federation from celebrating International Human Rights Day in several villages and communes. More explicit threats by government officers had clearly violated Article 1 of the Convention. In a speech, the Prime Minister Hun Sen had threatened to “eliminate 100 or 200 people” if they supported the “colour revolution” to ensure Cambodia’s stability. The Prime Minister had repeated his readiness to use weapons and jail to curb demonstrations or challenge to 2018 election results. Likewise, the Minister of Social Affairs, Vong Soth, had warned of using bamboo rods against anyone protesting against the 2018 election. Prime Minister Hun Sen had ordered garment industry union leaders to ensure that factory workers did not organize political protests or associate with the remnants of the since-dissolved opposition party. The speaker urged the Committee to issue its strongest statement against the Government’s persistent breaches of the Convention and to maintain its supervision over the matter.

The Government representative thanked the delegates for their constructive interventions and comments. Clarification as to the grounds on which Cambodia was double footnoted was needed. In the Government’s opinion, this was linked to the upcoming July 2018 elections. Some delegates disguised the session as a political platform to tarnish the Government’s reputation, efforts and achievements. To express their political discontent, they should have used a different forum. In Geneva, a number of UN institutions and mechanisms dealt with human rights, the rule of law and democracy issues. The speaker recalled that the session of the Human Rights Council could be used by those wanting to improve the situation of human rights in the country. The International Labour Conference was the forum to discuss labour laws and relevant Conventions. It was not proper to use this forum to make political propaganda in order to give preferences to other political parties or individuals. Regarding the situation of freedom of association, the Government and the relevant parties, including the ILO, had agreed on the way forward to improve it. In reply to the statement by the EU representative, the speaker pointed out that while the EBA scheme had considerably helped the people and economy of Cambodia, the country’s sovereign interests should be respected. He urged the international community to respect Cambodia’s sovereignty, its peace, stability and economic development.

The Worker members stated that there was no effective guarantee of basic civil liberties in Cambodia, and those who exercised the right to freedom of expression and assembly became targets for criminal prosecution, imprisonment and compulsory labour. Trade unionists, human rights’ defenders, the political opposition and virtually anyone who adopted views opposed to those of the Government had come under enormous pressure involving detentions and prosecutions. Legislative provisions on public defamation had been applied in a selective manner to punish critical opinions. The Worker members expressed very deep concern over the lack of impartiality and independence in the judiciary, as well as the excessive pre-trial detention periods aimed at punishing those who seemingly opposed the current Government. This was particularly worrying in the context of the upcoming elections, during which free debate and exchange of views became even more important. The Government had therefore an obligation to take legislative measures to ensure that penalties involving compulsory labour were not imposed in order to silence and censor the peaceful expression of political opinions. The right to association and assembly provided the means through which citizens could seek to secure the dissemination and acceptance of their views and must therefore also be protected. Moreover, Article 1(d) of Convention No. 105 prohibited the imposition of compulsory labour for organizing or peacefully participating in strikes. The Government must ensure that freedom of association could be exercised in a climate free of intimidation and violence. All individuals who had been imprisoned for having exercised their right to freedom of expression and assembly must be released immediately and unconditionally. Institutional reforms were also necessary in order to guarantee the independence and impartiality of the judiciary. Freedom of expression and peaceful assembly, freedom of association and freedom from arbitrary arrest should be guaranteed as safeguards against the imposition of compulsory labour for exercising these rights. This required a serious commitment to undertake extensive reforms on a number of laws, which were clearly not in conformity with Convention No. 105, including the Law on Political Parties, the Penal Code, the Law on Trade Unions, the LANGO, the Law on Peaceful Demonstration and the Draft Minimum Wage Law. Freedom of expression and assembly, the right to strike and freedom from forced and compulsory labour were extremely important issues for working people but also for the values of the ILO as a whole. Therefore, the Government needed to work with the ILO in order to give full effect to Convention No. 105. A double-footnoted case meant that the Committee of Experts had serious concerns. The Worker member referred in this respect to section 68 of the Law on Prisons under which convicted prisoners who had been assessed as physically capable should be assigned to

work as part of the prison's daily routine and disagreed with the request to strike comments concerning the Law on Trade Unions and the draft Minimum Wage Law from the *Record of Proceedings*.

The Employer members reiterated that while it was undeniable that there were serious issues of concern regarding the situation of human rights in Cambodia, as noted by various UN bodies, including the UN Special Rapporteur, the Committee had to limit itself to dealing with Convention No. 105. The fact that this was a double-footnoted case meant that this was a serious case. However, no evidence demonstrating the existence of forced labour in the country had been provided. While there was a potential risk that forced labour could be imposed, there was no evidence that it had occurred. In these circumstances, and considering serious concerns regarding the application of various legislative provisions establishing sanctions in practice, the Government should be asked to give assurances that it would not be imposing forced labour.

Conclusions

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

Taking into account the Government's submissions and the discussion of the case that followed, the Committee urged the Government to:

- Take measures in law and practice to ensure that no penalties involving forced labour or compulsory labour may be imposed in compliance with Article 1(a) of Convention No. 105, including the amendment of existing legislation that permits forced labour.

The Committee calls on the Government to avail itself of ILO technical assistance to address this recommendation. The Committee also asked the Government to report in detail on the measures taken to implement this recommendation to the next meeting of the Committee of Experts in November 2018.

The Government representative reiterated that forced labour had no place in Cambodia and that his Government was willing to provide factual and legal elements to shed light on this misunderstanding or misinterpretation of the Convention and of Cambodia's relevant law and regulations that had given rise to the wrongful allegation that such practices existed. Despite his respect for the work of the Committee of Experts, any review that went beyond the Convention's scope was not helpful to its application. Mutual understanding and close collaboration between social and development partners were effective tools for resolving misunderstandings and tensions. The existing social dialogue and tripartite mechanisms were especially critical to maintaining Cambodia's hard-earned peace, stability and development. He welcomed the assistance of the ILO in promoting labour rights and decent work in accordance with international labour standards.

Conclusions

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

Prenant en compte les exposés du gouvernement et la discussion du cas qui a suivi, la commission a prié instamment le gouvernement:

- de prendre des mesures, en droit et dans la pratique, pour faire en sorte qu'aucune sanction impliquant du travail forcé ou obligatoire ne puisse être imposée, conformément à l'article 1, paragraphe a), de la convention n° 105, y compris en modifiant la législation en vigueur qui autorise le recours au travail forcé.

La commission invite le gouvernement à se prévaloir de l'assistance technique du BIT pour donner suite à la présente recommandation. Elle le prie également de faire rapport en détail sur les mesures prises pour mettre cette recommandation en pratique à la prochaine réunion de la commission d'experts, en novembre 2018.

Conclusiones

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

Teniendo en cuenta la información proporcionada por el Gobierno y la discusión del caso que tuvo lugar seguidamente, la Comisión instó al Gobierno a que:

- Adopte medidas en la legislación y en la práctica para velar por que no puedan imponerse sanciones que conlleven trabajo forzoso o trabajo obligatorio, de conformidad con el artículo 1, *a*), del Convenio núm. 105, en particular enmendando la legislación vigente que permite el trabajo forzoso.

La Comisión instó al Gobierno a que recurra a la asistencia técnica de la OIT para dar curso a esta recomendación. La Comisión también pidió al Gobierno que proporcione a la Comisión de Expertos, para su examen en noviembre de 2018, información detallada sobre las medidas adoptadas para aplicar esta recomendación.

Forced Labour Convention, 1930 (No. 29)

Convention (nº 29) sur le travail forcé, 1930

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

Eritrea (*ratification: 2000*)

Erythrée (*ratification: 2000*)

Eritrea (*ratificación: 2000*)

A **Government representative** stated that the observations made on 30 August 2017 by the International Organisation of Employers (IOE) and the comments made by the Committee of Experts and the Conference Committee in this regard had been noted by the Government. In 2000, Eritrea had ratified both forced labour Conventions and always remained engaged in matters related to the Conventions. The Eritrean struggle was not only for independence, but also for social justice and ensuring its rights from the colonial rulers. Regarding the issue of compulsory national service, the Government's position needed to be reiterated as it had been stated in the Conference Committee in 2015. He hoped that the discussion would lead to a clear understanding of the issue and a fruitful conclusion. The national service programme was at the centre of nation building and the upbringing and preparedness of the new generation towards that end. Eritrea had introduced the national service programme in 1995 through Proclamation No. 82/1995 against the backdrop of massive demobilization of the Eritrean Liberation Army after independence. In certain ways, it was also seen as a contingent security architecture which would allow the young nation to maintain a very small regular army with the latitude to mobilize the necessary force if and when it faced existential threats. The need for a dynamic effort for a robust framework of regional security and development was also considered essential. In normal times, national service by law was limited to 18 months, 12 months of which were generally spent on public works in community or development assignments and the remaining six months on military training in the Sawa Education and Training Centre. They were also part of the reserve army eligible for recall if and when war broke out or any demand arose due to any national security challenge. This was compatible with the definition of "normal civic obligation" provided for by Article 2(2)(b) of the Convention. The work exacted was aimed at the best interests of the nation and the community, not for the benefit of private companies or individuals. It focused on reforestation, soil and water conservation, reconstruction projects and food security programmes. Overall, the purpose for which it was used was limited to what was strictly required in the prevailing situation as a pre-requisite for the existence of the nation. The national service programme had been affected by existential external threats over the past 20 years. Ethiopia's continued occupation of sovereign Eritrean territories constituted a flagrant violation of international law, fundamental provisions of the United Nations Charter and the 2000 Algiers Agreement signed by the two countries. It also constituted a violation of the Eritrean people's right to sovereignty, development and the right to live in peace without any threats. However, the international community, in particular the United Nations Security Council (UNSC), had not taken any appropriate measures to address the problem. Consequently, Eritrea had no option but to take the necessary measures of self-defence that were proportionate to the threat it faced.

Despite the prevailing challenges, the Government had taken various measures to transform the national service system and address the unintended consequences. For example: (1) the Commission for Demobilization had

been established in 2001 and had demobilized over 105,000 soldiers from national service from 2001 to 2005. The project envisaged the full demobilization of the army, but had been discontinued when Ethiopia rejected the decision of the Eritrea Ethiopia Boundary Commission; (2) large scale demobilization practices had continued on various grounds through local resources, especially for women and other segments of society; (3) in the past five or six years, all graduates of the national service programme had been directly enrolled in different education institutions and deployed in various areas of work after finishing their studies. The one year of community or development service in most cases was thus deferred to take place at any convenient time. Most of the recent graduates were covered by the new remuneration system established in 2016, which had introduced a substantial increase in the salary of the civil service; and (4) the communal services were intended to promote social service and the dignified life of the population. Members of the community were frequently consulted through the popular local governance system and were involved both as beneficiaries and active participants on the need for such services. Due to the prevailing situation described repeatedly, national service members were called upon to perform non-military activities in the specific circumstances described, which was confined to genuine cases of force majeure. In times of peace, national service members did not have any other obligations once they had fulfilled their obligation of service for 18 months. The duration of national service had been prolonged due to unrelenting threats and a protracted state of belligerency by Ethiopia. Therefore, the extended obligations imposed on the population in general and national service members in particular were compatible with the provisions of Conventions Nos 29 and 105. Neither forced nor compulsory labour had been exacted in the country in violation of the Conventions. In terms of the legal and institutional context of the State, national service constituted an exception to forced labour under article 3(17) of Labour Proclamation No. 118/2001, which provided that normal civic obligations, labour performed as stipulated in the Penal Code and communal or development services rendered in the situation of existential external threats were not considered as forced labour. The legitimacy of the ongoing practice of qualifying military and non-military service as force majeure under Convention No. 29 was thus unambiguous. He emphasized that peace, security, human rights and development were interlinked and constituted a fundamental principle of the international system. The existential external threats faced by Eritrea and the failure of the international community, in particular the UNSC, to address the pertinent threats faced by Eritrea could not be underestimated. The Government of Eritrea categorically rejected the allegations made and reiterated its stated position that the Committee had to consider these objective realities, drop the allegations and continue to expand and strengthen engagement with Eritrea in a meaningful way. Regarding the IOE's claim that "the illegal occupation of Eritrean territory by Ethiopia does not amount to a genuine situation of emergency and, as such, recourse to compulsory labour couldn't be justified", he stated that it negated the concrete reality in the country, the fundamental principle of the international system on the interdependence of peace, security and development, as well as the provisions of Article 1(b) of the Convention. Contrary to the IOE's assertion, Eritrea did not exploit forced or compulsory labour for economic development as a systemic approach aimed to replace the labour system. All forms of compulsory labour exacted in Eritrea met the criteria of minor communal services. This work, accomplished under the duress of existential threats, was consistent with the parameters provided for in Convention No. 29. Moreover, it also warranted the mobilization of labour for the purpose of economic development in the context of Convention No. 105. In line with the ratified Conventions on forced labour and its abolition, and following the border war with Ethiopia, the Committee had requested Eritrea to provide reports and information, indicating that work exacted from the population as part of compulsory national service in Eritrea was equated to forced labour. The Government of Eritrea had provided several written reports and information to the Conference Committee and the Committee of Experts indicating that no forced labour had been practiced in the Bisha Mine. In conclusion, he hoped that all the efforts made so far, including the information included in this statement, would instil an objective understanding of the prevailing reality leading to the termination of unwarranted allegations of forced labour and related observations. He also reiterated the Government's commitment to continue its engagement with the relevant bodies in the future.

Les membres travailleurs ont rappelé la gravité du problème et l'incapacité du gouvernement à y apporter une réponse satisfaisante alors même que le recours au travail forcé en Erythrée avait déjà été abordé lors de la 104^e session de la Conférence internationale du Travail de 2015 et que le gouvernement n'a pas depuis sollicité l'assistance technique du BIT. Les constats alarmants faits en 2015 (meurtres, tortures, enlèvements, conditions de détention inhumaines) restent identiques en 2018 et sont confirmés par de nombreuses instances internationales telles que la Commission d'enquête des Nations Unies sur les droits de l'homme en Erythrée de juin 2016 et par la Rapporteuse spéciale sur la situation des droits de l'homme en Erythrée en juin 2017. Les mauvaises relations diplomatiques avec l'Éthiopie ne peuvent servir de justification aux graves violations en cours. Il convient d'espérer que la discussion à la commission cette année pourra convaincre le gouvernement érythréen de tout mettre en œuvre afin que sa législation et sa pratique soient conformes à la convention. C'est le service national obligatoire, qui repose sur la Proclamation relative au service national (n° 82 de 1995) et la déclaration de 2002 concernant la Campagne de développement Warsai Yakaalo, qui continue d'être la source du problème. S'il est en théorie d'une durée limitée, la campagne Warsai Yakaalo a permis de mobiliser les conscrits pour une durée indéterminée. Le service national porte par ailleurs sur de nombreuses activités, telles que la construction ou l'agriculture, qui ne sont pas des activités purement militaires, et n'entrent donc pas dans le champ d'application de l'exception prévue à

l'article 2, paragraphe 2, de la convention. Comme le rappelle la commission d'experts, cette condition a pour but d'empêcher la réquisition de conscrits pour la réalisation de travaux publics ou à des fins de développement. Or il est rapporté que certains conscrits sont mis au service d'entreprises privées, notamment dans le secteur des mines. La convention (n° 105) sur l'abolition du travail forcé, 1957, interdit également l'utilisation du travail forcé ou obligatoire en tant que méthode de mobilisation et d'utilisation de la main-d'œuvre à des fins de développement économique. C'est en ce sens que doit être interprétée la convention n° 29. Or un des objectifs déclarés de la campagne Warsai Yakaalo est précisément «d'investir dans le développement du travail de la population en tant que richesse potentielle», c'est-à-dire de favoriser le développement économique. Une autre exception à l'interdiction du travail forcé ou obligatoire prévue par la convention est celle de la force majeure, celle-ci étant définie de façon restrictive comme un événement soudain et imprévisible appelant une intervention immédiate. Mais, au vu des périodes extrêmement longues de réquisition de main-d'œuvre, on ne peut considérer que le gouvernement érythréen mobilise une large partie de sa population pour faire face à un événement soudain et imprévisible. Il ne peut donc se prévaloir de l'exception de la force majeure. Le gouvernement estime que les mesures prises visent à prévenir un événement futur de force majeure. Une telle interprétation, outre qu'elle est incompatible avec le caractère imprévisible que requiert la force majeure, n'est pas acceptable car elle permettrait aux Etats de prendre des mesures graves de limitation des droits fondamentaux en prévision d'une force majeure hypothétique, ce qui constituerait un dangereux précédent.

L'institutionnalisation du travail forcé est démontrée par les sanctions graves qu'encourent les Erythréens qui chercheraient à se libérer de cette obligation, notamment les peines de prison, la suspension de droits, les repréailles à l'encontre des membres de leur famille ou le non-renouvellement de licences commerciales. Or le travail forcé ou obligatoire est défini à l'article 2, paragraphe 1, de la convention comme tout travail ou service exigé d'un individu sous la menace d'une peine quelconque et pour lequel ledit individu ne s'est pas offert de plein gré. Les membres travailleurs ont réitéré leur inquiétude en ce qui concerne l'impact de la campagne Warsai Yakaalo sur les femmes et les enfants. Bien que la législation prévoie que le service national soit effectué à partir de 18 ans, divers rapports ont révélé que près d'un tiers des nouveaux conscrits aux centres d'entraînement militaire sont bien plus jeunes. Les étudiants qui achèvent leur parcours scolaire sont obligés de se soumettre à un entraînement militaire intensif à Sawa et de continuer ensuite leurs études sous l'autorité militaire. Ils sont ensuite directement transférés au programme de service national. Très souvent les étudiants doivent travailler dans l'agriculture, parfois jusqu'à un ou deux mois, en plus de leur formation militaire et de leurs études. Quant aux femmes, elles sont particulièrement vulnérables au harcèlement et aux violences sexuelles. Elles sont également forcées de réaliser des tâches domestiques pour les officiers, en plus de leurs tâches dans le cadre de leur service obligatoire. Il y a lieu de regretter l'abandon des mesures qui avaient été prises en vue de démobiliser les conscrits et de les réintégrer dans la fonction publique, notamment en déterminant une échelle salariale pour ceux ayant achevé leurs obligations et en leur donnant un statut à part entière. Il faut espérer que le gouvernement relancera ce processus. L'affirmation du gouvernement, selon laquelle les objectifs poursuivis par la campagne Warsai Yakaalo se limitent à ce qui est strictement nécessaire pour répondre aux exigences de la situation du pays, revient à ajouter un critère au texte de la convention en faisant usage de la notion de proportionnalité afin de justifier les atteintes aux droits fondamentaux de sa population. Or la question de la proportionnalité ne se pose que dans le cadre de la force majeure, qui ne peut pas être invoquée en l'espèce. Les constats dressés par la commission d'experts, et par la commission, sont renforcés par d'autres organisations. Le Conseil des droits de l'homme en a appelé à ce que l'Erythrée procède à une réforme juridique et institutionnelle approfondie. La Rapporteuse spéciale a dû constater, en juin 2017, que le gouvernement érythréen n'avait déployé aucun effort pour donner suite aux recommandations de la commission d'enquête. Le même constat s'impose à l'égard des recommandations que la commission a adressées au gouvernement en 2015. Le service national obligatoire tel qu'il est actuellement mis en œuvre constitue une atteinte aux droits fondamentaux des Erythréens. Il conviendrait d'appliquer les recommandations déjà adressées en 2015 par la commission, ainsi que les recommandations de la Commission d'enquête du Conseil des droits de l'homme des Nations Unies, de révoquer la Proclamation de 1995 relative au service national et de mettre fin à la campagne Warsai Yakaalo. Le gouvernement est invité à envisager la ratification du Protocole de 2014 relatif à la convention sur le travail forcé, 1930, qui viendra utilement compléter la politique de démantèlement du travail forcé qui devra être mise en œuvre.

The Employer members recalled that the case essentially involved two national instruments that violated the Convention, namely the Proclamation on National Service No. 82 of 1995 and the 2002 Declaration on the Warsai Yakaalo Development Campaign (WYDC). While conscription into military service was initially limited to 18 months, the war between Eritrea and Ethiopia had led to a lifting of the cap. According to the Government, national service was intended for both military and development purposes. In other words, conscripts could be used in a variety of activities, some of which were purely of a developmental and/or economic nature. However, under the Convention, the use of involuntary labour for non-military work was only permitted in very limited circumstances. When discussing the case in 2015, the Conference Committee had been highly concerned at the continued state of forced labour in Eritrea and urged the Government to seek ILO technical assistance to ensure compliance with the Convention. Following the Committee's 2015 conclusions, both the IOE and the International

Trade Union Confederation (ITUC) had made observations in which they expressed concern at the situation. Noting with regret the Government's failure to provide a report, the Committee of Experts had strongly urged the Government to take the necessary measures to bring an end to the generalized and systematic practice of the exaction of compulsory labour from the population in the context of the obligation of national service. In 2017, the Committee of Experts had adopted an observation, based on the observations by the IOE and responses thereto provided by the Government. The IOE emphasized the urgency of bringing an end to forced labour in Eritrea, and observed that, despite the commitment to work towards that goal, the Government had not sought ILO technical assistance nor demonstrated any will to cooperate with the ILO. The Government reiterated that demobilization had been interrupted and national service prolonged because of the need to take action vis-à-vis Ethiopia's state of belligerency. Moreover, the Government was adamant that the work exacted from the population under the WYDC was limited to the benefit of the community, and was not for the profit of private companies or individuals. Consequently, according to the Government, there was no systematic practice of compulsory labour. In its observation, the Committee of Experts noted that, according to the latest reports of the bodies appointed by the United Nations Human Rights Council, the Government had still not taken steps to reform the national service programmes. The Committee of Experts also noted with deep concern that there was no progress by the Government to harmonize its law and practice with the Convention. While it was understandable that the Government wanted to be prepared to defend its borders, it had ratified Convention No. 29, which placed limits on the permissibility of some actions. National legal instruments needed to be harmonized with the provisions of ratified international labour standards. The Government's statement in reply to the observation confirmed that conscription went beyond the limit of 18 months, and military conscripts were used to perform non-military work or activities, including economic activities supposedly for the benefit of the community. However, the interpretation of the facts was controversial. Both the Conference Committee and the Committee of Experts had repeatedly found that the situation in Eritrea amounted to forced labour and was in conflict with the Convention, whereas the Government believed that the conscription programme and the non-military activities performed under the WYDC were justifiable as exceptions under Article 2 of the Convention. The Government had also highlighted that it had taken steps to reduce national service by enrolling many conscripts into the civil service, with improved remuneration. While the Government's efforts could demonstrate its intention to follow through on its commitments on demobilization, there were still concerns about those who remained in extended national service, and those who were used in compulsory non-military work. If the Government was committed to complying with its obligations under international law, it needed to take the necessary steps to amend or repeal the national instruments that were in conflict with the Convention. Regardless of their justification, the Proclamation on National Service and the WYDC violated the Convention. In conclusion, the delay in harmonizing national law and practice with the Convention, the number of observations and recommendations by the Conference Committee, the Committee of Experts and other international bodies, and the Government's continued failure to seek assistance from the ILO in that regard justified viewing this case as a serious case of non-compliance.

The Worker member of Eritrea thanked the Committee for giving him the opportunity to intervene and correct certain misconceptions about his country. He expressed concern at the prescriptive approach taken by the Committee of Experts and the IOE concerning the application of the Convention by Eritrea, without having any discernible evidence of the allegations and without considering the reality in Eritrea. Eritrea's genuine approach on grass-roots indigenous development had not been understood. Without visiting the country, it was virtually impossible to understand the Eritrean reality, the spirit of community belongingness and the people's passion for peace, stability, growth and prosperity. Eritrea had its unique vision for the future. The country was indeed still facing socio-economic development challenges and was ravaged by war and geopolitical agendas. However, despite all the hardship, it had managed to retain the most cherished values – honesty, integrity, hard work, community and civic duties, for sustainable nation building. It was hoped that the success achieved in implementing the Millennium Development Goals would be further extended during the realization of the Sustainable Development Goals. Regarding the allegations of forced labour, it was inconceivable that a country that was born from the painful struggle for its self-determination and human rights could allow the violation of the human rights of its people, including the systematic use of forced labour in contravention of the country's values and the principles of the Convention. Eritrea had ratified all the fundamental ILO Conventions, except the Worst Forms of Child Labour Convention, 1999 (No. 182), which was under consideration, and was fully committed to their implementation. The principles of the Conventions were enshrined in the Labour Law, No. 118 of 2001. Eritrean trade unions were active, also in cooperation with international confederations and with the ILO, to protect workers' rights. In order to discuss the Decent Work Agenda and in particular forced labour and labour migration in Africa, an International Solidarity Conference had been organized, in collaboration with the ILO, in Asmara in March 2016, which had been attended by more than 25 national trade unions, the ITUC and the Organization of African Trade Union Unity (OATUU). Participants at the conference had visited, inter alia, the Bisha Mine. Following the visit, many of the employees of the Bisha Mining Company had been unionized.

He added that a formal response had been provided in response to the report of the Commission of Inquiry on human rights in Eritrea, specifying that, in compliance with Article 25 of the Convention, the illegal exaction of forced labour or compulsory labour was punished as a penal offence in Eritrea under the Penal Code, and that section 3(7) of the Labour Proclamation No. 118/2001 provided that the obligation of national service did not constitute forced labour. Eritrea made use of the exceptions under Article 2(2) of the Convention, which included compulsory military service, as well as work which formed part of the normal civic obligations of Eritrean citizens. Eritrean trade unions also regularly ensured compliance with Article 9 of the Convention. While disagreeing with the observations of the Committee of Experts, which equated national service to forced labour, he reiterated his commitment to preventing any such practice should it occur in future. It was to be hoped that the Committee would engage in genuine dialogue with all partners to obtain real information about the situation in Eritrea.

The Employer member of Eritrea stated that it was a procedural violation for the IOE to submit observations on Eritrea to the Committee of Experts without having consulted the Employers Federation of Eritrea (EFE), as a member of the IOE. The allegation therefore had neither legitimacy nor credibility. It was factually baseless. He therefore called on all IOE members to join the EFE in rejecting the unrealistic allegation. The issue of forced labour in the national service programme had been raised in 2015 by the ITUC and then by the IOE in 2017 without substantive information from their respective affiliates. As a matter of fact, the Government was continuously taking measures to mitigate the economic burden of national service members and other employees. At the end of 2015, a new salary scale had been introduced for members of national service, and demobilization was underway. The report of the United Nations Special Rapporteur, on which the Committee of Experts had based its comment, was highly debatable and lacked credibility on many grounds. In general, the allegation was outdated and lacked information on the recent developments regarding the issue under discussion.

The Government member of Bulgaria, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Norway, the former Yugoslav Republic of Macedonia and Montenegro, emphasized that the promotion and universal ratification and implementation of the core labour standards was part of the European Action Plan on Human Rights, adopted in July 2015. Eritrea was a Party to the Cotonou agreement, the framework for cooperation with the European Union which required Parties to respect democracy, the rule of law and human rights principles, including the abolition of forced labour. The Proclamation on National Service and the WYDC of 2002 did not comply with the Convention as they established a generalized and systematic practice of the exaction of compulsory labour from the population. She noted with deep concern that a large part of the population could be forced into conscription, that work could be required for an indefinite and arbitrary period of time, and that much of this work went far beyond the exceptions authorized by the Convention. She deeply regretted that, despite previous recommendations of the Conference Committee and the Committee of Experts, the Government had not taken any measures to amend or repeal the legislation. The threat of war should not be taken as a justification to compel a population to undertake compulsory labour for purposes outside the scope of military service or beyond genuine cases of emergency or force majeure. She urged the Government of Eritrea to tackle this situation and respond positively to the ILO's offer of cooperation and technical assistance and recalled that the EU remained ready to assist Eritrea in meeting its obligations in terms of democratization, human rights and the rule of law, and to support its economic and sustainable development.

The Worker member of Nigeria, also speaking on behalf of the Organisation of Trade Unions of West Africa (OTUWA), recalled that Nigeria had operated a one year national service programme which had been instituted after Nigeria's civil war, while that of Eritrea was linked to its conflict with Ethiopia. However, Nigeria's national service programme did not exact forced labour. Its objective was for youth to appreciate the essence of patriotism as well as to consolidate national unity and to provide them with first-hand work experience. The Government of Eritrea was urged to avail itself of ILO assistance to effectively reform and transform its national service legislation and practices to promote youth social and economic empowerment in accordance with the Committee of Experts' recommendations. Nigeria had a similar experience of a disagreement with a neighbouring State, and the conflict had been resolved amicably with the assistance of the international community. In response to the appeals made by Eritrea, he called for robust technical assistance through the ILO to coordinate an inter-UN agency process for effective follow-up to the peace accord to end the situation of "no war no peace".

The Government member of Sudan thanked the Government of Eritrea for its great interest in workers and labour matters, as well as in the comments of the Committee of Experts. She affirmed that: (a) the Convention provided that national service was not considered as forced labour when a State was confronted with an emergency; (b) the tripartite constituents in Eritrea had taken action through a number of initiatives taken by the Eritrean Workers' Confederation and sought the resolution of the issue with the Government following the observations made by the ITUC; and (c) it was important to welcome and praise the positive developments undertaken by the Government of Eritrea. She suggested that it would be better to stop raising the issues mentioned in the observation

of the Committee of Experts altogether and to work jointly with Eritrea to support it in implementing international labour standards.

The Worker member of South Africa echoed the concerns of the Worker members over the indefinite military service for conscripts and the lack of viable socio-economic opportunities for youth. Prolonged national military service was the primary reason for fleeing Eritrea: in 2016 and 2017, Eritrean refugees had constituted the fifth largest group of arrivals in Europe via the Mediterranean Sea. According to the International Organization for Migration, 1,184 Eritreans had arrived by sea in Europe since the beginning of 2018. The United Nations estimated that one tenth of the Eritrean population had fled in recent years. The situation was alarming and the lack of individual and collective economic activities could not be sustained. However, by exploiting conscripts for civil and economic purposes, the Government was contravening international law. Working for up to 15 years, without income, in the context of so-called civic obligations and national duty and under a façade of perpetual military duties could no longer be tolerated. The 2017 report of the Special Rapporteur on the situation of human rights in Eritrea indicated that Eritrea's national service programmes "continued to be arbitrary, extended, and involuntary in nature, amounting to enslavement, as per the findings of the Commission of Inquiry". The new measures to demobilize conscripts and to rehabilitate them in the national civil service, including the introduction of a salary scale was encouraging, but not sufficient. Such efforts needed to be further strengthened and extended and include the adoption of a broader employment and poverty eradication policy in both the public and private sectors. The Government should therefore be urged to accept the ILO's technical assistance to develop a time-bound plan of action.

Le membre gouvernemental de l'Algérie a relevé avec satisfaction les nouvelles mesures adoptées pour organiser le service national et la formation professionnelle dans le cadre de son programme de développement, cela malgré une situation très difficile. Il a encouragé le gouvernement érythréen à poursuivre ses efforts pour respecter ses obligations dans le cadre de la convention n° 29, en collaboration avec l'OIT.

The Worker member of Zambia stated that allegations of violations of workers' and human rights as serious as forced labour needed to be based on solid facts and information. A team of 25 international trade unionists had travelled to Eritrea in 2016 and visited the Bisha Mine, in relation to which allegations of forced labour had been made. No incidents of forced labour had been observed. However, in view of the serious allegations, the Conference Committee, the Committee of Experts and other interested parties should undertake a fact-finding mission to Eritrea to: (a) gather first-hand information on the current situation; (b) objectively assess the progress made by the country in the area of human and trade union rights; and (c) identify challenges and propose the way forward for further improvement in these areas. All trade unions and international organizations were urged to continue supporting the National Confederation of Eritrean Workers in capacity building and international trade union solidarity.

The Government representative called for a complete understanding of the issue which could lead to a real solution. It was sad to hear comments that the force majeure in the country was false, when the issue of the national service programme was directly related to the extensive occupation of Eritrean territory by Ethiopia. Peace was a precondition for implementing international labour standards and occupation did not allow for that to happen. In this context, solidarity was essential for development. The fact that national service members had participated in non-military activities was not denied by the Government. However, it had been performed due to the force majeure, not for the purpose of economic development. Eritrea would not have imposed forced labour on its own population; on the contrary, it wanted to abolish forced labour altogether. However, even if legislation was amended, the root cause of the problem would still remain, namely, the occupation of Ethiopia, which needed to be addressed. The discussion based on the unwarranted allegations did not help Eritrea to apply international labour standards. The Government did not reject any technical assistance, provided that it addressed the root causes of forced labour and led to peace and re-stabilization. Considering the seriousness of the circumstances which were not fully understood by others, Eritrea had had to take unilateral action. Furthermore, Eritrea had started and would continue to improve the situation. In this regard, the measures undertaken included the introduction of an adequate salary scale for members of the national service and the rehabilitation of former national service members within the civil service. The WYDC had only been implemented between 2006 and 2015 and had been terminated since then. It was also necessary to clarify that the allegation of the involvement of children under 18 years was not true.

Another Government representative highlighted the procedural issue regarding the submission of the IOE's observations. The fact that the EFE, as a member of the IOE, had not been consulted before the submission of the observations to the Committee of Experts needed to be taken into consideration. He added that, considering the reconstruction and development process of European countries in history, Eritrea should not be treated differently. Due to the continuation of force majeure, there was no alternative to the national service programme. For the same reason, no specific time frame could be established in this regard. In conclusion, he again underlined that Eritrea was willing to engage with the international community and was open to the technical assistance proposed.

However, mutual trust was vital and any cooperation should come with a better understanding of the real situation in Eritrea.

Les membres travailleurs ont remercié l'ensemble des intervenants et les représentants du gouvernement érythréen pour les éléments d'information qu'ils ont transmis à la commission. Si la paix, la stabilité et les droits sont étroitement liés, il est néanmoins regrettable que le gouvernement érythréen se retranche derrière la situation diplomatique difficile avec son voisin éthiopien pour justifier les exactions institutionnalisées à l'encontre de la population érythréenne et la négation de ses droits humains fondamentaux. Il est également regrettable que le gouvernement continue de sous-évaluer et de nier les très graves violations en cause. Il faut mettre fin au service national à durée indéterminée en abolissant la campagne Warsai Yakaalo et en abrogeant la Proclamation relative au service national. Il faut mettre un terme à l'utilisation de conscrits pour des travaux qui ne revêtent pas de caractère purement militaire. De nombreux rapports font état de conscrits mis au service du secteur privé qui y trouve là une main-d'œuvre docile, parce qu'opprimée, et bon marché. Cela doit cesser. Le gouvernement érythréen doit enfin reconnaître que la situation du pays ne permet pas de faire appel à la notion de force majeure pour justifier la réalisation de tâches non militaires dans le cadre du service national obligatoire. Il doit également mettre fin à la conscription militaire des enfants, une pratique qui n'est ni tenable pour le pays ni acceptable au niveau international. Le gouvernement doit également prendre des mesures immédiates afin de préserver les femmes conscrites du harcèlement et des violences sexuelles. Les membres travailleurs ont demandé au gouvernement de faire toute la lumière sur les nombreuses allégations de meurtres, de tortures, d'enlèvements et d'autres violations dans le cadre du service national. Il est urgent que l'Erythrée change son image de colonie pénitentiaire: le gouvernement doit fermer les lieux de détention secrets, garantir l'intégrité physique des détenus et leur accès à des traitements médicaux, ainsi que des conditions de détention adéquates, conformément aux règles internationales. Il doit également mettre fin aux représailles exercées sur les familles des personnes qui fuient le pays. Il conviendrait de mettre en place un mécanisme indépendant permettant aux conscrits de porter plainte en cas de mauvais traitements et d'obtenir réparation lorsqu'ils ont subi un préjudice dans le cadre de leurs obligations de service. Le gouvernement érythréen doit avoir recours à l'assistance technique du BIT, déjà recommandée en 2015, afin de développer un plan d'action, en consultation avec les partenaires sociaux, pour réviser la législation sur le service militaire. Il doit également mettre en place une politique nationale d'emploi et d'éradication de la pauvreté.

The Employer members concluded that the key to the issue was that the Government recognized that national service was taking place, but justified it as the force majeure exception under the Convention. In view of its continuing non-compliance with the Convention, including with respect to the use of the force majeure exception, the Government was encouraged to avail itself of the technical assistance of the ILO and was urged to cooperate with the ILO, including by submitting reports based on the recommendations of the Committee.

The Government representative raised a point of order and stated that the discussion should be limited to issues raised under Convention No. 29, while some political issues such as those mentioned by the Worker members, did not fall within this scope. He again raised the question of whether the IOE had the right to submit observations without having consulted the EFE. He asked for explanations from the IOE.

The Employer members clarified that the IOE had not made a complaint to this Committee in relation to the case under discussion.

Conclusions

The Committee took note of the oral information provided by the Government representatives and the discussion that followed relating to the large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of programmes related to the obligation of national service. These members of the national service also perform other duties, including a whole range of economic activities. The obligation to perform compulsory national service was stipulated in the Proclamation on National Service of 1995 and the Warsai Yakaalo Development Campaign of 2002.

The Committee noted that the Government has declared that the Warsai Yakaalo Development Campaign is no longer in force, that a number of conscripts have been demobilized and are now under the civil service with an adequate salary. In view of these specific circumstances, the Government has declared that the exceptions to Article 2(2) of Convention No. 29 relating to cases of emergency justify the prolongation of the duration of conscription beyond the statutory 18 months established in the Proclamation on National Service of 1995.

Finally, the Committee noted the Government's statement that it wished to avail itself of technical assistance.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:

- amend or revoke the Proclamation on National Service to bring to an end forced labour;
- ensure the cessation of the use of conscripts for the exaction of forced labour in line with Convention No. 29;
- avail itself without delay of technical assistance in order to fully comply with its obligations under Convention No. 29; and
- report to the Committee of Experts before 1 September 2018 on its progress in implementing the conclusions of this Committee.

The Government representative indicated that procedurally, his country had been treated in a different way than other countries. As it was not known who had sent observations to the Committee of Experts on the application of the Convention in his country, the allegations should have been discarded from the outset. The Conference Committee had not taken into account the real situation on the ground so as to formulate an accurate opinion on the seriousness of the root causes standing in the way of full implementation of the Convention. Consequently, this genuine case of *force majeure* which was compatible with the Convention was not being acknowledged as such. The Committee was highly dependent on unrelated and unreliable external sources of information and mistrusted the Government's statements concerning, for example, the obsolescence of the WYDC. There was no appreciation of the mitigating measures taken by the Government, such as for example, the progress made in improving the salary scale of the National Service members and integrating them in the civil service. The Government would consider ILO technical assistance provided the assistance led to addressing the root causes of the problem. His Government believed that human rights were indivisible, interdependent and universal and remained fully committed to them including in the area of labour. Even though his Government was engaged to work jointly with the ILO on all outstanding issues with technical support to mitigate the root causes, he hardly agreed with the conclusions as they were mainly the result of unrealistic information that did not reflect reality.

Conclusions

La commission a pris note des informations que les représentants gouvernementaux ont fournies oralement et de la discussion qui a suivi sur la pratique systématique et à grande échelle de l'imposition du travail obligatoire à la population pendant une durée indéterminée, dans le cadre des programmes relatifs à l'obligation de service national. Les membres du service national ont également d'autres obligations, dont l'exécution d'un large éventail d'activités économiques. L'obligation d'effectuer le service national obligatoire est énoncée dans la Proclamation relative au service national de 1995 et dans la Campagne de développement Warsai Yakaalo de 2002.

La commission a pris note du fait que le gouvernement a déclaré que la Campagne de développement Warsai Yakaalo était terminée et qu'un certain nombre de conscrits avaient été démobilisés et qu'ils avaient désormais rejoint la fonction publique, où ils touchaient un salaire suffisant. Compte tenu de la situation particulière du pays, le gouvernement a déclaré que les dérogations à l'article 2, paragraphe 2, de la convention n° 29 concernant les cas de force majeure justifient que la durée de la conscription soit prolongée au-delà des dix-huit mois obligatoires prévus par la Proclamation relative au service national de 1995.

En dernier lieu, la commission a noté que le gouvernement souhaitait se prévaloir d'une assistance technique.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement:

- de modifier ou d'abroger la Proclamation relative au service national afin de mettre un terme au travail forcé;

- de veiller à ce qu'aucun conscrit ne soit plus astreint au travail forcé, conformément à la convention n° 29;
- de se prévaloir sans délai d'une assistance technique afin de s'acquitter pleinement des obligations qui lui incombent au titre de la convention n° 29;
- d'indiquer à la commission d'experts les progrès réalisés dans la mise en œuvre des conclusions de la Commission de la Conférence avant le 1^{er} septembre 2018.

Conclusiones

La Comisión tomó nota de la información oral suministrada por los representantes gubernamentales y de la discusión que tuvo lugar a continuación sobre la práctica extendida y sistemática de imponer trabajo obligatorio a la población, por un período de tiempo indefinido, en el marco de los programas vinculados con las obligaciones del servicio nacional. Los miembros del servicio nacional en cuestión también desempeñan otras tareas, incluida una amplia gama de actividades económicas. El deber de cumplir con el servicio nacional obligatorio está recogido en la Proclamación sobre el Servicio Nacional, de 1995, y en la declaración sobre la «Campaña de Desarrollo Warsai Yakaalo», de 2002.

La Comisión tomó nota de que el Gobierno ha declarado que ya no está en vigor la «Campaña de Desarrollo Warsai Yakaalo», y que cierto número de conscriptos han sido desmovilizados y trabajan ahora en la administración pública con un salario adecuado. Habida cuenta de estas circunstancias específicas, el Gobierno ha declarado que las excepciones que prevé el artículo 2, 2), del Convenio núm. 29 en relación con los casos de fuerza mayor justifican la prolongación de la conscripción más allá de los dieciocho meses previstos legalmente en la Proclamación sobre el Servicio Nacional, de 1995.

Por último, la Comisión tomó nota de que el Gobierno ha declarado que desea recurrir a la asistencia técnica de la OIT.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión instó al Gobierno a que:

- modifique o revoque la Proclamación sobre el Servicio Nacional para poner fin al trabajo forzoso;
- garantice el cese de la utilización de conscriptos para imponerles trabajo forzoso, de conformidad con el Convenio núm. 29;
- recurra sin demora a la asistencia técnica de la OIT para cumplir plenamente con sus obligaciones en virtud del Convenio núm. 29, e
- informe a la Comisión de Expertos, antes del 1.º de septiembre de 2018, sobre los progresos realizados en la aplicación de las conclusiones de esta Comisión.

Convention (n° 1) sur la durée du travail (industrie), 1919
Convention (n° 14) sur le repos hebdomadaire (industrie), 1921
Convention (n° 30) sur la durée du travail (commerce et bureaux), 1930
Convention (n° 106) sur le repos hebdomadaire (commerce et bureaux), 1957

Hours of Work (Industry) Convention, 1919 (No. 1)
Weekly Rest (Industry) Convention, 1921 (No. 14)
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

Convenio sobre las horas de trabajo (industria), 1919 (núm. 1)
Convenio sobre el descanso semanal (industria), 1921 (núm. 14)
Convenio sobre las horas de trabajo (comercio y oficinas), 1930 (núm. 30)
Convenio sobre el descanso semanal (comercio y oficinas), 1957 (núm. 106)

Haïti (ratifications: 1952, 1952, 1952 et 1958)

Haiti (ratifications: 1952, 1952, 1952 and 1958)

Haítí (ratificaciones: 1952, 1952, 1952 y 1958)

Un représentant gouvernemental a assuré la commission de la pleine et entière coopération de la délégation haïtienne, soulignant son appréciation des travaux des organes de contrôle de l'OIT qui constitue une source d'inspiration et de référence pour les Etats en matière de normes du travail. Le gouvernement a pris note des observations de la commission d'experts sur l'application par Haïti des conventions ratifiées en matière de temps de travail. Se référant au contexte national, l'orateur a rappelé que le pays avait connu dans les dernières années de nombreuses catastrophes naturelles ainsi que des crises politiques qui ont eu un impact sur le fonctionnement régulier des institutions chargées d'élaborer et de mettre en œuvre la politique sociale de l'Etat, notamment le ministère des Affaires sociales et du Travail (MAST). Sur le plan économique, la situation est précaire, avec un taux de chômage officiel de près de 35 pour cent de la population active et une croissance économique en déclin. Le gouvernement au pouvoir depuis mai 2017 a pour objectifs particuliers de créer des emplois massifs pour lutter contre le chômage, relancer l'économie nationale, renforcer le dialogue social, poursuivre les objectifs de développement durable et promouvoir les objectifs de justice sociale tels que prévus par la Constitution de l'OIT. A cet effet, l'accent a été mis sur le secteur de la sous-traitance, un secteur vital pour l'économie nationale. C'est dans cette dynamique de favoriser rapidement des emplois massifs qu'en 2017 le Parlement haïtien a adopté la loi portant organisation et réglementation du travail sur la durée de vingt-quatre heures, répartie en trois tranches de huit heures. Par cet instrument, l'Etat haïtien a voulu adapter la situation du travail aux réalités contemporaines. Tout en établissant le principe de 8 heures de travail par jour et 48 heures par semaine, la loi permet qu'en cas de besoin, par accord entre l'employeur et l'employé et en conformité avec les normes nationales et internationales du travail, la tranche normale de 8 heures de travail par jour soit dépassée sans que le total des heures fournies ne dépasse 48 heures par semaine. Le nombre d'heures de travail par jour de 8 heures reste la clé de voûte du régime haïtien en matière de temps de travail. Le régime des trois tranches horaires mises en place dans l'ensemble des secteurs n'a été conçu que dans la finalité de dynamiser l'économie nationale et de renforcer la production grâce à la disponibilité des machines, ce qui pourrait créer un plus grand nombre de postes de travail et d'emplois au bénéfice de la population haïtienne tout entière. La loi prend, en principe, en compte la protection, la santé et la sécurité des travailleurs dans l'esprit des conventions ratifiées par Haïti. En faisant injonction aux employeurs de veiller à la bonne santé et à la reconstruction des forces de travail des travailleurs et en exigeant que les entreprises mettent à leur disposition des services sanitaires et de restauration conformes aux normes, le législateur haïtien a mis en place des garde-fous qui sont appelés à être complétés par des mesures réglementaires, en vue de mieux protéger et sécuriser les travailleurs contre toute forme d'exploitation abusive. Ayant pris bonne note des observations de la commission d'experts et des partenaires sociaux, le gouvernement est disposé à poursuivre les discussions dans un cadre tripartite et avec l'assistance du BIT en vue de trouver des formules consensuelles haïtiennes en ce qui concerne la durée du temps de travail. S'agissant de l'inspection du travail, le gouvernement reconnaît l'importance d'un corps d'inspecteurs compétent pour assurer le respect effectif des dispositions du Code du travail. A cet effet, des efforts ont été déployés et la coopération avec le BIT a permis de renforcer les capacités du service concerné qui compte actuellement sept inspecteurs stables et environ une quarantaine de personnes ressources qui font office, occasionnellement, d'inspecteurs ou de conciliateurs. Un projet de «centre d'appel» visant à faciliter la réception d'éventuelles plaintes de la part de personnes qui auraient pu être victimes dans leurs milieux de travail a été retardé à cause d'une série d'exigences pratiques liées à la confidentialité et à la fiabilité des services

fournis par les opérateurs téléphoniques sur place. Plusieurs programmes coordonnés par le BIT interviennent utilement dans le pays, tels que Better Work ou le Programme des investissements à haute intensité de main-d'œuvre (HIMO). En dépit des efforts déployés par le gouvernement, le pays reste un pays fragile où les projets de coopération doivent être élaborés et exécutés de manière à créer des effets durables sur la population. Ils doivent viser le renforcement du dialogue social, la création rapide d'emplois décents durables susceptibles de générer des revenus au sein des populations les plus déshéritées. Dans cette perspective, le gouvernement plaide pour un renforcement de la coopération avec l'OIT dans des questions aussi fondamentales que la protection sociale, la lutte contre le travail des enfants, la formation professionnelle et d'autres thématiques pertinentes qui font partie du champ d'intervention de l'Organisation. En ce qui concerne le dialogue social, le gouvernement considère qu'il s'agit d'un élément fondamental pour la poursuite des objectifs de paix et de croissance économique. Encourager les partenaires sociaux à résoudre leurs conflits par des mécanismes pacifiques demeure une priorité du gouvernement qui a accueilli avec satisfaction la conclusion d'un accord en mars 2018 entre les six principales organisations de travailleurs du pays et le secteur patronal. Par ailleurs, le gouvernement a pris note du nombre important de rapports sur l'application des conventions et recommandations qui sont dus par Haïti. Des dispositions sont prises au niveau de l'instance concernée en vue de s'acquitter de ces obligations internationales dans le meilleur délai. Une assistance technique de l'OIT sur cette question spécifique sera sollicitée. Enfin, l'orateur a souligné qu'il n'existe aucune volonté du gouvernement de violer les conventions de l'OIT auxquelles Haïti est partie, notamment les dispositions relatives au temps de travail. Les difficultés qui existent autour de la loi de 2017 seront adressées par le gouvernement à travers des discussions tripartites. L'accord intervenu entre les syndicats et le patronat en mars 2018 constitue une base solide pour lancer de telles initiatives.

The Employer members first noted that it would be helpful if the Committee of Experts provided a clear indication on why cases were double-footnoted. They considered that this case, which concerned the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (Act on working time), was timely as it took place two days after the discussion of the 2018 General Survey on working time instruments. Working time was an issue subject to constant changes and requiring regular adaptation to new realities. Enhancements in technology and communications were changing the traditional time and space dimensions at work, and the organization of working time was of fundamental importance for productivity, performance, competitiveness, sustainability and the ability to create jobs by enterprises. With regard to Conventions Nos 1 and 30 on hours of work, they referred to the 2005 General Survey on Hours of Work, according to which: *“Conventions Nos 1 and 30 do not fully reflect modern realities in the regulation of working time. In fact, there are elements of the Conventions that are clearly outdated. ... In general, these two instruments are viewed by an increasing number of countries as prescribing overly rigid standards. The ‘fixed’ working hours system adopted by both Conventions as a cornerstone for the regulation of working time conflicts with today’s demands for more flexibility.”* With regard to Conventions Nos 14 and 106 on weekly rest, these had been considered by the ILO Governing Body as up to date and were more widely ratified. This was particularly the case for Convention No. 14 which was a relatively flexible instrument in that it allowed almost unconditioned total or partial exceptions to the normal weekly rest day, as well as exceptions to compensation where it was not possible to grant the weekly rest days. On the other hand, Convention No. 106 allowed exceptions to weekly rest under much stricter conditions and did not foresee exceptions regarding the provision of compensation. They noted that, as the decree of application of the Act on working time had not yet been published, the articles of the Labour Code regarding working time continued to apply in the country. They encouraged the Government to ensure that working time regulation was discussed in the framework of the comprehensive reform of the Labour Code with a view to ensuring conformity with ratified Conventions. They considered that, in the event that the new and emerging realities of the labour market in Haiti required a change in legislation that went against the provisions of the Conventions in question, the Government should consider denouncing these Conventions to avoid a lack of conformity with its international obligations. Finally, they noted with deep concern that, for the fifth consecutive year, the reports due on all ratified Conventions had not been received. They urged the Government to avail itself of ILO technical assistance before 1 September 2018, with a view to submitting without delay the reports due to the Committee of Experts, including on Conventions Nos 1, 14, 30 and 106.

Les membres travailleurs ont rappelé que les questions relatives à la durée du travail sont au cœur de la relation de travail et se retrouvent dans le traité fondateur de l'OIT et la Déclaration de Philadelphie qui affirment que le travail n'est pas une marchandise. Fixer des limites décentes au temps de travail préserve la dignité des travailleurs et leur permet de donner un sens à leur activité professionnelle. La question du temps de travail présente de nombreux enjeux majeurs pour les travailleurs, tels que le pouvoir d'achat, la conciliation entre la vie professionnelle et la vie privée, la sécurité, la santé et le bien-être. Il est fondamental qu'une réglementation claire et stricte du temps de travail soit mise en place et effectivement appliquée pour que le travail décent puisse être

garanti. Les partenaires tripartites au sein de l'OIT ont toujours été convaincus de la nécessité de réglementer le temps de travail. C'est pourquoi l'Organisation s'est dotée de nombreux instruments qui fixent certaines limites à la durée du travail. La commission doit veiller à ce que les Etats Membres mettent tout en œuvre en vue de respecter ces normes. Dans le cas examiné, le gouvernement s'est affranchi de certaines limites fixées par les normes internationales du travail relatives au temps de travail. Les différentes mesures prises ont pour effet d'accroître la durée effective du travail et s'éloignent de la recommandation n° 116. En Haïti, une grande proportion de la population est demandeuse d'emploi et l'introduction de réformes qui visent à allonger la durée du travail des travailleurs déjà actifs ne favorisera pas une répartition efficace du travail disponible. La récente réforme législative a abrogé les dispositions qui réglementaient les dérogations au principe de la journée de travail de 8 heures et les dérogations à la durée normale du travail, et qui affirmaient le principe du repos hebdomadaire de 24 heures consécutives devant être accordé de préférence le dimanche et en même temps à tout le personnel d'un même établissement. Il résulte de ces différentes abrogations que la législation haïtienne n'est plus en conformité avec les conventions ratifiées. La nouvelle législation prévoit également qu'employeurs et travailleurs peuvent déroger au niveau individuel au principe de la durée du travail journalière de 8 heures, sans préciser une durée journalière maximale, et que les travailleurs négocient individuellement leur horaire de travail. La relation de travail étant fondamentalement asymétrique, il est essentiel que les normes relatives au temps de travail soient négociées collectivement et non individuellement. En outre, l'absence d'encadrement de limitation des dérogations possibles à la durée normale du travail laisse penser que les heures supplémentaires peuvent être effectuées sans aucun motif et sans limites, contrairement aux dispositions des conventions n°s 1 et 30. Cela pourrait compromettre l'objectif de la recommandation n° 116 d'atteindre une norme sociale de 40 heures de travail par semaine. La nouvelle législation a encore pour conséquence que les organisations syndicales ne doivent plus être consultées et que la direction du travail du ministère des Affaires sociales et du Travail ne doit plus donner son autorisation sur un certain nombre de questions ayant trait aux dérogations possibles en matière de durée du travail. Cela contrevient aux dispositions des conventions n°s 1 et 30. Se référant au manque de moyens des services d'inspection, l'oratrice a rappelé que les conventions n°s 30 et 106 prévoient que les Etats doivent adopter des mesures appropriées pour assurer la bonne application des règles relatives au temps de travail par une inspection adéquate. Haïti a également ratifié la convention n° 81. Le gouvernement doit donc veiller à ce que les inspections aient des effectifs suffisants et à ce que les inspecteurs reçoivent une formation adéquate en matière de temps de travail et bénéficient de moyens financiers et matériels suffisants. Le développement de ressources statistiques est également essentiel en vue de pouvoir cibler les secteurs sensibles aux abus en matière de temps de travail. Notant qu'une grande majorité de l'activité en Haïti relève de l'économie informelle où les travailleurs sont particulièrement exposés aux abus, l'oratrice a souligné qu'il convient de veiller à ce que les services d'inspection aient compétence pour contrôler le respect de la législation sur la durée du travail dans le secteur informel. Bien qu'ils bénéficient généralement de relations de travail plus formelles, les travailleurs des zones franches d'exportation sont également soumis à de nombreux abus. Ces zones représentent un important pourvoyeur d'emplois dans le pays et il convient d'y assurer le respect de la réglementation sur la durée du travail. Il est regrettable que la réforme du temps de travail soit intervenue sans aucune consultation des organisations syndicales représentatives et en dehors du processus de réforme globale du Code du travail en cours avec l'assistance du BIT, que le gouvernement s'était engagé à finaliser pour le 31 juillet 2015 dans le cadre du programme par pays de promotion du travail décent, couvrant la période 2015-2020. La nouvelle législation sur le temps de travail a été votée à la surprise générale lors d'une session parlementaire de nuit. Cette réforme ne tient par ailleurs aucunement compte de l'accord qui avait été obtenu dans le cadre de la réforme globale du Code du travail, entre-temps paralysée. Il est donc nécessaire de rappeler que le dialogue social et la négociation collective ont un rôle fondamental pour aboutir à des règles relatives au temps de travail qui sont portées par les partenaires sociaux et à travers eux une large part de la société. La réforme, passée en force par le gouvernement et approuvée unilatéralement par une frange des organisations d'employeurs, ne bénéficie pas du soutien des travailleurs. Les tentatives de passer sous silence les oppositions mettent en péril l'ordre démocratique haïtien et le gouvernement est invité à prendre l'engagement fort de ratifier la convention n° 144. Par ailleurs, les membres travailleurs partagent la profonde préoccupation de la commission d'experts quant à la non-communication des rapports par le gouvernement qui doit veiller à respecter ses obligations constitutionnelles. En outre, il est regrettable que du fait du retard pris dans la constitution de la délégation haïtienne le délégué travailleur titulaire n'ait pas pu prendre part à l'examen du cas. Il s'agit d'une négligence de la part du gouvernement vis-à-vis de ses obligations à l'égard de l'OIT et une plainte a été introduite auprès de la Commission de vérification des pouvoirs. Les membres travailleurs condamnent les menaces et pressions que subissent les syndicalistes en Haïti. Le gouvernement doit prendre toutes les mesures afin d'assurer un environnement propice à l'expression libre des opinions syndicales et la sécurité de tous les militants syndicaux pour que ceux-ci puissent exercer leur activité syndicale en toute liberté et sans crainte de représailles et afin que l'ordre démocratique haïtien puisse être sauvegardé. Les membres travailleurs regrettent que les membres employeurs aient encouragé le gouvernement à dénoncer les conventions relatives au temps de travail ratifiées et aient remis en question la pertinence des normes

internationales du travail relatives au temps de travail. L'examen d'un cas individuel par la commission ne peut avoir pour objet d'évaluer la pertinence des normes examinées et doit se tenir à évaluer leur correcte application en droit comme en pratique dans le pays concerné. Les membres travailleurs rappellent les conclusions de la Réunion tripartite d'experts de l'OIT sur l'aménagement du temps de travail (octobre 2011) qui indiquent clairement que les normes actuelles de l'OIT relatives au temps de travail sont toujours d'actualité et qu'elles doivent être encouragées dans le but de faciliter le travail décent.

The Employer member of Malawi, speaking on behalf of the Employer member of Haiti in her absence, noted that, while the provisions of the new Act on working time were not as precise as the repealed provisions of the Labour Code, enterprises were obliged to respect the provisions of Conventions Nos 1, 14, 30 and 106 ratified by Haiti since those provisions were legally binding and took precedence over domestic laws by virtue of article 276-2 of the Haitian Constitution. Moreover, the application decree of the Act on working time having not yet been published, the articles of the Labour Code still applied in Haiti. The speaker considered that Conventions Nos 1 and 30 on hours of work did not fully reflect the modern realities of working time. The low rates of ratification of these two Conventions were due to the increased need for flexibility in today's work environment. Countries reverted more frequently to collective or individual labour agreements to address their specific needs on working time. The speaker indicated that, while awaiting the promulgation of the new Labour Code, the Employers in Haiti were determined to continue to engage in tripartite dialogue with a view to adopting the operational framework necessary to ensure conformity with the international instruments ratified by Haiti. He seized the opportunity to thank the ILO for the continuous technical support provided to Haiti and for its role as facilitator in the tripartite dialogue conducted to resume the work on the reform of the Labour Code.

Le membre travailleur d'Haïti a indiqué que la situation qui prévaut actuellement dans le monde du travail en Haïti est très préoccupante. Se référant spécialement au travail domestique et au secteur informel, l'orateur a dénoncé des conditions de travail injustes tant au regard de la durée du temps de travail qu'en matière de droit au congé ou au préavis en cas de révocation. S'agissant de la situation des agents de sécurité et des travailleurs des entreprises de sous-traitance dans le secteur textile, il est à déplorer l'absence d'horaires de travail fixes et le refus du paiement des heures supplémentaires par les employeurs, et ce avec la complicité du gouvernement. L'orateur a appelé l'attention de la commission sur la violation flagrante des conventions nos 1, 14, 30 et 106, portant sur le temps de travail, ainsi que de la convention n° 81 relative à l'inspection du travail. L'inspection du travail en Haïti manque de moyens et de capacités. Bien que le BIT ait contribué au renforcement des capacités d'un groupe d'inspecteurs, ceux-ci sont souvent empêchés d'agir en toute neutralité et font l'objet de nombreuses pressions. La nouvelle loi, adoptée sous l'impulsion des employeurs, montre le mépris du gouvernement envers ses engagements auprès de l'OIT. Elle permet aux employeurs de forcer les travailleurs et travailleuses à faire des heures supplémentaires, occasionnant des cas d'abus graves, tels que l'exercice de pressions psychologiques et l'émergence du travail forcé. Le gouvernement a décidé d'amender unilatéralement le Code du travail en abrogeant certains articles alors qu'il avait sollicité et obtenu une assistance technique du BIT dans le cadre de la réforme globale de ce code et que la finalisation de cette réforme était une priorité en termes de résultats à atteindre dans le cadre du programme par pays de promotion du travail décent. Les syndicats haïtiens exigent la reprise du processus de réforme du Code du travail qui doit respecter en matière de temps de travail l'esprit et la lettre des conventions nos 1, 14, 30 et 106. L'orateur espère que les engagements pris dans le cadre du récent accord signé sous les auspices du BIT seront respectés, et sollicite de l'OIT un suivi étroit et rigoureux de l'application par Haïti des conventions ratifiées relatives au temps de travail.

The Government member of Bulgaria speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Serbia, the former Yugoslav Republic of Macedonia, and Norway, noted the timeliness of the discussion of this case following the debate on the General Survey on working time instruments. Working hours and rest periods were central to the employment relationship and had important consequences for both workers and employers. Haiti was the largest recipient of bilateral EU development assistance in Latin America and the Caribbean. The speaker recalled the commitment made by Haiti under the Cotonou Agreement (the framework for cooperation with the EU) to respect democracy, the rule of law and human rights principles. She noted with great concern that the new Act repealed most of the provisions of the Labour Code giving effect to the ratified Conventions on working time and that it did not give effect to important matters covered by these Conventions, including on central issues such as the maximum number of working hours per day and the principle of weekly rest. She also expressed concern over the observations of the Confederation of Public and Private Sector Workers (CTSP) regarding non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest as well as the absence of resources of the labour inspection services to take effective action to combat violations. The Government was urged to complete the reform of the Labour Code

in consultation with the social partners and to ensure that it was in full conformity with ILO Conventions. The Government was also requested to ensure in practice that workers benefit from the protection afforded by Conventions on working time and to take the necessary measures to carry out labour inspections to make this protection effective. The Government was strongly encouraged to continue to avail itself of ILO technical assistance and to comply with its reporting obligations. The EU and its Member States would continue to support Haiti in its efforts to comply with ILO Conventions.

Un observateur représentant la Confédération syndicale internationale (CSI) s'est référé au programme par pays de promotion du travail décent, signé par le gouvernement haïtien, les employeurs, les travailleurs et le BIT en 2015, et dont le premier résultat visait la reprise du processus de révision du Code du travail qui devait être finalisé le 31 juillet 2015. Au lieu de cela, la loi portant organisation et réglementation du travail sur la durée de vingt-quatre heures, répartie en trois tranches de huit heures a été adoptée en août 2017, loi qui viole les principes fondamentaux en matière de travail et met en péril la conformité de la législation nationale avec les normes internationales en la matière. Une réglementation stricte du temps de travail permet de garantir une vie décente, un équilibre dans la répartition du temps entre les espaces professionnels et privés, la préservation de la santé, l'absence de travail forcé et une rémunération en accord avec les efforts consentis. L'adoption de la nouvelle loi sur le temps de travail représente donc un recul considérable et un mépris du travail accompli dans le cadre de l'OIT et des engagements pris en termes de dialogue social et du tripartisme. Cette loi a des impacts considérables, notamment pour les travailleurs les plus vulnérables. La négociation du temps de travail sur une base individuelle et non collective ouvre les portes, dans la pratique, au renforcement du pouvoir illimité des employeurs, à l'augmentation de la pression patronale en matière d'accroissement du temps de travail et à des sanctions vis-à-vis des travailleurs qui n'acceptent pas de se soumettre aux besoins des entreprises. La situation est d'autant plus préoccupante que l'inspection du travail ne fonctionne pas, n'a pas de capacités ou de moyens et est parfois corrompue. En outre, la loi supprime la condition selon laquelle les organisations syndicales représentatives doivent être consultées sur les questions relatives aux dérogations possibles en matière de durée du travail. La loi viole aussi le principe du repos hebdomadaire et diminue dramatiquement le niveau des salaires. L'orateur a regretté l'attitude complaisante du gouvernement qui a décidé de faire corps avec les employeurs pour violer les conventions internationales et a exigé que l'Etat haïtien respecte les droits fondamentaux des travailleurs et travailleuses, notamment en reprenant le processus de réforme du Code de travail et en respectant les accords déjà pris à ce sujet.

El miembro trabajador de la República Dominicana señaló que el manejo de las relaciones laborales en Haití se hace a expensas del respeto de importantes convenios de la OIT. Expresó que cuando hay alto desempleo y pobreza en un país se suele priorizar la creación de empleo en desmedro del trabajo decente, mientras el trabajo decente es fuente de superación de la pobreza. Indicó que cuando trabajadores en el sector de la maquila o en las zonas francas de exportación demandan una reforma laboral verdadera como la que está actualmente interrumpida en Haití, se considera que alejan la posibilidad de inversión extranjera en el país. En opinión del orador, una inversión que se basa en la pobreza de los trabajadores no tiene sentido y debe ser rechazada. Pidió al Gobierno que respete los convenios y continúe con las reformas laborales iniciadas, sin someterse a las reglas sobre condiciones laborales impuestas por las empresas que contrarían los convenios de la OIT.

La membre travailleuse de l'Italie a rappelé que, après avoir obtenu l'assistance technique de l'OIT en vue de la réforme du Code du travail, Haïti a signé le programme par pays de promotion du travail décent 2015-2020, dans le cadre de négociations tripartites sous les auspices du BIT. Bien que ce programme ait prévu que la révision du Code du travail devait être finalisée en juillet 2015, le gouvernement a préféré adopter la loi portant organisation et réglementation du travail sur la durée de vingt-quatre heures, répartie en trois tranches de huit heures, qui abroge un nombre d'articles du Code du travail, renforce le pouvoir des employeurs et ne réglemente pas les heures supplémentaires. Cette loi qui contrevient à toutes les conventions de l'OIT sur le temps de travail élimine la nécessité de consultations des organisations syndicales représentatives pour les décisions relatives au temps de travail et sacrifie le principe du repos hebdomadaire. En outre, la perte de 50 pour cent de la majoration pour le travail de nuit et, de manière plus générale, l'augmentation de la durée du temps de travail ont un impact dramatique sur la diminution considérable des salaires, plongeant les travailleurs et leurs familles dans une plus grande misère. Bien que dans le cadre de l'assistance technique du BIT l'inspection du travail ait bénéficié d'une formation technique et d'un renforcement de ses capacités, les dysfonctionnements du ministère des Affaires sociales et du Travail et le manque de moyens la mettent dans une situation d'impuissance face aux employeurs. L'oratrice a dénoncé les dérives du gouvernement en matière de respect des droits fondamentaux du travail et le mépris dont il fait preuve pour ses engagements concernant les conventions de l'OIT. Elle a appelé à la reprise du processus de réforme du Code du travail dans le respect total du tripartisme.

An observer representing IndustriALL Global Union stated that for workers in the Haitian garment industry, ILO standards on working hours and the 48-hour working week were unfortunately meaningless concepts. They were working long hours in order to survive on starvation wages. When overtime was paid, it was almost always below the legal rate. The failure of the Government to uphold international standards and national laws was giving factories and their multinational customers free reign to steal wages and the lives from some of the world's poorest workers. The introduction of the new Act on working time, which repealed existing standards on overtime, weekly rest, Sunday pay and night time rates, only made matters worse. In May of 2017, the workers of 22 garment factories went on strike to demand higher wages. Dozens of union leaders and members had yet to be reinstated, and were even blacklisted, in spite of very clear recommendations following an investigation by the ILO's Better Work Programme. Finally, the speaker stated that without better wages and respect for workers and union rights, the ILO Conventions on hours of work would remain on the wish list and there would be no lasting social peace in Haiti's garment industry.

El miembro trabajador del Uruguay estimó que tratar el caso del cumplimiento por parte de Haití de los convenios sobre tiempo de trabajo desde un punto de vista técnico y pedirles a los trabajadores haitianos que se adapten a los nuevos tiempos es negar que se trata de una tragedia humanitaria. Opinó que la solución a los problemas reside en el diálogo social. Indicó que era necesario ayudar a Haití a retomar el camino del diálogo social con el objetivo de lograr el trabajo decente. Solicitó que se tratara el caso de Haití desde este enfoque.

Le représentant gouvernemental a pris note des remarques et des recommandations faites dans un esprit constructif lors de la discussion. Il a réitéré la volonté du gouvernement de respecter ses engagements internationaux et de poursuivre le dialogue dans un cadre tripartite. L'arrêt d'application de la nouvelle loi n'ayant pas été publié, une solution consensuelle est encore possible. L'accord signé entre les partenaires sociaux en mars 2018 est un cadre idéal pour poursuivre les discussions. Il a demandé l'assistance technique du BIT pour accompagner ce processus.

Les membres travailleurs ont salué la volonté du gouvernement de travailler à la mise en conformité de sa législation relative au temps de travail avec les conventions internationales et ont exprimé l'espoir que cette volonté se traduira par des actions concrètes sur le terrain. Les questions relatives au temps de travail sont essentielles. Les actions suivantes pourraient utilement être prises par le gouvernement pour rendre sa législation et sa pratique conformes aux conventions internationales relatives au temps de travail. Tout d'abord, garantir la consultation de l'ensemble des partenaires sociaux représentatifs afin de réviser la réglementation relative au temps de travail en vue de la mettre en conformité avec les conventions n^{os} 1, 14, 30 et 106. Suite à l'accord intervenu en mars 2018 avec les partenaires sociaux en vue de relancer le dialogue social, la consultation de l'ensemble des partenaires sociaux pourra utilement se faire dans le cadre de la réforme globale du Code du travail qui a été interrompue. Ceci permettra au gouvernement haïtien de remplir l'engagement pris, dans le cadre du programme par pays de promotion du travail décent 2015-2020, de finaliser cette réforme globale. Les membres travailleurs invitent le gouvernement haïtien à relancer ce processus en étroite collaboration avec le BIT. Il conviendra que le gouvernement travaille, avec le concours de l'ensemble des partenaires sociaux, sur un certain nombre de points. Ainsi, à défaut de dérogations inscrites dans la législation, il conviendra d'appliquer et de faire respecter le principe de la journée de 8 heures et de déclarer illégales les dérogations appliquées en pratique. De plus, il conviendra de réintroduire une liste limitative des cas dans lesquels la prestation d'heures supplémentaires est justifiée, ainsi que des limites à la prestation d'heures supplémentaires. La disparition du Code du travail d'une mention explicite au principe du repos hebdomadaire minimum de 24 heures consécutives qui coïncideront de préférence avec le dimanche et qui devront être accordées en même temps à tout le personnel d'un même établissement est un manquement aux obligations prévues par les conventions. Il conviendra donc de réintroduire ce principe dans le Code du travail. Le gouvernement doit veiller à prévoir, dans sa législation et en pratique, une consultation des partenaires sociaux au sujet de tout projet de réforme portant sur ces éléments. Il conviendrait de supprimer la possibilité prévue dans la législation de négocier individuellement entre le travailleur et l'employeur les dérogations à la durée journalière maximale de travail. La négociation individuelle sur des questions aussi importantes que le temps de travail est extrêmement délicate au vu du caractère fondamentalement asymétrique du contrat de travail, l'employeur ayant un pouvoir d'autorité sur le travailleur. Des services d'inspection efficaces sont une condition sine qua non d'une législation du temps de travail respectée dans la pratique. Il conviendra dès lors de doter les services d'inspection d'effectifs et de moyens matériels et financiers suffisants. Une formation adéquate des inspecteurs en matière de temps de travail et des normes internationales est également essentielle. Le gouvernement devra respecter et faire respecter l'indépendance des services d'inspection. Il conviendra également d'accorder une attention particulière au respect de la réglementation du temps de travail dans le secteur informel et dans les zones franches d'exportation qui occupent une grande majorité des travailleurs haïtiens, en s'assurant notamment que les services d'inspection soient compétents pour y contrôler l'application de la législation. Ce cas montre que l'absence de rapport de la part d'un

gouvernement ne lui permet pas d'échapper aux organes de contrôle de l'OIT. Les membres travailleurs prient le gouvernement de faire parvenir ses rapports conformément à ses obligations constitutionnelles. Les violences et intimidations envers les militants syndicaux rapportées sont inacceptables. Les membres travailleurs insistent auprès du gouvernement afin qu'il fasse cesser toute manœuvre d'intimidation à l'égard des représentants syndicaux en Haïti, qu'il diligente des enquêtes et condamne les auteurs à des sanctions effectives et dissuasives. Il est important que les militants syndicaux puissent exercer leurs activités librement et sans craintes de représailles. En vue de réaliser toutes ces recommandations, le gouvernement est exhorté à avoir recours à l'assistance technique du BIT. En réponse à la remarque concernant le faible nombre de ratifications des conventions à l'examen, qui serait dû au manque de flexibilité de ces conventions, les membres travailleurs ont indiqué que celui-ci est le signe qu'une large campagne de ratification de ces instruments adoptés de façon tripartite est nécessaire afin que les Etats Membres soient sensibilisés aux principes contenus dans ces normes mais également à la flexibilité que ces instruments permettent.

The Employer members stated that it was clear that Haiti was not immune to the realities of a changing world of work, which required more modern, flexible and responsive regulating measures. They wished to make clear that, far from encouraging the Government not to comply with ratified Conventions, Haiti needed to comply with all international obligations voluntarily assumed. They pointed out that the only way for a Government to escape compliance with a ratified Convention was to denounce the Convention when the window for denunciation opened. They urged the Government to continue with the reform process, in collaboration with social partners and under the guidance of the ILO, in order to comply with its obligations under ratified Conventions. Finally, they urged the Government to seek technical assistance from the ILO to rectify the situation of serious failure to comply with its reporting obligations.

Conclusions

La commission a pris note des informations fournies par le représentant gouvernemental et de la discussion qui a suivi. La commission s'est dite préoccupée par plusieurs dispositions législatives figurant dans la loi de 2017 sur le temps de travail qui ne sont pas conformes aux conventions ratifiées sur le temps de travail. La commission a noté que le décret d'application de la nouvelle loi n'a pas été promulgué et que le Code du travail reste d'application. La commission a noté avec regret que la réforme globale du Code du travail n'a pas été finalisée.

Prenant en compte les déclarations du gouvernement et la discussion du cas qui a suivi, la commission a prié instamment le gouvernement:

- **d'examiner, en consultation avec les organisations d'employeurs et de travailleurs les plus représentatives, la conformité du Code du travail et de la loi sur le temps de travail avec les conventions ratifiées de l'OIT sur le temps de travail;**
- **de renforcer l'inspection du travail et les autres mécanismes de contrôle pertinents pour garantir que les travailleurs bénéficient de la protection prévue dans les conventions; et**
- **de faire rapport à la commission d'experts sur ces mesures.**

La commission demande au gouvernement de se prévaloir d'une assistance technique pour traiter ces problèmes. Elle demande au gouvernement de soumettre sans délai tous les rapports dus à la commission d'experts, et d'inclure un rapport détaillé sur les mesures prises pour mettre en œuvre ces conclusions en vue de son examen à la prochaine session de la commission d'experts en novembre 2018.

La représentante gouvernementale a déclaré que la délégation haïtienne avait pris bonne note des discussions et des conclusions adoptées par la Commission de la Conférence et partageait l'avis de la commission d'experts dans son étude d'ensemble selon lequel «le nombre d'heures de travail et les modalités de l'organisation du travail peuvent avoir une profonde influence non seulement sur la qualité du travail, mais aussi sur la vie privée des travailleurs, leur santé physique et mentale, leur bien-être, leur sécurité, au travail mais aussi au cours du trajet entre travail et domicile, et sur leurs revenus». Les conventions ratifiées par Haïti faisaient partie du corpus juridique interne conformément à l'article 276-2 de la Constitution haïtienne, étant au-dessus des textes nationaux dans la hiérarchie des normes et pouvant être invoquées sans réserve devant les tribunaux. Prenant note des observations

de la commission d'experts concernant l'application de la loi du 7 août 2017 sur la répartition du temps de travail, l'Etat haïtien envisageait la réalisation de consultations tripartites en vue d'identifier et d'adresser les principales difficultés rencontrées dans l'application de la loi, ainsi que l'adoption d'arrêtés ou de mesures réglementaires qui pourraient préciser le champ d'application respectif. Par ailleurs, le gouvernement était conscient du retard enregistré dans la finalisation du processus de réforme du Code du travail; les discussions avaient été entamées au niveau de la primature et se poursuivraient dans un cadre tripartite, dans l'esprit de l'Accord de San José du 21 mars 2018 et en tenant compte des recommandations du Bureau.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed. The Committee expressed concern over a number of legislative provisions stipulated in the 2017 Act on working time, which are not in conformity with the ratified Conventions on working time. The Committee noted that the application decree of the new law has not been published and that the Labour Code continues to apply. The Committee noted with regret that the comprehensive reform of the Labour Code has not been finalized.

Taking into account the Government's submissions and the discussion of the case that followed, the Committee urged the Government to:

- review in consultation with the most representative employers and workers organizations the conformity of the Labour Code and the Act on working time, with respect to the ratified ILO Conventions on working time;
- strengthen the labour inspectorate and other relevant enforcement mechanisms to ensure that workers benefit from the protection afforded by the Conventions; and
- report to the Committee of Experts on these measures.

The Committee calls on the Government to avail itself of technical assistance to address these matters. The Committee calls on the Government to submit without delay all the reports due to the Committee of Experts and include a detailed report on the measures taken to implement these conclusions to the next meeting of the Committee of Experts in November 2018.

Conclusiones

La Comisión tomó nota de la información suministrada por el representante gubernamental y del debate que se celebró a continuación. La Comisión expresó su preocupación por una serie de disposiciones de la Ley sobre el Tiempo de Trabajo, de 2017, que no están de conformidad con los convenios ratificados sobre el tiempo de trabajo. La Comisión tomó nota de que no se ha publicado el decreto de aplicación de la nueva ley y de que el Código del Trabajo continúa aplicándose. La Comisión lamentó tomar nota de que no se ha finalizado la reforma integral del Código del Trabajo.

Teniendo en cuenta la información proporcionada por el Gobierno y la discusión del caso que tuvo lugar a continuación, la Comisión instó al Gobierno a que:

- revise, en consulta con las organizaciones más representativas de empleadores y de trabajadores, la conformidad del Código del Trabajo y de la Ley sobre el Tiempo de Trabajo con los convenios de la OIT sobre el tiempo de trabajo que han sido ratificados;
- fortalezca la inspección del trabajo y otros mecanismos de control del cumplimiento pertinentes para velar por que los trabajadores se beneficien de la protección que brindan los convenios, e
- informe a la Comisión de Expertos sobre estas medidas.

La Comisión insta al Gobierno a que recurra a la asistencia técnica de la OIT para abordar estas cuestiones. Asimismo, la Comisión exhorta al Gobierno a que transmita sin demora a la Comisión de Expertos todas las memorias debidas, y a que presente a la siguiente reunión de la Comisión de Expertos, en noviembre de 2018, una memoria detallada sobre las medidas adoptadas para aplicar estas conclusiones.

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

Honduras (ratificación: 1956)

Honduras (ratification: 1956)

Honduras (ratification: 1956)

El Gobierno ha comunicado la siguiente información por escrito.

Derechos Sindicales y Libertades Públicas

El Gobierno ha tomado nota con profunda preocupación de los anteriores y nuevos alegatos de supuestos «numerosos crímenes antisindicales», incluyendo varios «homicidios y amenazas de muerte», ocurridos entre 2010 y 2014. Como es de conocimiento de la comunidad internacional, la violencia y la inseguridad son problemas muy profundos y de graves consecuencias para la sociedad hondureña, por ello, la actual administración hace enormes esfuerzos para remover estos obstáculos, fortaleciendo las instituciones e implementando diversas acciones y medidas, que en su conjunto han permitido obtener avances en esta materia. En este sentido, entre otras acciones que se explicarán más adelante, el Gobierno en el Marco estratégico institucional (2015-2022) de la Secretaría de Seguridad (SEDS) tiene como uno de sus objetivos, contribuir a la reducción de la impunidad, mediante el fortalecimiento de la Policía de Investigación Criminal, la Agencia Técnica de Investigación Criminal (ATIC) y se ha comprometido de manera especializada y exclusiva con el tema de los derechos humanos e impulsar la implementación de la política pública y el Plan Nacional de Acción en Derechos Humanos (PNADH), para lo cual se crea la Secretaría de Estado en el Despacho de Derechos Humanos que funciona desde enero de 2018. Las cifras de homicidios al 2016 reflejan una tendencia a la baja, reduciendo en 27 puntos la tasa de homicidios por cada 100 000 habitantes respecto a 2011. Datos más recientes indican que al cierre de 2017 se alcanzó una tasa de homicidios de 42,7 por cada 100 000 habitantes.

Información de la evolución de las investigaciones y los procesos penales correspondientes a cada caso concreto

Cuadro de casos

Núm.	Nombre de la víctima	Núm. exp.	Fecha de muerte/ denuncia	Delito	Estado del proceso
1	Alma Yaneth Díaz Ortega	546-/17 Judicial	27 de marzo de 2014	Asesinato	Judicializado
2	Uva Erlinda Castellanos Vigil	546-/17 Judicial	27 de marzo de 2014	Asesinato	Judicializado
3	Sonia Landaverde Miranda	Den. 4772-2013/ Lev. 1261-2013	21 de junio de 2013	Homicidio	En investigación
4	Alfredo Misaél Ávila Castellanos	0801-2013-0264	12 de diciembre de 2013	Homicidio	En investigación
5	Evelio Posadas Velásquez	636-20147	27 de febrero de 2014	Homicidio	Proceso de análisis para determinar requerimiento fiscal o ampliación de investigación
6	Juana Suyapa Posadas Bustillo	1819-10	2010	Homicidio	En investigación

Núm.	Nombre de la víctima	Núm. exp.	Fecha de muerte/ denuncia	Delito	Estado del proceso
7	Maribel Sánchez		2010	Homicidio	En investigación
8	Fredis Omar Rodríguez		27 de noviembre de 2013	Homicidio	En investigación
9	Claudia Larissa Brizuela	0801-2010	2010	Homicidio	En casación
10	Roger Abraham Vallejo	0801-2009-31202	31 de julio de 2009	Homicidio	En investigación
11	Martin Florencio		2014	Homicidio	En investigación
12	Félix Murillo López		17 de septiembre de 2009	Homicidio	En investigación
13	José Ángel Flores	139-2016	18 de octubre de 2016	Asesinato	Pendiente de ejecutar órdenes de captura
14	Silmer Dionisio George	139-2016	18 de octubre de 2016	Asesinato	Pendiente de ejecutar órdenes de captura
15	Moisés Sánchez		15 de abril de 2017	Secuestro	En investigación
16	Hermes Misael Sánchez		15 de abril de 2017	Secuestro	En investigación
17	Miguel Ángel López Murillo	1480968681-2016	5 de diciembre de 2016	Amenazas	Mecanismo de protección
18	Patricia Riera		agosto de 2016	Amenazas	Pendiente de presentación de denuncia
19	Ilse Ivania Velásquez Rodríguez	0801-2011-11149	19 de marzo de 2011	Homicidio culposo	Sentencia
20	Víctor Manuel Crespo Murcia	1377-13	14 de septiembre de 2014	Amenazas	En investigación
21	Víctor Manuel Crespo Puerto	11-2014	26 de enero de 2014	Homicidio culposo	Concluido
22	Berta Isabel Cáceres Flores	N. 21-2016 (TSJN 3-88-2017, TSJN 4-14-2018)	2 de marzo de 2016	Asesinato	Judicializado

Evaluación del avance

Como se puede apreciar, actualmente hay nueve (9) casos que ya han sido judicializados por delitos de orden público, y los mismos están: en fase de casación, sentencia definitiva, concluidos o con mecanismo de protección; de ellos, dos (2) casos son por accidentes de tránsito. Dos (2) casos, han avanzado hasta emitir órdenes de captura, en espera de que se ejecuten por la autoridad policial. Tres (3) casos por amenazas, no han interpuesto la denuncia en sede fiscal. Seis (6) casos por delitos de orden público están en investigación. Debe destacarse además, que siete líderes sindicales se encuentran acogidos y protegidos por el Mecanismo Nacional de Protección a Defensores de Derechos Humanos.

Artículos 2 y siguientes del Convenio núm. 87 relativos a la constitución, autonomía y actividades de las organizaciones sindicales

Reformas al Código del Trabajo

Cronología de acciones

El Gobierno de Honduras informa que desde hace varios años se siguió un proceso en busca de armonizar las reformas al Código del Trabajo con los Convenios núms. 87 y 98; por lo que a continuación se detallan las acciones realizadas con este propósito:

- a) El Código del Trabajo fue emitido mediante el decreto núm. 189 de 19 de mayo de 1959, dejando sin vigencia 18 decretos-ley que regulaban las relaciones laborales, constituyéndose en un único cuerpo legal.

- b) Entre 1960 y 1993, varios artículos del Código del Trabajo fueron modificados con el objeto de dar una correcta aplicación a los mismos y siempre para favorecer los derechos de los trabajadores.
- c) En 1993, bajo la asesoría de la Organización Internacional del Trabajo (OIT), fue constituida una comisión integrada por la representación de la empresa privada COHEP, la representación de los trabajadores por medio de las tres centrales obreras, la Confederación de Trabajadores de Honduras (CTH); la Central General de Trabajadores (CGT), y la Confederación Unitaria de Trabajadores de Honduras (CUTH) y la representación del sector gubernamental mediante la Secretaría de Estado en el Despacho de Trabajo y Previsión Social. El resultado del trabajo de la comisión tripartita fue la elaboración por consenso de un anteproyecto contentivo de un nuevo cuerpo legal que vendría a sustituir el Código del Trabajo vigente desde 1959. El anteproyecto fue entregado por la comisión tripartita al entonces Presidente de la República, Dr. Carlos Roberto Reyna.
- d) Las reformas propuestas favorecían a los trabajadores y mejorarían la aplicación de las normas del Código. Pese a haberse consensuado tales reformas, posteriormente los trabajadores acusaron, que de manera unilateral, sectores de la empresa privada pretendieron introducir reformas a la legislación laboral que buscaban la flexibilización y desregulación del trabajo. Por lo tanto el Gobierno de ese entonces decidió no someter las reformas al Congreso Nacional. Al no ser posible que las partes llegaran a un consenso en cuanto a las reformas y con el rechazo de que fueron objeto las reformas elaboradas por la comisión tripartita, la tendencia a la reforma del Código del Trabajo fue paralizada.
- e) En junio de 2013: una comisión técnica de la Secretaría de Trabajo y Seguridad Social (STSS) elaboró la propuesta de reforma de trece (13) artículos del Código del Trabajo para ponerlo en conformidad con el Convenio núm. 87 y cuatro (4) artículos adicionales para ajustarlos al Convenio núm. 98. La Secretaría de Trabajo y Seguridad Social, remitió la propuesta de reformas a la Oficina Subregional de la OIT, San José, Costa Rica, con el objeto de obtener la opinión técnica de la OIT.
- f) En marzo de 2014: la Secretaría de Trabajo y Seguridad Social recibió los comentarios a la propuesta de armonización del Código del Trabajo con los Convenios núms. 87 y 98 de la OIT, procedentes del Departamento de Normas Internacionales del Trabajo, sede Ginebra.
- g) En marzo-abril de 2014: la Secretaría de Trabajo y Seguridad Social, presentó en forma individual a los sectores empleador y trabajador la propuesta de armonización del Código del Trabajo (reuniones con cada una de las centrales obreras: CGT, CTH, CUTH y con la representación de la empresa privada COHEP).
- h) En abril de 2014: se atendió la misión de contacto de la OIT en el marco del Consejo Económico Social (CES).
- i) En mayo de 2014: se remitió la propuesta de armonización del Código del Trabajo con los Convenios núms. 87 y 98 de la OIT, al CES.
- j) En mayo de 2014: se aprobó por parte del CES la Hoja de ruta para la discusión y aprobación de la propuesta de armonización del Código del Trabajo, tomando en cuenta las recomendaciones de la Comisión de Expertos de la OIT.
- k) En septiembre de 2014: informe de la misión de contactos – la misión de contactos directos también tuvo conocimiento del comunicado de fecha 7 de abril de 2014, en el que la CGT, la CUTH y la CTH exponían su reserva respecto a la consideración por el Poder Legislativo de eventuales reformas al Código del Trabajo, habida cuenta de los antecedentes existentes, y del temor que dichas reformas impliquen «mayores retrocesos en materia de derechos laborales y beneficios para el gran capital».

Situación actual de las reformas al Código del Trabajo

- a) El Gobierno de Honduras reitera su voluntad política, de adoptar las acciones conducentes para materializar las reformas al Código del Trabajo vigente, de tal forma de armonizarlo con los convenios ratificados con la OIT, proceso que se ha venido realizando de forma gradual mediante el diálogo social y de forma tripartita en el CES tal y como sucedió con el capítulo III del mismo, referente a la nueva Ley de Inspección del Trabajo, decreto núm. 178-2016, de 23 de enero de 2017 y publicado en el *Diario Oficial La Gaceta*.
- b) En atención a las reformas pendientes para armonizar el Convenio núm. 87 y recordando lo sucedido en 2014 donde las centrales de trabajadores expresaron sus reservas, como ya es de conocimiento de la OIT, la

Secretaría de Trabajo y Seguridad Social está elaborando una nueva propuesta retomando los articulados dejados en suspenso en 2014, para que sirvan de línea base en las discusiones.

- c) En ese sentido, el Gobierno asume su compromiso de someter de nuevo en el seno del CES la discusión de las reformas pendientes y asimismo elaborar una Hoja de ruta que permita continuar con la armonización del Código al Convenio núm. 87 en busca de que se logre el consenso para, de esa manera, someter las reformas al Congreso Nacional previa opinión de la Corte Suprema de Justicia.
- d) En este caso se solicita de nuevo la asistencia y el acompañamiento técnico requerido de la OIT.

Aplicación del Convenio en la práctica (nuevas inscripciones sindicales que se vayan registrando)

El Gobierno de Honduras informó en la memoria anterior (2017), que se han presentado varias solicitudes para el otorgamiento de las personalidades jurídicas, siendo 25 inscritas desde 2014 a mayo de 2017, las cuales se detallan a continuación:

- a) En 2014, se inscribieron cinco personalidades jurídicas privadas y cero del sector público.
- b) En 2015, se inscribieron seis personalidades jurídicas todas del sector privado.
- c) En 2016, se otorgaron ocho personalidades jurídicas, seis del sector privado y dos del sector público.
- d) En 2017, se otorgaron seis del sector privado.

Por lo que las nuevas inscripciones sindicales de mayo de 2017 a marzo de 2018 solamente han sido dos, haciendo un total de 27 personalidades jurídicas inscritas del período de 2014 a marzo de 2018. Finalmente el Gobierno de Honduras, quiere reafirmar que todo este esfuerzo, evidencia el respeto y cumplimiento por los convenios y la normativa laboral vigente y particularmente que no existe ninguna política de persecución y violencia antisindical desde el Estado y que desafortunadamente los casos que aparecen mencionados en el informe, forman parte de la violencia que por distintas causas afectan a la hondureñidad en general.

Además, ante la Comisión **un representante gubernamental** reiteró las informaciones comunicadas por escrito y declaró que, en relación a los derechos sindicales y libertades públicas, se ha tomado nota con profunda preocupación de anteriores y nuevos alegatos de supuestos «numerosos crímenes antisindicales», incluyendo homicidios y amenazas de muerte entre 2010 y 2014. La violencia y la inseguridad son problemas muy graves de la sociedad hondureña y se han hecho esfuerzos en el contexto del Marco estratégico institucional para mejorar su institucionalidad y reforzar los órganos de policía y de investigación criminal. Según los datos de 2017, el índice de homicidios ha bajado y siete líderes sindicales se encuentran acogidos y protegidos por el Mecanismo Nacional de Protección a Defensores de Derechos Humanos. En relación al artículo 2 y siguientes del Convenio relativos a la constitución, autonomía y actividades de las organizaciones sindicales, los distintos intentos de reforma del Código del Trabajo, en particular el proyecto de reforma de 1993 y el de 2014 no fueron finalmente aprobados. En este sentido, el Gobierno asume el compromiso de presentar de nuevo al CES la discusión de las reformas pendientes y asimismo elaborar una Hoja de ruta que permita continuar con la armonización del Código con el Convenio. Destacó asimismo que en la evaluación de avances en los casos cuya información solicitó la Comisión de Expertos: 1) actualmente hay nueve casos que han sido judicializados por delitos de orden público y los mismos están en fase de casación, sentencia definitiva, concluidos o con mecanismo de protección; de ellos dos casos son por accidentes de tránsito; 2) dos casos han avanzado; se han emitido órdenes de captura y se está a la espera de que se ejecuten por la autoridad policial; 3) no se ha interpuesto denuncia en sede fiscal en relación a los tres casos por amenazas; 4) seis casos por delitos de orden público están en etapa de investigación. Finalmente, el representante gubernamental reiteró la solicitud de asistencia y el acompañamiento técnico de la Oficina, y reafirmó que todo el esfuerzo desplegado evidencia el deseo de dar cumplimiento a los convenios y a la normativa laboral y, particularmente, que no existe una política de persecución y violencia antisindical desde el Estado. Los distintos casos a los cuales se refiere la Comisión de Expertos forman parte de la violencia que por distintas causas afectan a la hondureñidad en general.

Los miembros trabajadores señalaron que durante años el Gobierno ha cometido violaciones graves y sistemáticas contra el derecho a la libertad sindical. La Comisión de Expertos ha introducido una doble nota de pie de página a este caso, lamentando profundamente el alto grado de violencia antisindical y expresando su profunda

preocupación ante la situación de impunidad en relación a los autores de estos crímenes y la falta de protección efectiva para los sindicalistas amenazados por la violencia. El Gobierno no tomó medidas concretas para asegurar que su legislación laboral cumpla debidamente con el Convenio ni tampoco aplicó efectivamente su legislación vigente. El Gobierno también aprobó recientemente una enmienda al Código Penal que podría criminalizar las protestas sociales en tanto que actos de terrorismo. Como resultado, los trabajadores y los sindicatos de todo el país se enfrentan a obstáculos abrumadores para ejercer uno de los derechos fundamentales, a saber, el derecho de huelga. Honduras se sitúa entre los países más peligrosos del mundo para los trabajadores y los sindicalistas. Desde 2010, 14 sindicalistas han sido asesinados. Entre 2015 y 2017, la Red Contra la Violencia Sindical documentó 46 casos de violencia antisindical y un total de 69 víctimas. Además, muchos sindicalistas sufren agresiones físicas brutales, amenazas de muerte, desapariciones forzadas y persecución. Por ejemplo, desde 2015, la Sra. Juárez, presidenta del Sindicato de Trabajadores de Servicios Municipales, Comunales y Afines (SITRASEMCA), vive en constante temor por su vida luego de haber recibido amenazas y haber escapado a un intento de secuestro en abril de 2017. Los actos de violencia crean un clima de terror, que en la práctica asfixia la representación de los trabajadores y las actividades sindicales en el país. Los sindicalistas también han sido blanco de violencias en el contexto posterior a las elecciones de 2017. En diciembre, por ejemplo, los trabajadores que participaban en una protesta pacífica en la Colonia Arellano organizada por sindicatos del sector maquilador fueron atacados por la policía militar para obligarlos a dispersarse. Tres sindicalistas resultaron heridos por disparos y uno falleció. La inacción del Gobierno para hacer frente e impedir los crímenes antisindicales, crea un clima de total impunidad. El Gobierno no hace progresos para llevar ante la justicia a los responsables del asesinato de sindicalistas. Por ejemplo, los asesinatos de los Sres. Sonia Landaverde Miranda, Alfredo Misael Ávila Castellanos, Evelio Posadas Velásquez, Roger Abraham Vallejo y Juana Suyapa Bustillo siguen investigándose. Pese a que se llevaron a cabo arrestos, no se ha detenido a nadie en relación con los asesinatos de las Sras. Alma Yaneth Díaz Ortega y Uva Erlinda Castellanos Vigil, acaecidos hace cuatro años. El Gobierno no proporciona información a la Comisión de Expertos sobre sus esfuerzos para investigar los asesinatos de los Sres. Maribel Sánchez, Fredis Omar Rodríguez, Claudia Larissa Brizuela, Martín Florencio y Félix Murillo López. Los miembros trabajadores deploraron el asesinato de los Sres. José Ángel Flores y Silmer Dionisios George en 2016, pese a beneficiarse de medidas cautelares de la Comisión Interamericana de Derechos Humanos, luego de graves y reiteradas amenazas de muerte. Estos asesinatos demuestran claramente que la protección que ofrece el Gobierno es totalmente inadecuada.

Además de la violencia antisindical, en 2017 el Gobierno aprobó una enmienda al Código Penal, que criminaliza una amplia diversidad de actividades como actos de terrorismo. Un dirigente sindical podría ser acusado del delito de terrorismo si su sindicato participa en una protesta social considerada posteriormente por un fiscal como una subversión del orden constitucional. Teniendo en cuenta los acontecimientos ocurridos en los últimos años y el reciente contexto postelectoral en el que los sindicatos desempeñan un papel central en las protestas sociales, esta legislación que está en total disconformidad con los instrumentos internacionales sobre el tema del terrorismo, puede utilizarse fácilmente para criminalizar todo ejercicio legítimo del derecho a la libertad sindical por parte de los sindicatos. La situación en el país se ve agravada por numerosas e importantes lagunas en la legislación nacional que niegan los derechos sindicales fundamentales a los trabajadores. Durante más de treinta años, la Comisión de Expertos solicitó la modificación del Código del Trabajo. Por ejemplo, la Comisión de Expertos señala que se niega el derecho de libertad sindical a los trabajadores de las empresas agrícolas que no emplean permanentemente a más de diez trabajadores. El sector de la agricultura es el sector más grande del país y emplea el 27 por ciento de la fuerza de trabajo (más de 1 millón de trabajadores). La organización de estos trabajadores se ve obstaculizada por el requisito legislativo de contar con más de 30 trabajadores para establecer un sindicato, lo que impide la creación de sindicatos en las pequeñas y medianas empresas. Los trabajadores no pueden elegir a sus representantes con plena libertad. Los representantes sindicales deben ser de nacionalidad hondureña, participar en la actividad correspondiente y saber leer y escribir. Las disposiciones que regulan las huelgas son de naturaleza tan restrictiva que dejan sin efecto el derecho de huelga, privando a los trabajadores y a los sindicatos de un medio fundamental para defender sus intereses. Estos requerimientos incluyen contar con una mayoría de dos tercios del número total de miembros de la organización sindical, la prohibición a federaciones y confederaciones de convocar huelgas y el cumplimiento de excesivos requisitos previos para las huelgas en los servicios públicos que no son esenciales en el sentido estricto del término. En la práctica, los trabajadores de todo el país son víctimas de graves violaciones de su derecho a la libertad sindical. Por ejemplo el Sindicato de Trabajadores de la Agroindustria y Similares (STAS) presentó una queja contra un empleador del sector del aceite de palma que no pagaba el salario mínimo ni proporcionaba las prestaciones requeridas a sus trabajadores. En múltiples ocasiones, los empleadores se negaron a permitir que los inspectores de trabajo accedieran a los lugares de trabajo y despidieron a 18 trabajadores que intentaron formar un sindicato local del STAS. Los despidos provocaron una huelga de 160 trabajadores y en noviembre la empresa despidió a otros 80 trabajadores afiliados al sindicato. Varios trabajadores en huelga fueron agredidos por guardias de seguridad privados y amenazados con la cárcel mientras caminaban pacíficamente en un piquete frente a las oficinas de una empresa. Se tomaron medidas para disolver el sindicato, en cuanto la ley permite la disolución como castigo en caso de que una huelga se declare ilegal, lo que

también resulta en una violación del Convenio. El Gobierno no disolvió el sindicato, pero casi todos los activistas sindicales despedidos no han sido reintegrados a su puesto de trabajo. Por último, no se ha resuelto casi ninguna de las violaciones identificadas en la queja de 2012 contra Honduras con respecto a los trabajadores en el sector de la maquila y el sector agrícola en el marco del Tratado de Libre Comercio de América Central con los Estados Unidos. Desde 2009 se registra un drástico descenso de la afiliación sindical. Las graves y constantes violaciones de los derechos sindicales desde hace años afectan profundamente a las relaciones laborales y cuestionan la situación de la democracia y de los derechos humanos. Por lo tanto, los miembros trabajadores instaron al Gobierno: *a)* a tomar medidas inmediatas y efectivas para proteger la vida y la integridad física de los sindicalistas, los afiliados y los trabajadores; *b)* a agilizar las investigaciones de todos los delitos y crímenes antisindicales y castigar a los culpables, y *c)* a actualizar su legislación de conformidad con el Convenio sin más demora y proteger el derecho de libertad sindical en la práctica.

Los miembros empleadores agradecieron las informaciones brindadas relativas al cumplimiento del Convenio y la presencia de altas autoridades ante la Comisión. El caso se ha examinado dos veces desde 1987, en 1991 y 1992. Desde 1998, la Comisión de Expertos ha formulado hasta 20 observaciones a Honduras sobre la aplicación del Convenio, así como algunas sobre el Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98). En el informe de la Comisión de Expertos de 2017 se incluyó a Honduras con una doble nota a pie de página. En sus observaciones, la Comisión de Expertos toma nota de los comentarios de la Central General de Trabajadores (CGT), la Confederación de Trabajadores de Honduras (CTH), la Confederación Sindical Internacional (CSI) y el Consejo Hondureño de la Empresa Privada (COHEP). En relación con los derechos sindicales y las libertades públicas, la Comisión de Expertos tomó nota con preocupación de numerosos crímenes antisindicales y de amenazas de muerte entre 2010-2014 y pidió al Gobierno información sobre la evolución de las investigaciones y procesos penales correspondientes. Hay que deplorar profundamente las denuncias sobre nuevos homicidios, secuestros y amenazas de muerte de las que han sido víctimas los sindicalistas. El Comité de Derechos Humanos de las Naciones Unidas (CCPR/C/SR/3378 y 3379) también manifestó su preocupación por los actos de violencia e intimidación cometidos contra sindicalistas en un marco de impunidad. Como ha manifestado el Gobierno, la violencia y la inseguridad son problemas muy profundos y de graves consecuencias para Honduras. El Gobierno hace esfuerzos, fortaleciendo instituciones y tomando diversas medidas para lograr avances en la materia. En este sentido, el Marco estratégico institucional (2015-2022) de la Secretaría de Seguridad tiene como objetivo reducir la impunidad mediante el fortalecimiento de la Policía de Investigación Criminal, la Agencia Técnica de Investigación Criminal y, en relación a los derechos humanos, impulsar una política pública y plan de acción en derechos humanos, para lo que se creó, en enero de 2018, la Secretaría de Derechos Humanos. Ya en enero de 2016 se registró una tendencia a la baja en los homicidios disminuyendo 27 puntos la tasa de homicidios por cada 100 000 habitantes respecto de 2011. En 2017 se alcanzó una tasa de 42,7 por cada 100 000 habitantes. Además, siete líderes sindicales están acogidos al Mecanismo Nacional de Protección a Defensores de Derechos Humanos. El COHEP no se pronunció respecto de los homicidios ocurridos entre 2010-2014 por desconocer los sucesos. Entre 2016 y 2018 se solicitó una entrevista al Fiscal General que nunca fue otorgada. La muerte de hondureños cuyo motivo de fallecimiento se desconoce resulta lamentable. Hoy el Ministerio Público presenta informes sobre casos penales judicializados, en investigación, pendientes, que esperan por ejecución de órdenes de captura, sentenciados, concluidos o donde se adoptaron medidas de protección. El índice de Paz Global de 2017 ubica a Honduras en el lugar 106 entre 163 países. El Gobierno no tiene una política antisindical. Los derechos de libertad sindical sólo pueden ejercerse por trabajadores y empleadores en un clima exento de violencia, presiones o amenazas y en el que se respeten los derechos humanos e incumbe al Gobierno garantizar el respeto de estos principios, como lo ha destacado el Comité de Libertad Sindical. Los miembros empleadores exhortaron a que cuanto antes se realicen investigaciones a fin de encontrar a los culpables y someterlos a la justicia. Asimismo, deben tomarse medidas para brindar protección rápida y eficaz a los dirigentes sindicales en situación de riesgo, ya que se trata de un caso grave.

En relación al artículo 2 y siguientes del Convenio relativos a la constitución, autonomía, y actividades de las organizaciones sindicales, hay que mencionar que el Código del Trabajo fue aprobado en 1959. En 1993, con el asesoramiento de la OIT, se constituyó una comisión tripartita para elaborar un proyecto de modificación del Código que llegó a ser presentado al Presidente de la República. Si bien la reforma favorecía a los trabajadores, aunque no a todos, ellos unilateralmente acusaron a la empresa privada de pretender debilitar y flexibilizar el trabajo, con lo que no se pudo adoptar el texto. En 2013, una comisión técnica de la Secretaría de Trabajo y Seguridad Social elaboró una propuesta de reforma de 13 artículos para adecuar el Código al Convenio núm. 87 y al Convenio núm. 98. El proyecto se sometió a la Oficina de la OIT en San José, Costa Rica, para comentarios técnicos. En abril de 2014, una misión de contactos directos de la OIT visitó al país y el proyecto se sometió al CES. En septiembre de ese mismo año, se conoció la reserva del sector sindical sobre la reforma pues a su criterio implicaba «mayores retrocesos en materia de derechos laborales y beneficiaba al gran capital». Se procura el diálogo social como ocurrió para la aprobación de la nueva Ley de Inspección del Trabajo. La Secretaría de Trabajo y sobre la base del texto proyectado de 2014 retoma los artículos propuestos en esa ocasión para someterlos al CES nuevamente y elaborar

una Hoja de ruta por consenso para armonizar la legislación con el Convenio. De nuevo se solicita la asistencia y el acompañamiento técnico de la OIT. El COHEP está dispuesto a revisar la legislación laboral pero desde 2014 no se ha realizado ninguna convocatoria del CES en este sentido. En abril de 2018 se envió un correo electrónico para requerir opinión sobre el texto de reforma, dando 24 horas para realizar comentarios, lo cual resulta inaceptable. El diálogo tripartito requiere de la buena fe y lo que sucedió no indica que así haya sido. La Comisión de Expertos recuerda que desde hace años se refiere a la necesidad de reformar el Código del Trabajo para ponerlo en conformidad con el Convenio. Se mencionan entre otras disposiciones: 1) la exclusión de derechos y garantías del Convenio para trabajadores de explotaciones agrícolas o ganaderas que no ocupen más de diez trabajadores; 2) la prohibición de que exista más de un sindicato en una misma empresa; 3) el requisito de 30 trabajadores para constituir un sindicato; 4) los requisitos para ser miembro de la junta directiva como: tener nacionalidad hondureña, pertenecer a la actividad correspondiente, o saber leer y escribir, y 5) la facultad del Ministro competente de poner fin al litigio en los servicios de la industria del petróleo. Asimismo, resulta preocupante que las observaciones de los expertos hagan referencia a un número de cuestiones legislativas relacionadas con el derecho de huelga. En tal sentido, se reitera la postura del Grupo de los Empleadores en cuanto considera que el derecho de huelga no está regulado en el Convenio y, que por tanto, no existe base para discutir este tema en la Comisión; que las conclusiones de este caso no podrán hacer referencia al derecho de huelga y que el Gobierno no está obligado a seguir las recomendaciones de los expertos en relación al tema específico. Se recuerda la Declaración conjunta del Grupo de los Trabajadores y del Grupo de los Empleadores y la del Grupo Gubernamental (ambas del 23 de febrero de 2015). Esta última indicaba que «el ámbito y las condiciones de ejercicio de este derecho son regulados a nivel nacional». En tal sentido cualquier solicitud de la Comisión de Expertos a los gobiernos para alinear su legislación y práctica con sus propias reglas sobre el derecho de huelga no son vinculantes.

El miembro trabajador de Honduras expresó su preocupación por la negligencia del Gobierno en los casos de asesinatos, amenazas, y persecución de dirigentes sindicales y por la falta de información a este respecto. Un informe de la Comisión de Violencia Antisindical (conformada por tres centrales obreras), indica que en los últimos tres años los autores de más de 60 casos de violencia antisindical gozan de impunidad. La Comisión de Expertos lamenta la ausencia de sentencias condenatorias contra los culpables de crímenes contra sindicalistas. Su informe menciona 19 personas asesinadas (Sres. Sonia Landaverde Miranda, Alfredo Misael Ávila Castellanos, Evelio Posadas Velásquez, Juana Suyapa Bustillo, Alma Yaneth Díaz Ortega, Uva Erlinda Castellanos Vigil, Maribel Sánchez, Fredis Omar Rodríguez, Claudia Larissa Brizuela, Roger Abraham Vallejo, Martín Florencio, Félix Murillo López, Manuel Crespo, José Ángel Flores, Silmer Dionisios George e Ilse Ivania Velásquez Rodríguez) y cinco víctimas de amenazas, secuestros, seguimiento, persecución y ataques (Sres. Miguel López, Nelson Núñez, Patricia Riera, Moisés Sánchez y Hermes Misael Sánchez). Expresó su más profunda preocupación por estos crímenes, subrayando que los derechos sindicales sólo pueden ejercerse en un clima exento de violencia y en el respecto de los derechos humanos establecidos en la Constitución. Asimismo, en mayo de 2018 el Relator Especial de las Naciones Unidas señaló la vulnerabilidad, la criminalización y el desprestigio de los defensores de los derechos humanos en el país. El Gobierno ha presentado una propuesta para reiniciar el proceso de discusión de la reforma del Código del Trabajo en el CES y este proceso se tiene que consensuar con el sector obrero. Asimismo, lamentó la interpretación por parte del Gobierno de los artículos 534 y 536 del Código del Trabajo en relación con los pliegos de peticiones y contratos colectivos de los sindicatos de empleados públicos y sus consecuencias en el sector de la educación. De igual forma, expresó su preocupación sobre la aceptación por parte del Gobierno de anteproyectos de contratos colectivos propuestos por el sector patronal que desmejoran condiciones laborales, sociales y salariales. El orador solicitó de forma urgente e inmediata: 1) que se organice una misión de contactos directos para evaluar la situación y que la Oficina Regional de la OIT brinde asistencia para preparar la misión; 2) que la OIT brinde asistencia técnica para la reforma del Código del Trabajo; 3) que el Gobierno proporcione información detallada sobre la violencia contra dirigentes campesinos, indígenas, sindicalistas, maestros y ambientalistas, para favorecer acciones de prevención, y 4) que se reinicien las negociaciones de los contratos colectivos de organizaciones estatales y semiestatales.

El miembro empleador de Honduras indicó que desde la ratificación del Convenio en 1956, se han realizado varias reformas al Código del Trabajo en cuanto al derecho fundamental de libertad sindical. El COHEP, organización representativa, ha expresado sus observaciones sobre el cumplimiento del Convenio, así como la CTH y la CGT. Los hechos violentos contra cualquier ciudadano hondureño son lamentables, y respecto a los hechos denunciados, el Estado debe investigar, aclarar y sancionar a los responsables de los mismos. En lo que se refiere a la reforma al Código del Trabajo para adecuarlo al Convenio, el COHEP está dispuesto a llevar a cabo discusiones tripartitas sobre la propuesta de reforma en un ámbito de concertación y diálogo social en el marco del CES. El sector empleador de Honduras cree en los principios de la libertad de sindicación y del respeto a la autodeterminación de empleadores y de trabajadores. Es preocupante constatar que la observación de la Comisión de Expertos se refiere a cuestiones legislativas relacionadas con el derecho de huelga. En tal sentido, hay que reiterar la postura del Grupo de los Empleadores según la cual este derecho no se encuentra regulado en el Convenio y no

existe base para discutir este tema en la Comisión. Por lo tanto, las conclusiones del caso no deberían hacer referencia al derecho de huelga y el Gobierno no está obligado a seguir las recomendaciones de la Comisión de Expertos en relación a este tema específico. Asimismo, es importante destacar la declaración conjunta del Grupo de los Trabajadores y del Grupo de los Empleadores de 23 de febrero de 2015 y la del Grupo Gubernamental de la misma fecha, en la cual se indica que «el ámbito y las condiciones de ejercicio de este derecho son regulados a nivel nacional». En tal sentido, cualquier solicitud que la Comisión de Expertos realice al Gobierno de que alinee su legislación y práctica con sus propias reglas sobre el «derecho de huelga» no sólo no es vinculante, sino que también está fuera del alcance de la supervisión de normas. La democratización de las organizaciones de empleadores y de trabajadores, donde la mayoría sea la que tome las decisiones en condiciones de igualdad, libertad y sin presión alguna, es importante. Desde 1993, el COHEP ha apoyado la decisión de reformar de manera general el Código del Trabajo, que ha quedado desfasado en el tiempo, con el objeto de promover y generar el empleo en el país. La conformación de más de una organización sindical de base o empresa en un mismo centro de trabajo también es importante, pero la negociación colectiva debe realizarla quien tenga la mayoría de los trabajadores de la empresa. Una efectiva reforma y adecuación de la legislación nacional con los convenios es necesaria y debe realizarse de manera tripartita, con el acompañamiento técnico de la OIT, en un plazo determinado de no más de tres meses en el seno del CES, y debe responder a todos los sectores.

The Government member of Bulgaria, speaking on behalf of the European Union (EU), as well as Albania, Bosnia and Herzegovina, Norway, the former Yugoslav Republic of Macedonia, Montenegro and Serbia stated that the above countries attached great importance to the respect of human rights, including freedom of association of workers and employers and the protection of the right to organize, and recalled the important role played by the ILO. Through the Association Agreement between the EU and Central America, the EU and Honduras had both committed to effectively implement the fundamental ILO Conventions. Although there was progress, high murder rates fueled by the significant presence of organized crime in the country constituted a persistent problem, and the human rights situation remained highly challenging. She expressed deep concern over the recent allegations of new murders, kidnappings and death threats against members of the trade union movement contained in the report of the Committee of Experts and requested more information on the outcome of the investigations in the cases of murders which had occurred between 2010 and 2014. She urged the national authorities to ensure that proper investigation and prosecutions of material and intellectual perpetrators of such crimes were carried out promptly, and requested it to take measures so as to ensure that trade union representatives were duly protected, as the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure and threats. Fighting impunity should remain a priority of the Government, and strong support was therefore expressed towards the work of the Organization of American States mission against corruption and impunity in Honduras. Strengthening and ensuring impartiality of the national police and judicial institutions were also considered central to achieve the goal. Freedom of association and collective bargaining constituted a powerful tool to ensure social stability and economic development and although creating an environment conducive to tripartite dialogue and freedom of association was a complex task, it remained the Government's first responsibility. The Committee of Experts had been emphasizing for many years the need to amend certain provisions of the Labour Code which were not in conformity with the Convention, in particular the restrictions to the right to establish a trade union and to the right to strike. In that regard, the speaker welcomed the reform of the Labour Code initiated a few years ago, with the support of the ILO, but expressed regret that no progress had been made since the draft reform had been submitted to the Economic and Social Council in 2014. While acknowledging the complex and challenging political environment prevailing in the country, the Government was encouraged to organize proper consultations on the reform with the social partners with a view to finalizing it, and submitting a draft to Congress and the social partners were called on to engage in the discussions in a constructive manner. The EU and its Member States would continue to cooperate with, and support the Government in its efforts to comply with ILO Conventions.

La miembro gubernamental del Paraguay, hablando en nombre de una significativa mayoría de los países de América Latina y el Caribe, indicó que la composición de la delegación y la información presentada muestran la transparencia del Estado y el compromiso de las más altas autoridades en trabajar para investigar todos los casos. Hay que rechazar cualquier acto de agresión, violencia o impunidad contra la integridad y la vida de las personas, y al mismo tiempo resaltar el gran esfuerzo del Gobierno, en la reducción de los índices de violencia. El Gobierno ha hecho avances en materia de prevención y protección de la defensa de los derechos humanos, particularmente los derechos de los trabajadores, así como en materia de investigación criminal (judicialización del 41 por ciento de los casos mencionados y medidas integrales para proteger a siete líderes sindicales). En el período 2014-2018, un significativo número de personalidades jurídicas han sido otorgadas a nuevas organizaciones sindicales, tanto del sector privado como del sector público. Se valoran los esfuerzos y la voluntad del Gobierno para someter nuevamente al CES, la discusión de las reformas al Código del Trabajo y así continuar con la elaboración conjunta de una Hoja de ruta que permita la armonización del Código con el Convenio. Finalmente, la oradora alentó al

Gobierno a seguir con sus esfuerzos para dar cumplimiento a los compromisos internacionales contraídos en materia laboral y confió en que se continuará fortaleciendo el diálogo y la construcción del consenso tripartito.

El miembro gubernamental de Panamá manifestó su apoyo a la declaración realizada por la miembro gubernamental del Paraguay. El proceso de reforma legislativa en curso en el país es una demostración de los esfuerzos del Gobierno para resolver los problemas relativos al crimen organizado que cuenta con desestabilizar el Estado y cuya acción no está dirigida contra las organizaciones de los empleadores y de los trabajadores. Acogió con agrado la asistencia brindada por la OIT y animó al Gobierno a seguir con sus esfuerzos.

El miembro trabajador de España manifestó su solidaridad con todos los sindicalistas, trabajadores y ciudadanos que ponen en peligro su integridad física y su vida para defender los derechos fundamentales del trabajo en Honduras. Dichos trabajadores no sólo padecen altos niveles de inseguridad, desigualdad y pobreza, sino que además sufren una violencia antisindical extraordinaria, cuyo único objetivo es debilitar y destruir al movimiento sindical. Las detenciones ilegales, los secuestros y los asesinatos de miembros del movimiento sindical, forman parte de una deplorable realidad, consecuencia directa de la falta de legitimidad del Estado, de la crisis de institucionalidad y de la ausencia absoluta de separación de poderes, que se prolonga en Honduras desde el golpe de Estado de 2009. Esta situación no sólo pone de relieve una violación clara del Convenio sino también de los derechos humanos. El Gobierno no ha hecho lo suficiente para cumplir con el Convenio, por lo contrario, su actuación se ha dirigido a limitar y entorpecer el ejercicio legal de las garantías que contiene. En este sentido, no ha habido avances en la persecución de los autores de los casos de homicidios de dirigentes sindicales y sindicalistas; en el fortalecimiento de las políticas dirigidas a proteger y reaccionar contra las conductas antisindicales; ni en la adecuación del Código del Trabajo al Convenio. Por todo lo expuesto, el orador apoyó las demandas de las centrales sindicales de Honduras y consideró que la OIT debería enviar una misión de contactos directos para verificar el cumplimiento del Convenio y también proporcionar la asistencia técnica necesaria.

The Government member of Lebanon welcomed the information presented by the Government and expressed appreciation of the efforts made and procedures taken with regard to combating impunity at all levels, whether legal, judicial or administrative in order to protect human rights defenders, judges and trade unionists. She also welcomed the reform of the Labour Code to ensure compliance with the Convention, encouraged social dialogue to finalize the amendments, and invited the ILO to provide technical assistance to Honduras, whenever necessary.

El miembro empleador de Chile observó con preocupación que, no obstante los esfuerzos del Gobierno para combatir la violencia, la situación sigue siendo muy grave, tal como han denunciado la CGT y la CTH. Reconociendo que la impunidad es un problema de máxima gravedad y un peligroso incentivo para la violencia y la inseguridad, el Gobierno debería aumentar los recursos humanos y materiales necesarios para garantizar la vida y la integridad de la población. Asimismo, el Gobierno debería modificar y adecuar el Código del Trabajo a las relaciones laborales actuales y al Convenio. Por último, la sugerencia de modificación legal en materia de derecho de huelga es una solicitud errada de la Comisión de Expertos en cuanto este derecho no se encuentra contemplado en ningún convenio de la OIT.

The Worker member of the United States indicated that the recurring violence against unionists demanded attention and that persistent violations of freedom of association enabled countless labour law violations and impunity to be the norm in Honduras. He further pointed to the utter failure of the governments, including those of Honduras and the United States, in using ILO standards to protect workers' rights in international trade agreements. Although the Central American Free Trade Agreement required the parties to protect freedom of association, Honduras' lack of compliance with the Convention had been recognized for years. In March 2012, a complaint was filed for abuses of labour rights under the labour chapter of the mentioned trade agreement and finally, after almost three years, the Government of the United States found merit in all 17 cases in the complaint. As a result, both Governments negotiated a detailed monitoring plan and consulted with workers and employers to adopt an improved labour inspection law. However, six years after the complaint, not a single trade unionist had been reinstated and not a single union had been restored in any of the mentioned cases. In addition to violence, practices by employers, and inaction by the Government frustrated workers' attempts at forming trade unions and defending labour standards. For instance, in the agriculture sector – the largest industry in Honduras – systematic violations of minimum wage, overtime, health and safety and child labour standards persisted, and those who tried to form an industry-wide union experienced recurring violence and a denial of association rights, including attempts at creating employer-dominated unions, employers' refusal to bargain with workers' representatives and anti-union tactics, such as harassment and isolating workplace leaders, as well as delays by the Government in recognizing local sections of the STAS. Anti-union violence and repression of agricultural workers' freedom of association constituted a strategic denial of rights, in which employers and the Government appeared to collaborate, and did not contribute

to decent work and sustainable development. International actors, like Fair Trade USA, also falsely certified that a multinational produce company is complying with labour standards in the midst of dozens of labour violations, some of which had occurred the previous month.

Le membre gouvernemental de la Suisse s'est associé à la déclaration faite au nom de l'Union européenne et a regretté que la commission doive une nouvelle fois discuter ce cas. En effet, des relations de travail solides et durables et un dialogue social empreint de confiance et de sécurité constituent l'un des facteurs clés pour le développement durable d'une économie. Il est déplorable de constater qu'aucune condamnation pénale n'a été rendue contre les auteurs des homicides, enlèvements, violences et menaces mentionnés par la commission d'experts. La violence et l'insécurité auxquelles sont confrontés les syndicalistes ainsi que l'impunité endommagent gravement le bon fonctionnement du dialogue social. Il y a lieu d'encourager le gouvernement à respecter le principe fondamental de liberté syndicale et à adopter les mesures nécessaires pour que les procédures en cours aboutissent dans les meilleurs délais. Le gouvernement doit également poursuivre, en concertation avec les partenaires sociaux, la réforme du Code du travail afin d'assurer sa pleine conformité avec les normes internationales du travail. L'orateur a encouragé le Honduras à poursuivre ses efforts pour promouvoir le dialogue social et garantir le climat de confiance nécessaire à cette fin.

The Worker member of the Republic of Korea indicated that the recurring violence against unionists demanded attention and that persistent violations of freedom of association enabled countless labour law violations and impunity to be the norm in Honduras. He further pointed to the utter failure of the governments, including those of Honduras and the United States, in using ILO standards to protect workers' rights in international trade agreements. Although the Central American Free Trade Agreement required the parties to protect freedom of association, Honduras' lack of compliance with the Convention had been recognized for years. In March 2012, a complaint was filed for abuses of labour rights under the labour chapter of the mentioned trade agreement and finally, after almost three years, the Government of the United States found merit in all 17 cases in the complaint. As a result, both Governments negotiated a detailed monitoring plan and consulted with workers and employers to adopt an improved labour inspection law. However, six years after the complaint, not a single trade unionist had been reinstated and not a single union had been restored in any of the mentioned cases. In addition to violence, practices by employers, and inaction by the Government frustrated workers' attempts at forming trade unions and defending labour standards. For instance, in the agriculture sector – the largest industry in Honduras – systematic violations of minimum wage, overtime, health and safety and child labour standards persisted, and those who tried to form an industry-wide union experienced recurring violence and a denial of association rights, including attempts at creating employer-dominated unions, employers' refusal to bargain with workers' representatives and anti-union tactics, such as harassment and isolating workplace leaders, as well as delays by the Government in recognizing local sections of the STAS. Anti-union violence and repression of agricultural workers' freedom of association constituted a strategic denial of rights, in which employers and the Government appeared to collaborate, and did not contribute to decent work and sustainable development.

The Government member of Canada noted with regret the lack of progress by the Government in making reforms to the Labour Code to bring it into compliance with the Convention, as well as the apparent lack of tripartite consultations associated with the reform. She expressed concern at the human rights violations cited by the Report of the United Nations High Commissioner for Human Rights, as well as the allegations of anti-union murders, kidnappings, violence and death threats, with apparent impunity for offenders, highlighted in the report of the Committee of Experts and discussed in the Conference Committee. The speaker urged the Government to continue to take all necessary measures to ensure that investigations were carried out promptly and in accordance with the rule of law and due process, and emphasized that it was crucial that adequate investigatory, prosecutory and protective measures were undertaken to allow the free exercise of labour rights in the country. The Government was further urged to take, in full consultation with workers' and employers' organizations, all necessary measures to reform the Labour Code in accordance with the principles of the Convention. Finally, the speaker stated that her Government remained committed to supporting respect for human rights in Honduras, including through the full application of international human and labour rights instruments, especially the Convention, and urged the Government to put into action its commitment to implementing and respecting those norms.

Un observador representante de la Internacional de Servicios Públicos (ISP) se refirió a varios casos relacionados con problemas de violación a la libertad sindical, como: el no registro por parte del Ministro de Gobernación de la nueva Junta Directiva de la Asociación Nacional de Empleados Públicos de Honduras (ANDEPH); el despido, el 13 de enero de 2016, de la anterior presidente de la organización del Ministerio de Salud, que la llevó a interponer una demanda judicial por despido antisindical; el despido el 30 de marzo de 2018 de 700 trabajadores de la corporación municipal de San Pedro Sula, entre ellos 39 miembros del Sindicato de Empleados y Trabajadores de la Municipalidad Sampedrana (SIDEYTMS) con fuero sindical, por lo que se

interpusieron acciones judiciales para la reposición o el pago de prestaciones laborales y, como consecuencia, negación del alcalde de firmar el nuevo convenio colectivo; la persecución por denuncias falsas de miembros del Sindicato de Trabajadores de la Medicina, Hospitales y Afines (SITRAMEDHYS), por ejemplo, la presidenta de la seccional 3 del Hospital Santa Bárbara y la presidenta de la seccional 34 del Hospital de Puerto Cortez. Además, en la casa presidencial se ha implementado un sistema de contratación de nuevas plazas para hacer frente a la sobrecarga de trabajo, pero de forma solapada el nombramiento se condiciona a la no sindicalización. Estos casos pueden ser considerados banales si los contrastamos con el asesinato de docenas de sindicalistas y activistas de derechos humanos en el país. Sin embargo, si el Gobierno no es capaz de hacer frente a estos problemas banales, mucho menos se puede considerar que tiene la capacidad y voluntad política para resolver los asesinatos de nuestros compañeros. Es evidente que los planes estratégicos, marcos nacionales, creación de secretarías y cuerpos especializados, Memorándums de Entendimiento, Hojas de ruta, como medios para hacer frente a la impunidad, la violencia y la inseguridad, no funcionan. Sólo sirven para que el Gobierno no enfrente a su responsabilidad. No se puede seguir aceptando este tipo de medio como respuesta a la problemática en el país. Se requiere justicia para que los sindicalistas hondureños puedan ejercitar sus derechos en un clima sin intimidación, sin violencia, y sin muerte. Las conclusiones de la Comisión deben reflejar la seriedad de la situación y exigir del Gobierno resultados tangibles a corto plazo.

El miembro trabajador de Colombia indicó que el Gobierno se encuentra nuevamente cuestionado por el sistema de control, en razón a la grave violación del Convenio, denunciada por la CSI, la Confederación Sindical de Trabajadores y Trabajadoras de las Américas (CSA), la Internacional de la Educación (IE) y las centrales sindicales nacionales, ante la ocurrencia reiterada de amenazas, secuestros, incluso asesinatos contra dirigentes sindicales de varios sectores (entre ellos el de la educación, que suele ser el que más víctimas registra por el ejercicio de la asociación sindical). La ausencia de una investigación efectiva de los delitos, la negativa a reconocer su naturaleza antisindical y la no imposición de fallos ejemplificantes brindan un espacio propicio a los crímenes contra los y las dirigentes sindicales y se juntan a la gravedad de las violaciones del derecho a la vida e integridad. Recordando que la Comisión de Expertos señaló gravísimos obstáculos al ejercicio del derecho de huelga en violación del Convenio, también identificados en Colombia, es lamentable que ambos países ignoren estos comentarios. Al contrario, se prohíbe a las federaciones y confederaciones declarar la huelga, se exigen mayorías inalcanzables para votar la huelga e imposibilitarla en servicios que no son públicos esenciales en el sentido estricto del término, y no se modifica el Código del Trabajo que no garantiza la libertad sindical y conserva restricciones indebidas a su ejercicio. Expresó su preocupación por el hecho de que los gobiernos reiteradamente hagan caso omiso a las recomendaciones de la Comisión de Expertos, el Comité de Libertad Sindical y la Comisión y reiteró el total apoyo a la solicitud de una misión de contactos directos realizada por el miembro trabajador de Honduras.

La miembro gubernamental de la República Dominicana manifestó su apoyo a la declaración realizada por la miembro gubernamental del Paraguay y reconoció las acciones llevadas a cabo por el Gobierno para reconocer la personería jurídica a nuevos sindicatos, los avances en materia de seguridad, complementados con medidas legislativas, judiciales y administrativas, para lograr el fortalecimiento de las instituciones que velan por la protección efectiva de los derechos humanos, la convivencia pacífica y el disfrute total de los derechos y principios fundamentales del trabajo.

Un observador, en representación de la Internacional de la Educación, destacó el papel desempeñado por las organizaciones gremiales, sindicales y de la clase trabajadora en contra del golpe de Estado de 2009 y sus consecuencias (despidos de docentes, asesinatos, encarcelación y suspensión de 18 y 303 docentes respectivamente, abandono del diálogo entre maestros y autoridades educativas y congelamiento del salario a los docentes durante nueve años, desempleo de 28 000 maestros, existencia de 4 500 y 2 500 escuelas unidocentes y bidocentes, carencia de servicios de agua y luz en las estructuras educativas, exclusión del sistema educativo público de alrededor de 500 000 niños y jóvenes, exclusión por la Ley Fundamental de Educación de los docentes y de la sociedad en general de los organismos e instancias de decisión en la formulación y seguimiento de las políticas públicas en materia educativa, alto índice de analfabetismo, reducción del presupuesto para educación y aprobación de leyes que criminalizan la protesta pública). Según el observatorio de la violencia de la Universidad Nacional Autónoma de Honduras desde 2009 hasta la fecha se asesinaron impunemente más de 83 docentes y 30 estudiantes en el primer trimestre de 2018. Ante la violencia, los docentes emigran a diferentes países. Se propuso sin éxito al Gobierno que se instale una mesa de diálogo para lograr un pacto social por la educación pública de calidad. El observador propuso: 1) que se organice una misión de contactos directos para evaluar la situación; 2) que el Gobierno informe sobre los avances en los procesos gubernamentales y jurisdiccionales, y 3) que ningún caso de los denunciados quede en la impunidad.

La miembro gubernamental de México se adhirió a la declaración realizada por la miembro gubernamental del Paraguay y agradeció las informaciones brindadas y las acciones concretas adoptadas por el Gobierno para

atender la observación de la Comisión de Expertos. En especial, su voluntad para someter nuevamente a consideración del CES, principal entidad de diálogo y concertación social del país, las reformas de 2014 que quedaron pendientes al Código del Trabajo. Se confía en que ello coadyuve al consenso para dar continuidad a la elaboración de una Hoja de ruta, que permita la armonización del Código con el Convenio. El respeto de los derechos fundamentales en el trabajo es un componente esencial para la realización del trabajo decente y, por ello, resulta satisfactoria la apertura del Gobierno y su disposición a colaborar con los mecanismos de control. Teniendo en cuenta su buena voluntad, se alienta al Gobierno a continuar emprendiendo esfuerzos tendientes a superar los retos que plantea la Comisión de Expertos y seguir trabajando de la mano de la OIT en el fortalecimiento del diálogo como herramienta fundamental para alcanzar la paz laboral.

El miembro trabajador del Brasil señaló que las centrales sindicales de Honduras manifiestan su profunda preocupación ante los casos de asesinatos, amenazas de muerte, persecución y seguimiento a dirigentes sindicales y ante la negligencia con que el Estado trata estos casos. No se ha recibido ningún informe sobre la persecución de estos crímenes, a pesar de que en la última década más de 300 defensores de los derechos humanos hayan sido asesinados. Cabe señalar a la atención del Gobierno que es obligación constitucional del Estado garantizar que los derechos de las organizaciones de trabajadores se ejerzan en un clima exento de violencia, presiones o amenazas, en el que se respetan plenamente los derechos humanos. El Gobierno no ha respondido a la solicitud de revisar el Código del Trabajo y ha impuesto leyes que vulneran los derechos laborales contemplados en el Código del Trabajo y los convenios internacionales. Tal es el caso de la Ley de Empleo por Hora, la reforma al artículo 7 del Código del Trabajo, o la modificación del artículo 72 de la Ley de Inspección del Trabajo. Ante la gravedad de la situación, el orador solicitó al Gobierno que garantizara la plena libertad de reunión y de manifestación y que cesara inmediatamente las prácticas que violan los derechos humanos y la libertad sindical.

El miembro gubernamental del Brasil manifestó su apoyo a la declaración realizada por la miembro gubernamental del Paraguay. Al mismo tiempo expresó su preocupación en relación a los procedimientos adoptados en esta Comisión, sin consenso tripartito. Asimismo, rechazó firmemente los actos de violencia antisindical y alentó al Gobierno a seguir con sus esfuerzos y avances concretos en la prevención de la violencia y en la lucha contra la impunidad, reconociendo los esfuerzos para promover, a través de acciones prácticas y cambios normativos, los principios y derechos fundamentales en el trabajo, en particular la libertad sindical, así como para reformar y modernizar su legislación laboral.

The Worker member of Canada stated that the deep concern expressed by the Committee of Experts regarding anti-union crimes and the prevailing context of impunity was situated in a broader systematic context of violence against trade unionists, as well as defenders of human and environmental rights. According to various sources, since 2009, 31 trade unionists had been assassinated, 200 injured in violent attacks, 52 workers killed in confrontations with landowners and the Government, 120 environmental activists killed (since 2010) and attacks and repression of Honduran citizens had continued with 14 deaths (including children) in election-related violence in December 2017. The social conflicts were linked to economic disparities and government policies, including agrarian and investment policies, which often resulted in granting land permits to international corporations, such as Canadian and United States firms, thus superseding the rights of the rural poor. The most vulnerable people affected had limited legal recourse to protect their rights and in doing so, were subjected to smear campaigns, intimidation, threats and attacks, as was the case of an environmental activist and indigenous leader Berta Caceres assassinated two years ago in her home after years of threats against her life. According to the Inter-American Commission on Human Rights, impunity rates ranged between 95 to 98 per cent and justice was thus rarely served. To conclude, the speaker echoed the Committee of Experts' observations that the absence of convictions against those guilty of crimes reinforced the climate of violence and insecurity and was damaging to the exercise of trade union and human rights.

La miembro gubernamental de El Salvador coincidió con la declaración realizada por la miembro gubernamental del Paraguay y agradeció las informaciones brindadas relativas al cumplimiento del Convenio. La presencia de altas autoridades ante la Comisión denota el compromiso del Gobierno de Honduras. Cabe destacar los esfuerzos realizados en materia de prevención, protección e investigación del derecho a defender derechos humanos, particularmente los derechos de los trabajadores; la judicialización del 41 por ciento de los casos mencionados; las medidas integrales para proteger a siete líderes sindicales; la sumisión al CES de las reformas al Código del Trabajo que quedaron pendientes, y la elaboración conjunta de una Hoja de ruta que permita la armonización del Código con el Convenio. La oradora confió en que el Gobierno continuará con sus esfuerzos para asegurar el cumplimiento del Convenio y así garantizar los derechos relativos a la libertad sindical y al derecho de sindicación.

El miembro trabajador de la República Bolivariana de Venezuela indicó que la importancia del Convenio, uno de los ocho fundamentales, radica en la protección del derecho de todos los trabajadores a constituir libremente

sindicatos que promuevan y defiendan los derechos laborales como la libertad sindical. La Comisión de Expertos señala una serie de asesinatos de dirigentes sindicales, maestros, indígenas, campesinos, defensores de derechos humanos y ambientales, lo que muestra un desprecio a la vida por aquellos que se ven afectados en sus intereses por las acciones que estos compañeros y compañeras realizan. La cantidad de muertos en el país, por participar en protestas sociales y políticas, organizar sindicatos, defender el medio ambiente o simplemente señalar la corrupción es la razón de la discusión del caso en el seno de la Comisión. Es importante resaltar la total impunidad en que se encuentran estos casos, por lo que hay que hacer un llamado al Gobierno para que genere espacios de diálogo que permitan establecer programas eficaces de protección a defensores de derechos humanos y laborales. La situación de los sindicatos estatales, a quienes se les niega el acceso a la contratación colectiva y aumentos salariales, evidenciando la falta de protección laboral, es preocupante, así como el temor de los trabajadores a participar en los procesos de reformas del Código del Trabajo por posible menoscabo de derechos. A la opresión social, se suma la flexibilización, provocando un retroceso de los derechos laborales, generando reformas en detrimento de beneficios ya establecidos. Leyes que incentivan la desprotección social e incumplimiento de consensos tripartitos, han llevado al señalamiento internacional de la desprotección laboral del Estado. Se solicitó una misión de contactos directos que permita evaluar la información del Gobierno y consultar con las centrales obreras hondureñas sobre la realidad de la situación de criminalización y flexibilización laboral y especialmente el papel del Estado como protector de los derechos humanos y laborales.

Otra representante gubernamental mencionó que la seguridad continúa siendo una prioridad en la agenda de la presente administración. La violencia y la inseguridad aún presentan muy profundos problemas, cuyas consecuencias son graves para la sociedad hondureña, por ello, se hacen enormes esfuerzos para eliminar estos obstáculos, fortaleciendo las instituciones e implementando múltiples acciones estatales. Estas medidas que en su conjunto han permitido obtener avances en la protección de los connacionales, tal y como se evidenció, pues Honduras ha reducido sus índices de homicidios a 42,7 puntos en cinco años, un logro histórico para el país y ejemplo para el mundo considerando que en 2011 la cifra fue de 87,3 por cada 100 000 habitantes. Estos logros se han producido gracias a los avances que se han expuesto, como la protección de los sindicalistas como a defensores de derechos humanos, la creación de la estructura dentro del Ejecutivo para prevenir e investigar el delito y su consecuente fortalecimiento. En relación a los principales avances en el combate al crimen organizado, estos esfuerzos han sido amplificados: en 2016 se efectuaron 18 extradiciones; se ejecutaron 9 395 órdenes de captura; se destruyeron diez narco laboratorios; se decomisaron 8 350 armas de fuego y se incautaron 1 256 bienes de origen ilícito. Dicho avance, ha sido posible gracias a los esfuerzos de los órganos operadores de justicia y a la coordinación que hoy en día existe en el combate al crimen. Continúan los esfuerzos para el fortalecimiento integral de la investigación criminal: en los últimos años se ha fortalecido el Ministerio Público en más de 24 millones de dólares de los Estados Unidos entre 2015 y 2017, lo que le ha permitido impulsar las causas investigativas mediante la creación de nuevas dependencias, como la Fiscalía Especial para la protección de defensores de derechos humanos, periodistas, operadores de justicia, defensores de trabajadores y comunicadores sociales. Ello también ha permitido fortalecer la Agencia Técnica de Investigación Criminal (ATIC), incrementando su presupuesto que al iniciar operaciones era de aproximadamente 1,1 millones de dólares de los Estados Unidos a 6,4 millones de dólares. También se aprobó el reglamento especial de organización y funcionamiento de la dirección de medicina forense y el reglamento especial de organización y funcionamiento de la dirección de lucha contra el narcotráfico. En el ámbito de los esfuerzos para fortalecer el sistema de justicia, y a fin de mejorar el sistema de impartición de justicia en el país, se han implementado diversas medidas, entre las que destacan: i) el incremento en 2017 del presupuesto del Poder Judicial en más de 10 millones de lempiras, en relación al año 2016; ii) la reforma a la Ley Especial de Órganos Jurisdiccionales con Competencia Territorial, y iii) la creación de los juzgados especiales con jurisdicción nacional para conocer los casos de corrupción y extorsión; así como la creación de la Comisión especial para el proceso de selección de los jueces y magistrados anticorrupción y antiextorsión, integrada por representantes de la sociedad civil, la Corte Suprema de Justicia y la Misión de Apoyo contra la Corrupción y la Impunidad en Honduras (MACCIH). Todos los esfuerzos mencionados representan algunos de los más grandes ejemplos de Honduras en el combate a la corrupción e impunidad, además de los cuales se debe mencionar la instalación en abril de 2016 de la MACCIH, promoviendo un fortalecimiento en la labor investigativa de las instituciones del Estado. Igualmente, se han adoptado leyes que facilitan las labores en contra de la corrupción e impunidad, entre las que destacan: i) la creación de la Unidad Fiscal Especial Contra la Impunidad de la Corrupción (UFECIC); ii) la aprobación de la Ley de Financiamiento, Transparencia y Fiscalización de Partidos Políticos en Honduras, y iii) la instauración de una política anticorrupción en la Procuraduría General de la República. Honduras se aleja cada día más de su pasado violento causado por el crimen organizado y se convierte en una tierra más amigable para los defensores de derechos humanos. Un paso importante en este sentido fue la aprobación de la Ley de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia, la cual instaura el Sistema Nacional de Protección, el cual actualmente protege a siete líderes sindicales. En relación al caso de la Sra. Berta Cáceres, hay nueve personas detenidas y bajo proceso. Dentro de las medidas cautelares ordenadas por el Sistema Interamericano de Protección de Derechos Humanos, los miembros del Consejo indígena San Isidro y los del

Movimiento Lenca de la Paz, se benefician de una medida cautelar. Recientemente el Relator Especial sobre la situación de las y los defensores de derechos humanos de las Naciones Unidas, visitó el país, lo que significa un importante mensaje de apertura y de deseo en seguir mejorando para superar los desafíos de derechos humanos. Por último, la promoción y defensa de los derechos humanos en Honduras se ha fortalecido con la creación de la Secretaría de Estado en el Despacho de Derechos Humanos, dando un paso firme hacia la protección de los derechos humanos desde el Estado. En el día de hoy, hay 211 personas entre defensores de derechos humanos, operadores judiciales y sindicalistas que están bajo protección.

Un tercer representante gubernamental reiteró que todos estos esfuerzos son prueba fehaciente de que Honduras asume con convicción sus compromisos internacionales en la protección de los derechos que garantiza el Convenio y de que no existe ninguna política de persecución y violencia antisindical desde el Estado, sino que se han creado las estructuras para combatir la impunidad y proteger los derechos de las y los líderes sindicalistas. Sobre las reformas al Código del Trabajo y sobre las nuevas inscripciones sindicales y la actuación del nuevo Gobierno y el respeto a derechos laborales, Honduras vive una nueva etapa en donde se garantizan mayores libertades individuales y el ejercicio de los derechos. En este contexto, el Gobierno reitera su voluntad política, de adoptar acciones conducentes para materializar las reformas al Código del Trabajo, de manera de armonizarlo con los convenios ratificados, proceso que se ha venido realizando de forma gradual mediante el diálogo social y de forma tripartita en el CES tal y como sucedió con la nueva Ley de Inspección del Trabajo, que ha sido la mayor reforma al Código del Trabajo en la historia de su vigencia. En cuanto a los avances en la aplicación de la nueva Ley de Inspección del Trabajo, ésta ha permitido crear paulatinamente una nueva cultura de cumplimiento, con 32 268 inspecciones realizadas a la fecha, de las cuales se han beneficiado 433 304 trabajadores. Asimismo, desde la entrada en vigor de dicha ley, se han impuesto multas por distintas infracciones laborales por un valor aproximado de 1,2 millones de dólares de los Estados Unidos, resaltándose un monto total de 62 000 dólares por violaciones a libertades sindicales y 198 000 dólares por obstrucción a la labor de la inspección. En cuanto a la armonización del Código del Trabajo con el Convenio y a las reformas pendientes, y recordando lo sucedido en 2014 donde las centrales de trabajadores expresaron sus reservas, la Secretaría de Trabajo y Seguridad Social está elaborando una nueva propuesta que servirá de base en las discusiones. En ese sentido, el Gobierno asume su compromiso de someter de nuevo al CES la discusión de las reformas y asimismo elaborar una Hoja de ruta que permita continuar con la armonización del Código con el Convenio en busca de que se logre el consenso. En este sentido se solicita de nuevo la asistencia y el acompañamiento técnico de la OIT. Honduras seguirá siendo un Estado respetuoso de los derechos humanos, donde la protección y promoción de dichos derechos está en el centro de todas las acciones. El orador destacó que el Estado es un socio con causas comunes con la OIT ya que se comparten valores e intereses en un afán de seguir haciendo importantes aportes a la consecución de los objetivos internacionales de justicia social con equidad y un mejor ámbito de trabajo.

Los miembros empleadores agradecieron las informaciones brindadas. Respecto de los derechos sindicales y las libertades públicas se valoran los esfuerzos del Gobierno por fortalecer las instituciones de seguridad, pero lo hecho hasta ahora es aún insuficiente. Se exhorta al Gobierno a acelerar los procesos de investigaciones que concluyan con el sometimiento de los responsables ante la justicia y a que informe a la Comisión de Expertos sobre los resultados de las mismas y las sentencias condenatorias cuando se dicten. En relación al artículo 2 y siguientes del Convenio relativos a la constitución, autonomía y actividades de las organizaciones sindicales, la reforma del Código del Trabajo es necesaria, pero no sólo para adaptarlo al Convenio sino a las nuevas formas de trabajo. Se hace indispensable establecer un diálogo social tripartito para lograr las modificaciones legislativas pendientes, tal como se hizo para la Ley de Inspección del Trabajo, y se podría tener en cuenta la economía informal. El diálogo tripartito debe realizarse de buena fe, y no necesariamente asegura el consenso. El necesario consenso confiere al final un poder de veto que fue lo que ocurrió con las reformas de 1993 y de 2014 cuando la posición del sector sindical impidió avanzar. El Gobierno no puede renunciar a sus obligaciones. Instaron al Gobierno a que acepte la asistencia técnica de la Oficina pero, visto el tiempo transcurrido, ésta tiene que tener plazos, antes de la próxima sesión de la Comisión de Expertos, y reiteraron la solicitud del Grupo de los Empleadores en el sentido de que en las conclusiones de la Comisión no se haga referencia al derecho de huelga.

Los miembros trabajadores en respuesta a los comentarios de los miembros empleadores sobre al derecho de huelga, reiteraron que su posición no ha cambiado. El Convenio protege el derecho internacional de huelga. Este derecho es parte del derecho a la libertad sindical que es un derecho fundamental y asegura a los trabajadores que su voz, con demasiada frecuencia ignorada por los gobiernos y los empleadores, sea escuchada. Por ende, el Gobierno tiene que adecuarse a las recomendaciones de la Comisión de Expertos. A pesar de las opiniones divergentes sobre este tema en particular, los miembros trabajadores continúan comprometiéndose de manera constructiva para llegar a conclusiones consensuadas, de conformidad con el acuerdo con los empleadores. La situación en el país es sumamente grave (equiparándose a países como Guatemala y Colombia) con respecto a los altos niveles de violencia antisindical y una impunidad casi total por este tipo de crímenes. Es necesario solucionar

inmediatamente esta situación. El Gobierno es abierta y directamente responsable de los actos de violencia antisindical que tuvieron lugar después de las elecciones políticas de 2017, en los cuales docenas de civiles han sido asesinados por militares y policías, y miles han sido heridos, arrestados, encarcelados o torturados por agentes estatales, y nadie ha sido responsabilizado por ello. El Gobierno es incapaz de hacer frente a la violencia y la impunidad contra los sindicalistas y participa en la violación generalizada de los derechos humanos. Ningún trabajador puede ejercer sus derechos fundamentales mientras sepa que las autoridades quedan impunes cuando cometen un asesinato. No obstante, este caso no concierne solamente la violencia antisindical. Los trabajadores no tienen la posibilidad de ejercer su derecho a la libertad sindical debido a un Código del Trabajo deficiente, un sistema de inspección laboral fallido (como se discutió en la Comisión de la Conferencia en 2016) y a algunos empleadores que violan la ley a sabiendas de que van a quedar impunes. Los miembros trabajadores expresaron su preocupación con respecto a los esfuerzos desplegados para frustrar la formación de sindicatos, especialmente en el sector de la agricultura, donde la discriminación antisindical es particularmente intensa, incluso en la producción del melón y el aceite de palma. Los trabajadores de la industria del vestido también se enfrentan a una oposición intensa e ilegal por parte de sus empleadores y a menudo son despedidos por tratar de formar sindicatos. Esto conlleva un aumento de la violencia. Por último, recordando que la Comisión de Expertos observó durante años que la legislación laboral no cumple con el Convenio, los miembros trabajadores solicitaron al Gobierno que aborde inmediatamente por lo menos las reformas prioritarias mediante la promulgación de enmiendas elaboradas en colaboración con los interlocutores sociales. Asimismo, consideraron necesario que una misión de alto nivel de la OIT visite el país para constatar los progresos realizados antes de finales del año.

Conclusiones

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

La Comisión lamentó los graves alegatos sobre actos de violencia antisindical, en particular, las agresiones físicas y los asesinatos, así como la ausencia de condenas contra los culpables de estos crímenes, lo cual crea una situación de impunidad que acentúa el clima predominante de violencia e inseguridad.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión instó al Gobierno a que:

- **adopte sin demora todas las medidas necesarias para garantizar que se llevan a cabo con prontitud investigaciones sobre los asesinatos y para determinar las personas responsables, y que se castiga a las personas culpables de estos delitos;**
- **proporcione protección rápida y efectiva a todos los dirigentes y afiliados sindicales que se encuentran amenazados de manera que se garantice la protección de sus vidas e integridad física, y aplique medidas que eviten otros casos de asesinatos y violencia contra sindicalistas;**
- **realice con apremio las investigaciones competentes de estos actos de violencia antisindical y se enjuicie a las personas consideradas responsables de estos delitos;**
- **vele por que las autoridades competentes dispongan de recursos y personal suficientes para llevar a cabo este trabajo con eficacia, y**
- **adopte las medidas necesarias para crear un entorno en el que los trabajadores puedan ejercer su derecho a la libertad sindical sin verse amenazados por la violencia o por otras violaciones de sus libertades civiles.**

En consulta con los interlocutores sociales, ponga el Código del Trabajo en conformidad con el Convenio en relación con:

- **la exclusión de las organizaciones de trabajadores de aquellas explotaciones agrícolas o ganaderas que no ocupen en forma permanente a más de diez trabajadores (artículo 2, párrafo 1);**
- **la prohibición de que exista más de un sindicato en una misma empresa (artículo 472);**
- **el requisito de 30 trabajadores para constituir un sindicato (artículo 475), y**

- los requisitos para ser miembro de la junta directiva de una organización sindical: tener la nacionalidad hondureña (artículos 510, *a*), y 541, *a*); pertenecer a la actividad correspondiente (artículos 510, *c*), y 541, *c*), y saber leer y escribir (artículos 510, *d*), y 541, *d*)).

La Comisión insta al Gobierno a recurrir a la asistencia técnica de la OIT a fin de dar seguimiento a estas conclusiones. Pide asimismo al Gobierno que informe detalladamente a la Comisión de Expertos, antes de su próxima reunión de noviembre de 2018, sobre las medidas adoptadas para poner en práctica estas conclusiones. La Comisión insta al Gobierno a que acepte una misión de contactos directos antes de la próxima Conferencia Internacional del Trabajo.

El representante gubernamental ofreció la colaboración de su Gobierno para el éxito de la misión de contactos directos que se enviará al país en aplicación de las conclusiones de la Comisión así como para recibir la asistencia técnica solicitada a la OIT. Reiteró que no existe política alguna de persecución ni de violencia antisindical desde el Estado y que, además de las acciones ya implementadas sobre las que se ha informado a la Comisión, se creará, con la asistencia técnica de la OIT, una mesa de seguimiento e información sobre casos de violencia sindical en el Consejo Económico y Social (CES). Indicó, con respecto a las reformas al Código del Trabajo, que las mismas serán sometidas nuevamente a la discusión tripartita en el CES, con la asistencia técnica de la OIT y que, en ausencia de acuerdo, como ha ocurrido en los últimos años, se procederá a presentar al Congreso Nacional el proyecto de reformas del Gobierno, a fin de armonizar la legislación nacional al Convenio.

Conclusions

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

The Committee deplored the serious allegations of acts of anti-union violence, including physical aggression and murders, and the absence of convictions against those guilty of the crimes, which create a situation of impunity reinforcing the prevalent climate of violence and insecurity.

Taking into account the Government's submissions and the discussion that followed, the Committee called upon the Government to:

- take without delay all the necessary measures to ensure that the investigations into the murders are carried out promptly in order to determine the persons responsible and to punish those guilty of these crimes;
- provide rapid and effective protection to all trade union leaders and members who are under threat to ensure that the lives and physical integrity of persons are effectively protected and to implement measures to prevent further cases of trade union murders and violence;
- immediately conduct competent investigations into acts of anti-union violence and prosecute the persons responsible for those crimes;
- ensure that the relevant authorities have sufficient resources and personnel to undertake this work effectively; and
- take all the necessary measures to create an environment in which workers are able to exercise their right of freedom of association without the threat of violence or other violations of their civil liberties.

In consultation with the social partners, bring the Labour Code into conformity with the Convention as regards:

- the exclusion of workers' organizations in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));
- the prohibition of more than one trade union in a single enterprise (section 472);
- the requirement of more than 30 workers to establish a trade union (section 475); and

- the requirement that the officers of a trade union must be of Honduran nationality (sections 510(a) and 541(a)), be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d)).

In this regard, the Committee calls on the Government to avail itself of ILO technical assistance to address these conclusions. The Committee also asked the Government to report in detail on the measures taken to implement these conclusions to the next meeting of the Committee of Experts in November 2018. The Committee urges the Government to accept a direct contacts mission before the next International Labour Conference.

Conclusions

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

La commission déplore les graves allégations d'actes de violence antisyndicale, tels que les agressions physiques et les meurtres, et l'absence de condamnations de ceux qui se rendent coupables de ces crimes, engendrant ainsi une situation d'impunité qui renforce le climat dominant de violence et d'insécurité.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement:

- de prendre sans retard toutes les mesures nécessaires pour faire en sorte que les enquêtes sur les meurtres soient diligentées rapidement afin de désigner les personnes responsables et de punir les coupables de ces crimes;
- d'apporter rapidement une protection efficace à tous les dirigeants et adhérents syndicaux qui font l'objet de menaces pour faire en sorte que la vie et l'intégrité physique des personnes soient effectivement protégées et mettre en œuvre des mesures propres à empêcher d'autres cas de meurtres et de violences dirigés contre des syndicalistes;
- de diligenter immédiatement des enquêtes compétentes sur les actes de violence antisyndicale et de poursuivre les personnes responsables de ces crimes;
- de veiller à ce que les autorités concernées disposent de suffisamment de ressources et de personnel pour s'acquitter efficacement de cette tâche; et
- de prendre toutes les mesures nécessaires pour créer un environnement dans lequel les travailleurs sont en mesure d'exercer leur droit à la liberté syndicale sans être menacés de violence ou d'autres violations de leurs libertés civiles.

En concertation avec les partenaires sociaux, mettre le Code du travail en conformité avec la convention sur les points suivants:

- l'exclusion des organisations de travailleurs des exploitations agricoles ou d'élevage qui n'emploient pas de manière permanente plus de dix travailleurs (art. 2(1));
- l'interdiction d'avoir plus d'un syndicat dans une même entreprise (art. 472);
- l'obligation de réunir 30 travailleurs pour pouvoir constituer un syndicat (art. 475); et
- les conditions imposées pour être membre des instances dirigeantes d'un syndicat: avoir la nationalité hondurienne (art. 510(a) et 541(a)); appartenir à l'activité correspondante (art. 510(c) et 541(c)); et savoir lire et écrire (art. 510(d) et 541(d)).

A cet égard, la commission invite le gouvernement à se prévaloir de l'assistance technique du BIT pour donner suite à ces conclusions. Elle le prie également de faire rapport en détail sur les mesures prises pour mettre ces conclusions en pratique à la prochaine réunion de la commission d'experts, en novembre 2018. La commission prie instamment le gouvernement d'accepter une mission de contacts directs avant la prochaine Conférence internationale du Travail.

Labour Inspection Convention, 1947 (No. 81)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)
Convention (n° 81) sur l'inspection du travail, 1947
Convention (n° 129) sur l'inspection du travail (agriculture), 1969
Convenio sobre la inspección del trabajo, 1947 (núm. 81)
Convenio sobre la inspección del trabajo (agricultura), 1969 (núm. 129)

Republic of Moldova (ratifications: 1996 and 1997)
République de Moldova (ratifications: 1996 et 1997)
República de Moldova (ratificaciones: 1996 y 1997)

A Government representative said that a complex process of reforms was being implemented to bring national legislation, including in the field of labour, into compliance with the instruments referred to in the Association Agreement of 2014 between the European Union (EU) and the Republic of Moldova. During 2016 and 2017, there had been a fundamental reform in the field of state control of entrepreneurial activity, including a reduction from 58 control bodies to 13 authorities and five authorities with regulatory functions. The main purpose of the reform had been to simplify the control procedures, to move to risk-based inspections and to eliminate overlapping competencies among control bodies. As a result of the reform, labour relations had been retained under the competence of the State Labour Inspectorate, while occupational safety and health had been transferred from the State Labour Inspectorate to ten sectoral agencies. The Ministry of Health, Labour and Social Protection was the central body of the public administration responsible for promoting occupational safety and health policy. The State Labour Inspectorate monitored and coordinated compliance, reporting to the central authority the action related to monitoring occupational safety and health carried out by the ten sectoral agencies. Under the reformed institutional framework, employers in all areas of economic activity were monitored in the field of occupational safety and health. In agriculture, this was done by labour inspectors from the National Food Safety Agency. With respect to the allocation of resources, each of the authorities with functions in the field of occupational safety and health were responsible for budgetary planning to ensure the proper implementation of their labour inspectors' activities. The State Labour Inspectorate held training activities for labour inspection, including those with control functions in the field of occupational safety and health, and four inspectors from three agencies had received such training. No interference was permitted in the work of labour inspectors. The Government was in the process of drafting legal acts in order to establish the status of labour inspectors in accordance with ILO Conventions, to be independent of changes of government and of improper external influences. Inspectors in the ten authorities had the right to require and get the support of experts and specialists from other relevant institutions in order to perform occupational safety and health inspections. The State Labour Inspectorate, as a national coordinating body, had the duty to elaborate the labour inspection report, with the participation of the ten competent agencies. She indicated that labour inspectors with control responsibilities in the field of occupational safety and health had the status of civil servants, except for those who were employees of the National Energy Regulation Agency and the National Regulatory Agency for Electronic Communications and Information Technology. The Government intended to modify the national legislation to include those two agencies. With regard to ensuring a sufficient number of inspectors, 36 personnel out of 43 labour inspectors of the State Labour Inspectorate had been transferred to six newly established authorities with control functions in the field of occupational safety and health, including the budgets for their salaries. There were a sufficient number of inspectors, and inspectors also had competences in the field of activity of the respective agencies. The majority of agencies with occupational safety and health responsibilities had territorial offices. While the Law No. 131 on state control of entrepreneurial activity stated that a planned control could only be carried out in an enterprise no more than once a year, that did not prevent unannounced controls whenever necessary in order to ensure the application of labour legislation and occupational safety and health standards. Law No. 131 had been amended by Law No. 185 of 21 September 2017, to remove the requirement for prior notification of inspections. The number of infringement reports for violations of labour legislation had decreased following the implementation of Law No. 131 in 2013. A six month moratorium on labour inspection had been declared in 2016. Law No. 185 of 2017 amended the Contravention Code to introduce new fines for employers who were not meeting their occupational safety and health obligations under national legislation. Pursuant to Law No. 140 on state labour inspection of 2001 and the Law on safety and health at work, labour inspectors were required to keep confidential the source of any complaint. The modification of the provisions of Law No. 131 removing the requirement for prior notification would ensure that the fact that a control was carried out following a complaint would not be disclosed. The ILO mission undertaken in December 2017 had assisted in focusing on the main issues requiring improvement in the occupational safety and health system. The Ministry of Health, Labour and Social Protection had already undertaken certain administrative and organizational measures in

order to implement the mission's recommendations and accelerate the control process in the area of occupational safety and health.

Les membres employeurs ont rappelé que, à la suite d'une réclamation introduite en 2013 par la Confédération nationale des syndicats de Moldova (CNSM), le Conseil d'administration du BIT avait désigné un comité tripartite dont le rapport avait été rendu public en mars 2015, et que la décision de clôturer la réclamation à cette date était liée à l'adoption de mesures nationales pour donner effet, en particulier, aux articles 12 et 16 de la convention n° 81. L'assistance technique du BIT, suggérée en 2015, a finalement été sollicitée par le gouvernement et a pu démarrer en février 2017. Les autorités nationales ont ainsi souhaité vérifier si leur projet de réforme de l'inspection du travail était conforme aux normes de l'OIT. En dépit des efforts fournis dans le cadre de l'assistance technique, les membres de la commission d'experts, en proposant de faire figurer cette situation nationale sur la liste des cas de manquements graves à l'occasion de la présente session de la Conférence, ont donné un signal clair de non-conformité. Les membres employeurs se sont dits préoccupés par les questions soulevées par la commission d'experts, à savoir: l'existence d'une autorité centrale encore efficace et fonctionnelle pour coordonner les différents services d'inspection dans le domaine de la santé et sécurité au travail; les raisons de la baisse du nombre de rapports d'infraction soumis aux tribunaux entre 2012 et 2016; les restrictions au pouvoir des inspecteurs d'effectuer des visites d'inspection sans avertissement préalable; les garanties de confidentialité; la nécessité de prendre des mesures pour que les inspections soient possibles aussi souvent que nécessaire; la réalité du libre choix des inspecteurs d'engager ou non des poursuites légales immédiates; et, enfin, la question de la formation adéquate des inspecteurs dans l'agriculture. Seule une inspection du travail répondant aux critères d'indépendance, de qualité et d'égalité de traitement de tous les acteurs économiques permet d'assurer une bonne gouvernance dans le monde du travail et est indispensable pour une administration efficace. Dans un état de droit, grâce à l'inspection du travail et à un cadre réglementaire judicieux, le climat des affaires se stabilise, la sécurité juridique et économique augmente et les risques sociaux pour les investisseurs sont plus limités. Une bonne inspection du travail, qui agit prioritairement à titre préventif et consultatif, est essentielle pour garantir une concurrence loyale et éthique, ce qui encourage l'investissement, la croissance économique et la création d'emplois qui en résultent. Si l'inspection du travail, comme l'exigent les conventions n°s 81 et 129, doit fonctionner de manière autonome et sans restriction afin de veiller à l'application effective de la réglementation du travail, il est également important qu'elle fonctionne de manière impartiale et conforme à l'état de droit. Par exemple, les inspecteurs du travail ne doivent pas être dissuadés d'imposer des amendes, et des mesures efficaces doivent être mises en place pour garantir l'absence de corruption. Le fonctionnement indépendant et sans restriction de l'inspection du travail est lié à des garanties en termes de bonne gouvernance, de transparence et de responsabilité.

En raison de la complexité croissante des législations sociales dans de nombreux pays, l'employeur n'est pas toujours en capacité de se mettre immédiatement en conformité avec tout le corpus de règles de droit social. Les services d'inspection doivent donc veiller à soutenir les entreprises, à titre préventif, en leur fournissant des informations et des conseils techniques sur les moyens les plus efficaces d'observer la législation. Outre les fonctions de conseil et de prévention, la seconde priorité d'action des services d'inspection du travail doit être de s'attaquer à la fraude sociale. Il convient de fournir suffisamment de moyens humains et matériels aux services d'inspection dans ce but, ainsi qu'une allocation judicieuse des ressources pour lutter contre des acteurs économiques et sociaux qui ne respectent pas, volontairement, les règles du jeu. Par ailleurs, les inspecteurs doivent disposer des qualifications, mais aussi de l'indépendance et de la déontologie nécessaires pour pouvoir remplir leur rôle de manière efficace et adaptée. Les membres employeurs ont également affirmé que les griefs formulés dans les observations devaient se référer – et se limiter – aux droits et obligations spécifiques prévus dans les conventions concernées. Ainsi, faisant référence au paragraphe 237 de l'étude d'ensemble de 2006 de la commission d'experts, ils considèrent qu'il ne semble pas opportun de veiller à ce qu'un plus grand nombre de contrôles non programmés soient effectués dans le but de garantir la confidentialité de l'identité des plaignants. De même, sur la question des poursuites légales immédiates, ils estiment, à la lumière de l'article 17.1 de la convention n° 81, que l'inspection du travail n'a pas nécessairement un pouvoir de décision absolu pour poursuivre légalement les contrevenants et que, en fonction des législations nationales, elle doit parfois privilégier les mesures incitatives, qui s'avèrent généralement très efficaces. Enfin, les visites sans avertissement préalable ont certes démontré leur efficacité, mais elles devraient être encadrées par des règles spécifiques et devraient se dérouler dans le respect des libertés fondamentales et du principe de proportionnalité. Ceci étant, les membres employeurs ont réaffirmé que le cadre législatif de la République de Moldova et son application pratique ne semblait pas encore apporter toutes les garanties nécessaires. Aussi les autorités nationales sont-elles encouragées à communiquer les informations demandées et à entreprendre les réformes appropriées pour rendre leurs services d'inspection du travail plus performants en respectant les principes des conventions.

Les membres travailleurs, à l'instar des membres employeurs, ont rappelé qu'en juin 2013 la CNSM avait déposé une réclamation au titre de l'article 24 de la Constitution de l'OIT quant à la non-exécution par la République

de Moldova de la convention n° 81. La réclamation exposait que, depuis l'adoption de la loi n° 131, il n'était plus possible pour l'inspection du travail d'effectuer des visites sans avertissement préalable, un préavis de cinq jours étant requis. Le comité tripartite créé afin d'examiner cette réclamation avait relevé, dans son rapport approuvé par le Conseil d'administration en 2015, que la loi n° 131 présentait effectivement des incompatibilités avec les conventions précitées. Depuis cette date, la situation ne s'est pas améliorée, elle s'est au contraire dégradée. D'après la commission d'experts, bien que le gouvernement ait pris quelques mesures afin d'adapter la législation nationale, il n'en reste pas moins que celle-ci présente toujours des incompatibilités avec les conventions. Si le gouvernement prévoit d'introduire certaines dérogations à l'obligation de présenter un préavis de cinq jours avant l'inspection, le fait d'introduire des dérogations n'est pas suffisant pour satisfaire aux prescriptions des conventions. Il est rappelé que la loi n° 131 retire certaines compétences et fonctions de surveillance dans le domaine de la sécurité et santé au travail de l'inspection du travail de l'Etat pour les transférer à dix organes de surveillance, tels que l'autorité nationale pour la sécurité alimentaire, l'agence pour la protection des consommateurs ou encore l'agence nationale pour la santé publique. Le fractionnement des fonctions de contrôle en matière de sécurité et de santé au travail a pour conséquence de diluer l'inspection du travail dans un ensemble plus vaste et conduit à en effacer la spécificité. Certes, ces conventions n'empêchent pas que certaines responsabilités concernant l'inspection du travail puissent être attribuées à différents départements, mais sous réserve que l'autorité compétente prenne des mesures afin de veiller à ce que des ressources budgétaires adéquates soient mises à disposition et d'encourager la coopération entre ces différents départements. Il appartient donc au gouvernement d'apporter des réponses précises aux observations de la commission d'experts sur ce point. Il s'agit notamment d'assurer: la stabilité d'emploi et l'indépendance du personnel d'inspection; la collaboration d'experts et de techniciens dûment qualifiés; un nombre suffisant d'inspecteurs pour permettre l'exercice efficace des fonctions d'inspection et de mettre à leur disposition les moyens nécessaires comme les bureaux et facilités de transport; et la conduite aussi fréquente et soigneuse que nécessaire afin d'assurer l'application effective des dispositions légales existantes. S'agissant du nombre de rapports d'infractions présentés aux tribunaux entre 2012 et 2016, qui a connu une baisse considérable, passant de 891 à 165, le gouvernement est prié de fournir des explications sur cette baisse, ainsi que des informations sur les résultats spécifiques des rapports présentés aux tribunaux. La raison d'être de la confidentialité des plaintes reçues par l'inspection tombe sous le sens: il s'agit d'assurer la protection de la victime et d'éviter qu'elle ne fasse l'objet de représailles. Etant donné que la législation nationale prévoit que les entreprises doivent être informées du contrôle cinq jours à l'avance, il en résulte que les enquêtes non programmées font toujours suite à une plainte, ce qui met à mal le droit à la confidentialité.

En ce qui concerne la fréquence des inspections, il est rappelé que l'article 14 de la loi n° 131 dispose que chaque autorité exerçant des fonctions de surveillance élabore un plan annuel d'inspections qui ne peut être modifié et qui spécifie les inspections planifiées par trimestre, sans qu'il soit possible de procéder à des visites non prévues par le calendrier. Si le gouvernement allègue que la loi prévoit un maximum d'une visite par an sauf si la méthodologie fondée sur le risque exige une fréquence plus élevée et qu'en outre il n'y a pas de limite pour les inspections non programmées, force est de constater, avec la commission d'experts, que les visites non programmées ne sont autorisées que sous certaines conditions spécifiques. Il est enfin fait référence à l'article 4 de la loi n° 131 (qui prévoit que les inspections au cours des trois premières années de l'exploitation d'une entreprise auront un caractère consultatif) et à l'article 5 (selon lequel en cas d'infraction mineure les sanctions prévues par la loi sur les infractions administratives ou d'autres peuvent ne pas être appliquées). Pour les membres travailleurs, cela revient à octroyer aux entreprises un chèque en blanc les autorisant à enfreindre comme elles le souhaitent la loi puisqu'elles sont assurées de ne subir aucune conséquence. Il est regrettable que plutôt que d'encourager la création d'entreprises saines, assurant des emplois décents, dans le respect des normes de santé et d'hygiène, le gouvernement préfère favoriser dans les faits des mécanismes de contournement des lois. Il est également évident que ceci va à l'encontre des conventions en question qui prévoient, sous réserve de certaines exceptions, que les infractions aux dispositions légales dont les inspecteurs sont chargés d'assurer la surveillance seront passibles de poursuites légales immédiates, sans avertissement préalable, et qu'il doit être laissé aux inspecteurs la liberté d'apprécier s'il y a lieu de donner des avertissements ou des conseils ou plutôt d'entamer ou de recommander des poursuites. En guise de conclusion, les membres travailleurs ont déclaré que la législation sur l'inspection adoptée en 2012 a fortement été influencée par la volonté de créer un environnement propice aux affaires qui échappe au respect des normes du travail. Rappelant la raison d'être de l'OIT, ils se sont référés au Préambule de la Constitution de l'OIT selon lequel «il existe des conditions de travail impliquant pour un grand nombre de personnes l'injustice, la misère et les privations, ce qui engendre un tel mécontentement que la paix et l'harmonie universelles sont mises en danger...». Il existe donc un lien entre, d'une part, les mauvaises conditions de travail – celles qui justement font l'objet d'une surveillance via l'inspection – et, d'autre part, le développement de l'injustice et de la misère. Le deuxième enseignement qui découle du Préambule est que de mauvaises conditions de travail empêchent toute justice sociale ainsi que la construction d'un développement soutenu pour toutes et tous. Ceci ne peut se réaliser que dans le respect des droits des travailleurs à de bonnes conditions de travail sous le contrôle d'une inspection efficace. La réalisation de ces objectifs est également conditionnée au respect des droits et principes fondamentaux du travail, et en premier lieu

la liberté syndicale. Ainsi, le fait de démanteler l'inspection du travail afin de soi-disant créer un environnement propice aux affaires représente un calcul à court terme qui risque de nuire gravement à la cohésion et à la stabilité sociale.

The Employer member of the Republic of Moldova indicated that in November 2013 the National Confederation of the Employers of the Republic of Moldova (CNPM) had organized a business forum to examine the main obstacles for the business environment in the country and had made a number of recommendations. The information collected had served as a basis for the development of the business environment improvement programme and a memorandum had been signed with the Government which had served as the basis for reforms. Efforts had been made to eliminate business restrictions. In the field of business regulation, there had been a three-fold reduction in the number of approval documents and the process of financial and statistical reporting had been simplified. An institutional reform had been carried out, optimizing the number of institutions with supervisory powers. The goal of the reform was to reduce the burden on economic agents and significantly reduce the number of controls of enterprises with a view to increasing transparency and predictability in the control process. This included a reduction of institutions with supervisory powers; a reduction in the number of approval documents; a simplification of labour relations through the amendment to the Labour Code; and a simplification of financial reporting. With regard to labour inspections, the CNPM had, in consultation with the social partners and the ILO, found that Law No. 131 was not in compliance with Convention No. 81. Certain amendments had to be made. However, for these governmental initiatives to support the business environment by optimizing the number of institutions, it had been necessary to include the State Labour Inspectorate in the reforms. He referred to a proposal that had been made by the CNPM to create an integrated inspection system comprised of the State Labour Inspectorate and the National Centre of Public Health, as was the case in several other countries, but underlined that the proposal had not been supported. Currently, the Republic of Moldova was going through a number of transformations. In this regard, he eagerly awaited the end of the transitional period in order to assess the outcome of the reforms.

The Worker member of the Republic of Moldova emphasized that compliance with Conventions Nos 81 and 129 contributed to saving lives. Limitations on labour inspection functions were unacceptable. Referring to the representation made under article 24 of the ILO Constitution by the CNSM in 2013 and closed in 2015, he recalled the length of time that it had taken for the representation to be examined. Occupational accidents, including fatal accidents, had occurred after the adoption of Law No. 131 which had been related to the absence of labour inspections. The regulation of occupational safety and health by Law No. 131 was in contradiction with the Conventions. The Ministry of Health, Labour and Social Protection had always supported the position of the CNSM and defended compliance with ILO standards. However, the Ministry had not been supported by the Ministry of the Economy or other parts of the Government. The CNSM had been told that the reform had required change and that, following the signing of the Association Agreement of 2014, the country would have to respect international standards. The tripartite committee set up to examine the article 24 representation had found that Law No. 131 was not in compliance with the provisions of Convention No. 81, and had requested measures be taken to ensure the effective implementation of Articles 12 and 16 of the Convention. While the Government had undertaken to bring the national legislation into line with the provisions of Convention No. 81, through the adoption of the Decent Work Country Programme 2013–16, Articles 12 and 16 of the Convention were not implemented in national legislation. Further, the Ministry of Economy had stated that Law No. 131 was in conformity with international standards and further measures were not needed. The absence of appropriate labour inspection had led to the death of three minors in occupational accidents. Moreover, in April 2016, a moratorium on labour inspection had been introduced. The Committee of Experts had stated that such a limitation was a severe violation of Conventions Nos 81 and 129. Moreover, the functions of the state labour inspection had been transferred to other agencies. He welcomed the fact that, very recently, Parliament had amended the national legislation and given back to the labour inspectorate functions relating to the investigation of severe occupational accidents. An ILO technical assistance mission had led to a number of recommendations on compliance with the Conventions, including with respect to the decentralization of the labour inspection system. Further technical assistance should be provided to improve the national legislation and bring it into compliance with the Conventions.

The Government member of Bulgaria speaking on behalf of the Member States of the European Union (EU), as well as Albania, Bosnia and Herzegovina, Montenegro and Norway, emphasized the fundamental importance of labour inspection for promoting decent work. She confirmed the commitment to political association and economic integration in the framework of the EU-Moldova Association Agreement with its Deep and Comprehensive Free Trade Area (DCFTA), which was based on core values, notably respect for democratic principles, the rule of law, good governance, human rights and fundamental freedoms, and she welcomed the results of the EU-Moldova Association Council held in May 2018. The issue of labour inspection in the Republic of Moldova had been examined several times by the Committee of Experts, and certain parts of the legislation,

particularly Law No. 131, had been found to be in contradiction with Conventions Nos 81 and 129. The reform enacted in 2017, removing occupational safety and health from the mandate of the State Labour Inspectorate, established a complex system that raised many concerns regarding compliance with the Conventions, notably with respect to the overall supervision and coordination of occupational safety and health inspections, the allocation of sufficient budgetary and human resources and the professional qualifications of inspectors, as well as their stability and independence. She expressed concern that the new system would not deliver equal prevention of occupational risks and the protection of health and safety at work to all workers in the country. She also further expressed strong concern at the restrictions on labour inspection contained in Law No. 131, which limited the undertaking of unannounced inspections, as well as the number of inspection visits per year. The Law also weakened the system of penalties and jeopardized the confidentiality of complaints. The number of infringement reports resulting from inspections had also dropped significantly in recent years. The Government was expected to take the necessary steps to bring the national law and practice related to labour inspection, including in agriculture, into conformity with the Conventions, and to avail itself of ILO expertise. The lack of an effective system for the enforcement of labour rights and standards could result in a breach of commitments undertaken by the Republic of Moldova under its Association Agreement (including the DCFTA) with the EU. That included commitments to effectively implement in national law and practice the core labour standards embodied in the ILO fundamental Conventions and to approximate its national legislation to EU law on labour and health and safety at work issues (Article 37 of the Association Agreement). The Republic of Moldova had also undertaken to implement effectively Conventions Nos 81 and 129 in national law and practice pursuant to Article 365 of the Association Agreement. The Republic of Moldova had further committed not to lower levels of protection or to fail to enforce effectively labour law, as an encouragement for trade or investment, pursuant to Article 371 of the Association Agreement. She emphasized the need for the Government, as well as the ILO, to coordinate closely with all relevant international and regional organizations, including the International Monetary Fund, the World Bank and the Organisation for Economic Co-operation and Development to ensure that the measures taken with regard to labour inspection were in accordance with ILO Conventions.

The Worker member of the United Kingdom emphasized that in accordance with Convention No. 81, the existence of adequately funded labour inspectorates was a vital component in the effective supervision and enforcement of the labour legislation, including occupational safety and health standards. Referring to the discussion on the case of the application of Conventions Nos 81 and 129 by Ukraine, she highlighted that governments were increasingly restricting the powers and resources of labour inspectorates, under the pretext that it would improve the business environment and regularize the informal economy. In the Republic of Moldova, the capacity of labour inspectorates had never been strong and the number of labour inspectors was limited. Recent legislative reform had further undermined the effectiveness of the system. The adoption of Law No. 131 substantially reduced the capacity of labour inspectorates by limiting the frequency of inspections in individual firms, requiring the provision of prior notice and imposing limits on unannounced inspections. These changes had led to a marked increase in workers' complaints of labour violations and accidents in the workplace, by 50 per cent between 2012 and 2013. Ten work-related deaths had been reported in 2013 and there had been a significant increase in serious occupational accidents. The Committee of Experts had concluded that Law No. 131 did not comply with the requirements of Convention No. 81 and had made clear recommendations in that respect, but no amendments had been introduced. Further, in 2016, responsibility for the enforcement of labour law and occupational safety and health had been separated, leading to a fragmentation of occupational safety and health-related enforcement and contributing to the growth in occupational accidents and fatalities. The moratorium imposed in 2016 had also paralyzed the work of the labour inspectorate. Such moratoriums were a clear violation of Convention No. 81. In conclusion, she called on the ILO to provide technical assistance, and for the Government to reform its national legislation to comply with Convention No. 81.

The Worker member of Sweden, speaking on behalf of trade unions from the Nordic countries and Germany, stated that they expected countries engaged in close cooperation with the EU and the European Economic Area to comply with international labour standards. Providing for labour inspection was a requirement of Convention No. 81 that had to be respected by all ratifying member States. Legislation designed to protect decent working conditions had to be applied in practice and labour inspection played a vital role in that respect. The application of Convention No. 81 was therefore both important in itself and an important means of ensuring the correct implementation of other labour standards. The Republic of Moldova and the EU had signed the Association Agreement in June 2014 which contained provisions for the creation of a DCFTA over a ten-year transition period. The DCFTA included a number of commitments relating to both labour standards and environmental matters. A weakened State Labour Inspectorate would not enable the country to comply with its obligations to implement ILO Conventions and those created by the Association Agreement with the EU. The Republic of Moldova risked moving away from its commitment to the enforcement of labour standards at the international and European levels, which had also been confirmed through the institutional mechanisms for the implementation of the trade and sustainable development

chapter of the DCFTA. The report of the second joint meeting of the Republic of Moldova – European Union Domestic Advisory Group under the DCFTA had expressed growing concern regarding the situation of the State Labour Inspectorate, which raised problems in view of the ILO's standards on labour inspection as well as under EU law. Labour inspection was under threat in many countries. It was a core function that any responsible state needed to carry out. Weakening labour inspection was harmful to a decent societal climate and detrimental to a fair market for goods and services. Therefore, legislation needed to be introduced to ensure compliance with Convention No. 81 and appropriate resources must be provided for the labour inspectorate to enable it to be effective.

The Government representative recalled that reform in the field of safety and health at work was a challenge, but that, with the support of the ILO and the social partners, the Government would manage to ensure a functional system in line with ILO standards. As the central authority, the Ministry of Health, Labour and Social Protection would update the national occupational safety and health profile with ILO support. A round-table discussion with the participation of high-level officials from relevant institutions would be organized to discuss and share EU best practices. She expressed appreciation for ILO support offered in adjusting the national framework to achieve compliance with ILO standards. With ILO expertise and technical support, it would be possible to improve the national occupational safety and health system. It was important to have an efficient occupational safety and health system in accordance with ILO Conventions, and in this respect, the Government would build an effective labour administration and labour inspection systems through strong tripartite social dialogue. The changes of Law No. 131 did not automatically imply that the budget for inspections would be reduced. The Law did not limit the number of unannounced visits of inspectors as the limitations referred only to planned visits. The penalties for violations had also not been weakened. The reason for the reduced number of infringement reports filed in 2016 was the moratorium put in place that year. While the Government had taken many steps to implement the ILO standards, there were still areas for improvement. She said her Government was ready to continue the constructive engagement with its partners, especially the ILO and the EU, in order to address the issues raised.

Les membres travailleurs ont remercié le gouvernement et l'ont invité à faire preuve de célérité dans la mise en conformité de la législation avec les conventions. En effet, certains problèmes datent de plusieurs années et ont déjà fait l'objet de remarques des autres mécanismes de contrôle, notamment en ce qui concerne les dispositions qui interdisent de mener des inspections sans avertissement préalable. Dans le cadre de la réforme des services d'inspection, les membres travailleurs ont invité le gouvernement à assurer: la stabilité de l'emploi et l'indépendance du personnel d'inspection; la collaboration d'experts et de techniciens dûment qualifiés; un nombre suffisant d'inspecteurs pour permettre l'exercice efficace des fonctions d'inspection, et les moyens nécessaires aux inspecteurs pour l'exercice de leurs fonctions, notamment des bureaux et des facilités de transport. Les membres travailleurs ont également demandé au gouvernement de garantir aux inspecteurs le droit de réaliser des visites aussi souvent que nécessaire ainsi que de garantir la confidentialité de la plainte. Il convient aussi de mettre la législation en conformité avec les conventions afin de permettre aux inspecteurs d'entamer des poursuites ou de se contenter d'un avertissement. Enfin, les membres travailleurs ont encouragé le gouvernement à se prévaloir de l'assistance technique du Bureau pour mettre en œuvre ces recommandations.

Les membres employeurs ont remercié le gouvernement pour les informations et perspectives fournies. Ils ont recommandé aux autorités nationales de prendre les mesures nécessaires et de réaliser les réformes appropriées pour rendre leurs services d'inspection du travail conformes aux principes des conventions n^{os} 81 et 129, s'agissant notamment du pouvoir des inspecteurs d'effectuer des visites d'entreprises sans avertissement préalable et de la nécessité d'effectuer des inspections aussi souvent que nécessaire. Les membres employeurs ont également demandé au gouvernement de fournir à la commission d'experts avant le 1^{er} septembre 2018 des informations par écrit, détaillées et précises, sur l'ensemble des questions soulevées dans son observation. Ils ont invité le gouvernement à continuer à se prévaloir de l'assistance technique du BIT. Les membres employeurs ont rappelé que, si l'inspection du travail doit recevoir les moyens nécessaires pour fonctionner utilement, elle doit aussi être encadrée pour éviter tout type d'abus. Pour être crédible et professionnel, tout service d'inspection du travail doit pouvoir fonctionner en toute indépendance. L'inspection du travail doit pratiquer un dialogue ouvert avec les entreprises et les personnes contrôlées. Les contrôles doivent être légitimes et proportionnés à la finalité poursuivie; ils doivent garantir l'égalité de traitement et respecter la nécessaire confidentialité pour ne pas nuire aux intérêts des entreprises, des personnes contrôlées et des plaignants. Les membres employeurs ont aussi rappelé que la priorité des services d'inspection du travail doit viser la prévention et le conseil dans les entreprises de bonne foi et qu'ils doivent surtout intensifier leurs efforts de lutte contre la fraude sociale dans les autres entreprises. Les pratiques de fraude sont un fléau pour l'ensemble de la société, pour la sécurité sociale, mais aussi pour les entreprises honnêtes confrontées à une concurrence économique et sociale gravement déloyale.

Conclusions

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

The Committee noted that the labour inspectorate must be given the necessary means to function effectively and independently, and it shall also be placed under the supervision and control of a central authority.

Taking into account the Government's submissions and the discussion that followed, the Committee recommends the Government to:

- take the necessary measures and appropriate reforms to bring their labour inspection services into line with the provisions of Conventions Nos 81 and 129;
- bring national legislation and practice into line with Conventions Nos 81 and 129 to enable labour inspectors to carry out visits to workplaces liable to inspection without prior notice in order to guarantee adequate and effective supervision;
- ensure that inspections are proportionate to the legitimate aim pursued and are possible as often as necessary;
- provide to the Committee of Experts in writing before 1 September 2018, detailed and precise information on:
 - the decentralization of labour inspection services since 2012 in the field of occupational safety and health and on the guarantees of effective operation of labour inspectors throughout the national territory;
 - the reasons for the decrease in the number of inspection reports submitted to the courts between 2012 and 2016;
 - the guarantees of confidentiality of the identity of complainants;
 - the measures taken to ensure that labour inspectors can freely initiate or recommend legal proceedings; and
 - the training provided to inspectors in agriculture, including the level of participation.

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

Conclusions

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

La commission a fait observer que les services de l'inspection du travail doivent être dotés des moyens nécessaires pour exercer leurs activités de manière efficace et en toute indépendance et qu'ils doivent également être placés sous la surveillance et le contrôle d'une autorité centrale.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a recommandé au gouvernement:

- d'adopter les mesures nécessaires et les réformes adéquates pour mettre ses services de l'inspection du travail en conformité avec les dispositions des conventions n^{os} 81 et 129;

- de mettre la législation et la pratique nationales en conformité avec les conventions n^{os} 81 et 129 afin de permettre aux inspecteurs du travail de procéder à des visites dans les établissements assujettis au contrôle de l'inspection sans avertissement préalable afin de garantir un contrôle adéquat et efficace;
- de veiller à ce que les inspections soient proportionnées au but légitime recherché et aussi fréquentes que nécessaire;
- de communiquer des informations détaillées et précises à la commission d'experts, par écrit, avant le 1^{er} septembre 2018, sur les points suivants:
 - la décentralisation des services de l'inspection du travail depuis 2012 dans le domaine de la sécurité et de la santé au travail et les garanties d'une intervention efficace des inspecteurs du travail sur l'ensemble du territoire national;
 - les raisons de la diminution du nombre de rapports d'inspection déferés à la justice entre 2012 et 2016;
 - les éléments garantissant l'anonymat des auteurs de plaintes;
 - les mesures prises pour permettre aux inspecteurs du travail de recommander ou d'engager sans contrainte des poursuites judiciaires;
 - la formation dispensée aux inspecteurs dans l'agriculture, y compris le nombre d'inspecteurs formés.

La commission invite le gouvernement à continuer de se prévaloir d'une assistance technique en ce qui concerne les présentes 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 debe dotarse a la inspección del trabajo de los medios necesarios para llevar a cabo sus funciones de forma eficaz e independiente, y de que ésta debe estar bajo la vigilancia y control de una autoridad central.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión recomienda al Gobierno que:

- adopte las medidas necesarias y realice las reformas apropiadas para poner sus servicios de inspección del trabajo en conformidad con las disposiciones de los Convenios núms. 81 y 129;
- ponga en conformidad la legislación nacional con los Convenios núms. 81 y 129 a fin de velar por que los inspectores del trabajo puedan efectuar visitas en los lugares de trabajo sujetos a inspección sin previo aviso con miras a garantizar una supervisión adecuada y efectiva;
- garantice que las inspecciones se ajusten a la finalidad perseguida y sea posible efectuarlas tan a menudo como sea necesario;
- proporcione a la Comisión de Expertos información detallada y precisa por escrito, antes del 1.º de septiembre de 2018, sobre:
 - la descentralización, desde 2012, de los servicios de inspección del trabajo en materia de seguridad y salud en el trabajo, así como sobre las garantías para el funcionamiento eficaz de los inspectores del trabajo en todo el territorio nacional;
 - los motivos del descenso en el número de informes de la inspección presentados a los tribunales entre 2012 y 2016;

- las garantías en cuanto a la confidencialidad de la identidad de los denunciantes;
- las medidas adoptadas para garantizar que los inspectores del trabajo puedan iniciar libremente procedimientos judiciales o proponerlos, y
- la formación que se imparte a los inspectores en la agricultura, incluido el nivel de participación de estos.

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

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Convention (n° 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976

Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144)

Serbia (ratification: 2005)

Serbie (ratification: 2005)

Serbia (ratificación: 2005)

A Government representative indicated that social dialogue at the national level was a tripartite process between representatives of employers, workers and the Government, and that collective bargaining and the work of social and economic councils were the most important forms of social dialogue. The foundation of social dialogue had been laid in the Labour Code, primarily with respect to the establishment of trade unions and employers' associations, as well as the method of and requirements for determining their representativeness. The establishment of the Social and Economic Council of the Republic of Serbia (SEC) in 2004 had created the conditions for a more successful social dialogue at the national level. Social dialogue was promoted by regular staff meetings and the SEC sessions. Four sessions of the SEC had been held in 2018, and eight in 2017.

With respect to the remarks by the social partners that draft laws had not been submitted for consultations, the speaker explained that in 2017, the following laws and other acts, which had been prepared by the Ministry of Labour, Employment, Veteran and Social Affairs (henceforth Ministry of Labour), had been communicated to the SEC for its consideration and opinion: Draft Law on Amending the Law on Peaceful Settlement of Labour Disputes; Draft Law on Amending the Labour Code; Proposal of a Rulebook on Amending the Rulebook on previous and periodical medical examinations of employees in employment at increased risk; and Proposal of a Rulebook on acquiring new knowledge relating to occupational health and safety. In addition, also in 2017, the following draft laws prepared by the Ministry of State Administration and Local Self-Government had been considered by the SEC: Draft Law on Salaries of Civil Servants and State Employees in Autonomous Province Authorities and Local Government Units; Draft Law on Employees at Public Services; and Draft law on Amending the Public Sector Wage System Law.

Apart from the SEC established at the level of the Republic, there were social and economic councils at the level of autonomous territories and local government. The Registry kept by the Ministry of Labour contained 19 councils.

One of the most important forms of social dialogue was collective bargaining. The amendments to the Labour Code made in July 2014 had been aimed at encouraging social dialogue and collective bargaining for the purpose of concluding collective agreements at all levels (individual employer, industry, local government unit, as well as at the national level). Government representatives were involved in the negotiation procedures both for collective agreements for public enterprises and corporations founded by the Republic, and for special collective agreements for public enterprises and public services, which were signed by a founder. Seventeen special collective agreements and five collective agreements for economic branches were currently registered by the Ministry of Labour and published in the *Official Gazette*. For instance, special collective agreements had been concluded for: health institutions; cultural institutions; social protection institutions; employees in elementary and secondary schools and student homes; police officers; state authorities; and pre-school institutions. Collective agreements for economic

branches had been concluded for such industries as: chemistry and non-metals; agriculture, food, tobacco and water management; construction and construction materials; and road maintenance.

With respect to the observation that the social partners were excluded from the drafting process of labour and social legislation, the speaker reiterated that social dialogue was a very important part of the law-drafting process within the relevant working group. In line with the Government workplan for 2016–18, a legal framework on strike and peaceful settlement of labour disputes was in the process of development. The working group had consisted of representatives of trade unions and of employers' associations from the territory of the Republic, and members of the SEC. At the session on 28 December 2017, the Government had finalized a draft Bill on Amending the Law on Peaceful Settlement of Labour Disputes, and had communicated it to the National Assembly for adoption. Public discussion on the Draft Law on Strike had been finalized on 10 May 2018, and further activities were undertaken for this bill to be adopted by the Government.

In response to the observations made by the social partners that the Representativeness Committee had ceased to function in May 2017, the speaker informed that since the new Government had been formed on 29 June 2017, new Government representatives to the Committee had to be nominated by the Ministry of Education, Science and Technological Development, the Ministry of Labour and the Ministry of Health. Following their nomination on 19 April 2018, the Representativeness Committee had held its first session on 7 May 2018.

With respect to the observations made by the social partners that no consultations on international labour standards had taken place, she stated that such consultations had been regularly held. The most obvious example of the consultation results was the ratification of the Maternity Protection Convention, 2000 (No. 183). This Convention had been ratified after the meeting between the Government representatives and the trade union representatives. The ratification procedure had started at the initiative of the Trade Union Confederation "Nezavisnost", with the support of the Confederation of Autonomous Trade Unions of Serbia, and employers' associations. All reports on the implementation of ILO Conventions had been regularly communicated to the social partners on a yearly basis for their opinion and comments. All comments received were forwarded to the ILO by the Government in a timely manner. In order to prepare the delegation of the Republic of Serbia to the International Labour Conference, the Government had delivered the following documents to the SEC: the invitation letter, information on the Conference and the guidelines for participation and a request to the SEC to transmit to the Government information on the social partners' delegates to the Conference. Furthermore, the Government had delivered the following ILO documents to the social partners: the text of the newly adopted Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205); and a questionnaire on the implementation of the Social Protection Floors Recommendation, 2012 (No. 202). The SEC had met twice in March and April 2018 concerning the participation in the International Labour Conference.

Les membres travailleurs ont rappelé la nécessité d'organiser le dialogue social de manière efficace afin d'appréhender l'ensemble des problèmes qui peuvent émerger dans le cadre de la mise en œuvre des instruments internationaux du travail. En effet, le dialogue social se retrouve de manière transversale dans tous les instruments de l'OIT, notamment dans la convention qui traite directement de la question du dialogue social dans le cadre des consultations tripartites relatives aux normes internationales du travail. Cette convention bénéficie d'une large adhésion des Etats Membres de l'OIT puisqu'elle compte 140 ratifications à ce jour. Ils ont souligné qu'une campagne de ratification qui vise à atteindre une ratification universelle pour le centenaire de l'OIT a été lancée. Les Etats qui ne l'ont pas encore fait devraient s'engager dans un processus de ratification de la convention. En effet, si la ratification de cette convention est essentielle, son respect, en droit comme en pratique, l'est tout autant.

L'application par la Serbie de la convention qui a été ratifiée en 2005 pose problème. Comme il s'agit d'une ratification relativement récente, ces manquements sont peut-être dus à la relative jeunesse de cette ratification. Cette convention, qui consacre les principes fondamentaux du dialogue social, semble difficilement trouver écho en Serbie. En effet, selon les partenaires sociaux, la concertation sociale a été réduite au strict minimum à tous les niveaux. Alors que cette convention vise à promouvoir des consultations tripartites efficaces, il faut se rendre à l'évidence qu'actuellement c'est loin d'être le cas en Serbie. Ce n'est pas en réduisant la concertation sociale au minimum que des consultations efficaces pourront être mises en place, conformément aux prescriptions de la convention. A cet égard, les partenaires sociaux signalent que, de manière générale, les projets de loi dans le domaine de la législation du travail ou sociale ne sont pas tous soumis à l'organe de consultation compétent en la matière. Il n'est pas possible d'imaginer qu'il en soit autrement pour tous les éléments à soumettre obligatoirement à la consultation des partenaires sociaux en vertu de l'article 5 de la convention. En effet, tous les projets sont directement soumis à l'Assemblée législative sans consultation préalable de l'organe consultatif compétent. L'article 2, paragraphe 1, de la convention prévoit que tout Etat Membre se doit de mettre en œuvre des procédures qui assurent des consultations tripartites efficaces et cela ne semble plus être le cas en Serbie.

Si le gouvernement devait mettre ou remettre en œuvre de telles procédures, il devra consulter les organisations représentatives des travailleurs et des employeurs afin d'établir ou de rétablir de telles procédures, conformément à l'article 2, paragraphe 2, de la convention. A cet égard, les organisations représentatives des travailleurs indiquent que leur représentant n'est plus autorisé à participer à la rédaction des textes de loi dans le domaine de la législation du travail ou sociale. Cela s'ajoute au manque de concertation avec les partenaires sociaux, en particulier avec les organisations de travailleurs. Un comité de représentativité a été mis en place afin de déterminer la représentativité des organisations de travailleurs et d'employeurs, mais il a cessé ses activités en mai 2017. Selon les partenaires sociaux, la paralysie de ce comité affecte fortement la concertation sociale et a pour conséquence que le gouvernement détermine dorénavant la représentativité des organisations. Les décisions prises par le gouvernement en matière de représentativité sont prises sans l'avis du comité. Il va de soi que cette procédure, probablement appliquée en réponse au dysfonctionnement de l'organe compétent en la matière, devrait faire l'objet de consultations avec les partenaires sociaux.

Contrairement à l'article 5, paragraphe 2, de la convention, aucun agenda ne semble avoir été fixé en concertation avec les partenaires sociaux afin d'assurer leur consultation à intervalles réguliers sur les questions qui font l'objet de cette convention. En raison de l'absence de consultations régulières, les consultations interviennent trop tardivement, voire même pas du tout. Par conséquent, le gouvernement est invité à revoir, en concertation avec les partenaires sociaux, les procédures applicables en la matière.

Au vu des difficultés constatées, il semblerait utile que le gouvernement invite l'autorité compétente à produire un rapport annuel sur le fonctionnement des procédures de consultation en application de l'article 6 de la convention. Il revient au gouvernement de veiller à ce que l'autorité compétente bénéficie de tous les moyens pour préparer ce rapport. Ce dernier fera un état des lieux utile de la situation et permettra d'envisager la révision de tous les éléments qui paralysent la concertation sociale dans ce pays. La Serbie est déjà bénéficiaire d'un programme d'assistance technique du BIT qui vise précisément à renforcer les capacités de l'autorité compétente en matière de consultations tripartites. Il est important d'évaluer les progrès réalisés dans ce cadre et de renforcer davantage le recours à cette assistance. Un atelier tripartite a également été organisé à Belgrade en 2017 par le BIT afin de former les partenaires tripartites sur la manière de mettre en œuvre la convention. Malgré une telle assistance, il ressort clairement des observations formulées par la commission d'experts qu'il existe de nombreux manquements à cette convention.

Les membres travailleurs ont estimé que la situation peut sensiblement s'améliorer si le gouvernement fait des efforts en ce sens. Les démarches à entreprendre en vue de résoudre les difficultés constatées et de rétablir des consultations tripartites efficaces ne sont pas excessivement complexes et ne demandent qu'un minimum de volonté politique.

Les membres employeurs ont souligné l'importance du respect par les Etats de cette convention de gouvernance. La Serbie a ratifié la convention le 13 mai 2005 et, jusqu'à présent, la commission d'experts a déjà rédigé sept observations à ce sujet, les trois dernières datant de 2012, de 2015 et de 2017. En 2001, le Conseil économique et social de la République de Serbie a été créé en tant qu'organe consultatif tripartite. La loi prévoit une représentation des partenaires sociaux sur un pied d'égalité, aux côtés d'une délégation gouvernementale. Ce conseil tripartite apparaît donc comme étant l'organe national compétent par excellence pour assumer la fonction consultative sur les instruments de l'OIT. Il semble cependant établi que cet organe tripartite n'est que rarement saisi par les autorités, en particulier concernant les obligations visées dans la convention. Le contenu, la procédure, les délais de consultation, l'issue et la fréquence de ces consultations continuent visiblement à poser question. Les membres employeurs ont exprimé leur préoccupation quant aux constats établis par la commission d'experts. Ayant pris connaissance des explications fournies par le gouvernement, ils ont estimé que des actions concrètes devront être entreprises afin de mettre la convention en application au niveau national.

Les membres employeurs accordent beaucoup d'importance à cette convention étant donné que, proclamé par la Constitution de l'OIT, le tripartisme est l'un des piliers de l'Organisation. Il est ce qui la distingue des autres organisations internationales. La convention a le mérite de la souplesse en laissant le soin à la pratique nationale de déterminer la nature aussi bien que la forme des procédures de consultation. Des procédures ou méthodes fort diverses de consultation tripartite peuvent ainsi satisfaire aux objectifs de la convention. Néanmoins, pour avoir un sens, les consultations ne doivent pas se limiter à des démarches de pure forme, mais retenir toute l'attention des organisations représentatives d'employeurs et de travailleurs afin d'aider le gouvernement à prendre une décision. Dans ce sens, le tripartisme n'est pas une voie facile. Il impose la mise en place de moyens d'information appropriés des organisations afin que celles-ci disposent d'une base de consultation suffisante, d'échanges d'informations sur les points de vue, et de résolution des conflits tenant compte des positions des partenaires sociaux avant que la décision finale ne soit prise. Il est essentiel que les décisions finales du gouvernement concernant leurs obligations envers l'OIT tiennent compte des points de vue exprimés par les employeurs et les travailleurs. Enfin, il est prévu à l'article 5, paragraphe 2, de la convention que des consultations aient lieu au moins une fois par an. On peut

difficilement concevoir des consultations moins fréquentes, compte tenu de la diversité des questions qui en justifient la tenue à différentes périodes de l'année. Toutefois, rien n'oblige les gouvernements à publier des rapports annuels sur le fonctionnement de cette procédure; ils sont tenus d'organiser des consultations sur l'opportunité de tels rapports. Cela étant dit, les obligations de rapport à charge des gouvernements sont lourdes et parfois de nature à retarder ou réduire le délai des consultations tripartites, voire à empêcher que celles-ci aient lieu dans les délais impartis. Les membres employeurs soutiennent toute initiative qui permettrait d'alléger la charge administrative des gouvernements, tout en conservant la qualité des informations communiquées par ceux-ci. Ces rationalisations seraient de nature à faciliter le déroulement des consultations tripartites.

En ce qui concerne les différentes observations formulées par la commission d'experts, les membres employeurs ont rappelé que les consultations tripartites par le gouvernement ne peuvent pas se limiter à un texte de loi ou à une consultation purement formelle. Ainsi, il ne suffit pas d'organiser le voyage des délégués employeurs et travailleurs pour participer à la Conférence internationale du travail ni de leur soumettre pro forma, de manière sélective ou en dernière minute, des notes générales impropres à une consultation de qualité. Au contraire, un processus fondamental de consultation effective doit être mis en œuvre. Certaines questions examinées par la commission d'experts ont été soulevées à maintes reprises. Il importe donc que le gouvernement fournisse par écrit toute information détaillée et utile à propos du fonctionnement effectif du Conseil économique et social.

The Worker member of Serbia indicated that the Law on the Social and Economic Council had defined the SEC as an independent body, composed of representatives of the Government, representative employers' associations and representative trade unions. Pursuant to the Law, the SEC should take positions on issues such as development and improvement of social bargaining, impact of economic policy and measures for its implementation with regard to social development and stability, employment policy, wage and price policies, competition and productivity, privatization and other structural adjustment issues, protection of working and living environment, education and vocational training, health care and social welfare, demographic trends and other issues. The positions should be taken by consensus of the members of the SEC. Regarding the implementation of the Convention, the speaker denounced that draft laws in the area of labour and social legislation or those that regulated the right to work were not submitted to the SEC for review. Instead, the Government had directly submitted these bills to the National Assembly. In the course of 2017, 18 bills had been submitted to the National Assembly without having consulted and requested the participation of the SEC.

With respect to representativeness, the speaker indicated that, pursuant to section 224 of the Labour Code, representativeness of a trade union for the territory of the Republic of Serbia was determined by the Minister at the proposal of the Representativeness Committee. The Representativeness Committee should be composed of three representatives of each, the Government, the trade unions and the association of employers. It had not been formally in operation from May 2017 to April 2018, due to the Government's failure to nominate its representatives. Moreover, in July 2014, section 229 of the Labour Code had been amended, setting out that the Representativeness Committee could operate and adopt proposals if at least two-thirds of its members were present at the meeting (before the amendment the decisions had to be taken by consensus). As a result, the representative trade union, as a social partner, did not have equal status in the Committee, since the Government together with the representative employers' association could make decisions and proposals even without the trade union, which was contrary to the Convention. Pursuant to section 229(7) of the Labour Code as amended, the Government had taken over the determination of representativeness, as the minister could decide without seeking the Representativeness Committee's advice. With regard to branch collective agreements, he denounced that in the industrial sector these were non-existent, or those that were signed, were not implemented or failed to obtain approval for extended effect. Moreover, according to the speaker, there were no employers' organizations in Serbia meeting the representativeness requirement prescribed by the Labour Code as amended (more than 50 per cent of employees in a specific branch), and collective agreements could not be implemented without extended effect.

The Worker member of Serbia therefore requested the Government to: (i) introduce a provision in its Rules of Procedure to the effect that a draft law could not be submitted to the Government for review unless it was accompanied by an opinion of the SEC; and (ii) ensure the full implementation of the Convention through an amendment of the relevant laws.

The Employer member of Serbia highlighted that the Convention called for "effective consultations" with the purpose of exchange of opinions before the Government could make the final decision. The Serbian Association of Employers (SAE) had never been informed on the majority of the topics covered by the Convention. There had been no exchange of opinions and consultations with employers. For example, the Convention had been ratified by Serbia in 2005, and since then, six additional Conventions had been ratified without consulting the social partners about the benefits of ratification, the improvements expected, or the changes required in national legislation. The

laws related to ratification were directly submitted to the National Assembly. Hence, the employers were not given the opportunity to express their opinion on matters concerning ILO activities.

The allocation of sufficient time to examine the information was also important. The Government's requests for comments from the workers' and employers' organizations on ratified Conventions were usually accompanied by an extremely short deadline for replying. In response to complaints of the social partners in this regard, the Government had introduced the practice of approving additional time if so requested. However, afterwards, the Government had stopped requesting comments. In 2017, having in mind the deadline set by the ILO, the SAE had prepared its comments in a timely manner and had sent them directly to the ILO. The scope of issues that should be subject to tripartite consultations had been selectively implemented. The Government's comments on proposed texts to be discussed by the Conference were in the form of a document called "Platform". However, this document contained only general notes and short descriptions about the Conference agenda and the relevant committees, without any remarks on the Government's position on any issue on the agenda. There was nothing to comment or add to. This year's Platform had been received by the social partners only on 25 May 2018, and no information had been included about Serbia being on the preliminary list of cases to be discussed by the Committee. The Conference was put on the agenda of the SEC, a national tripartite body, but only for formal approval of the composition of the delegation. Furthermore, there had been no requests for consultation from the Government on the denunciation of ratified Conventions, even in the case of automatic denunciation, for example when the Maritime Labour Convention (MLC, 2006), had been ratified in 2006. There had been no consultations on examining non-ratified Conventions or Recommendations to which effect had not yet been given. With regard to reports on ratified and non-ratified Conventions, apart from the usually short deadline, which could occur during the holiday season, the speaker was not aware of any "questions arising out of reports to be made" to the Office, as the Convention established in Article 5(d). The employers had never been given the opportunity to read all comments provided by the Government, trade unions and employers at one place. In addition, they had never received the final copies of the reports that had been sent to the ILO, either on ratified or on non-ratified Conventions, pursuant to article 23, paragraph 2, of the ILO Constitution. Furthermore, no consultations had ever been held after the Conference, related to the Conference Committees' conclusions and decisions, not even when Serbia had been the subject of the discussion. In 2017, the SAE had filed a complaint to the Credentials Committee. However, a discussion on the Credential Committee's request to the Government to act in accordance with the ILO Constitution had taken place only upon the employers' initiative, during a meeting of the SEC. The Government's comments had revealed that it had not considered the request, and that it did not intend to do so in the future.

The nature and form of consultations would have to be determined according to national practice. As the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), explained in more detail, the Government was free to organize consultations in the most time-efficient and non-bureaucratic manner, taking into consideration cost-effectiveness. Consultations would have to be related to ILO standards, be effective and be held before a decision could be taken and should take place at least once a year. In Serbia, there was a national tripartite body with an equal representation of government, trade unions and employers, the SEC, which had been established in 2001 based on an agreement signed by all three social partners. The SEC had the purpose of enabling the development of tripartite dialogue at the national level. Considering the purpose and composition of the SEC, the speaker believed that it should be considered as the body where the discussions and consultations, in line with the Convention, should be taking place among the social partners and not only be used for the formal approval of the composition of the delegation to the Conference. With regard to the absence of determined intervals for consultations on issues related to the Convention, the administrative capacity of all the three constituents did not correspond to the scope and variety of their tasks. For that reason, it would be useful to establish intervals for consultations. It would enable sufficient time for planning and preparation, particularly having in mind that, on the one hand, the reporting cycle and deadlines introduced by the ILO, as well as the topics of the Conference, were well known in advance and, on the other hand, the SEC met on a regular basis. Serbia was fully "equipped" with an excellent framework to implement the Convention and Recommendation No. 152, but there was a lack of will to use it.

The Worker member of Sweden, speaking on behalf of the Worker members of the Nordic countries and the United Kingdom, highlighted the importance of tripartite consultations, which enabled the full inclusion of workers' and employers' representatives in the legislative processes and in the implementation of international labour standards. Tripartite consultations, as laid down in the Convention, were the cornerstone of the ILO and its supervisory mechanism. Tripartite consultations could take place in various forms, but had to meet the preconditions established in the country concerned. The speaker referred by way of example to the European Economic and Social Committee (EESC), a European Union (EU) advisory body comprising representatives of workers' and employers' organizations, which delivered opinions on relevant EU legislative projects and policy initiatives. Moreover, one of the priorities of the EU was to promote social dialogue, as evidenced by the European Pillar of Social Rights, which promoted active social dialogue within its 20 principles. According to this pillar, social partners had to be consulted

on the design and implementation of economic, employment and social policies, and were encouraged to negotiate and conclude collective agreements. In this context, the EU had identified closer cooperation with the Western Balkans, including Serbia, as one of its priorities. Serbia had recently committed to such closer cooperation as part of its strive for EU accession. Highlighting that social dialogue was one of the EU fundamental values, the speaker urged the Government to comply with international labour standards, particularly this Convention, thus demonstrating its true commitment in practice.

Une observatrice, représentant l'International de l'éducation (IE), a rappelé que la convention est au cœur du tripartisme. Le Syndicat des enseignants de Serbie (TUS) est un affilié de l'IE et souhaite que les revendications et les attentes de ses membres soient prises en compte dans les négociations collectives débouchant sur un accord collectif. Des accords collectifs ont abouti dans tous les secteurs de l'éducation, à l'exception de l'enseignement supérieur. Les négociations ont commencé en 2015 et n'ont toujours pas abouti. Ainsi, les enseignants du supérieur n'ont pas les mêmes droits que leurs collègues. Cette situation pose problème, du point de vue de la démocratie et de l'égalité. Selon le TUS, plusieurs ministres engagés dans les négociations font obstruction aux accords, à savoir le ministre de l'Education, et aussi ceux du Travail et des Finances, qui invoquent notamment un problème de financement. Toutefois, une éducation de qualité est vitale au développement économique et social et nécessite un investissement de la part de l'Etat, comme le préconisent les recommandations de 1966 et de 1997 de l'OIT et de l'UNESCO. En outre, l'oratrice a souligné que le TUS n'a pas été consulté sur plusieurs projets de loi. C'est le cas, par exemple de la loi sur l'éducation, adoptée à la fin de l'année 2017. Les organisations syndicales d'enseignants ont été consultées dans un premier temps, puis exclues des négociations. Elles ont également été exclues des discussions portant sur la réforme du système scolaire alors que cela implique nécessairement des conséquences sur les statuts et les droits du personnel. En effet, la majorité des enseignants sont employés dans des conditions précaires, notamment sous contrats de courte durée. Les salaires des enseignants ont été réduits de 10 pour cent en 2014 et, bien qu'ayant augmenté, ils restent 16 pour cent plus bas que le salaire moyen dans le pays. S'agissant du projet de loi sur le droit de grève, le TUS regrette également de ne pas avoir été entendu et s'interroge sur le fonctionnement du Conseil économique et social ainsi que du Comité de la représentativité, qui n'a pas été opérationnel depuis mai 2017. De même, le TUS s'inquiète des critères choisis par le gouvernement pour juger de la représentativité. Dans sa conclusion, l'oratrice a appelé au rétablissement pérenne et entier du dialogue avec le TUS afin que ce dernier puisse être entendu, à égalité, avec les autres parties sur ces questions.

The Government representative thanked all participants in the discussion for their comments and indicated that the Government had already tackled most of the issues that had been mentioned. A new meeting of the Representativeness Committee, the authority responsible for determining the representativeness of workers' and employers' organizations, was going to be held on 6 June 2018. Referring to the intervention of the Worker member of Serbia in relation to a law in the field of education, the speaker stated that she was not in a position to provide concrete answers at that time, but the Government would provide information on that matter in its next report under article 22 of the ILO Constitution or in a separate letter addressed to the ILO. The next report with regard to the application of the Convention would contain a copy of the request that had been sent to the social partners. The Ministry of Labour, which was the authority responsible to draft the report, would do its best to respond to all comments made by the Committee of Experts.

Les membres employeurs ont réitéré que le tripartisme constitue un des piliers de l'OIT. Il est fondamental que le tripartisme soit effectivement mis en œuvre au niveau international ainsi qu'au niveau national. Lorsqu'un gouvernement envisage de ratifier une convention de l'OIT, il doit avoir examiné non seulement sa propre capacité à mettre en œuvre cette convention – en droit et en pratique – au niveau national, mais également sa capacité à remplir les obligations administratives résultant de cette ratification, en particulier celles relatives aux rapports sur la mise en œuvre ainsi qu'aux consultations tripartites qui y sont liées. Tenant compte de cette charge administrative, les gouvernements sont cependant libres d'organiser ces consultations de la manière la plus efficace, afin d'éviter toute bureaucratie, pour autant que les prescriptions suivantes de la convention soient respectées: i) les consultations doivent couvrir toutes les normes de l'OIT, et uniquement ces normes, tel que mentionné dans l'article 5, paragraphe 1 – on ne doit pas, en vertu de la convention, consulter les partenaires sociaux sur les matières économiques et sociales en général; ii) en vertu de l'article 2, paragraphe 1, ces consultations doivent être efficaces, à savoir organisées de manière telle que les positions des organisations respectives soient prises en considération par le gouvernement avant de prendre ses décisions; et iii) en application de l'article 5, paragraphe 2, ces consultations tripartites doivent avoir lieu au moins une fois par an.

Ayant pris bonne note des explications fournies par le gouvernement, les membres employeurs ont recommandé aux autorités nationales de prendre les mesures nécessaires et appropriées pour assurer une consultation tripartite effective et efficace des partenaires sociaux nationaux en exécution de la convention. Plus particulièrement, les membres employeurs ont recommandé que le gouvernement: i) prenne les mesures nécessaires pour assurer des consultations significatives, efficaces et tenues en temps opportun sur toutes les questions couvertes

par la convention; ii) saisisse l'opportunité de cet organe tripartite de dialogue social déjà existant, le SEC, pour organiser les consultations tripartites requises par la convention, sans devoir investir dans d'autres types de structures; et iii) communique par écrit toutes informations utiles au sujet des résultats de ces consultations tripartites. Enfin, les membres employeurs ont invité le gouvernement à continuer à se prévaloir de l'assistance technique du BIT en relation avec leurs recommandations.

Les membres travailleurs ont remercié le représentant du gouvernement pour les informations fournies à la commission. Il est essentiel que le gouvernement œuvre résolument à la mise en conformité de sa législation et de sa pratique avec la convention. Si l'OIT s'est fixé pour objectif d'atteindre la ratification universelle de la convention, il en est un autre pour le gouvernement: celui d'assurer le respect et l'application effective de la convention. En effet, les recommandations à adresser au gouvernement pourront être facilement mises en œuvre, s'il existe une volonté politique. Le gouvernement devra mettre ou remettre en œuvre des procédures qui assurent des consultations efficaces entre les représentants gouvernementaux et les partenaires sociaux, notamment au sein du Conseil économique et social. Il est essentiel d'organiser des consultations avec les partenaires sociaux en vue de l'établissement ou du rétablissement de ces procédures afin qu'ils puissent faire valoir leurs points de vue. A cet effet, il est important de relancer les activités du Comité de la représentativité, afin qu'il puisse soit délibérer lui-même sur les questions de représentativité, soit fournir des avis au gouvernement sur ces questions. Le gouvernement ne peut pas, sans l'avis d'un organe indépendant, valablement décider seul de la représentativité des organisations. Cette situation ne devrait pas perdurer. Les membres travailleurs ont accueilli favorablement les informations transmises par le gouvernement selon lesquelles ce comité a tenu sa première réunion le 7 mai 2018, après la désignation des représentants gouvernementaux. Le gouvernement est invité à assurer à l'avenir le fonctionnement du comité, même lorsqu'un nouveau gouvernement est en formation.

Il est important que le gouvernement veille également à mettre ou remettre en place des consultations à intervalles réguliers sur les éléments de discussion, conformément à l'article 5, paragraphe 1 a) à e), de la convention, en établissant un calendrier annuel de réunions de l'autorité compétente. Un rapport sur la situation, tel que prévu à l'article 6 de la convention, pourra éclairer le gouvernement, ainsi que les partenaires sociaux, sur la conformité des procédures avec la convention. Le gouvernement est prié de tout mettre en œuvre afin que l'autorité compétente ait les moyens d'établir ce rapport.

Le gouvernement ayant bénéficié d'un programme d'assistance technique du BIT (le programme ESAP), il conviendrait également d'établir un état des lieux des progrès réalisés dans ce domaine. A l'issue de cet état des lieux, et vu la persistance des difficultés de mise en œuvre de la convention, les membres travailleurs ont recommandé au gouvernement de renforcer son implication dans ce programme d'assistance technique.

Conclusions

The Committee took note of the oral statements made by the Government.

Taking into account the Government's submissions and the discussion that followed, the Committee recommends that the national authorities take the necessary and appropriate measures to ensure effective and efficient tripartite consultation of the national social partners in implementation of Convention No. 144. It further recommends the Government to:

- **take the necessary steps to ensure that meaningful, effective and timely consultations on matters concerning international labour standards take place including within the framework of the Social and Economic Council of the Republic of Serbia; and**
- **report on the issues discussed and the frequency of tripartite consultations to the Committee of Experts before its November 2018 session.**

The Committee invites the Government to avail itself of ILO technical assistance in relation to these conclusions.

Conclusions

La commission a pris note des déclarations orales du gouvernement.

Prenant en compte les déclarations du gouvernement et la discussion qui a suivi, la commission recommande aux autorités nationales de prendre les mesures nécessaires et appropriées pour assurer une consultation tripartite effective et efficace des partenaires sociaux nationaux dans la mise en application de la convention n° 144. Elle recommande en outre:

- de prendre les mesures nécessaires pour garantir des consultations approfondies, effectives et rapides sur les questions relatives aux normes internationales du travail, y compris dans le cadre du Conseil économique et social de la République de Serbie; et
- de rendre compte des questions examinées et de la fréquence des consultations tripartites à la commission d'experts avant sa session de novembre 2018.

La commission invite le gouvernement à se prévaloir de l'assistance technique du BIT en ce qui concerne ces conclusions.

Conclusiones

La Comisión tomó nota de las declaraciones orales formuladas por la representante gubernamental.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión recomienda a las autoridades nacionales que adopten las medidas necesarias y adecuadas para velar por que se realicen consultas efectivas y eficientes con los interlocutores sociales nacionales en aplicación del Convenio núm. 144. Asimismo, recomienda al Gobierno que:

- adopte las medidas necesarias para que se celebren consultas significativas, efectivas y oportunas sobre cuestiones relativas a las normas internacionales del trabajo, en particular dentro del marco del Consejo Económico y Social de la República de Serbia, y
- proporcione información a la Comisión de Expertos, antes de su reunión de noviembre de 2018, sobre las cuestiones discutidas y la frecuencia de las consultas tripartitas.

La Comisión invita al Gobierno a que recurra a la asistencia técnica de la OIT en relación con las presentes conclusiones.

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*)

A **Government representative** stated that the commitment for compliance with the Conventions, ratified in 2004, had been reconfirmed by the Government through the European Union (EU)–Ukraine Association Agreement, as well as the free trade agreement between Ukraine and Canada. The Government had taken all the necessary measures to ensure full compliance with these important ILO Conventions, in both law and practice. The measures taken since the discussion in the Conference Committee in 2017 had included, with respect to legal developments:

The cancellation of the moratorium on labour inspection visits through the adoption of: (a) the Law of Ukraine on Temporary Peculiarities of Performing State Supervision (Control) Measures in the Sphere of Economic Activity, dated 3 November 2016, No. 1728-VIII; and (b) Ministerial Decree No. 1104 of 18 December 2017 on the approval of the list of supervisory bodies exempt from the scope of the abovementioned law. These amendments had been made to exclude labour inspection, including occupational safety and health (OSH) and mining supervision, from the moratorium on State control. Concerning the Lugansk and Donetsk regions, a moratorium on labour inspection had been introduced for the period of anti-terrorist operations. The ensuing lack of labour inspections had not only led to a significant increase in wage arrears, but also to the significant deterioration of the social and economic conditions in those areas. The State Level Service (SLS) had established a Bill to amend Article 3 of the Law on internal measures for the period of anti-terrorist operations dated 2 September 2014, No. 1669-VII, to exempt labour inspection from the scope of that law. The Government would strongly push for the adoption of those amendments, which were currently before Parliament. The Government had also adopted a new procedure for exercising State supervision of labour legislation, by a Resolution which had come into force in May 2017. The Ministry of Social Policy had requested ILO technical comments on the Resolution, which had concluded that the draft Resolution was not in violation of Conventions Nos 81 and 129. The new labour inspection procedure had established fundamentally new approaches to labour inspection functions. During an inspection, labour inspectors had free and independent access. Concerning the alleged absence of planned control measures, state control was carried out in the form of inspection visits and non-visiting inspections, which by their nature were unscheduled control measures. With reference to policy respecting penalties, employers were given the opportunity to comply with the measures ordered by the labour inspectorate within a certain time limit, except for cases concerning undeclared work and the failure to comply with the payment of wages.

With regard to practical measures, the SLS endeavoured to strike a balance between the promotion of compliance and issuing sanctions. Between January and April 2018, the SLS had conducted more than 3,000 inspections and 137 non-visiting inspections of 3,834 enterprises. During inspections, labour inspectors had detected more than 8,000 cases of non-compliance with labour legislation by almost 2,000 employers. Violations had been detected in 74 per cent of all inspections, with three violations on average per enterprise. The greatest number of violations related to the payment of wages, followed by working hours and rest time. The largest share of violations had been detected in the private sector, mostly in the retail and wholesale services. A total of 2,800 compliance notices had been issued by labour inspectors and almost all of them had been strictly followed by employers. The rights of more than 8,000 workers had been re-established. As a result of inspections, more than 1,000 cases of administrative violations had been referred to court or resolved by the labour inspectorate and had resulted in fines being imposed. More than 200 cases had been referred to the law enforcement agencies and 47 cases had been referred for pre-trial investigation. With regard to preventive activities, labour inspectors had been directly involved in awareness-raising activities and the promotion of labour legislation. In 2018, almost 2,000 events nationwide had been undertaken, including more than 1,000 media events. The SLS had received 160 written requests for advice of complying with legislation and had provided advice to almost 6,000 employers on the most effective ways to comply with labour legislation. In the framework of the ILO technical assistance provided at the request of the Government, the SLS had been one of the main beneficiaries. In this context, reference should be made to the ILO project to strengthen the effectiveness of the labour inspection system and social dialogue mechanisms, including the development and implementation of a gender-responsive policy and measures for the recruitment and retention of labour inspectors. Moreover, the Government was working with the ILO to extend the work of the SLS to the informal economy and to establish a functioning model of tripartite dialogue within the labour administration. Starting in November 2017, the ILO–EU project “Enhancing labour administration capacity to improve working conditions and tackle undeclared work” had included measures to implement the obligations of Conventions Nos 81 and 129, selected EU directives, and training on these Conventions and EU directives. A variety of safety and health standards were also being reviewed with a view to the ratification of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Government was committed to making efforts to ensure the adaptation of the legislation, the improvement of management mechanisms, the development of better business conditions and safer working conditions.

The Employer members welcomed the Government’s detailed statement and comprehensive information on the measures taken to address the situation, including those on capacity building and the training of inspectors as well as on awareness-raising campaigns. The Government was invited to provide that information to the Committee of Experts so that it could be analysed at its next session. Since 2010, the Committee of Experts had made six observations on the application by Ukraine of the Conventions. The case had been discussed by the Conference Committee in 2017 as a double-footnoted case. In 2017, the Conference Committee had noted positively the progress achieved in 2016. It had also noted that the ILO had undertaken a needs assessment of the labour inspection system in response to a request by the Government, and a number of recommendations had been made, as well as the ILO project on the strengthening of the effectiveness of the labour inspection system and social dialogue

mechanisms launched from September 2016. They had noted with interest that new legislation had entered into force in May 2017, which had had an impact on state supervision and labour inspection. They also welcomed the information provided on what might trigger inspections, and the organization and feedback on engagement with the ILO, and particularly the training of labour inspectors. The Government was encouraged to continue accepting technical assistance to ensure that new and any existing legislation reflected the provisions of Convention No. 81, in particular the requirement for labour inspectors to be public officials, independent of changes of Government and any external influences. They had finally noted that the moratorium had expired and had not been extended. In its conclusions, the Conference Committee had called upon the Government to: (a) provide detailed information on recent legislation enacted regulating the labour inspection system; (b) promote effective dialogue with employers' and workers' organizations concerning labour inspection matters; (c) continue to avail itself of ILO technical assistance in order to strengthen the capacity and resources of the labour inspection system, in particular with regard to the training and capacity building of labour inspectors; (d) ensure that the status and conditions of service of labour inspectors guaranteed their independence and impartiality in line with the Conventions; and (e) ensure that other functions entrusted to labour inspectors did not interfere with their primary duties and impact negatively on the quality of labour inspections.

The Employer members emphasized at the outset the importance of compliance by member States with the two ILO Conventions on labour inspection. In this regard, they urged the Government to: (a) ensure that recent legislative amendments brought the national legislation into conformity with the Conventions; and (b) ensure that inspections were carried out as often as necessary and were not hampered by a strict regulatory timetable, while recalling that the means used should be proportionate to the legitimate aims pursued (under Article 16 of Convention No. 81 and Article 21 of Convention No. 129). Taking into account the new legislation enacted in 2017 and the 2018 amendments, they encouraged the Government to provide detailed information on the measures taken to ensure that the status and conditions of service of labour inspectors guaranteed their independence and impartiality in line with the Conventions; and provide information to the Committee of Experts on how authorized officials working as labour inspectors under the SLS and local authorities were independent from any undue influence, as well as information related to the training received. In this regard, it was important to guarantee the impartiality of inspectors and that their activities were carried out according to law. Therefore, measures to guarantee impartiality should be accompanied by measures to ensure good governance, transparency and accountability of inspectors for their actions. The Government was also encouraged to take measures to ensure that the number of inspectors and the level of resources were appropriate for the effective performance of their duties, as well as measures to strengthen labour inspection in the informal economy. They finally encouraged the Government to continue to avail itself of ILO technical assistance in relation to the ongoing action to strengthen the effectiveness of the labour inspection system and looked forward to receiving information on the results of the ongoing cooperation.

Les membres travailleurs ont rappelé que lors de la discussion de ce cas en 2017, en tant que cas de double note de bas de page, la commission avait invité le gouvernement à veiller à ce que le statut et les conditions de service des inspecteurs du travail garantissent leur indépendance et leur impartialité; et à ce que les autres fonctions qui leur sont confiées ne fassent pas obstacle à leurs fonctions principales, ni n'aient un impact négatif sur la qualité des inspections. Selon les derniers commentaires de la commission d'experts, même si le gouvernement s'est abstenu d'adopter un nouveau moratoire sur l'inspection du travail, la situation ne s'est pas améliorée. En effet, plusieurs dispositifs légaux et réglementaires adoptés en 2017 limitent le travail de l'inspection du travail et sont contrairement aux conventions: les restrictions au droit des inspecteurs d'initier des inspections sans préavis; les limitations à la fréquence des inspections et au pouvoir des inspecteurs du travail de diligenter des procédures judiciaires sans avertissement préalable; et le projet de loi se trouvant devant le Parlement qui fait de la conduite d'inspection sans avertissement une infraction administrative. Tout ceci alors que les conventions garantissent aux inspecteurs le droit de mener des visites sans avertissement préalable et d'en mener aussi souvent que nécessaire. Le gouvernement doit donc assurer que ces restrictions ne seront pas mises en œuvre. Il doit également mettre sa législation en conformité avec les dispositions pertinentes des conventions.

En outre, et à la lumière des conventions, il n'est pas possible de soutenir que les missions de conseil primeraient sur les missions de contrôle. Il s'agit de deux missions complémentaires et les inspecteurs doivent avoir la liberté d'exercer l'une ou l'autre, selon ce qu'exige la situation. S'agissant de la nécessité d'avoir le système d'inspection sous le contrôle direct et exclusif d'une autorité centrale, comme prévu par les conventions, cette exigence permet d'assurer l'indépendance de l'inspection à l'égard des autorités locales et de faciliter l'établissement et l'application d'une politique uniforme sur l'ensemble du territoire. Toutefois, le fait d'avoir une autorité centrale ne doit pas faire perdre de vue qu'il est indispensable que les services d'inspection soient effectivement présents sur les plans régional et local. Cette présence régionale est importante dans la mesure où elle permet d'assurer une application similaire de la législation sur l'ensemble du territoire et de mettre sur un pied d'égalité tous les employeurs et les travailleurs. Il importe également, lorsque certaines responsabilités sont confiées

à des départements différents, que des ressources budgétaires adéquates leur soient allouées. L'autorité compétente doit en outre veiller à ce que les changements organisationnels se fassent conformément aux dispositions des conventions. Les membres travailleurs ont rappelé l'importance de garantir l'indépendance des inspecteurs de toute influence externe et de s'assurer qu'ils possèdent les qualifications et la formation adéquates pour exercer leurs fonctions, et ont prié le gouvernement de fournir les éléments demandés par la commission d'experts sur ce point. De même, le fait d'allouer des moyens matériels et des ressources humaines appropriés à l'inspection pour qu'elle puisse couvrir adéquatement les lieux de travail est fondamental. Il convient de faire en sorte que le nombre d'inspecteurs et les ressources dont ils disposent leur permettent de s'acquitter de leurs tâches avec efficacité. Or, comme le souligne la commission d'experts, la question des moyens matériels et des ressources humaines demeure problématique et les objectifs de la convention ne sont pas atteints. Ainsi l'Ukraine ne dispose-t-elle que de 542 inspecteurs et 223 postes sont vacants. Le gouvernement doit être prié de fournir les informations demandées par la commission d'experts à ce propos et de prendre les mesures nécessaires pour se conformer aux conventions.

The Worker member of Ukraine stated that labour inspection was still being restricted by Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity, which contradicted the Conventions. In July 2017, the Parliament had approved in its first reading the Bill "On amending certain legislative acts of Ukraine regarding prevention of unreasonable pressure on businesses by measures of state supervision and monitoring on compliance with labour and employment legislation" (Bill No. 6489). The Bill was not aimed at improving state control of labour and employment legislation, as its name might suggest. While the authors of the Bill pretended that there was a need to move from punitive inspection to the prevention and rectification of offences, as well as to address undeclared work and abuses of labour inspectors during inspection visits, the Bill was in fact trying to restrict state labour control and provided businesses with a possibility to avoid penalties in case of first violations. The proposed legislative changes were an invitation for businesses to employ undeclared workers without having to fear any consequences. As the employment of undeclared workers was always an intentional offence, there should be no warnings, but dissuasive fines. In other countries, employers who did not legally hire workers were criminally liable, whereas the Bill even proposed to suppress administrative liability. The Bill also introduced the establishment of administrative responsibility for individuals and officials who made groundless complaints to the state supervision and monitoring authorities about labour law violations. Those proposed changes directly contradicted Convention No. 81, according to which the national legislation should prohibit the disclosure by labour inspectors of the sources of complaints made. Fines for such complaints in the Bill ranged from 50–100 times the minimum wage to 150–300 times the minimum wage, in the event of repeated offense. As the minimum wage in the country was equivalent to €122, workers in the informal sector would simply be afraid to make a complaint to the labour inspectorate in order to not lose their jobs. Currently, almost 4.5 million workers were working illegally, without the formalization of their employment relationship, and more than 100,000 workers had received their wages late.

At the end of 2017, the Cabinet of Ministers had prepared and sent to the Supreme Council a Bill on amending certain legislative acts of Ukraine concerning the establishment of proper safe and healthy working conditions (Bill No. 8045), which provided for State supervision of the legislation on labour protection and hygiene, and State mining supervision. The Bill complied with the requirements of the labour inspection Conventions, as it was proposed to lift the moratorium on labour inspection. A sharp increase in the number of deaths and injuries had occurred between 2017 and 2018 as a result of the moratorium. The Bill also envisaged regulations of on State supervision being issued by the Cabinet of Ministers. In May 2018, the specialized committee of the Supreme Council had recommended to Parliament the adoption of the Bill. He expressed the hope that the Bill would be adopted in the near future. However, attention should also be drawn to the fact that in 2017 the Government had illegally abolished the existing acts on labour protection, which had led to the deterioration of social protection, working conditions and the safety of workers. This was in violation of Article 18 of the Act on Labour Protection (Safety and Health) of 14 October 1992, establishing the procedure for the development, adoption and abolition of regulations on labour protection, as the trade unions had not been consulted. The abolition of the laws regulating standards for the issuance of uniforms, special footwear and other personal protective equipment had been made without substituting them with more modern standards. The objective of reducing pressure on business was not justified, in view of the consequences for the health and safety of workers. He expressed the hope that the controversial Bill No. 6489, which was in violation of ILO standards would be withdrawn, and that the regulation of the labour inspectorate would be based on the provisions of Convention No. 81, and not on the interests of a separate group of persons promoting such bills. He pointed out the need to continue and intensify technical assistance to strengthen the capacity of labour inspection, in close cooperation with the social partners.

The Employer member of Cambodia, conveying the position of the Joint Representative Body of Employers at the National Level of Ukraine, referred to Act No. 1774 of 2016 amending Article 34 of the Local Self-Government Act, and the procedure for monitoring compliance with labour legislation, approved in connection with

that Act. That legislation had empowered the local authorities to monitor compliance with labour and employment legislation within their territorial jurisdiction, conduct inspections and impose penalties for labour violations and had enabled officials working at the local authority to act as labour inspectors. That was not in conformity with the Conventions, in accordance with which labour inspectors had to be public servants and labour inspections were to be conducted under the supervision and control of a central authority; appropriately qualified technical experts and specialists should be involved in inspections and labour inspectors should receive continued training. In reality, 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 SLS. Moreover, there were often conflicts and confrontation in determining the limits on 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. It was therefore impossible to appeal against the actions of local self-government officials or to hold them responsible for misconduct. Furthermore, there was a duplication of the powers of SLS regional branches and local authorities, resulting in double inspections by two different bodies, creating a burden for employers. In conclusion, she emphasized the need to repeal the above legislation which was in contradiction of the provisions of the Conventions and unreasonably extended the discretionary powers of labour inspectors, defined by these Conventions, to officials of local self-government incapable of effectively performing such functions. This problem could be resolved by adopting Bill No. 6489, which would deprive the local self-government of control functions and the power to impose penalties.

The Government member of Bulgaria, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro and Norway, reiterated that effective labour inspection was fundamental to human rights, safe workplaces and decent work. She recalled the political association and economic integration in the framework of the EU–Ukraine Association Agreement and its Deep and Comprehensive Free Trade Area (DCFTA). Ukraine had ratified and committed to implement effectively, in law and practice, the ILO governance Conventions on labour inspection. It was regrettable that, although the Committee had discussed this case last year, the issues remained unresolved. Since 2014, the Government had undertaken reforms to strengthen labour inspection services and the SLS, with technical assistance from the ILO and support from the EU. She welcomed the Government’s exemption of the SLS from the general moratorium on inspections for 2018, and strongly encouraged making this exemption permanent. Furthermore, the preparation of new legislation that would permanently abolish the moratorium on labour inspections, was an important precondition for full compliance with ILO Conventions and the EU–Ukraine Association Agreement, which would send a positive signal to workers and employers regarding the Government’s intention to safeguard working standards. However, certain legislative measures were of great concern, namely Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and the monitoring of economic activity and Ministerial Decree No. 295 of 26 April 2017 on the procedure for State control and State supervision of compliance with labour legislation, which drastically restricted labour inspectors’ ability to undertake inspections without prior notice, the frequency of inspections and their discretion to initiate prompt legal proceedings without prior notification. Bill No. 6489 would make unscheduled inspections an administrative offence. The Government was called upon to promptly amend Act No. 877 and Ministerial Decree No. 295 to ensure conformity with the Conventions, and to ensure in practice that no restrictions were imposed on the powers of labour inspectors, including limits on unscheduled inspections. Regarding decentralization of the labour inspection system, the Government must ensure close supervision and coordination by the central authority, the allocation of adequate budgetary resources to authorities performing inspections and the provision of sufficient training to inspectors; it must also provide information on how the new system guaranteed the independence of authorized officials working as inspectors. The Government was encouraged to thoroughly assess the new system and to commit to amending it as appropriate, with ILO technical assistance. Given the 223 vacant labour inspection positions, more information was needed on Government measures to improve the budgetary situation of the SLS, and the material and human resources of the labour inspection services. In light of the highly politicized debate on the adoption of the new Labour Code, the Government was strongly encouraged to take due regard of ILO comments, particularly concerning working conditions, OSH and mining. While remaining committed to constructive engagement and partnership with the Government, she expected it to avail itself of ILO expertise in taking the necessary steps to bring the national labour inspection legislation and practice into conformity with the Conventions.

The Worker member of Sweden, speaking on behalf of the trade unions of the Nordic countries and the United Kingdom, indicated that countries cooperating closely with the EU were expected to comply with international labour standards, including in times of hardship. As many ILO standards concerned occupational safety and health and working conditions, efficient labour inspection was of two-fold interest, both in ensuring compliance with the Conventions, and in securing the proper enforcement of other ILO standards. Since the review of this double-footnoted case the previous year, the EU and Ukraine had launched a project within the framework of the

EU-Ukraine Association Agreement that was intended to support reforms in such areas as employment policy, labour market and social protection by enhancing the labour administration capacity to improve working conditions and tackle undeclared work. Through this valuable project, lawmakers and the social partners were working closely to align Ukrainian OSH and labour legislation with EU directives and ILO Conventions, and to strengthen the capacity of the Ministry of Social Policy and the SLS to implement its labour inspection mandate, with a particular focus on undeclared work. It nonetheless remained important for the ILO to continue to provide technical support and to promote the active participation of the social partners. Just one month after the discussion of the case the previous year, Parliament had approved Bill No. 6489, which would eliminate penalties for first violations of labour legislation regarding undeclared work, introduce administrative penalties for unjustified unscheduled inspections, and would limit the access of labour inspectors to workplaces and the sanctions they could apply. She hoped that those provisions would be corrected. Labour inspection was not a mere formality, but an efficient means of ensuring compliance with applicable standards, fair competition, and a safe and healthy work environment. Therefore, the Government was expected to bring national legislation and practice into conformity with Convention No. 81.

The Government member of the United States indicated that the discussion of the case in 2017 had highlighted a number of legal constraints that had inhibited the carrying out of labour inspections. While there had been reports that the SLS had conducted some complaint-based labour inspections, including some without prior notice, according to other reports, the labour inspectorate was still unable to conduct inspections of its own initiative. The Committee of Experts had pointed to the significant legal restrictions on the activities of the labour inspection services (limitations on the free initiative of labour inspectors to undertake inspections without prior notice, on the frequency of labour inspections, and on the powers of labour inspectors to initiate prompt legal proceedings without previous warning). Moreover, the legislative amendments enacted in 2014 required the SLS to seek approval from the Cabinet of Ministers to conduct inspections of businesses with an annual income of less than US\$750,000 (which corresponded to 80 per cent of businesses). Those legal restrictions severely inhibited the capacity of the labour inspectorate to perform its key functions in the way that was required by the Conventions to most effectively protect workers. The Committee had already called upon the Government to adopt a number of measures to strengthen the capacity of the labour inspectorate; undertake legal reforms to ensure compliance with the Conventions; and, more importantly, ensure that the labour inspectorate was in a position to carry out the critical government function of labour law enforcement. He considered that to implement these recommendations, the Government should be urged to take the necessary measures to ensure that provisions creating legal obstacles to labour inspection were brought into conformity with the Conventions; avail itself of ILO technical assistance to ensure that the competent legislative and administrative authorities understood the obligations under the Conventions; and provide sufficient budgetary and other resources to the labour inspectorate, including by filling outstanding vacancies.

The Worker member of the United States welcomed the fact that Ukraine was not pursuing a nationwide moratorium on labour inspections. Nonetheless, he expressed concern about what seemed to be a regional trend towards weakening labour inspectorates. He also questioned the slow and excessively complex process of reforming the labour inspectorate, which indicated a reluctance to affirm the role of the State to perform labour inspection. One of the main remaining issues was that unannounced inspections were still prohibited, in spite of the fact that the Conventions provided for the right of labour inspectors to enter freely and without previous notice at any hour of the day or night any workplace subject to inspection. While it was positive that some inspections had been carried out as of February 2018, the requirement of advance permission greatly limited the effectiveness of the labour inspection system. Another issue of concern was Bill No. 6489. While the adoption of the Bill was still pending, it provided for the imposition of penalties for complaints which had been found not to have merit, thereby contradicting the spirit of Convention No. 81. Another matter of concern was that the inspectorate lacked adequate resources and technical capacity. Local unions reported that labour inspectors usually had no capacity to investigate cases of workplace injuries or wage arrears. For those reasons, the labour inspectorate needed to be fully empowered, with a mandate, budget, the capacity and confidence in its stature. A moratorium on inspections continued in the country's conflict zones; those regions were heavily industrialized and the continued moratorium covered a number of particularly dangerous sectors, including the coal, metal and mining sectors, in which hundreds of thousands of workers were employed. The draft legislation to repeal the moratorium had not been approved by Parliament. Ukraine's economy remained very fragile, and could not afford the adverse impact of shortcuts based on poor safety standards. In order to recover from conflict and from the moratorium on inspections, Ukraine should rebuild its institutions responsible for the vital function of labour inspection and professionalize labour inspectors. Those measures were especially important in high-risk sectors, such as mining, that were central to Ukraine's economic life.

Le membre gouvernemental de la Suisse a soutenu la déclaration faite au nom de l'Union européenne et a souligné que le fonctionnement efficace de l'inspection du travail est primordial pour assurer le respect des conditions de travail et des droits des travailleurs. Il contribue aussi au développement économique, y compris à la

concurrence loyale entre les entreprises. La législation ukrainienne prévoit plusieurs restrictions aux prérogatives des inspecteurs du travail, notamment en ce qui concerne la fréquence des inspections ou le droit de procéder à des inspections sans préavis. En outre, plus de 223 postes d'inspecteurs sont toujours vacants. Il est regrettable que la commission doive à nouveau discuter ce cas. Le gouvernement doit par conséquent être encouragé à assurer l'application de la législation dans le respect des obligations découlant des conventions; à veiller à ce que l'inspection du travail de l'Etat dispose des ressources humaines et financières nécessaires pour exercer ses activités sans aucune restriction ou interférence; à moderniser les procédures d'inspection et à les harmoniser avec les standards internationaux. L'orateur a souligné qu'il serait bienvenu que la révision des procédures d'inspection puisse se faire en consultation et en coopération avec les partenaires sociaux et avec le secteur privé.

An observer representing IndustriALL Global Union stated that the moratorium on labour inspection particularly affected workers in mines, where the rate of fatal accidents made them the country's most dangerous work sector. The 2017 report of the Ukrainian Fund of Social Insurance showed that, as a result of the moratorium on labour inspection, the number of industrial accidents at production sites had substantially increased since 2016. The moratorium on inspections had seriously undermined and dismantled State labour inspection; the total number of inspectors had decreased and many competent specialists had gone. Even after the removal of the ban on labour safety inspections, time would be needed to restore the service to full strength. The problem of lack of staff, and especially of qualified staff, required urgent attention. He referred to recent examples, including in a steel plant, where 90 per cent of the rolling stock was worn out, and an investigation by the State Safety Inspectorate had found 83 violations, including locomotives without functioning brakes. In April 2018, the lives of 240 mining workers had been endangered when they had been trapped 1,000 metres underground for several hours after the local electricity provider had cut the power supply in a mine. Twice in April, electricity had also been cut in 16 different coal mines. The problem of OSH, which was a result of the moratorium on labour inspection, was aggravated by other work-related issues, such as low wages and arrears in the payment of wages. In April 2018, 12,000 members of an industrial affiliate, the Nuclear Power and Industry Workers' Union of Ukraine, held actions in eight different cities to protest against a State policy of low-energy tariffs, which resulted in low pay for workers. Current wage arrears had amounted to 2.4 billion hryvnias (equal to US\$92 million), of which one third concerned coal miners. Certain estimates had found that arrears in the formal economy, when combined with the shadow economy, could easily be double or even triple that amount. The Government needed to urgently address the situation of safety at work, as well as arrears in wages and low wages, a matter made more urgent by its past failure to implement the Committee's recommendations and observations. Workers expected and demanded appropriate responses from the Government.

The Government representative emphasized that significant progress had been made in resolving the issues regarding labour inspection discussed at the Conference Committee in 2017. Except for the conflict areas of the country, in the rest of the territory, labour inspectors had free access to workplaces and could conduct inspections at any hour of the day or night without previous notice. This was guaranteed by Ministerial Decree No. 295 on certain questions of the implementation of Article 259 of the Labour Code and Article 34 of the Law on local government of 26 April 2017, as well as legislative changes which had come into effect in 2017. The labour inspection functions carried out by the local authorities were limited to the control of compliance with legal provisions respecting wages. The SLS exercised control in that it had access to the record of the inspection visits carried out by the local authorities (including the workplaces concerned, the actions taken and the penalties imposed). The SLS could not only step in, but had also set up an appeal procedure for enterprises against the actions taken by the local authorities. He emphasized that Bill No. 6489 had been introduced in accordance with the legislative procedure and that other bills existed, including Bill No. 8045 which proposed to lift the moratorium on labour inspection and Bill No. 8101 which proposed to remove the restrictions for labour inspection in the Donetsk and Lugansk regions. These Bills would hopefully soon be considered by Parliament. The late payment of wages in Ukraine was a priority issue for the SLS, and both national labour inspectors and inspectors working in the local authorities were doing all in their power to address that situation. The Government was also currently studying the issue of how to increase the resources for labour inspection, so that labour inspectors could focus on the priority areas of unregistered labour, wage arrears and the failure to pay minimum wages. With regard to the issue of fines, labour inspectors were indeed empowered to issue fines, up to an amount of more than 10,000 hryvnia (approximately US\$382) with regard to undeclared work. In the current difficult times (including the military conflict and efforts to promote the economic development of the country), the Government was trying to strike a balance between preventive measures and the imposition of penalties, intending to be judicious in applying fines. Replies to all requests for information on the measures taken to fully implement the Conventions would be sent for examination by the Committee of Experts.

Les membres travailleurs ont remercié le représentant gouvernemental pour les explications fournies et ont rappelé que le gouvernement avait déjà pris une série d'engagements lors de la dernière discussion. Non seulement

ces engagements n'ont pas été tenus mais une série de nouveaux manquements ont été constatés. Par conséquent, le gouvernement est invité à lever toutes les restrictions imposées aux services d'inspection, et en particulier l'interdiction de mener une inspection sans avertissement préalable et les limites apportées au pouvoir discrétionnaire d'entamer ou pas des poursuites judiciaires. Doivent également être revues, car elles sont incompatibles avec les conventions, les dispositions qui érigent le fait de mener une inspection de manière inopinée en infraction administrative. Le gouvernement doit également fournir des informations au sujet de l'organisation des services d'inspection et prévoir toutes les garanties nécessaires pour assurer l'indépendance des inspecteurs et leurs capacités à réaliser leurs missions. De même, le gouvernement doit mettre à disposition des services d'inspection des moyens matériels suffisants en leur assurant des bonnes conditions de travail et de rémunération et la prise en charge de leurs frais de transport, et en mettant à leur disposition des bureaux et des fournitures. Il est également primordial de prendre les mesures nécessaires pour que les postes vacants soient pourvus. Les membres travailleurs ont invité le gouvernement à continuer à se prévaloir de l'assistance technique du Bureau pour faciliter la mise en œuvre des recommandations de la commission, en associant étroitement les partenaires sociaux.

The Employer members welcomed the Government's and responses to a number of issues, as well as the information on the priorities of the SLS, in particular with regard to the implementation of the two Conventions. Notwithstanding the challenges resulting from the military conflict in certain regions, the Government had taken positive measures to bring the law and practice into conformity with the Conventions. The Government was encouraged to allocate adequate resources for labour inspection and to continue capacity-building activities for labour inspectors. However, there was concern over local government officials and their potential capacity to fill the role of labour inspectors. As already mentioned, measures needed to be taken to ensure the independency, transparency and accountability of inspectors for their actions. They urged the Government to provide information to the Committee of Experts on the recent legislation enacted and on the issues raised, in order to fully measure progress in that regard. Effective dialogue was a very important component of that process. The Government also needed to guarantee the independence of labour inspectors in line with the provisions of the Convention and to ensure that other functions did not interfere with their primary duties or impact negatively on the functions performed. They finally urged the Government to continue to avail itself of ILO technical assistance in order to further strengthen the resources allocated to labour inspection, with specific emphasis on training and capacity building of inspectors.

Conclusions

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

The Committee noted that the labour inspectorate must be given the necessary means to function effectively and independently, and it shall also be placed under the supervision and control of a central authority.

Taking into account the Government's submissions and the discussion that followed, the Committee recommends the Government to:

- **take the necessary measures and appropriate reforms to bring their labour inspection services into line with the provisions of Conventions Nos 81 and 129;**
- **provide detailed information regarding the restrictions on the powers of labour inspectors contained in Act No. 877 and Ministerial Decree No. 295 and regarding the recent legislation enacted on the labour inspection system;**
- **promote effective dialogue with employers' and workers' organizations concerning labour inspection matters;**
- **ensure that the status and conditions of service of labour inspectors guarantee their independence, transparency, impartiality and accountability in line with the Conventions;**

- ensure that the inspection functions of the local authorities are placed under the supervision and control of the State Labour Service; and
- ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.

The Committee encourages the Government to continue to avail itself of technical assistance in order to strengthen the capacity and resources of the labour inspection system, in particular with regard to the training and capacity building of labour inspectors. The Committee requested that the Government report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2018.

Conclusions

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

La commission a noté que l'inspection du travail doit disposer des moyens nécessaires pour fonctionner de manière efficace et indépendante et qu'elle doit aussi être placée sous le contrôle et la surveillance d'une autorité centrale.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a recommandé au gouvernement:

- de prendre les mesures nécessaires et d'adopter les réformes appropriées afin de conformer ses services de l'inspection du travail aux dispositions des conventions n^{os} 81 et 129;
- de fournir des informations détaillées sur les restrictions aux prérogatives des inspecteurs du travail contenues dans la loi n^o 877 et le décret ministériel n^o 295 et sur le texte de loi relatif au système de l'inspection du travail qui a été récemment adopté;
- de promouvoir un dialogue effectif avec les organisations d'employeurs et de travailleurs sur les questions relatives à l'inspection du travail;
- de veiller à ce que le statut et les conditions de service des inspecteurs du travail garantissent la transparence, leur indépendance, leur impartialité et leur responsabilité conformément aux conventions;
- de faire en sorte que les fonctions d'inspection des autorités locales soient placées sous le contrôle et la surveillance de l'Inspection du travail de l'Etat; et
- de veiller à ce que d'autres fonctions confiées aux inspecteurs du travail n'interfèrent pas avec leurs obligations premières et n'aient pas une incidence négative sur la qualité des inspections du travail.

La commission a invité le gouvernement à continuer de se prévaloir d'une assistance technique pour renforcer la capacité et les ressources du système d'inspection du travail, en particulier concernant la formation et le renforcement des capacités des inspecteurs du travail. La commission a prié le gouvernement de faire rapport en détail sur les mesures prises pour donner suite à ces recommandations à la prochaine réunion de la commission d'experts, en novembre 2018.

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 observó que es preciso dotar a la inspección del trabajo de los medios necesarios para que funcione de forma eficaz e independiente, y que esta debe someterse a la supervisión y el control de una autoridad central.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión recomienda al Gobierno que:

- tome las medidas necesarias y realice las reformas apropiadas para poner los servicios de inspección del trabajo en conformidad con las disposiciones de los Convenios núms. 81 y 129;
- suministre información detallada en lo relativo a las restricciones de las competencias de los inspectores del trabajo contenidas en la ley núm. 877 y el decreto ministerial núm. 295, y acerca de la legislación promulgada recientemente sobre el sistema de inspección del trabajo;
- promueva el diálogo efectivo con las organizaciones de empleadores y de trabajadores sobre cuestiones relativas a la inspección del trabajo;
- vele por que la situación jurídica y las condiciones de servicio de los inspectores del trabajo garanticen su independencia, la transparencia de sus actos, su imparcialidad y la rendición de cuentas, de conformidad con los Convenios;
- garantice que las responsabilidades en materia de inspección de las autoridades locales estén bajo la supervisión y el control del servicio estatal de trabajo, 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.

La Comisión alienta al Gobierno a que continúe recurriendo a la asistencia técnica 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 el desarrollo de las capacidades de los inspectores del trabajo. La Comisión pidió al Gobierno que proporcione información detallada a la Comisión de Expertos, para su examen en noviembre de 2018, sobre las medidas que adopte para aplicar estas recomendaciones.

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: 1962)

Algeria (ratification: 1962)

Argelia (ratificación: 1962)

Le gouvernement a communiqué les informations écrites ci-après.

Demandes de réintégration des travailleurs licenciés

La législation nationale prévoit des procédures de prévention et de règlement des conflits individuels de travail. La loi n° 90-04 du 6 février 1990, modifiée et complétée, relative au règlement des conflits individuels de travail, a fixé des procédures de règlement des conflits individuels de travail que chaque travailleur et chaque employeur doivent respecter.

A ce titre, les cas des travailleurs nommément cités dans les conclusions de la 106^e session de la Conférence internationale du Travail ont suivi les procédures prévues par la loi précitée quel que soit le sort du règlement auquel a abouti leur conflit individuel.

Dans ce cadre, il est nécessaire de rappeler que le gouvernement a toujours répondu aux demandes des organes compétents de l'OIT. A ce titre, et après vérification, il a été relevé que, sur les 86 travailleurs, 76 situations de

travailleurs ont été réglées ou sont en cours de règlement. Les affaires sont devant les juridictions compétentes dans six cas et des demandes sont en cours d'exécution dans trois cas.

S'agissant de la situation de huit des dix travailleurs qui demeure, deux travailleurs ont été révoqués après accomplissement de l'ensemble des procédures légales et réglementaires, pour absences irrégulières et non-respect du règlement intérieur de l'entreprise, et trois travailleurs ont été licenciés pour fautes professionnelles graves.

A ce titre, le gouvernement observe que l'examen des dossiers des travailleurs a révélé qu'à aucun moment il n'a été constaté qu'il s'agit de sanction pour motifs d'exercice syndical, mais pour des raisons de fautes professionnelles prévues par la loi et le règlement intérieur des entreprises. Ces travailleurs ont usé de tous les recours prévus par la loi en matière de règlement des conflits individuels de travail, de la tentative de conciliation auprès des services de l'inspection du travail aux juridictions compétentes. Ainsi, la quasi-totalité des travailleurs nommément cités dans les conclusions de la 106^e session sont en activité, excepté M. Benyahia Habib (SNAPAP-CGATA) de l'Université de Tiaret qui est à la retraite. Par ailleurs, il a été relevé que, parmi ces travailleurs, M. Arab Haddak (SNAPAP-CGATA) a été promu au grade d'agent d'administration.

S'agissant des fonctionnaires greffiers, ils sont en position d'activité. Le gouvernement joint toutes les pièces qui concernent la situation de tous les travailleurs cités dans les conclusions par l'organisme employeur.

Cas n° 3210 devant le Comité de la liberté syndicale

Le gouvernement avait transmis toutes les informations sur la plainte devant le Comité de la liberté syndicale présentée par le Syndicat national autonome des travailleurs de l'électricité et du gaz (SNATEGS) (cas n° 3210), à travers une communication du 18 décembre 2017, dans lequel il a été porté à la connaissance du BIT la dissolution volontaire du SNATEGS (copie jointe), ainsi que le procès-verbal de la dissolution volontaire du syndicat. Par ailleurs, par une communication du 5 mai 2018 relative au cas n° 3210, le gouvernement avait demandé que ce cas soit clos.

Achèvement de la réforme du Code du travail

S'agissant de la demande relative au parachèvement de la réforme du Code du travail, le gouvernement avait fourni toutes les informations sur le processus d'élaboration du Code du travail, et il ne ménagera aucun effort dans le cadre de la concertation avec ses partenaires économiques et sociaux pour produire un Code du travail consensuel qui renforcera les acquis résultant de l'expérience de la mise en œuvre des lois sociales en vigueur et répondra aux attentes des acteurs de la vie économique.

Enregistrement des syndicats

En ce qui concerne le dossier d'enregistrement du présumé Syndicat algérien autonome des travailleurs des transports (SAATT), le dossier présenté ne répond pas aux conditions prévues par les dispositions de la loi, notamment son article 2. Il a été relevé des imprécisions dans la détermination de la catégorie professionnelle couverte par le statut. Ce dernier n'a pas inséré les dispositions que doit contenir le statut et qui sont énoncées aux dispositions de l'article 21 de la loi. Les intéressés n'ont pas répondu ni demandé des précisions sur leur dossier.

Pour ce qui est du dossier du Syndicat autonome des avocats en Algérie (SAAVA), le gouvernement rappelle que toute demande de constitution d'une organisation syndicale est soumise à un examen de conformité du dossier à la loi. A ce titre, il a été relevé de l'examen du statut du présumé syndicat des catégories de personnes qui ont qualité de travailleurs salariés et qualité d'employeurs. La législation nationale fait la distinction entre un syndicat de travailleurs salariés et un syndicat d'employeurs. La réponse a été notifiée aux intéressés les invitant à se conformer aux dispositions de la loi; à ce jour, les concernés n'ont pas mis leur dossier en conformité avec les dispositions de la loi.

S'agissant du dossier de la CGATA, en sus des informations déjà fournies par le représentant du gouvernement lors de la 106^e session de la Conférence internationale du Travail en juin 2017, le prétendu président de la CGATA n'est issu d'aucun syndicat légalement enregistré et ne représente aucune organisation syndicale. Le gouvernement avait également informé l'OIT par envoi du 22 septembre 2013 (ci-joint une copie) que M. Malaoui Rachid a été révoqué de son poste de travail en respect des procédures légales et réglementaires pour abandon de poste pour absences irrégulières. Cette situation a fait perdre la qualité de salarié à ce dernier.

En Algérie, les organisations syndicales représentatives jouissent de prérogatives qui leur permettent notamment de négocier et de conclure des accords, et les conventions collectives d'avoir un local au sein de l'organisme employeur, un tableau d'affichage dans des lieux appropriés pour ses adhérents, un détachement au service de son organisation syndicale durant le mandat du syndicaliste. La participation des représentants de travailleurs à travers les délégués syndicaux est une condition légale dans la négociation des conditions d'emploi et de travail en vue de conclure les conventions et accords collectifs de travail. Les représentants des travailleurs au sein des commissions d'entreprise ou des commissions d'unité sont désignés par la structure syndicale la plus représentative ou, à défaut, par le comité de participation. Dans le cas où il n'existe ni structure syndicale ni comité de participation, ils sont élus par le collectif des travailleurs. Les représentants des travailleurs sont obligatoirement associés à toute décision concernant la mise en place de l'activité de médecine du travail au sein de l'organisme employeur. De même, les organisations syndicales représentatives de travailleurs et d'employeurs sont représentées par douze (12) représentants des travailleurs et douze (12) représentants des employeurs dans le Conseil national d'hygiène et de sécurité et de médecine du travail.

Par ailleurs et dans le cadre de la prévention et du règlement des conflits collectifs de travail et de l'exercice du droit de grève, les représentants des travailleurs tiennent des réunions périodiques avec les employeurs en vue d'examiner en commun la situation des relations socioprofessionnelles et des conditions générales de travail au sein de l'organisme employeur. Au niveau national, l'Algérie a acquis une grande expérience dans le dialogue social, à travers les rencontres tripartites qui regroupent le gouvernement et les organisations syndicales représentatives d'employeurs et de travailleurs. Ces espaces de concertation et de négociation ont abouti à des accords portant sur la vie économique et sociale, à la signature de pactes économiques et sociaux, ainsi qu'à la création d'institutions et autres, ci-joint une synthèse sur les rencontres tripartites et bipartites.

***Cas des travailleurs cités nominativement dans les conclusions
de la 106^e session de la Conférence internationale du Travail (juin 2017)***

N°	Secteur	Cas	Observations
01	Ministère de l'Enseignement supérieur et de la Recherche scientifique	1. M. KASSA Nacer (CGATA), Université de Béjaia	Réintégré à son poste de travail. Procès-verbal d'installation n° 49 du 27 déc. 2015. Décision n° 289/17 du 2 juillet 2017. Il est en activité à ce jour.
		2. M. ARAB Haddak (SNAPAP-CGATA), Université de Béjaia	Il a été promu au grade d'agent d'administration. Procès-verbal d'installation n° 46 du 27 déc. 2015. Décision n° 264/17 du 10 juin 2017. Il est en activité à ce jour.
		3. M. BENYAHIA Habib (SNAPAP-CGATA), Université de Tiaret	Admis à la retraite depuis le 1 ^{er} nov. 2015 (numéro de pension F 8Z560143).
		4. M. MANSRI Ahmed (SNAPAP-CGATA), Université de Tiaret	Attestation de travail n° 19 du 20 fév. 2018. Bulletin de paie (janv.-fév. 2018). Il est en activité à ce jour.
		5. M. HASSANE Fouad (CGATA), Université de Béjaia	Selon les informations fournies, il ne figure pas dans les effectifs du ministère de l'Enseignement supérieur et de la Recherche scientifique.
02	Ministère des Ressources en eau	1. M ^{me} BEDRI Nadia (SNAPAP-CGATA)	A sa demande M ^{me} Nadia BEDRI a été mutée et installée dans sa nouvelle fonction en date du 28 novembre 2016, à la Direction des ressources hydrauliques de la Wilaya d'Alger (procès-verbal d'installation n° 2356/2016).

N°	Secteur	Cas	Observations
03	Ministère de l'Intérieur, des Collectivités locales et de l'Aménagement du territoire	1. M ^{me} BENSAID Hassina (CGATA), APC de Tazmelt Wilaya de Béjaia	M ^{me} Hassina BENSAID exerce ses activités d'une manière ordinaire (décision de titularisation, confirmation en qualité d'administrateur territorial n° 269/2016 du 26 juillet 2016).
		2. M. HASSANI Nadj	Après appel, la Cour de Batna a rendu un arrêt en date du 20 janvier 2014 qui a annulé le premier jugement et a ordonné l'établissement public (G CET Batna) à payer astreinte de 100 000 DA. L'astreinte a été acquittée par l'établissement en date du 2 février 2016 (fiche de dépense datée du 9 février 2016), chèque n° 7 112 525.
		3. M. MEZIANI Nouredine	Après appel, la cour a rendu un arrêt en date du 21 décembre 2014 confirmant le jugement du tribunal daté du 4 décembre 2013. La situation financière de l'intéressé a été régularisée au mois de mars 2013 (bulletin de paie, matricule 0059, document joint).
		4. M. BOUDJELLAL Messaoud	Le Tribunal de Batna, section sociale, a débouté l'intéressé. M. Messaoud BOUDJELLAL a été régularisé au mois de mars 2013 (bulletin de paie, matricule 227, document joint).
		5. M. HAMZA Abdesamed	Après appel, la cour a rendu un arrêt en date du 10 mars 2014 confirmant le jugement du tribunal daté du 18 novembre 2013. La situation financière de l'intéressé a été régularisée au mois mars 2013 (bulletin de paie, matricule 0041, document joint).
		6. M. TCHIKOU Mourad (UNCP-SNAPAP)	En attente de l'arrêt de la Cour suprême.
04	Ministère de la Justice	Fonctionnaires greffiers	Les greffiers ont été réintégrés (attestations de travail jointes).
05	Ministère de la Poste, des Télécommunications, des Technologies et du Numérique	1. M. NEKKACHE Mourad (SNAP)	En attente d'informations de son organisme employeur.
		2. M. AMMAR Khodja Tarek (SNAP)	En attente d'informations de son organisme employeur.
06	Ministère de l'Energie Groupe Sonelgaz	46 travailleurs SNATEGS	Ci-joint tableau relatif à la situation professionnelle des concernés.
	Total	86 travailleurs	– 76 travailleurs dont la situation est réglée ou en voie de règlement. – Les 10 situations professionnelles restantes sont devant les juridictions compétentes, sauf un débouté, un condamné pour abus de confiance et trois licenciés pour fautes professionnelles graves.

En outre, devant la commission, **un représentant gouvernemental** a marqué son étonnement de voir une fois de plus l'Algérie parmi les cas examinés par la Commission de la Conférence et a regretté un refus récurrent de

reconnaître les progrès réalisés dans son pays dans la protection des libertés et des droits humains au travail. La ratification de 60 conventions de l'OIT, dont les huit fondamentales, pour la plupart dès l'indépendance du pays en 1962, montre l'attachement de l'Algérie à asseoir son développement économique et social sur les principes des conventions et traités internationaux. En outre, la Constitution nationale réserve une place importante aux libertés et aux droits reconnus à tous les citoyens dans le monde du travail, notamment la liberté syndicale et le droit de grève. Le gouvernement a fourni, en 2015 et 2017, toutes les informations requises sur des cas précis ou sur le Code du travail. L'année passée, lors de l'examen de ce cas, parmi les 32 interventions des membres de la commission, 26 ont appuyé les progrès réalisés par le gouvernement. Ne pas tenir compte de cette réalité constitue un déni des règles démocratiques. Rappelant que toute activité s'exerce dans le respect de la légalité, comme prescrit à l'article 8, paragraphe 2, de la convention, l'orateur a réitéré sa déclaration de l'année passée à la commission au sujet du Syndicat autonome des travailleurs du gaz et de l'électricité (SNATEGS), à savoir que ladite organisation syndicale fonctionnait normalement et que ses membres ont décidé de sa dissolution volontaire, cela conformément aux dispositions législatives et réglementaires du travail ainsi qu'à son statut. Les autorités ont simplement pris acte de cette dissolution en octobre 2017. S'agissant des cas de travailleurs cités dans les allégations, l'orateur s'est référé aux informations détaillées fournies par le gouvernement par écrit à cet égard et a indiqué que sur 86 cas répertoriés, 76 ont été réglés par une réintégration au poste de travail, par une réaffectation à un autre poste de travail, ou encore par un départ à la retraite à l'initiative du travailleur concerné. S'agissant des allégations dénonçant les violences policières lors de manifestations, il est rappelé que le gouvernement veille à la sécurité et au bien-être des citoyens et à la sauvegarde des biens. Ainsi, l'intervention des services de la police n'est justifiée que par la nécessité de préserver l'ordre public. Cette intervention s'effectue en outre conformément à la loi et en respectant les pratiques internationales. Cependant, comme il est admis de manière globale dans tous les pays qui disposent d'une réglementation encadrant les réunions et les manifestations, toute action menée en dehors du cadre prévu par la loi ne saurait être autorisée. Rappelant que la finalisation du projet de Code du travail nécessite non seulement un travail de réflexion approfondie avec les partenaires sociaux, mais aussi de recueillir l'adhésion des acteurs du monde du travail, l'orateur a réitéré la volonté du gouvernement d'achever ce travail dans le cadre de consultations tripartites. Il faut cependant accepter que, pour en assurer la réussite, un tel processus prend du temps. Il est aussi rappelé que plus de 70 pour cent des commentaires du Bureau sur le projet de texte initial ont été pris en compte par le gouvernement.

Le paysage syndical de l'Algérie est composé de 101 organisations représentatives, dont 65 organisations de travailleurs qui se sont organisées en toute liberté conformément à la loi. A cet égard, les formalités d'enregistrement des organisations syndicales sont prévues par la loi. Les cas signalés de constitution d'organisations syndicales, telles que la Confédération générale autonome des travailleurs en Algérie (CGATA), le Syndicat autonome des avocats en Algérie (SAAA) ou encore le Syndicat algérien des travailleurs des transports (SATT), ont fait l'objet d'observations de la part de l'administration, dans le souci de respecter les dispositions légales, transmises aux membres fondateurs afin qu'ils clarifient certaines questions concernant notamment le double statut des membres fondateurs ou encore l'absence d'un statut de salarié. Les retards pour régler les dossiers concernés incombent aux demandeurs. En conséquence, l'encadrement légal de l'enregistrement des syndicats ne saurait être assimilé à une intervention de l'autorité publique de nature à limiter ou à entraver l'exercice du droit syndical. Par ailleurs, la législation en vigueur s'inscrit totalement dans le cadre des normes internationales qui visent la promotion de la négociation collective, et aux termes desquelles des mesures adaptées aux circonstances nationales sont prises pour favoriser le dialogue social et la négociation collective. A titre indicatif, il a été enregistré à ce jour 82 conventions collectives de branche, 167 accords collectifs de branche et 3 817 conventions collectives ont été conclues au niveau de l'entreprise, auxquelles il faut ajouter 17 238 accords collectifs d'entreprises. Ainsi, le dialogue social est une pratique réelle et concrète en Algérie comme en attestent les rencontres tripartites et bipartites périodiques sur les questions économiques, sociales et de développement. En outre, le gouvernement et les partenaires économiques et sociaux ont signé un Pacte national économique et social ainsi qu'un Pacte national économique et social de croissance qui constituent la valorisation des acquis sociaux et des réformes économiques avec l'engagement des partenaires sociaux. Cet exemple de dialogue et de concertation sociale est partagé, grâce à l'appui du Bureau, avec des pays africains dans le cadre de la coopération Sud-Sud. Souhaitant apporter un éclairage sur les suites données à la proposition d'une mission de contacts directs sur place contenue dans les conclusions de 2017 de la Commission de la Conférence, l'orateur a indiqué que son gouvernement avait donné son accord pour qu'une telle mission soit effectuée en février 2018 et avait accepté sans réserve la composition de cette mission. Le Bureau avait par la suite proposé des termes de références que le gouvernement a acceptés pour l'essentiel, rejetant deux points sur les 12 proposés. Par la suite, le gouvernement avait finalisé le programme des réunions, y compris avec des membres du gouvernement, et s'était préparé à accueillir la mission qui, en fin de compte, n'a pu être effectuée. Suite à cette annulation, le gouvernement a tenu à s'entretenir avec le Bureau et les partenaires pour clarifier sa position. Il a ainsi expliqué ne pouvoir cautionner des personnes concernées par les deux termes de références non acceptées au motif que ces derniers développent leurs activités sans aucune base légale afin de provoquer la déstabilisation sociale du pays. Enfin, le gouvernement continue ses consultations avec le Bureau sur cette question, tel que le démontre

l'entretien que la délégation gouvernementale conduite par le ministre du Travail a tenu avec le Bureau peu avant le début des travaux de la Conférence. L'orateur a conclu en réaffirmant le soutien du gouvernement envers les réformes préconisées par le Directeur général du BIT et, en particulier, la promotion du tripartisme, élément fondamental de son fonctionnement. A cet égard, le gouvernement soutient la nécessité de réformer le fonctionnement de la Commission de la Conférence pour une participation tripartite à toutes les étapes du contrôle pour davantage de transparence, d'équité et de fidélité aux principes fondamentaux de l'OIT.

Les membres travailleurs ont souligné que ce cas fait à nouveau l'objet d'un examen pour la simple raison que le gouvernement a refusé de tenir compte des recommandations formulées par la Commission de la Conférence l'année dernière. Ils s'interrogent sur la démarche singulière du gouvernement qui a accusé, dans une communication diffusée dans le cadre de l'Organisation arabe du travail (OAT), le Bureau de partialité et la Commission de la Conférence de pratiquer une politique de deux poids, deux mesures. Une simple lecture des statistiques des cas examinés par la commission ces dernières années suffit pour démontrer que ces accusations sont infondées. Les membres travailleurs ont regretté que le gouvernement n'ait donné aucune suite aux conclusions adoptées l'année dernière par la Commission de la Conférence, en particulier celle relative à l'envoi d'une mission de contacts directs avant la présente session de la Conférence devant faire rapport à la commission d'experts sur les progrès accomplis. Par ailleurs, aucun progrès n'a été réalisé concernant le nouveau Code du travail qui en est au stade de projet depuis 2011 et au sujet duquel le gouvernement n'indique pas les commentaires de la commission d'experts à son égard qui ont été pris en compte. Aucun progrès non plus n'a été accompli pour modifier l'article 6 de la loi n° 90-14 du 2 juin 1990 qui limite le droit de fonder une organisation syndicale aux personnes de nationalité algérienne d'origine ou acquise depuis au moins dix ans. Si le gouvernement a indiqué qu'une disposition en cours de discussion avec les partenaires sociaux abaisserait l'ancienneté requise à cinq ans, cette modification ne serait toujours pas conforme à l'article 2 de la convention n° 87 qui prévoit qu'aucune distinction ne peut être faite quant au droit des travailleurs et des employeurs de constituer des organisations de leur choix. A cet égard, la commission d'experts dans son étude d'ensemble de 2012 sur les conventions fondamentales a rappelé que ceci implique que tous ceux qui séjournent sur le territoire d'un Etat, qu'ils aient ou non un permis de résidence, bénéficient des droits syndicaux prévus par la convention, sans aucune distinction fondée sur la nationalité. Enfin le gouvernement n'a pas fait état de progrès dans la modification des dispositions qui ont pour effet de limiter la constitution des fédérations et confédérations. Dans sa déclaration, le gouvernement indique, comme il l'a fait l'année passée, que le délai pour effectuer ces modifications peut paraître long mais, vu l'importance du texte, il conviendrait de rechercher l'adhésion la plus large possible. Si les membres travailleurs accueillent favorablement l'importance que le gouvernement semble attacher à la concertation, ils s'interrogent sur le fait qu'il faille une concertation de plus de douze ans sur des modifications relativement simples à adopter. En outre, dans le contexte actuel où certaines organisations sont exclues des cadres de consultation, les membres travailleurs considèrent que les concertations mentionnées ne sont pas conformes aux normes de l'OIT. S'agissant de la question de l'enregistrement des syndicats, la commission d'experts continue de faire état de sa préoccupation devant des délais particulièrement longs pour l'obtention de l'enregistrement, ou des refus sans justification des autorités d'enregistrer les syndicats autonomes. Il s'agit d'un procédé récurrent de la part des autorités. Ainsi, la CGATA demande depuis 2015 son enregistrement. Suite au dépôt de son dossier, elle a reçu une lettre qui se borne à indiquer que la demande est refusée pour cause de non-conformité avec la réglementation. Aucune suite n'a depuis été donnée à sa demande de justification. Il en résulte qu'à ce jour la CGATA est dans l'impossibilité de savoir en quoi sa demande d'enregistrement serait non conforme à la réglementation. De plus, en raison de cette non-reconnaissance, la CGATA est exclue de la participation aux structures tripartites de consultation, si bien qu'elle n'a pas été consultée sur la réforme du Code du travail en cours. Les membres travailleurs ont rappelé que certaines formalités préalables à l'enregistrement ne sont compatibles avec la convention que dans la mesure où elles ne donnent pas aux autorités un pouvoir discrétionnaire pour refuser la constitution d'une organisation et que ces exigences ne constituent pas un obstacle aboutissant en fait à une interdiction pure et simple.

Les membres travailleurs ont fait état de plusieurs cas d'ingérence des autorités dans le fonctionnement des syndicats: i) s'agissant du cas du SNATEGS, les membres travailleurs observent qu'un communiqué de presse du ministère du Travail du 3 décembre 2017 annonçait la dissolution volontaire du SNATEGS, selon les dispositions de la loi 90-14 de 1990. En vertu de l'article 29 de cette loi, la dissolution volontaire est prononcée par les membres de l'organisation syndicale ou leurs délégués régulièrement désignés conformément aux dispositions statutaires. Or, il est à signaler que selon les statuts du SNATEGS, déposés auprès du ministre du Travail, la dissolution de l'organisation syndicale doit être décidée lors d'un congrès national du syndicat SNATEGS. L'assemblée générale du 7 octobre 2017 à laquelle le gouvernement fait référence dans son communiqué de presse, n'avait donc ni la compétence, ni l'autorité pour décider cette dissolution. Il est regrettable que suite à cette décision, les comptes bancaires du syndicat SNATEGS aient été gelés; ii) le 4 février 2018, la police a indiqué au Syndicat algérien des éditeurs de la presse électronique, qui est un syndicat d'employeurs en voie de constitution, que son assemblée générale prévue pour le lendemain était illégale faute d'une demande d'autorisation préalable. Or, la loi ne prescrit

pas de demander une autorisation préalable pour la constitution d'un syndicat professionnel dans un espace privé un jour de semaine. Il s'agit ici simplement d'une autre atteinte à la liberté syndicale; iii) le 6 mars 2018, hors de tout cadre légal, le gouvernement a demandé, uniquement via le site Internet du ministère du Travail, de l'Emploi et de la Sécurité sociale, aux 65 organisations syndicales agréées à démontrer leur représentativité. Le formulaire imposé par le ministère obligeait les organisations syndicales à indiquer, entre autres, la liste nominative de leurs adhérents, leurs postes et leurs numéros d'immatriculation à la sécurité sociale. Au terme du délai de trois semaines imposé, seules 30 organisations ont pu déposer leurs dossiers. Sur ce nombre, selon le gouvernement, seules 17 auraient satisfait aux critères exigés. Les membres travailleurs rappellent à cet égard que la loi contient des dispositions qui permettent de déterminer la représentativité d'une organisation syndicale si bien que cette initiative superflue des autorités s'apparente à une énième atteinte à la liberté syndicale. Insistant une nouvelle fois sur le lien entre l'exercice de la liberté syndicale et le respect des libertés publiques, les membres travailleurs ont rappelé les cas de harcèlement et de persécution à l'encontre des dirigeants syndicaux indépendants affiliés à la CGATA, et en particulier de: i) M. Khaddour Chouicha, membre du bureau exécutif de la CGATA, arrêté par la police à la terrasse d'un café avec des militants des droits de l'homme au motif de rassemblement non autorisé; ii) M. Abedlkader Kouafi, secrétaire général du SNATEGS, et M. Slimane Benzine, président de la Fédération nationale des travailleurs de la sûreté interne, tous deux condamnés à des peines de prison et d'amende pour avoir dénoncé les mauvaises conditions de travail et les pratiques de harcèlement sexuel à l'encontre de travailleuses; iii) M. Raouf Mellal, président du SNATEGS, qui a fait l'objet de plusieurs plaintes en diffamation dans le but de l'intimider; à cet égard, une décision de justice prononcée en novembre 2017 ordonnant sa réintégration dans ses fonctions et en sa qualité de dirigeant syndical est toujours en attente d'exécution; et iv) M. Mekhfi Djeha, licencié en février 2018 après avoir informé sa hiérarchie de son mandat de délégué d'un syndicat indépendant. Les membres travailleurs ont conclu en regrettant profondément le fossé entre la situation du mouvement syndical indépendant en Algérie et les principes de la liberté syndicale de l'OIT.

The Employer members recalled that the case had been discussed by the Conference Committee in 2014, 2015 and 2017. It concerned issues relating to obstacles to the establishment of workers' organizations, including the registration of trade unions in law and practice. The Government had indicated that these issues would be addressed by the new Labour Code. The Employer members had recalled, as they had in 2017, the information on the social dialogue process in the country, the Government's stated commitment to meeting with parties to discuss the issues, and that the draft Labour Code, under preparation since 1990, had not yet been adopted. In 2017, the Conference Committee had made recommendations concerning the registration of trade unions, the removal of obstacles to the establishment by workers' organizations of federations and confederations of their own choosing, the need to ensure that freedom of association could be exercised in a climate free from intimidation and violence, and the need to ensure that the new draft Labour Code was in compliance with the Convention. The Conference Committee had also urged the Government to accept a direct contacts mission before the next session of the Conference. In that respect, the Committee of Experts had noted that the direct contacts mission had not been accepted without restriction. Thanking the Government for its explanation that it had accepted ten of the 12 points in the terms of reference of the mission, the Employer members nevertheless expressed disappointment that the mission had not been accepted based on the full terms proposed by the Office. If information had been provided to a direct contacts mission, the discussion at the Conference Committee might have been avoided. Without information from a direct contacts mission, the discussion had to be based on the report of the Committee of Experts. Taking into account the conclusions of the Conference Committee of 2017, the Employer members welcomed the Government's expressed commitment to tripartite social dialogue and encouraged the Government to complete the reform of the Labour Code, in consultation with the social partners. That reform should address the requirements to obtain prior authorization and should recognize the right of all workers to establish trade unions and ensure that the registration of trade unions in law and practice conformed to the requirements in the Convention. It should ensure that freedom of association could be exercised in a climate free of intimidation and without violence against workers, trade unions or employers. The Employer members were hopeful that on the basis of straightforward recommendations, it would be possible to move forward and achieve tangible progress on the case. The Government should be urged to provide a full report to the Committee of Experts and to accept a direct contacts mission in the spirit of openness and transparency, so that full information could be gathered with respect to the efforts made to achieve compliance with the Convention.

La membre travailleuse de l'Algérie a déclaré que la Conférence est une plate-forme mondiale qui permet aux partenaires sociaux de prendre la mesure de l'engagement des Etats Membres à l'égard des instruments qu'ils ont ratifiés, en toute impartialité et objectivité. Cependant, certains cas souffrent précisément d'un manque d'objectivité et d'intégrité. Les syndicats participent à la sensibilisation des travailleurs et améliorent leurs conditions de travail et de vie. Cependant, le mouvement syndical souffre actuellement d'une vision opportuniste du syndicalisme, celui-ci étant désormais plutôt utilisé comme un outil servant des fins qui n'ont rien à voir avec la vie et la souffrance des travailleurs. Cela représente une menace pour les travailleurs et pour la crédibilité de l'OIT

et de ses mécanismes. Les mécanismes et méthodes de l'OIT doivent être réformés afin d'en préserver la réputation, la crédibilité et l'efficacité. La campagne menée contre l'Algérie et certains autres pays repose sur des arguments fallacieux. Une législation datant d'un quart de siècle est soudain accusée de violer les obligations. Des manœuvres tentent de démanteler et d'affaiblir le mouvement syndical algérien, et il existe des projets contre les mouvements syndicaux originels en Algérie et ailleurs. Cela a des conséquences préjudiciables sur le principe d'un syndicalisme digne de ce nom ainsi que sur l'action de l'OIT. L'oratrice a instamment prié tous ceux qui respectent l'OIT de plaider pour un réexamen des cas et d'insister sur l'importance des preuves matérielles justifiant ces cas.

Un membre employeur de l'Algérie a exprimé son étonnement quant au grief adressé à l'Algérie de manière récurrente depuis quelques années, considérant le nombre important d'organisations syndicales de travailleurs enregistrées depuis le début des années quatre-vingt-dix et le fait que le pluralisme syndical et le droit de grève soient inscrits dans la loi fondamentale du pays. Il ne se passe pas un mois sans que des mouvements de grève ne soient déclenchés en Algérie, la plupart du temps en violation de la réglementation régissant le droit de grève et paralysant des secteurs vitaux tels que la santé, l'éducation, les transports et autres secteurs économiques. Les pouvoirs publics ont toujours privilégié le recours au dialogue et à la négociation pour résoudre ces conflits et n'ont jamais adopté des mesures répressives à l'encontre des travailleurs et des syndicats ayant déclenché ces grèves. Les sanctions prises à l'encontre des travailleurs ne sont pas liées à leur activité syndicale, mais relèvent plutôt de troubles à l'ordre public et d'entraves à l'activité au sein des lieux de travail, ce que toutes les législations nationales répriment. L'Algérie s'est distinguée en adoptant une politique visant à privilégier le dialogue et la concertation avec les partenaires économiques et sociaux, comme l'attestent les deux pactes économiques et sociaux signés en 2006 et 2014 et le nombre de réunions tripartites et bipartites organisées pour débattre des questions liées au développement économique du pays. En outre, des centaines de conventions et d'accords collectifs ont été signés entre les partenaires sociaux au sein des entreprises. L'orateur a déclaré que l'Algérie aspire à construire un Etat de droit et veille donc à la stricte application de la loi dans tous les domaines, y compris en matière d'exercice du droit syndical et d'organisation de manifestations publiques. Il ne s'agit donc pas d'entraves à la liberté syndicale, mais plutôt du respect des dispositions législatives régissant l'activité syndicale. Ces explications ont été fournies par le gouvernement à maintes reprises, sans qu'elles soient prises en compte par la commission.

Une autre membre employeuse de l'Algérie a souligné l'attachement du gouvernement et des employeurs de son pays au respect des normes internationales du travail et à la promotion du dialogue social qui s'expriment tant dans les institutions tripartites et le pacte économique et social existants en Algérie que dans la coopération de longue date entre l'Algérie et l'OIT. Elle a pris acte du travail de la commission d'experts et exprimé le souhait de son organisation, le Forum des chefs d'entreprise, que se poursuive une collaboration bénéfique pour toutes les parties prenantes, ce qui requiert cependant une exigence d'objectivité et de transparence conformément aux valeurs de l'OIT. Concernant la réforme du Code du travail, il s'agit d'un processus important, complexe et sensible qui doit assurer un équilibre entre les différentes parties qui composent l'entreprise et permettre la construction d'une économie moderne. Tant les employeurs que les travailleurs se doivent d'accompagner les efforts du gouvernement pour mener à bien ce processus de concertation de manière sereine et consolider durablement une croissance économique créatrice de richesse, d'emplois et de paix sociale. En matière de liberté syndicale et de droit de grève, l'oratrice a souligné que la Constitution algérienne garantit toutes les libertés fondamentales, y compris l'exercice de la liberté syndicale et du droit de grève, ces derniers s'exerçant dans le cadre du strict respect de la loi. Le dispositif juridique mis en place en application de la loi fondamentale du pays est 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 privé que dans la fonction publique. Il en résulte que, tel qu'indiqué par le gouvernement, le cadre normatif en vigueur ainsi que son application pratique respectent les principes de la convention en matière de liberté syndicale et d'exercice du droit de grève. L'oratrice a finalement signalé qu'il serait opportun de prévoir, en amont de la rédaction finale du rapport de la commission d'experts, des temps d'échanges avec les experts afin d'assurer qu'ils détiennent des informations fiables.

La membre gouvernementale du Mali a noté avec satisfaction les actions entreprises par l'Algérie pour le respect de la convention. Saluant les efforts fournis, notamment en ce qui concerne le renforcement du dialogue social à travers les rencontres tripartites, des espaces de concertation et de négociations, elle a encouragé l'Algérie à continuer dans son travail constant pour le respect de la liberté syndicale.

Un observateur représentant la Confédération syndicale internationale (CSI), s'exprimant au nom de la Confédération générale autonome des travailleurs en Algérie (CGATA), a déploré que le gouvernement fasse l'objet de plaintes récurrentes de la part des organisations syndicales et qu'il refuse de coopérer avec l'OIT. Depuis l'année dernière, quand ce cas a été discuté au sein de cette commission, il n'y a eût aucune amélioration, et d'autres entraves ont été ajoutés au libre exercice du droit syndical. Aucune recommandation de la commission d'Experts n'a été

retenue concernant les questions suivantes: les syndicalistes licenciés réintégrés ont été rétrogradés; l'enregistrement des organisations syndicales; la révision du projet de Code du travail; l'imposition d'un agenda à la mission de suivi du BIT qui interdisait la rencontre des responsables des organisations syndicales plaignantes. La répression continue dirigée contre les représentants syndicaux, en particulier le président de la CGATA (M. Rachid Malaoui) et le président du SNATEGS (M. Raouf Mellal), le coordonnateur national du Syndicat des enseignants du supérieur (SESS) (M. Kaddour Chouicha) et le responsable de la Fédération des travailleurs de la justice affiliée au Syndicat national autonome des personnels de l'administration publique (SNAPAP) (M. Mourad Ghedia).

The Government member of Lebanon noted that the Government was taking measures to fulfil its international obligations and trusted that no effort would be spared in that regard. She expressed appreciation for the measures already taken by Algeria, including the National Economic and Social Growth Pact. The social dialogue that was taking place should be encouraged.

Un observateur représentant IndustriALL Global Union a déclaré que le pluralisme syndical dont se revendique le gouvernement algérien n'est qu'un pluralisme de forme et que la preuve de cela se retrouve dans les terribles campagnes de répression à l'encontre du SNATEGS, malgré la ratification par l'Algérie de la plupart des conventions internationales consacrées aux libertés syndicales. A cet égard, 1 114 personnes impliquées ont été traduites devant la justice et 12 délégués syndicaux ont été poursuivis pour des affaires fabriquées et menacés de peines de prison pour avoir exercé leur droit de grève. L'orateur a fait part de sa propre condamnation à dix-huit mois d'emprisonnement ainsi que de plusieurs autres exemples de cas tous arbitraires, dans le cadre desquels un nombre important de dirigeants syndicaux ont été licenciés. Le ministère du Travail a non seulement refusé d'appliquer l'article 56 de la loi n° 90-14 sur les modalités d'exercice du droit syndical, selon lequel un délégué syndical doit être réintégré dans son poste de travail en cas de violation de la loi, mais a également dissous le syndicat deux fois: la première par l'entremise de l'adoption d'un décret ministériel en mai 2017 et la deuxième par la tenue d'une réunion dite de «dissolution volontaire». Dans ces deux cas, le ministère du Travail a refusé d'appliquer les lois relatives à la liberté syndicale et a outrepassé la compétence du pouvoir judiciaire, qui seul a le pouvoir de dissoudre les syndicats conformément aux articles 27 et suivants de la loi n° 90-14. La liberté syndicale est maintenant une illusion en Algérie, où les syndicats sont muselés et où celui qui tente d'exposer la détérioration des conditions sociales des travailleurs ou la mauvaise gestion des entreprises est condamné à l'emprisonnement pour diffamation. Finalement, l'orateur a exprimé sa préoccupation non seulement face aux peines d'emprisonnement, mais aussi face aux licenciements et à la politique d'agression du gouvernement algérien contre les dirigeants syndicaux et tous ceux qui essaient de s'engager dans une activité syndicale.

The Government member of Eritrea expressed his full support for the position taken by the Government regarding the application of the Convention. The Committee should appreciate the efforts undertaken by the Government to harmonize its legislation with the relevant international labour standards through a process of tripartite consultation, particularly for the ongoing labour law reform. He expressed support for the need to review the working methods of the Conference Committee in order to ensure transparency and inclusiveness, in particular regarding the criteria to select the cases to be included in the list.

Un observateur représentant l'Internationale des services publics (ISP) a fait part de la situation du Syndicat national autonome des personnels de l'administration publique (SNAPAP), syndicat affilié. A cet égard, il précise que les autorités ont réussi à mettre sur pied un syndicat clone du SNAPAP dont le dirigeant participe aux travaux de la Conférence internationale du Travail. Cette manœuvre ayant pour objectif de tromper les membres de la Commission de la Conférence. Cependant, au niveau national le SNAPAP original fait l'objet d'ingérence dans ses activités dans la mesure où à chaque fois qu'il tente de constituer une section syndicale dans une administration donnée, les adhérents potentiels font l'objet d'intimidations afin qu'ils adhèrent au syndicat clone par les services de sécurité et l'administration locale. En outre, des pressions sont exercées de toutes parts afin d'empêcher le SNAPAP de pouvoir louer des locaux syndicaux. Enfin, l'orateur a regretté qu'un responsable de l'ISP qui devait effectuer une mission sur place avec le SNAPAP se soit vu refuser un visa d'entrée par les autorités algériennes.

El miembro gubernamental de la República Bolivariana de Venezuela saludó la información brindada por el Gobierno respecto al cumplimiento del Convenio. Lo informado por el Gobierno en su intervención destaca las buenas prácticas en el ámbito del diálogo social, a los fines de promover las relaciones laborales y el ejercicio del derecho de sindicación. El Gobierno ha expresado su preocupación al solicitársele respuestas reiteradas a cuestiones relacionadas con el derecho de sindicación, no obstante que en 2015 y en 2017 ha proporcionado información sobre casos específicos y sobre el proyecto del Código Laboral, estando a la espera de que se evalúe su progreso. Encomiamos al Gobierno argelino para que continúe promoviendo el trabajo decente y el fortalecimiento de los derechos de los trabajadores en el marco del Convenio. Preocupa igualmente las denuncias contra el Gobierno provenientes de personas u organizaciones que no pertenecen al mundo del trabajo. Como escuchamos de parte del

Gobierno, existe una importante actividad sindical que ha dado lugar a la firma de un gran número de convenios colectivos con base en un diálogo social permanente y efectivo que ha llevado a la firma de un pacto de crecimiento económico y social y de varios acuerdos en los campos socioeconómicos. Finalmente, es deseable llamar la atención respecto del resurgimiento de una política agresiva contra Argelia encaminada a limitar su progreso social y negar sus valores de justicia social, todo lo cual debería ser tomado en cuenta por esta Comisión en sus conclusiones.

The Worker member of the United States recalled that SNATEGS had been dissolved by the Ministry of Labour and that this had not been voluntary. Following peaceful actions in response to that decision, leaders of SNATEGS had been detained. Subsequently, a peaceful protest had been organized by SNATEGS to demand that the Government put a stop to the privatization of national companies, uphold the freedom of association, and reinstate workers and union leaders who had been dismissed from the state-owned energy company, but police detained approximately 1,000 persons from that rally. The detention of union leaders for alleged unauthorized gatherings was not limited to SNATEGS. Mr Kaddour Chouicha, the national coordinator for SESS faced similar charges, and at the university where Mr Chouicha worked, teachers had been locked out. The detention of union leaders, the alleged dissolution of SNATEGS, and the lockout of SESS members were all in violation of the Convention and related to employers that were state-owned. The legislation was being used as an apparatus to deprive workers of their freedom of association by punishing union leaders and members and preventing them from joining together. Reform of the legislation was moving forward at an unacceptably slow pace. It was very concerning that this was occurring in the public sector as the Government was responsible for the slow progress towards the reforms recommended by the Conference Committee and the other actions under discussion. The speaker recommended the adoption of the same conclusions as last year, with an emphasis on the need for the reforms to occur without undue delay.

The Employer member of Qatar recalled that the case of Algeria was a unique situation. Algeria had ratified more than 60 ILO Conventions and had more than 100 active trade unions. As employers, they always viewed stability in the economic environment as the main goal for the development of the economy and any problems in the economic environment of a neighbouring or regional country would negatively affect their own economic environment. Algeria should not merit being among the 25 cases discussed by the Conference Committee. The case should be closed, and the Government should be encouraged to resolve the issues raised through Algerian regulations and legal frameworks.

La miembro gubernamental del Estado Plurinacional de Bolivia agradeció lo informado por el Gobierno en el sentido de que la libertad sindical está plenamente protegida por la legislación del país. Saludó el informe del Gobierno en lo que respecta a los reintegros de trabajadores despedidos, lo que debe ser tomado en cuenta por la Comisión en sus conclusiones. En el Estado Plurinacional de Bolivia los derechos sindicales son reconocidos como derechos fundamentales.

Le membre travailleur du Brésil a déploré l'augmentation des attaques violentes perpétrées par le gouvernement algérien contre les travailleurs. En particulier, les médecins affiliés au Comité autonome des médecins résidents algériens (CAMRA), en grève depuis plusieurs mois, ont été brutalement réprimés par la police lors de manifestations organisées entre janvier et mai 2018 à Alger et à Oran. En outre, plusieurs médecins ont été arbitrairement détenus et relâchés très tard dans la nuit dans des endroits isolés. Le 4 janvier 2018, après avoir interdit à des centaines de médecins de la CAMRA de protester devant l'hôpital universitaire «Mustafa Pacha» à Alger, la police les a brutalement réprimés, causant de graves blessures. Des arrestations arbitraires des membres de la Coordination des médecins ont également eu lieu. Enfin, le 20 janvier 2018, la police algérienne a brutalement réprimé encore une fois un rassemblement pacifique organisé par le SNATEGS-CGATA et arrêté un grand nombre de manifestants pacifiques, notamment des femmes syndicalistes membres du SNAPAP. Enfin, l'orateur a appelé le gouvernement à garantir la liberté syndicale sur la base du dialogue social tripartite.

The Government member of the United States noted that the Government continued to report that the process initiated in 2011 to amend the Labour Code was progressing. The dialogue with the Committee of Experts on the draft legislation and the efforts to engage in consultation with tripartite stakeholders showed its commitment. He expressed concern at the cancellation of the ILO direct contacts mission requested by the Conference Committee in 2017, owing to the Government's refusal to guarantee meetings with independent trade union organizations. Unregistered trade unions continued to report registration delays and certain denials of recognition. He encouraged the Government to take action to address those issues. It should accept an ILO tripartite mission and ensure meetings with all relevant stakeholders, including independent trade union organizations. The recommendations of the mission should include a time-bound action plan providing remedies for specific violations of workers' rights. The Government should also ensure the ability of trade unions to operate freely from intimidation, establish a transparent

trade union registration process in line with international standards and ensure the expeditious treatment of applications for trade union registration.

The Government member of Libya said that the Government's commitment to the application of the Convention was reflected in its national laws supporting freedom of association in Algeria, as well as in article 70 of the Constitution of 2016, which recognized freedom of association to all citizens. The detailed response of the Government representative confirmed that the Government was in the process of undertaking all necessary and positive action to resolve the individual cases of concern with only a few individual workers' cases remaining, which were the subject of reconciliation efforts by labour inspectors and the competent courts. Moreover, the settlement of 88 per cent of cases had been reported. The National Economic and Social Growth Pact had been signed by the Government and a number of bilateral and tripartite meetings of the social partners had followed. Concerning the completion of the labour reform process, the Government was developing the Labour Code which aimed to strengthen the application of all social laws in force and to respond to the expectations of economic actors. The Conference Committee should take into consideration, in its conclusions, all the positive action undertaken by the Algerian Government to implement the Convention.

La miembro trabajador de España indicó que intervenía en nombre de organizaciones sindicales, de Francia, Italia y España. Señaló que el reciente informe de la UE, de 6 de abril de 2018, sobre el estado de las relaciones entre la UE y Argelia en virtud de la Política Europea de Vecindad renovada que, en lo que respecta a la libertad de asociación, dice que los sindicatos autónomos argelinos siguen teniendo dificultades para registrarse o reunirse a pesar de la ratificación por parte de Argelia del Convenio (punto 3) y, de otra parte, que la promoción del diálogo social, particularmente a través del desarrollo de sindicatos autónomos, de acuerdo con las recomendaciones de la OIT, también debería ser parte de las mejoras en el entorno económico y del mercado laboral. Desde estas premisas fundamentales cabe recordar que existen pocos avances al respecto en Argelia. Tras recientes huelgas convocadas por el Consejo Nacional de Profesores Autónomos del Sector de Educación Terciaria, el Ministerio de Trabajo lanzó una campaña para presionar a los sindicatos que desvirtúa los mecanismos de la representatividad sindical. El 6 de marzo del presente año se exigió a los sindicatos que antes del 30 de marzo, es decir, en veinticuatro días, aportaran datos que pudieran demostrar su representatividad, tales como el número de afiliados y el monto de las cuotas en virtud de la ley. Pero se exigieron datos no contemplados en la ley como el nombre completo, sexo, fecha de nacimiento, organización empleadora, dirección del lugar de trabajo, puesto de trabajo, fecha de afiliación, número de afiliación, monto de la cuota de afiliación de 2017 y el número de afiliación a la seguridad social, exigencias que de manera evidente entorpecen la libre sindicación en el país. Estas exigencias han servido de pretexto para elaborar una lista de sindicatos que suelen ser citados por las autoridades para tratar de demostrar el libre ejercicio sindical en Argelia y que son aquéllos que han proporcionado estos datos, excluyendo así a los que no lo hicieron, declarándose además representativas a algunas organizaciones que sin previa presencia en el terreno se han sumado a la campaña de hostigamiento contra el citado Consejo Nacional. Por estas razones, entre otras muchas, la oradora cuestionó criterios para probar la representatividad sindical en Argelia. El Gobierno está aún muy lejos de cumplir lo que recoge el Convenio y lo que nos recomienda y recuerda el informe de la UE anteriormente mencionado.

Estas exigencias han servido de pretexto para elaborar una lista de sindicatos que suelen ser citados por las autoridades para tratar de demostrar el libre ejercicio sindical en Argelia y que son aquellos que han proporcionado estos datos, excluyendo así a los que no lo hicieron, declarándose además representativas a algunas organizaciones que sin previa presencia en el terreno se han sumado a la campaña de hostigamiento contra el citado Consejo Nacional. Por estas razones, entre otras muchas, la oradora cuestionó criterios para probar la representatividad sindical en Argelia. El Gobierno queda aún muy lejos de cumplir lo que recoge el Convenio y lo que nos recomienda y recuerda el Informe de la Unión Europea mencionado al principio.

La membre gouvernementale du Sénégal a salué les efforts entrepris par l'Algérie pour donner effet à la convention. Tout en réaffirmant son attachement aux idéaux et objectifs universels de l'OIT ainsi que la nécessité pour tout Etat Membre d'assurer le respect des droits et libertés syndicaux de tous les travailleurs, elle a exhorté le gouvernement algérien à poursuivre les progrès réalisés pour améliorer, avec ses partenaires sociaux, la situation de sa législation et de sa pratique nationales en matière de respect et de protection des droits syndicaux des travailleurs. Elle a également invité le gouvernement à renforcer la coopération avec le BIT et, si nécessaire, solliciter son assistance technique en vue de donner plein effet à la convention.

Un observateur, représentant de l'Union internationale des travailleurs de l'alimentation (UITA), a annoncé que Nassira Ghozlane, la secrétaire générale de la SNAPAP et membre de l'exécutif de l'ISP, a été empêchée par les autorités algériennes de voyager ce matin pour se rendre à Genève et assister à cette réunion. Il a par ailleurs constaté que l'isolement dans lequel se trouvent les syndicats autonomes ne fait qu'augmenter car, en

plus de refuser aux membres de la mission de suivi de rencontrer les syndicats autonomes qui se battent pour la liberté syndicale, bien qu'un camarade ait été prévenu d'assister le matin même à la réunion, la CSI et la CSE n'ont pas reçu de visa alors qu'ils devaient aller en Algérie pour débattre avec les responsables de la CGATA du contexte syndical et du prochain congrès de la CSI. Il convient de rappeler, à titre informatif, que M. Mustapha Tlili, responsable au sein de la CSI arabe, a été refoulé le 24 mai 2016, lors de son arrivée à l'aéroport d'Alger. La liberté syndicale exige la liberté d'association à tous les niveaux, y compris à l'international. On assiste à la montée de la criminalisation de toutes activités syndicales par le système judiciaire, qui a facilité une cascade de poursuites infondées contre des dirigeants syndicaux; aux jugements arbitraires déjà cités du 27 janvier 2016, du 2 janvier 2017 et du 28 novembre 2017 contre M. Raouf Mellal, président du SNATEGS, impliquant des peines d'emprisonnement allant jusqu'au six mois fermes et des amendes jusqu'à 5 000 euros pour avoir dénoncé la corruption dans le domaine public et pris la défense de victimes de harcèlement sexuel. En outre, des procédures à l'encontre du secrétaire général du SNATEGS, M. Abdelkader Kouafi, sont en cours. Ces procédures créent une atmosphère de peur qui pèse lourdement sur les travailleuses et travailleurs algériens, sur les droits civiques et sur la liberté syndicale.

The Government member of Qatar referred to the detailed information provided by the Government, in particular the legislative procedures undertaken to ensure the exercise of freedom of association and the establishment of trade union organizations and social dialogue processes with the social partners. The Conference Committee's conclusions should take into consideration the efforts undertaken by the Government as well as its openness to cooperate with the ILO in that respect.

The Government member of Turkey welcomed the information provided by the Government on the developments regarding the implementation of the Convention. The Government was committed to solving the problems regarding labour rights in the country and the figures on settled labour disputes clearly indicated the Government's willingness and commitment to continue its efforts to further improve the situation of workers. The Government was also commended for its efforts to draft the Labour Code and achieve consensus, which could be reached by social dialogue, and it was encouraged to continue working closely with the ILO and increase its efforts, especially for the protection of trade union rights.

The Worker member of Poland pointed out that the situation of workers in Algeria had not improved since the discussion the previous year by the Conference Committee. On the contrary, new serious violations had recently place. Freedom of association should be guaranteed without discrimination of any kind, particularly based on occupation and nationality, and there should be no prohibitions on the registration of trade unions. There were no guarantees for a rapid registration procedure in Algeria and no specific penalty was foreseen for the authorities, for long registration delays. The labour law reform had been a long process and, accordingly, stronger ILO recommendations were called for. There should be an ILO mission to Algeria. Finally, the Government was urged to amend its legislation, immediately recognize all legitimate unions and reinstate all workers who had been unlawfully dismissed for their trade union activities.

The Government member of Zimbabwe, noting the information submitted by the Government on the cases that had been finalized and those still under consideration, expressed the hope that the cases pending before the internal dispute settlement system would soon be finalized. She noted the Government's willingness to continue cooperating with ILO supervisory bodies in ensuring that all the pending cases were dealt with through domestic remedies. The ILO should continue to provide technical support to strengthen the tripartite and bipartite institutions in Algeria, as those structures were central to dispute settlement in the world of work.

The Government member of Islamic Republic of Iran welcomed the measures adopted by the Government to reinforce the situation of trade unions in the country. Referring to the statistics provided by the Government on the settlement of individual cases, he noted that 76 of 86 cases had been settled or were in the process of being settled. Efforts had been deployed to reach a consensual Labour Code in full consultation with the social partners. He recalled the Government's indication that it had not rejected the recommendations adopted by the Conference Committee in 2017 concerning the direct contacts mission and indicated that further negotiations could pave the way to a solution. He encouraged the Office to provide the necessary assistance to overcome the pending issues.

Le membre travailleur du Maroc s'est dit surpris par la réponse du gouvernement algérien selon laquelle il décrit la CGATA comme étant un «demi-syndicat» et a souligné que la CGATA est un membre fondateur de la Confédération syndicale arabe, du Forum social maghrébin et du Forum social mondial, et membre de la Confédération internationale des syndicats. En outre, la Fédération générale des travailleurs marocains entretient une relation de coopération datant de plusieurs années avec la CGATA, qu'elle considère être un syndicat sérieux et responsable. Par conséquent, considérer que ce syndicat n'existe pas et qu'il n'a pas de représentativité syndicale

n'est qu'une tentative de favoriser un syndicat par rapport à un autre, alors que la procédure appropriée devrait plutôt être de tisser les liens de coopération et de participation entre les syndicats centraux d'un pays. Ceci est un facteur essentiel à la promotion de la paix sociale, ce à quoi un gouvernement sérieux aspire. L'orateur a terminé en déclarant que toute action préjudiciable au droit à la liberté syndicale constitue une violation explicite de la Constitution de l'OIT et contredit les dispositions de la convention.

The Government member of Egypt said that account should be taken of all the efforts made by the Government in the framework of dialogue with the social partners, to ensure the effective implementation of the Convention. This included preparing labour legislation and other related social laws; ensuring the establishment of trade unions based on pluralism; facilitating the establishment of trade unions at different levels by removing the restrictions and obstacles in this exercise; and providing the necessary guarantees for the establishment of independent trade unions. The Government was encouraged to take additional measures to ensure the full application of the Convention, both in law and practice and to make use of the technical assistance provided by the Office in that respect.

Le membre travailleur du Mali, s'exprimant également au nom des travailleurs de la Guinée ainsi que de ceux du Congo, a indiqué que pour la deuxième année consécutive la commission examine les manquements aux dispositions de la convention par l'Algérie. Au regard des arguments développés par le gouvernement, et tenant compte des efforts fournis pour la clarification des points litigieux, des progrès significatifs ont été observés, notamment en ce qui concerne: la reconnaissance effective du pluralisme qui se traduit par l'enregistrement de plusieurs syndicats couvrant la quasi-totalité des branches d'activités économiques et le secteur de la fonction publique; et l'existence d'un cadre réglementaire favorisant la signature d'accords collectifs conclus au niveau d'entreprises. Outre ces acquis, un Pacte national économique et social de croissance a été signé donnant ainsi plus de force à la promotion du dialogue social et à la reconnaissance des droits de tous les travailleurs. La paix sociale est le socle de tout progrès économique et le fondement du droit dans la mesure où elle permet de respecter le choix de chaque travailleur d'exercer librement ses activités. En l'espèce, l'Algérie est un pays engagé dans un processus de mutation qualitative qui tout au long de sa marche s'enrichit des valeurs de progrès et de démocratie dont l'OIT est une référence. Dans ce contexte, le rôle de l'Organisation est d'encourager activement le renforcement du dialogue social comme vecteur de paix et de cohésion sociale par la reconnaissance des acquis obtenus depuis 2017 en matière de droit syndical. Le BIT doit continuer à appuyer l'Algérie pour parachever les résultats obtenus.

El miembro gubernamental de México tomó nota de las acciones adoptadas por el Gobierno para atender las observaciones de la Comisión de Expertos, en especial los avances en el proceso de reforma al Código del Trabajo y la voluntad política para llevar a cabo un amplio proceso de consultas con los interlocutores sociales, con miras a producir normas que fortalezcan la implementación de leyes y la práctica, lo que resulte en la superación de retos del presente caso. Por otro lado, la Comisión de Expertos toma nota de alegatos que se ventilan ante el Comité de Libertad Sindical, por lo que hay que destacar la importancia de no crear una duplicidad en el análisis de las cuestiones que se presentan. Por esta razón, es de especial relevancia no prejuzgar respecto de cuestiones que aún se encuentran pendientes ante dicho Comité, lo que permitirá asegurar la coherencia en el funcionamiento de los mecanismos de control. México reitera que el respeto de los derechos fundamentales en el trabajo es un componente esencial para la realización del trabajo decente y por ello es satisfactorio que el Gobierno está dispuesto a colaborar con los mecanismos de control. Se espera que el proceso legislativo que se emprenda tenga éxito y que se mantenga informada a la Comisión de Expertos sobre los avances alcanzados.

The Worker member of Bahrain said that there was no doubt that the Government was dealing decisively and transparently with the observations of the Committee of Experts and that it responded in detail to all the issues contained therein. He expressed his surprise at the fact that Algeria had been on the list of cases for years, despite the fact that it had ratified more than 60 international labour Conventions, which confirmed the country's commitment to respect of international labour standards. The Algerian labour movement was dynamic and active, and provided significant material and moral support to Arab and African trade unions. However, he supported the statements made by the Government in that they should be granted freedom in dealing with the draft Labour Code, with the full support of the social partners. He added that the great number of social sectoral agreements reflected the fact that Algeria used social dialogue and collective bargaining as the ideal means to regulate conditions of work. Finally, it was important to acknowledge efforts made in the country, which provided a good example of freedom of association and social dialogue, rather than insist on placing it on the list of cases.

The Government member of the Russian Federation noted that the information provided by the Government confirmed its commitment to complying with the Convention. The Government was demonstrating good will and was open to dialogue with the social partners on the issues raised. For a number of years, the Government had been taking specific steps that affirmed its commitment to the fundamental principles and rights

at work. The situation should be analysed carefully, and the ongoing social dialogue should be supported. The speaker concluded by encouraging the Government's cooperation with the ILO, including in the form of an ILO mission, and to continue to take measures in that respect.

The Worker member of Sudan noted that the Convention provided for account to be taken of national laws in the exercise of trade union activities. Algeria had ratified a large number of ILO conventions. It also had an important role in developing the African trade union movement through the Organization of the African Trade Union Unity (OATUU), as well as an active role in the Arab trade union movement through the International Confederation of Arab Trade Unions (ICATU). Algeria's national labour legislation was in conformity with international labour standards, including with respect to trade union pluralism.

The Government member of Ghana welcomed the efforts taken by the Government regarding the reinstatement of dismissed workers. The Committee of Experts should bear in mind the distinction between fundamental human rights and trade union rights, as trade union rights also entailed obligations. Algeria had acquired great experience in the use of social dialogue as a tool to reach consensus on important socio-economic issues. The reform of the Labour Code required the participation of major players in the country in order to ensure consensus over a law which addressed existing gaps and takes into account emerging issues in the industrial environment. He urged the Government to strengthen engagement with the social partners and avail itself of ILO technical assistance to make progress in the finalization of the Labour Code reform, in compliance with relevant international labour standards.

La miembro gubernamental de Cuba agradeció la información aportada por el Gobierno en relación al Convenio. Destacó que algunas de las recomendaciones de la Comisión de Expertos han sido ya implementadas y expresó su confianza en que Argelia seguirá avanzando en el sentido de poner en práctica las recomendaciones que ya han sido dadas.

An observer representing the World Federation of Trade Unions (WFTU) said that the trade unions situation in Algeria was characterized by pluralism, as more than 100 trade unions were registered, including 65 central trade unions. What was lacking in Algeria was ambitious and fair legislation regulating pluralistic trade unions. Some considered that tripartite dialogue necessarily meant the inclusion of only the most representative trade unions and the exclusion of the remaining organizations, when in fact tripartite dialogue should not be restricted but should encompass a number of workers' and employers' organizations at all stages of dialogue. He recommended that the Government of Algeria should work to establish a higher council for social dialogue in which more than one employers' organization and one workers' organization could participate.

The Government member of Kenya noted that since the last examination of the case by the Conference Committee in 2017, the Government had put in place a number of measures to address some of the problems regarding the application of the Convention. There had been an increase in the number of cases settled through conciliation or competent courts, most of which related to professional misconduct rather than to the exercise of workers' trade union rights. Consultation and negotiation had also resulted in the signing of a number of economic and social agreements and the creation of institutions to enhance social dialogue. As the process of amending laws and restructuring institutions was time-consuming, the Government should be given more time and technical assistance from the ILO in order to enhance compliance with the Convention.

The Government member of Nigeria noted with satisfaction the Government's report on the application of the Convention and considered that much substantial progress had been made. He expressed support for the proposal to revise the working methods of the Committee to carry out its mission in accordance with the principles of tripartism and ensure full transparency in individual cases. Particular concern remained about the complaints lodged against the Government by some persons and trade unions allegedly lacking official recognition on the pretext that the Government was hindering freedom of association. Trying to force governments to implicitly recognize pseudo-organizations was a practice that undermined a State's sovereignty. Finally, the Government's commitment to meet the requirements of the principles of the Convention was welcomed.

The Government member of the Syrian Arab Republic noted the positive measures initiated by the Government. Those measures should continue, as the Government was determined to pursue reforms to ensure the application of the Convention. The delay in finalizing the Labour Code should not be a concern as this legislation required tripartite consultations and dialogue. He hoped that the new law would soon be issued as the tripartite constituents reached consensus.

Le représentant gouvernemental a souligné que l'Algérie est un pays stable, respectueux des droits humains en général et de la liberté syndicale en particulier, comme le démontre la tenue de grèves, y compris dans des secteurs très sensibles comme l'éducation nationale, la santé ou les transports. Concernant l'enregistrement des organisations syndicales, il n'existe pas de conditions préalables mais uniquement l'application des procédures prévues par la législation nationale. Les informations sur la situation des dossiers d'enregistrement ont toujours été fournies au BIT dans les délais. L'orateur a par ailleurs affirmé qu'une personne prétendant représenter les travailleurs n'est actuellement plus fonctionnaire, qu'elle ne représente donc plus qu'elle-même aujourd'hui. Le gouvernement a par ailleurs déjà fourni toutes les preuves sur les activités illicites de cette personne consistant à inciter à la rébellion et à la désobéissance, agissements qui ne peuvent trouver protection dans la convention. Concernant la mission de contacts directs, l'orateur a mentionné que celle-ci n'a été ni annulée ni refusée par l'Algérie. Toutes les informations ont été fournies sur les efforts et préparatifs engagés à cet effet et un processus de concertation se poursuit à cet égard avec le Bureau. A propos des résultats des cas individuels, toutes les informations ont été fournies de manière transparente et les dossiers ont bien avancé. Quant à la réforme du Code du travail, le dialogue et la concertation tripartite sont en cours, y compris vis-à-vis de dispositions du code commentées par la commission d'experts. Dans l'attente de la finalisation de ce processus, l'Algérie dispose d'une législation du travail conforme aux conventions internationales et ne se trouve donc pas dans une situation de vide juridique. Le représentant gouvernemental a ensuite regretté que de nombreuses accusations aient été portées contre son pays en dépit des informations préalablement fournies par son gouvernement les réfutant. Il a ainsi été indiqué que M. Mellal ne fait plus partie de l'entreprise en question mais qu'il exerce la profession d'avocat au barreau d'Alger. Concernant la procédure judiciaire le concernant, l'entreprise a introduit un pourvoi en cassation et la justice poursuit son travail en toute indépendance. D'autres personnes présentes dans la salle prétendent avoir fait l'objet de peines d'emprisonnement alors qu'elles peuvent se déplacer librement hors du territoire national. Concernant le conflit ayant surgi au sein du SNAPAP, il faut rappeler que la Cour suprême a tranché cette affaire et que le syndicat dispose d'une direction réélue lors de son dernier congrès. Quant au cas de la CGATA, toutes les informations pertinentes ont été fournies au Bureau et il revient maintenant à la commission d'experts de les exploiter. Le pluralisme syndical existe en Algérie comme le démontre le grand nombre d'organisations existantes. Concernant la dissolution du SNATEGS, celle-ci a été prononcée par ses membres fondateurs conformément à la législation, et le ministère s'est limité à prendre acte de cette dissolution volontaire. S'agissant de la représentativité des syndicats, le cadre légal existe depuis la promulgation des lois sociales de 1990. Le canevas élaboré cette année vise uniquement à assurer plus de transparence et de précision dans l'appréciation de la représentativité des syndicats. De fait, 21 organisations syndicales ont respecté les nouvelles démarches sans que cela ne trouble leur fonctionnement. Le représentant gouvernemental a conclu ses propos en rappelant l'attachement de son pays au tripartisme et au dialogue social et en soulignant la pleine disposition de son gouvernement à poursuivre le renforcement de la coopération avec la commission et avec l'OIT en général.

Les membres travailleurs ont souligné que le gouvernement a apporté plusieurs précisions relatives à l'observation de la commission d'experts discutée par cette commission en 2017, sans toutefois fournir des réponses aux remarques formulées par la commission d'experts dans sa dernière observation. Il aurait été souhaitable, tel que l'avait demandé la commission l'an dernier, que ces informations aient été envoyées à la commission d'experts afin qu'elle ait pu en tenir compte dans l'examen de ce cas. Un envoi moins tardif de ces informations aurait également permis d'effectuer les vérifications nécessaires. Les membres travailleurs ont relevé qu'à ce stade: i) la liste des travailleurs réintégrés fournie par le gouvernement inclut des délégués du SNAPAP qui n'ont été réadmis qu'à condition de renoncer à leurs fonctions syndicales; ii) des travailleurs de la poste sont mentionnés sur cette liste alors qu'en fait la poste refuse toujours de les réintégrer; et iii) la plupart des délégués du SNATEGS ne sont pas mentionnés sur cette liste. Il résulte de ce qui précède que le gouvernement ne s'est que partiellement conformé à la recommandation de la commission sur ce point. S'agissant de la procédure d'enregistrement des syndicats, les membres travailleurs ont considéré que les informations fournies par le gouvernement sont préoccupantes. Selon ce dernier, la non-reconnaissance du Syndicat autonome des travailleurs des transports (SAATT) serait en premier lieu due à des imprécisions dans la détermination de la catégorie professionnelle couverte par les statuts de l'organisation, exigence qui s'avère contraire à l'article 3 de la convention qui reconnaît le droit des organisations de travailleurs d'élaborer librement leurs statuts. Quant à la supposée omission des dispositions de l'article 21 de la loi n° 90-14, les membres travailleurs ont souligné que cet article contient des exigences constituant une ingérence de la part des autorités publiques contraires à l'article 3, paragraphe 2, de la convention et que le gouvernement ne précise pas en quoi le SAATT ne respecterait pas l'article mentionné. Quant aux supposées réintégrations de travailleurs dans la fonction publique, le gouvernement ne fournit pas d'éléments précis pour appuyer son propos sur ce point. Les membres travailleurs ont ensuite souligné que la convention contient une série de dispositions qui ne sont toujours pas mises en œuvre dans le droit algérien. Concernant l'enregistrement des syndicats, des dispositions claires et transparentes sont nécessaires. Pour éviter que l'enregistrement ne s'apparente à une demande d'autorisation préalable, il serait utile de prévoir une disposition légale qui fixe un bref délai pour obtenir le récépissé d'enregistrement et qui prévoit l'enregistrement automatique du syndicat en cas de défaut de réponse motivée dans

ce délai. De manière spécifique, les membres travailleurs ont à cet égard demandé au gouvernement de: i) reconnaître dans les plus brefs délais les syndicats autonomes, y compris la CGATA et de rétablir le récépissé retiré indument au SNATEGS; et ii) modifier la législation afin que soit reconnu à tous les travailleurs, sans distinction de nationalité, le droit de constituer une organisation syndicale. Concernant le Code du travail en préparation, les membres travailleurs: i) ont demandé au gouvernement de s'assurer que le texte est pleinement conforme à la convention et ont regretté que le gouvernement ne se soit pas explicitement engagé dans ce sens; ii) ont relevé que le document déposé ne fait nullement référence aux commentaires de la commission d'experts; et iii) ont demandé au gouvernement de communiquer ce document aux organisations syndicales autonomes, y compris à la CGATA afin qu'elles puissent faire part de leurs observations. Les membres travailleurs ont par ailleurs prié le gouvernement de cesser toutes les actions entravant la liberté syndicale afin que celle-ci puisse s'exercer dans un climat exempt d'intimidation et de violence. Eu égard au fait que le gouvernement n'a réservé aucune suite aux recommandations émises lors de la dernière session de la commission, il lui est demandé d'accepter une mission de haut-niveau afin de prendre connaissance de tous les éléments pertinents, et notamment de rencontrer les syndicats plaignants.

The Employer members expressed appreciation for the information provided to the Conference Committee, including the Government's stated commitment to further cooperate with the ILO and the national social partners. Referring to the conclusions adopted by the Conference Committee in 2017, the Employer members encouraged the Government to work towards completing the reform of the Labour Code, in consultation with the social partners. In that respect, the Employers highlighted the requirement of the Convention to remove obstacles to the establishment, by workers of organizations of their own choosing, including the registration of trade unions, and emphasized the need for a climate free of intimidation and violence. The Employer members welcomed the Government's stated commitment to tripartite social dialogue, which was a necessary component for continued progress. In the spirit of transparency and clarity, and in light of the Committee of Experts' need for the most up-to-date information, a high-level mission should be accepted without reservation to demonstrate commitment to achieving compliance with ratified Conventions.

Conclusions

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

La commission s'est dite préoccupée que persistent les restrictions imposées au droit des travailleurs de s'affilier à des organisations, fédérations et confédérations syndicales de leur choix et d'en constituer. Elle a relevé avec préoccupation que la mise en conformité avec la convention n° 87 continuait à progresser lentement, alors qu'elle examine ce cas depuis plus de dix ans et que le gouvernement n'a toujours pas soumis le projet de Code du travail au Parlement pour adoption définitive. Elle regrette profondément que le gouvernement n'ait pas accepté les termes de la mission de contacts directs sans restriction, comme le demandaient ses recommandations de 2017.

Prenant en compte l'exposé du gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement:

- **de veiller à ce que l'enregistrement des syndicats, en droit et dans la pratique, soit conforme à la convention n° 87;**
- **de traiter les demandes d'enregistrement de syndicats en suspens qui répondent aux conditions énoncées par la loi et de permettre aux syndicats de mener librement leurs activités;**
- **de veiller à ce que le nouveau projet de Code du travail soit adopté en consultation avec les organisations de travailleurs et d'employeurs les plus représentatives et à ce qu'il soit conforme au texte de la convention n° 87;**
- **de modifier l'article 4 de la loi n° 90-14 afin de lever les obstacles que les travailleurs rencontrent pour constituer des organisations, des fédérations et des confédérations de leur choix, quel que soit le secteur auquel ils appartiennent;**
- **de modifier l'article 6 de la loi n° 90-14 afin de reconnaître le droit de tous les travailleurs, sans distinction d'aucune sorte, de constituer des syndicats;**

- de veiller à ce que la liberté syndicale puisse être exercée dans un environnement exempt d'actes d'intimidation et de violence à l'égard de travailleurs, de syndicats, d'employeurs ou d'organisations d'employeurs;
- de fournir davantage d'informations sur la réintégration rapide des agents de l'administration dont le licenciement relevait d'une discrimination antisyndicale;
- de fournir à la mission de haut niveau mentionnée ci-après des informations sur la décision de dissoudre le syndicat SNATEGS.

La commission a invité instamment le gouvernement à accepter sans délai et sans restriction, avant la prochaine session de la commission d'experts, une mission de haut niveau de l'OIT et à indiquer les progrès réalisés à cet égard à la commission d'experts, avant sa prochaine session de novembre 2018.

Le représentant gouvernemental a regretté la décision prise par la commission, malgré la transmission de toutes les informations et tous les documents au Bureau. Il a considéré qu'il y avait au niveau du fonctionnement du mécanisme de la commission des problèmes portant sur l'appréciation de la mise en œuvre de la convention par son pays, ce qui confirmait la nécessité et l'urgence de procéder à une réforme de son fonctionnement, permettant d'établir la liste des cas individuels de manière transparente et de conclure sur ces cas de manière tripartite, de manière à refléter correctement et fidèlement les points de vue exprimés lors des débats et en être l'expression des recommandations consensuelles. Il a rappelé la disponibilité du ministre du Travail pour poursuivre la consultation autour de la mission de contacts directs qui devait se déplacer à Alger, ayant notamment rencontré le Directeur général du BIT et la Directrice du Département des normes internationales du travail pour discuter de cette mission. Le représentant gouvernemental a déclaré solennellement que son pays rejetait dans le fond et dans la forme les conclusions de la commission. Il a regretté que la commission, au lieu de tenir compte des avancées et d'apporter un soutien et un accompagnement dans un objectif d'amélioration, se soit contentée des déclarations de deux personnes et de l'exploitation d'articles de presse non documentés et qu'elle ait recommandé l'envoi d'une mission de haut niveau sans prendre en considération dans ses conclusions les démarches, les arguments, les documents et les avancées enregistrées, ainsi que l'existence d'un grand nombre d'organisations syndicales. Il avait souligné à maintes reprises lors des précédentes sessions de la Conférence, que de telles dérives portaient atteinte à l'impartialité et à la crédibilité de la commission. Enfin, à l'intention des représentants des syndicats de travailleurs du Maroc et du Brésil, il leur a conseillé de consacrer leur énergie à amener leur pays à ratifier la convention au lieu de critiquer l'Algérie qui avait fait du pluralisme syndical un principe constitutionnel, et a saisi l'occasion pour rappeler au porte-parole des travailleurs les dangers d'un comportement non constructif poussant la commission vers le blocage et l'impasse.

Conclusions

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

The Committee expressed 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 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 deeply regretted that the Government did not accept the terms of the direct contacts mission without restriction pursuant to the Committee's recommendations in 2017.

Taking into account the Government's submission and the discussion that followed, the Committee urged the Government to:

- ensure that the registration of trade unions in law and in practice is in conformity with Convention No. 87;
- process pending applications for the registration of trade unions which have met the requirements set out by law and allow the free functioning of trade unions;

- ensure that the new draft Labour Code is adopted in consultation with the most representative worker and employer organizations and is in conformity with the text of Convention No. 87;
- amend section 4 of Act. No. 90-14 in order to remove obstacles to the establishment by workers of organizations, 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 whatsoever, 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, employers or employer organizations;
- provide further information on the expedient reinstatement of employees of the Government, terminated based on anti-union discrimination; and
- provide information regarding the decision to dissolve the SNATEGS trade union to the mission noted below.

The Committee urgently calls on the Government to accept without delay, and before the next meeting of the Committee of Experts, an ILO high-level mission without restriction and report progress to the Committee of Experts in this regard before its next meeting in November 2018.

Conclusiones

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

La Comisión expresó su 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 lentos, ya que este caso lleva discutiéndose más de un decenio y el Gobierno aún no ha presentado el proyecto de Código del Trabajo ante el Parlamento para que sea finalmente aprobado. La Comisión lamentó profundamente que el Gobierno no hubiese aceptado sin restricciones los términos de la misión de contactos directos que recomendó en la reunión de 2017.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión instó al Gobierno a que:

- garantice que el registro de sindicatos sea conforme con el 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 permita el libre funcionamiento de los sindicatos;
- vele por que se apruebe el proyecto de nuevo Código del Trabajo en consulta con las organizaciones de trabajadores y de empleadores más representativas y que el mismo sea conforme con lo dispuesto en el Convenio núm. 87;
- enmiende el artículo 4 de la ley núm. 90-14 con vistas a eliminar los obstáculos para que los trabajadores puedan constituir las organizaciones, federaciones y confederaciones que estimen convenientes, independientemente del sector al que pertenezcan;
- enmiende el artículo 6 de la ley núm. 90-14 con objeto de reconocer el derecho de todos los trabajadores, sin distinción alguna, de constituir sindicatos;
- asegure que la libertad sindical pueda ejercerse en un clima exento de intimidación y de actos de violencia contra los trabajadores, los sindicatos, los empleadores o las organizaciones de empleadores;

- proporcione más información sobre la rápida reintegración de empleados del Gobierno a los que se haya despedido por motivos antisindicales, y
- suministre información a la misión a la que se alude a continuación sobre la decisión de disolver el sindicato SNATEGS.

La Comisión insta urgentemente al Gobierno a que acepte sin demora y antes de la próxima reunión de la Comisión de Expertos una misión de alto nivel de la OIT sin restricciones y comunique los progresos realizados a la Comisión de Expertos antes de que se reúna en noviembre de 2018.

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

Convention (n° 111) concernant la discrimination (emploi et profession), 1958

Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)

Bahrain (ratification: 2000)

Bahreïn (ratification: 2000)

Bahreïn (ratificación: 2000)

A Government representative provided information about the measures taken by the Government to comply with the conclusions adopted by the Committee at the 106th Session of the International Labour Conference (June 2017), including: (i) the Government had submitted a report on the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014 in connection with the reinstatement of the dismissed workers following the events of February and March 2011. The report provided detailed information on all the cases settled and agreed upon with the social partners, in particular regarding the list of the 165 dismissed workers that was annexed to the Supplementary Tripartite Agreement of 2014; (ii) the Government had also provided a report dated 31 August 2017 on the measures taken to implement the Convention; and (iii) the Government had accepted the ILO's technical support via a direct contacts mission, in accordance with the letter addressed to the Director-General on 15 April 2018.

In reply to the Committee of Experts' comments, the Government highlighted the following points. Firstly, regarding the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014, 98 per cent of all cases involving the dismissal of workers following the 2011 events had been settled. The workers had returned to their work whether in the private or public sectors with the preservation of all their rights and privileges of employment and retirement. Moreover, the cooperation with relevant stakeholders was continuing with a view to finalizing the settlement of all the cases mentioned in the list annexed to the Agreement, which included 165 cases. All the governmental efforts concurred with the national tripartite committee's measures to reintegrate these workers either to their previous work, or to provide them with financial compensation, or even provide them with an alternative work with the same pay and benefits. The cooperation between the relevant stakeholders was ongoing to resolve the few remaining cases, and the Ministry of Labour and Social Development remained open to find appropriate solutions for the workers concerned.

Secondly, regarding the measures taken to ensure that the legislation covered all recognized prohibited grounds of discrimination, the speaker indicated that the conclusions adopted by the Committee in 2017 had been taken on board, and a comprehensive review of national legislation had been launched in order to consider the necessary amendments to prohibit and criminalize the practice of discrimination in labour legislation in the private sector. In this regard, the Council of Ministers had already approved an amendment to the Labour Law in the Private Sector on this matter, and information on any further developments would be sent to the Office.

Thirdly, regarding the measures taken to protect migrant workers, this category of workers benefited from mechanisms to submit labour complaints or formulate litigation and appeals against administrative and judicial decisions. Furthermore, a migrant worker could transfer to another employer under the conditions set out in the legislation, namely after one year of employment with the current employer, with the obligation to provide a notice of at least three months in advance, and under the condition of legal residence in the country. Migrant workers who had been subjected to abusive practices by their current employer, such as non-payment of wages or deprivation of fundamental rights set forth in the law, were allowed to change their employer without complying with the conditions and legal periods set forth above. One important practical step had also been taken through the flexible work permit scheme that aimed at regularizing the situation of migrant workers in irregular situations. Accordingly,

a migrant worker who had a flexible work permit and had signed a formal employment contract, would be covered by the laws and regulations of the country regarding the employment relationship. Referring to the Committee of Experts' requests for information on the measures taken to raise awareness among migrant workers, the speaker underlined that the national legislation concerning residency had been provided and broadcasted in several languages as part of an awareness-raising campaign. He also emphasized that the raising of awareness of migrant workers and the definition of their rights was not only the responsibility of the Government, but also of the embassies of labour-supplying countries, trade unions and civil society organizations of foreign communities such as cultural and social clubs. This was the purpose of the "amnesty" periods that had been organized by the Government since 2006 to date, which sought to correct the situation of more than 100,000 migrant workers without imposing any penalties on them or charging them with administrative fees.

Fourthly, regarding the measures taken to ensure equal opportunity and treatment between women and men in employment and occupation, women's participation in the labour market had increased to around 39 per cent in all the sectors of the economy, and the country was considered as the "best climber in the world on the sub-index of participation and economic opportunities" for women according to the World Economic Forum's 2015 report. A report would be sent in the near future on this matter.

Fifthly, regarding the measures taken to ensure that sexual harassment was prohibited in the labour legislation, the speaker considered that it would be appropriate to seek cooperation with the ILO in order to benefit from its expertise on this topic and enable the development of national legislation in line with international labour standards and other national practices.

The Employer members recalled that Bahrain had ratified this fundamental Convention in 1977. The application of the Convention by Bahrain had been the subject of observations of the Committee of Experts in 2012, 2016 and 2017 and had been discussed by the Conference Committee for the first time in 2017. The observation of the Committee of Experts focused on the following areas: (i) legislative coverage of all recognized prohibited grounds of discrimination and the application of legislation to all workers; (ii) promotion of the principle of equal opportunity between men and women in employment and occupation; and (iii) prohibition of sexual harassment in law and in practice.

Taking into account the 2017 conclusions adopted by the Conference Committee, the information provided by the Government and its willingness to examine with ILO support the possibility of formulating a comprehensive definition of discrimination in compliance with the Convention, the Employer members encouraged the Government to ensure that: (i) national legislation covered all recognized prohibited grounds of discrimination as set out in Article 1(1)(a) of the Convention; (ii) national legislation addressed discrimination in both its direct and indirect forms and discrimination in employment and occupation was prohibited in law and in practice; and (iii) all workers were covered by the protection of anti-discrimination legislation in both the private sector and civil service.

In addition, taking into account the Government's indication that it had engaged in steps to promote the principle of equal opportunity between men and women in employment and occupation and appreciating the Government's commitment to provide more statistical information, the Employer members requested the Government: (i) to provide information on the steps taken regarding the position of women in the labour market; and (ii) to continue to provide statistical information on the participation of men and women in the labour market, disaggregated by sector, occupational category and position in both the public and private sectors, and the numbers of women benefiting from vocational training.

With regard to the comments of the Committee of Experts relating to section 31 of the Labour Law in the Private Sector, which prohibited night work and work in certain sectors and occupations for women, and noting the Government's previous explanation that such measures aimed to protect women from work against their dignity, capacities and constitution as well as the Government's statement before the Committee that women received privileges such as maternity leave and protection against work-related risks, the Employer members expressed concern at the existence of national legislation based on stereotypes regarding women's professional abilities and role in society, which was in contravention of the principle of equal opportunity between men and women in employment and occupation laid down in the Convention. In light of the Government's stated willingness to consider legislative revision, the Employer members encouraged the Government to take the above into account when reviewing the so-called "protective" legislation so as to ensure respect of the aforementioned principle, and to provide information to the Committee of Experts on all measures taken in this regard.

Furthermore, welcoming the Government's condemnation of sexual harassment at the workplace and its commitment to cooperate with the ILO, the Employer members called on the Government to ensure that sexual

harassment was adequately prohibited in national legislation and to provide clarification as to existing complaint procedures in this regard.

In conclusion, they welcomed the Government's constructive approach to the issue and encouraged it to continue on this path.

Les membres travailleurs ont regretté que les conclusions adoptées par la commission lors de sa dernière session n'aient été que très partiellement exécutées. La mission de contacts directs suggérée au gouvernement avait pour objectif d'aider à la mise en œuvre de ces recommandations, si bien que son acceptation tardive (en avril 2018) n'a pas encore permis au Bureau de l'organiser, ce qui retarde le processus de mise en œuvre desdites recommandations. Dans son observation, la commission d'experts fait état de cinq problèmes majeurs dans l'application de la convention.

Premièrement, en ce qui concerne les accords tripartites de 2012 et 2014, conclus entre le gouvernement, la Fédération générale des syndicats de Bahreïn (GFBTU) et la Chambre de commerce et d'industrie de Bahreïn (BCCI) afin de trouver une solution aux cas de suspension, de licenciement et de sanctions infligées aux personnes ayant participé aux manifestations politiques de février 2011, le gouvernement a transmis à la commission d'experts un rapport expliquant les mesures prises pour mettre en œuvre ces accords et conclu qu'une solution a été trouvée pour la quasi-totalité des personnes concernées. Cependant, 64 cas de licenciement sont toujours pendants dans la mesure où les employeurs refusent de réintégrer ces travailleurs. En outre, la compensation financière de la plupart des travailleurs réintégrés n'a pas encore été réglée par leurs employeurs respectifs, malgré les termes des accords tripartites. Et, même pour les cas où il y a eu réintégration, il y a lieu de déplorer des discriminations: les travailleurs d'une entreprise d'aluminium ont dû signer un accord dans lequel ils renonçaient à réclamer des droits, des salaires, des avantages ou des congés annuels pour la période de licenciement; 184 travailleurs d'une entreprise dans le secteur de l'énergie n'ont pas été payés pour la période de licenciement; d'autres ont subi une baisse de salaire significative après leur réintégration, ont été affectés à des postes différents de ceux occupés avant le licenciement ou ont été rétrogradés. Il en résulte que les accords tripartites sont loin d'avoir été exécutés intégralement.

Deuxièmement, la législation de Bahreïn n'est toujours pas conforme à la convention car, d'une part, elle n'inclut pas tous les motifs de discrimination mentionnés dans celle-ci et, d'autre part, elle ne s'applique pas aux domestiques, aux gardes de sécurité, aux gouvernantes, aux chauffeurs et aux cuisiniers. Les conclusions adoptées par la commission à cet égard n'ayant pas été mises en œuvre, il convient d'être plus explicite sur les modifications attendues: *a)* le champ d'application de la loi sur le travail dans le secteur privé (loi n° 36/2012) doit être étendu aux domestiques et personnes considérées comme tels, y compris les travailleurs agricoles, les gardes de sécurité, les gouvernantes, les chauffeurs et les cuisiniers; et *b)* ses articles 39 (discrimination salariale) et 104 (licenciement considéré comme étant discriminatoire) doivent explicitement viser tous les motifs de discrimination énumérés dans la convention. Il est particulièrement important d'apporter ces modifications. En effet, des cas de discrimination ont eu lieu lors de la réintégration des dirigeants et des membres syndicaux suite aux événements de 2011, en violation des accords tripartites de 2012 et 2014. La réglementation, si elle n'est pas amendée, permettra donc toujours la discrimination dans l'emploi fondée sur l'opinion politique. C'est ce qui s'est produit en 2012, lorsque les travailleurs de l'industrie de l'aluminium ont été invités à résilier leur adhésion à la GFBTU sous peine de ne pas être réintégrés. De plus, un membre de cette fédération, également membre de la Commission tripartite pour le retour des chômeurs, a été licencié pendant un mois et demi puis réintégré sans aucune indemnité et forcé de prendre un congé annuel. Par ailleurs, les principes de non-discrimination doivent être appliqués, en droit comme en pratique, aussi bien dans le secteur privé que dans l'accès à la fonction publique. A cet égard, le gouvernement soutient qu'il n'y a pas de cas de discrimination et qu'aucune plainte n'a été enregistrée à ce propos, mais plusieurs exemples démontrent le contraire.

Troisièmement, le gouvernement affirme avoir mis en place un système de permis de travail flexible permettant aux travailleurs migrants en situation irrégulière de régulariser leur situation et d'accéder à des systèmes d'assurance sociale, d'assurance-chômage et de santé. Il s'agit d'un point crucial dès lors que plus de 77 pour cent de la main-d'œuvre du pays sont des travailleurs migrants. Toutefois, ce système ne s'applique ni aux ouvriers qualifiés, ni aux travailleurs qui ont fui des employeurs aux pratiques abusives, ni aux travailleurs domestiques et agricoles. Les travailleurs éligibles à ce dispositif ne peuvent travailler sans parrainage qu'à condition de s'acquitter de divers montants couvrant les frais annuels de délivrance de permis, les soins médicaux ou encore une cotisation d'assurance sociale. Cela revient à traiter ces travailleurs comme des travailleurs indépendants pour lesquels les employeurs n'endossent aucune responsabilité. Par ailleurs, l'octroi de ce permis est conditionné à la production d'un passeport en cours de validité. Or les migrants en situation irrégulière ne sont généralement pas en possession de leur passeport, celui-ci étant le plus souvent retenu par leur précédent employeur. Il convient de noter que l'Autorité régulatrice du marché du travail continue d'autoriser les employeurs à inclure dans les contrats de travail une clause limitant l'approbation d'un transfert à un autre employeur pour une durée déterminée. Ceci constitue une

version tempérée du régime de la *Kafala*. De plus, le contrat de travail unifié adopté en 2017 ne prévoit pour les travailleurs domestiques qu'une protection partielle du Code du travail et ils ne sont couverts que s'ils sont recrutés par des agences et non des particuliers. Il convient également de déplorer des cas de violences physiques et d'agressions sexuelles de travailleuses domestiques. La législation relative aux travailleurs migrants est par conséquent toujours incompatible avec la convention.

Quatrièmement, dans le rapport adressé à la commission d'experts, le gouvernement fait état de plusieurs mesures prises pour promouvoir l'égalité entre hommes et femmes, mais il n'y a pas d'information sur l'impact précis de ces mesures. L'absence d'amélioration concernant les mesures spéciales de protection dont devraient bénéficier les femmes est également regrettable: d'une part, celles-ci sont interdites d'accès à certaines professions (au-delà de ce qui est nécessaire à la protection de la maternité) et, d'autre part, il existe des pratiques discriminatoires dans certains secteurs (notamment le transport aérien), qui portent atteinte à la protection de la maternité (périodes de maternité considérées comme un congé sans solde ou cas de licenciement pour cause de grossesse).

Cinquièmement, la commission avait adopté des conclusions relatives à l'absence de définition et d'interdiction explicite du harcèlement sexuel dans la législation, conclusions qui n'ont reçu aucune suite. L'argument selon lequel l'absence de plainte en matière de harcèlement démontre qu'il n'y a pas lieu de procéder aux modifications demandées n'est pas valable: d'une part, en l'absence d'un cadre spécifique relatif au harcèlement, d'autres canaux – comme la loi contre la traite des êtres humains – sont utilisés; d'autre part, l'absence de plainte n'est pas synonyme d'absence de faits; enfin, comme l'indique la commission d'experts, d'autres facteurs peuvent expliquer l'absence de plainte, comme la crainte de représailles, l'absence d'accès à des mécanismes de plaintes et des voies de réparation, ou encore un manque de sensibilisation.

L'orateur a conclu en espérant que le gouvernement prendra conscience que le retard dans la mise en œuvre des recommandations de la commission, l'inertie et parfois même le déni de la réalité ne sont pas compatibles avec le progrès et la quête de la justice sociale, et qu'il agira de manière déterminée pour supprimer toute forme de discrimination.

The Employer member of Bahrain stated that following last year's discussion, it was important to highlight the close tripartite cooperation occurring between the social partners and the Government through bilateral and tripartite committees. He recalled the key role played by the BCCI in resolving the situation of those who had been dismissed, by persuading companies to provide satisfactory and compatible settlements, ensuring sound working relations and safeguarding the rights of all parties. Companies had covered all insurance contributions of dismissed workers during the period of separation to ensure continuous service without interruption. Moreover, the Committee and the ILO should recognize all the measures and initiatives taken by the Government to combat discrimination and to apply the principles of the Convention. The procedures available in the country to guarantee the rights of workers, such as complaint mechanisms, grievance procedures and the right to litigation, constituted pioneering measures contributing to the effective protection of workers' rights. The speaker considered that the panoply of regulations and measures adopted by the Government were progressive and had a significant positive impact on the workers of Bahrain. With regard to the issue of equal opportunities between men and women in employment and occupation, it was important to highlight the increasing percentage of women's participation in the labour force year after year, reaching about 39 per cent of the total national workforce. Bahraini women had proved their ability to reach the highest levels of employment, such as CEOs of major companies in the country, as well as to develop sophisticated business models. Moreover, at the recent elections of the BCCI board of directors on 10 March 2018, three women had been elected to join the board. The speaker emphasized the importance of continuing to hold fruitful tripartite meetings, which contributed to adopt measures promoting decent work opportunities, achieving equality and combating discrimination. Technical cooperation programmes, in collaboration with the ILO, would support the development of common relations and raise the level of compliance with international labour standards.

The Worker member of Bahrain welcomed the acceptance by the Government of a direct contacts mission and inquired about its time frame, stressing the need for the mission to meet with all the relevant parties who had participated in the adoption of the Tripartite Agreements. The matter dealt with in the Agreements had not yet been resolved, as there were still workers who had not been reinstated and had been without work for more than seven years. There were even a number of workers who had not returned to their initial positions and had been transferred to lower-level jobs. Indicating that this case was closed was an inaccurate statement, as the National Tripartite Committee had held only two meetings during the past year without any progress. The speaker also considered that re-discussing the justification of the 165 cases did not make any sense as this had already been discussed and finalized within the framework of the Tripartite Agreement of March 2014. Regarding the dismissed workers who had been rehired in other jobs or who had obtained commercial registers, it was important to record that this had occurred because of their personal persistence when they despaired of being reinstated. There was not any support

received from the Ministry of Labour in this regard. Currently, 64 cases of dismissal among the 165 were still pending. In order to facilitate the quick resolution of these cases, the GFBTU had selected a priority group of 37 cases related to workers who had been working in the biggest government-owned companies and public institutions and had submitted the list to the Government. The speaker further insisted that this initiative was not meant to do away with the rest of the 165 cases. The speaker also insisted on the importance of respecting the Tripartite Agreements as a binding contract between the three parties, aiming at strengthening social dialogue under the international umbrella of the ILO.

These agreements had provided a legal framework complementing the national labour law, and therefore should not focus only on the reinstatement of the dismissed workers, although this matter was at the heart of the Agreements. In addition, it was crucial to take the following measures as specified in the Tripartite Agreement: (i) to avoid the recurrence of dismissals of workers for the same reasons as in the complaint. The GFBTU had been regrettably registering cases of dismissal and suspension of workplace entry badges on the same discriminatory background mentioned in the complaint, and the Ministry of Labour and Social Development was accordingly kept aware of this situation; (ii) to establish a tripartite mechanism/body to follow-up on cases of discrimination in employment and occupation and to ensure conformity with the Convention, as proclaimed in both the Convention and the Tripartite Agreement. For instance, section 39 of the Labour Law in the Private Sector had ignored the comprehensive definition of discrimination enshrined in the Convention and had limited it to the subject of remuneration, thus leaving the field open to practice other forms of discrimination in employment and occupation; (iii) to provide financial compensation and social insurance coverage to the reinstated workers for the period of dismissal; (iv) to ratify 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), as there were tens of thousands of workers in the government sector who had been denied the right to organize. Indeed, under Circular No. 1 of 10 February 2003 on the right of civil service workers to join workers' unions, the establishment of unions in public sector institutions was illegal, in violation of the Constitution of Bahrain, which did not distinguish between workers in the private and public sectors as far as the right to establish trade union organizations was concerned; (v) to ensure respect for the Constitution of Bahrain, which proclaimed in its article 37 that international Conventions and Treaties, once ratified, had the force of law. Therefore, all requirements contained in the Convention were legally binding. The speaker expressed his readiness to continue to cooperate with the Government and the social partners in order to better implement the provisions of the Convention.

The Government member of Kuwait, speaking also on behalf of the Government members of the United Arab Emirates, Saudi Arabia, Oman, Kuwait and Yemen, welcomed the efforts made by Bahrain to give effect to the observations made by the Committee of Experts and to fulfil its obligations relating to the application of the Convention. The Government had already undertaken to give effect to the conclusions made by the Conference Committee at its session in 2017, and had fulfilled its commitment. It was necessary to give the Government sufficient time to implement all of the recommendations that had been made, particularly those relating to legislative amendments. The absence of a definition or a specific legal text did not necessarily mean that workers were deprived of protection. Their rights were protected by the administrative and judicial authorities. The action taken by the Government should be welcomed and it was to be hoped that the Committee would take into account the results achieved and the close cooperation between the social partners. The Government should also be encouraged to continue promoting social dialogue with a view to reinforcing decent work and ensuring equality between all individuals.

He called on the ILO to develop technical cooperation programmes in the countries enumerated above with a view to strengthening commitment to the implementation of international labour standards.

The Government member of Bulgaria, speaking on behalf of the European Union (EU) and its member States, as well as Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Norway, recalled that these countries attached great importance to the respect of human rights, as safeguarded by the fundamental ILO Conventions and other human rights instruments. The EU was engaged in promoting their universal ratification and implementation, as part of its Strategic Framework and Action Plan on Human Rights. Regrettably, this case had already been discussed in the Committee last year, as well as at the ILO Governing Body some years ago following a complaint made by workers under article 26 of the ILO Constitution. According to the allegations, suspensions and various forms of sanctions had been imposed on trade union leaders and members as a result of demonstrations in February 2011. In 2012 and 2014, tripartite agreements had been reached, and a national tripartite committee had been created to ensure follow-up on the cases. The updated information submitted by the Government regarding the settlement of the cases was welcomed but it was necessary to receive evidence that the 165 cases of dismissed workers had been resolved. The speaker asked the Government to indicate what conditions had to be fulfilled in order to obtain a certificate of rehabilitation for workers who had been convicted by a judicial decision. She recalled the Committee's conclusions adopted in 2017, in particular that the Government had been

requested: (i) to formulate a definition of discrimination that covered all workers in all forms of employment, and to prohibit direct and indirect discrimination based on all grounds covered by the Convention; and (ii) to ensure comprehensive protection of civil servants against discrimination through the amendment of Legislative Decree No. 48 of 2010 regarding the civil service (Legislative Decree No. 48/2010). It was regrettable that no measure had been taken to address these two issues.

The speaker called on the Government to provide information on the specific measures adopted to ensure the effective protection against discrimination, based on all the grounds set out in the Convention, of migrant workers, in particular as regards the very vulnerable domestic workers who were mostly women. She welcomed the new legislation rendering it mandatory for employers to deposit the salaries of domestic and unskilled workers in bank accounts, and looked forward to its effective implementation before the end of 2018. Noting with interest the process initiated by the Government with a view to abolishing the Kafala system and the introduction in 2017 of a flexible work permit scheme in order to allow migrant workers to change employers, she called on the Government to ensure that any rules adopted to regulate this right did not impose conditions or limitations that would increase the migrants' dependency on their employers and thus their vulnerability. In view of the allegations of the International Trade Union Confederation (ITUC) regarding the limitations of the flexible work permit scheme, the speaker requested the Government to provide information on the practical implementation of the scheme, including the number of cases where transfer to another employer had not been approved. The Government was invited: (i) to provide more information on efforts made to inform migrant workers and their employers of existing mechanisms to advance their claims to the relevant authorities; and (ii) to enhance the capacity of competent authorities and institutions to identify and address cases of discrimination.

She noted with interest the information provided by the Government on measures taken with regard to equality of opportunity and treatment between men and women in employment and occupation and indicated that further information on the concrete impact of such measures, notably on increasing the number of women in leadership positions and their situation in the labour market, would be welcomed. In view of the fact that, despite being prohibited in the Penal Code, sexual harassment was neither defined nor prohibited in labour law, and given the sensitivity of the issue, the higher burden of proof and the limited scope of the Penal Code, the Government was called, once again, to include provisions to that effect in the labour or civil law, to take measures to prevent sexual harassment in the workplace and to provide remedies to victims and impose dissuasive sanctions on perpetrators. The lack of complaints did not mean that there was no harassment in practice.

The speaker encouraged the Government to avail itself of ILO technical assistance, in order to adopt the legislative and practical measures necessary to address the issues raised by the Committee of Experts.

The Employer member of Kuwait welcomed the close cooperation between the social partners in bipartite and tripartite commissions. The Government had made a positive contribution to the action taken with regard to the cases of workers who had been dismissed in the public and private sectors following the events of February and March 2011. The Government had played an active role, in collaboration with the employers, to find a satisfactory solution through the reinstatement of the workers, while guaranteeing good labour relations and the protection of their rights. The Committee should take into consideration the initiatives taken by the Government to combat discrimination and to give effect to the principles set out in the Convention. Procedures had been established for that purpose to safeguard the rights of workers, including access to justice and the right to lodge complaints. Those progressive measures were contributing to the protection of workers, not only against discrimination, but also against any violation of their rights. With reference to equality of opportunity for men and women, there had been a significant increase in the labour market participation of women and they benefited from the privileges set out in the national legislation. In practice, women occupied positions with high levels of responsibility in the same way as men, including as ministers, ambassadors and presidents of administrative boards in the private sector. In conclusion, he encouraged the Government to avail itself of ILO technical assistance, which would contribute to the development of harmonious mutual relations and the promotion of international labour standards.

The Government member of the United Arab Emirates said that his country appreciated the efforts made by the Government to fulfil its obligations in relation to the ILO, including to give effect to the observations made by the Committee of Experts on discrimination in employment and occupation. The Government however needed more time to put the observations into practice. It was making substantial efforts to strengthen the rights of workers and to provide comfort and well-being for the residents of the country, as illustrated by the legislative reforms undertaken. Indeed, workers and employers were protected against any form of discrimination, work permits were granted in a flexible manner and the protection of wages was guaranteed, as well as the right to change employer. More time would be needed to assess the impact of the effect given to the observations of the Committee of Experts, as legislative reforms required time to deliver results. Finally, the technical assistance provided by the ILO was greatly appreciated.

The Worker member of the Philippines stated that many Filipinos considered themselves lucky to be working in “progressive and very open” Bahrain. While working, they even brought their families to reside and live in that country. There were 60,000 Filipinos living and working in Bahrain, and they included professional, skilled and semi-skilled workers as well as household service workers. About half of the overseas Filipino workers were domestic workers, and Bahrain had been the first and only country in the region to include, though partially only, domestic workers into its labour law.

However, the national legislation did not comply with ILO standards concerning domestic workers. Domestic workers remained excluded from critical protections, such as a fixed minimum wage, limits on working hours, mandatory rest hours or weekly days off, and the recent flexible work permit scheme adopted by the Government would not be enough to tackle exploitation of workers. First of all, not all categories of workers were eligible to apply for this scheme. For example, skilled workers and “runaway workers”, a category that included workers who had escaped abusive employers, were not eligible for the scheme. Also, the unified contract for migrant domestic workers only covered those workers recruited by agencies, and could not be considered as a full protection. Under the unified contract, employers should declare, among other things, the nature of the job, work and rest hours and weekly days off. Yet, the responsibility to translate the contract and inform the domestic worker of all details of the job offer remained solely with the recruitment agencies, leaving opportunity to misinform the domestic workers about the terms and conditions of the job. Domestic workers were particularly vulnerable to excessive working hours, and many domestic workers worked up to 19 hours a day with no rest day.

The speaker concluded by urging the Government to amend national labour legislation to ensure that all migrant workers were fully covered by the provisions of labour law, in order to protect workers from any direct or indirect discrimination.

An observer representing Education International (EI) indicated that the situation of teachers and public service workers in Bahrain remained extremely serious. Discriminations, mostly based on sectarian or political grounds, were still firmly in place. This prevented many teachers from exercising their profession and vocation, affected their working conditions, and prevented them from being able to associate in trade union organizations. Unions were still not allowed in the public sector. The Bahrain Teachers Association (BTA) had been dissolved by the authorities in April 2011 and its leaders, Mr Mahdi Abu Dheeb and Ms Jalila Al-Salman, had been accused of political activism and arrested. Mr Abu Dheeb had been released after five years of imprisonment, following intense pressure from the ILO and the international trade union movement. The severe detention conditions had taken a serious toll on his health. No detailed explanation had been given by the Government on the basis for his conviction and detention. Both Mr Abu Dheeb and Ms Al-Salman had been imposed travel bans on a recurring basis in the past years (as recently as September 2017), preventing them from speaking freely about the plight of teachers and unionists in Bahrain. Many other teachers who had been involved in the peaceful protests of 2011 had also been discriminated against on grounds of opinion, belief and trade union affiliation: they had lost their jobs and had not yet been reinstated nor received any compensation. The BTA could not operate nor communicate efficiently with teachers who were afraid to report what had happened to them while the Government remained hostile. Meanwhile, the Ministry of Education had hired 9,000 expatriate teachers, whereas at least 3,200 Bahraini graduates with degrees in education were unemployed, all of them belonging to the Shia community. It should also be noted that expatriate teachers were employed on more favourable terms and conditions and were fast-tracked into positions while Bahraini teachers had to qualify through exams and lengthy assessment.

The Worker member of the United States noted the Government’s acknowledgement that the lack of a definition of sexual harassment was problematic. The GFBTU had received reports of harassment establishing that sexual harassment certainly happened, even if there were no officially reported cases. Sexual harassment was a serious form of sex discrimination in violation of the Convention and formed a barrier for women in the workplace. Without a definition of sexual harassment, women could not point to a standard in order to inform their employers that something unacceptable was happening; likewise, employers did not have a guideline to measure when supervisors were acting inappropriately. As sexual harassment involved one person asserting power over another, laws preventing it were particularly important at work, where the power dynamic already tipped in the employer’s favour. The general penal provision outlawing violence and aggression against citizens was an inadequate instrument for addressing sexual harassment in the workplace because it focused generally on sexual assault. However, sexual harassment encompassed a range of activities far broader than that, and holding individuals accountable under penal law failed to impose any obligations on employers to provide harassment-free workplaces. That legal scheme, therefore, acted more as a mechanism for punishment than a tool for prevention and elimination of sexual harassment from the world of work, as envisaged by Article 2 of the Convention.

The speaker concluded by hoping that the Committee’s conclusions would include recommendations for a law broadly defining sexual harassment, including prohibitions on unwelcome sexual advances, requests for sexual

favours, any kind of verbal or physical harassment of a sexual nature and offensive remarks about a person's sex, so that both hostile environment and quid pro quo harassment would be unlawful. This law should cover domestic and migrant workers. Also, a mechanism should be created, where victims of harassment could lodge complaints that would be investigated and prosecuted, while the existing laws should be amended accordingly, including the Labour Law in the Private Sector and Legislative Decree No. 48/2010. Finally, the speaker called for an educational campaign.

The Government member of Egypt welcomed the efforts made by the Government for the reinstatement and compensation of workers. The amendments to the Labour Code offered the best guarantee of the rights of migrant workers, for example by permitting them to change employer without abusive conditions. They could also obtain work permits under less strict conditions. The increase in the participation rate of women on the labour market showed the Government's concern to give effect to the provisions of the Convention in an active manner. In conclusion, he encouraged the Government to strengthen its cooperation with the ILO in order to improve the application of the provisions of the Convention in law and practice.

The Worker member of Norway, speaking on behalf of the Worker members of the Nordic countries and the United Kingdom, recalled that migrant workers constituted around 77 per cent of the workforce in Bahrain. Many were exploited and deprived of their economic and social rights. In May 2017, the Ministry of Interior had introduced a pilot scheme for a flexible working permit for limited categories of migrant workers in irregular situations, permitting them to work without a sponsor, provided that they covered certain expenditures, such as fees for work permits, health care and social insurance. The Ministry of Interior would issue up to 2,000 permits per month. However, many workers who had a sponsor were not eligible for the flexible work permit scheme, such as skilled workers and workers who had escaped abusive employers. Moreover, workers had to provide a valid passport in order to apply for a permit and many migrants were not in possession of their own passport. Also, domestic workers and agricultural workers were excluded from the scheme. It was estimated that there were more than 100,000 domestic workers in Bahrain, who were excluded from a number of labour law provisions. The speaker further emphasized that there was no minimum wage protection. The wage gap between migrants and nationals was huge, and migrant workers were excluded from insurance relating to old age, disability and death. According to the 2017 Trafficking in Persons (TIP) Report, issued by the United States Department of State, Government and NGO officials had reported that physical abuse and sexual assault of female domestic workers were significant problems in Bahrain. In addition, domestic workers could work up to 19-hour days with minimal breaks, being only partly covered by the labour law and without overtime pay. National laws excluded private houses from labour inspection, effectively resulting in a total absence of labour inspection into the conditions of work of domestic workers. The speaker concluded by expressing full support for the recommendations of the Committee of Experts. She urged the Government to take quick and urgent action to ensure legal protection for migrant workers.

An observer representing the International Transport Workers Federation (ITF) indicated that, in December 2017, the ITF and the GFBTU had been received by the country's Minister of Labour and Social Development to discuss maritime labour issues. At that meeting, the Government had expressed its firm commitment to protecting the labour rights of maritime workers and the Minister had reiterated his willingness to cooperate with international workers' organizations like the ITF. The speaker hoped that this commitment to protecting workers' rights would also translate into a pledge by the Government to fully implement the Tripartite Agreements of 2012 and 2014. There were still a number of workers named in the annexes to the Tripartite Agreements (including transport workers) who had not had their cases resolved. Those workers not only needed to be reinstated or offered alternative employment, they must also receive financial compensation and statutory entitlements for the entire period of dismissal.

The speaker recalled that this was the second consecutive year that the Committee examined Bahrain's failure to develop a legal framework to protect the rights of women workers in line with the Convention and to enforce existing legal provisions. With regard to the latter aspect, for example, despite several protections in the law relating to maternity protection, the country's leading airline maintained policies and practices that directly contravened these laws. At the airline, not only was maternity leave unpaid, the worker must also pay additionally the employer's social security contributions during that period. Pregnant migrant workers were forced to vacate their paid company accommodation and find an alternative one at their own expense. Incredibly, a pregnant worker could expect her employment contract to be automatically terminated once she declared her pregnancy – with no guarantee of reinstatement. In three recent cases, crew members had not been reinstated after maternity leave. While the Bahrain Civil Aviation Law required annual medical assessments for flight crews, the airline abused this obligation to carry out compulsory pregnancy testing. The company's recruitment practices were no better either. The airline had recently listed vacancies for cabin crew on its website, but only single persons with no children had been invited to apply. Distinctions in employment based on pregnancy or maternity were considered to be discriminatory under the

Convention, as they could only, by definition, affect women. The Committee of Experts had repeatedly stressed that discrimination on these grounds constitutes a serious form of discrimination on the basis of sex.

In conclusion, the speaker urged the Government to bring its legislation into line with the Convention, in consultation with the social partners, and to resolve the outstanding cases from the Tripartite Agreements within 12 months. He also called on the Government to ensure that its labour inspectorate was adequately resourced to tackle gender-based discrimination at the workplace.

Le membre gouvernemental de la Suisse a déclaré soutenir la déclaration de la membre gouvernementale de la Bulgarie faite au nom de l'Union européenne et de ses Etats membres, ainsi que de la Bosnie-Herzégovine, de l'ex-République yougoslave de Macédoine, du Monténégro et de la Norvège.

La membre employeuse de l'Algérie a indiqué avoir suivi attentivement la déclaration du gouvernement selon laquelle le ministère du Travail avait réglé la situation des travailleurs licenciés soit par la réintégration, soit en leur offrant un nouveau travail. S'agissant des autres travailleurs, le gouvernement a fait appel aux assurances sociales. Il semble qu'il n'existe aucune discrimination dans l'emploi dans le pays mais que la commission d'experts demande la promulgation de législations complémentaires. A cet égard, l'assistance technique du BIT est hautement appréciée. La réforme législative entreprise par le gouvernement, en consultation avec les partenaires sociaux, en vue de promouvoir les droits des travailleurs migrants est un bon exemple qui démontre la volonté tripartite d'assurer de bonnes conditions de travail sans discrimination. Le gouvernement fait en sorte que les femmes occupent une place importante sur le marché du travail tout en s'assurant que le harcèlement sexuel soit interdit par la législation du travail. En effet, le taux de participation des femmes sur le marché du travail, dans les secteurs public et privé, oscille entre 36 et 39 pour cent. Elle a exprimé l'espoir que la commission d'experts prendra en considération les efforts déployés par le gouvernement et que le Bureau offrira l'assistance technique nécessaire pour renforcer la législation du travail en conformité avec la convention.

An observer representing the World Federation of Trade Unions (WFTU) indicated that workers' organizations in the public sector benefited from the same privileges as in the private sector. Moreover, dispute-resolution mechanisms were available to examine the application of the legislation.

The Worker member of Sudan, speaking also on behalf of the Worker members of Bahrain, Kuwait, Morocco, Saudi Arabia and the United Arab Emirates, affirmed that the Bahraini people, without distinction, enjoyed freedom to participate in political life and that there was no discrimination based on political opinion. Similarly, there had been no dismissals for political opinion. All those who had been dismissed during events in 2011 had been reinstated. All allegations of such dismissals made by the ITUC were unfounded, ill-intentioned and did not reflect reality. According to an international investment bank, foreign workers living in the country enjoyed very good working conditions. In that regard, Bahrain was in second place among the gulf countries and in tenth place worldwide. With regard to equality of opportunity in employment and occupation, Bahraini women occupied senior posts. In 2017, women occupied 48 per cent of public sector posts, 37 per cent of senior management posts, 59 per cent of middle-management posts and 32 per cent of the decision-making positions in the executive. In addition, the country had the highest rate of independent business women (28 per cent) among the countries in the Middle East and North Africa. According to a 2016 ILO report, there had been a rise in the rate of women in positions on companies' executive boards (from 12 to 14 per cent). Those changes constituted a real success, since certain posts had for a long time been monopolized by men, particularly political, parliamentary, judicial, diplomatic and military functions. In conclusion, no one could deny the progress made to protect workers, and the insistence on placing Bahrain on the list of individual cases, while omitting many countries which imprisoned, killed and persecuted workers' representatives, was surprising.

La miembro trabajadora de España consideró que, siete años después de las movilizaciones del 14 de febrero de 2011, se comprobaba un estado de paralización donde se habían usado todas las herramientas posibles para presionar al pueblo bahreiní. En lo que atañe a la aplicación del Convenio, se han aplicado diferentes herramientas como el desempleo forzado, la no contratación laboral por razones políticas y la pérdida de la nacionalidad bahreiní. Esta última práctica resulta especialmente preocupante para los trabajadores y trabajadoras de Bahrein que han sido desposeídos en numerosos casos de su nacionalidad por motivaciones políticas, y se ha ido incrementado durante los últimos seis años como sistema para castigar y silenciar a los oponentes políticos y defensores de las libertades civiles, incluidos los líderes sindicales. Se trata de una clara violación de la Declaración Universal de los Derechos Humanos que afirma que todas las personas tienen derecho a una nacionalidad y que nadie puede ser privado arbitrariamente de ésta. Las consecuencias son dramáticas: los ciudadanos desposeídos de su nacionalidad son considerados como trabajadores migrantes y, en aplicación del decreto núm. 36 de 2015, pierden todos sus derechos y beneficios incluidos los beneficios de la seguridad social, a pesar de haber contribuido durante años. Todo ello en un mercado de trabajo que depende en gran medida de mano de obra inmigrante, poco calificada

y mal remunerada, donde el sector público emplea principalmente a las personas nacidas en el país y, en una forma de dualismo del mercado laboral, el sector privado está dominado en su mayoría por los inmigrantes. Desde 2012, 719 personas se han visto despojadas de su nacionalidad. En 2018, se computan al día de hoy 213 ciudadanos. Por ejemplo al Sr. Hussein Khair Mohammadi, vicepresidente de un sindicato de empresa, al negarse ante diferentes presiones a dejar su cargo sindical, se le quitó su nacionalidad en enero de 2017, y se le ha privado de su derecho al empleo y a la seguridad social. Estas prácticas constituyen un trato discriminatorio y una clara violación del artículo 5 del Convenio.

The Government representative reaffirmed the Government's commitment to take into consideration the Committee of Experts' comments, and underlined the following: (i) the resolution of the cases of the dismissed workers had not yet been closed and the process was still ongoing; (ii) the certificate of rehabilitation was a procedure under the Criminal Procedure Law and not necessarily a condition for employment in some companies; and (iii) the flexible work permit scheme had been a positive step that guaranteed the rights of the workers concerned. Regarding the prerequisite of a valid passport, this problem should be solved by the relevant embassies. The speaker reaffirmed the Government's commitment towards the ILO supervisory bodies, and highlighted the importance of ensuring more transparency in selecting the list of cases.

Les membres travailleurs ont attiré l'attention du gouvernement sur le fait que les conclusions de la commission ont pour but de donner lieu à des changements concrets. Le gouvernement doit donc prendre les mesures nécessaires pour que la mission de contacts directs puisse avoir lieu dans les meilleurs délais; s'assurer de la bonne exécution des accords tripartites et communiquer des informations précises à ce sujet à la commission d'experts; adopter une définition de la discrimination qui soit conforme à la convention; et faire en sorte que la législation puisse couvrir toutes les catégories de travailleurs et en particulier celles qui ont le plus besoin d'être protégées. Ils ont réitéré qu'il fallait modifier la loi sur le travail dans le secteur privé (n° 36/2012) pour étendre son champ d'application aux travailleurs domestiques et aux personnes considérées comme tels et reprendre, en ses articles 39 et 104, tous les motifs de discrimination énumérés par la convention. Le décret législatif n° 48/2010 doit être modifié afin que les fonctionnaires jouissent d'une protection adéquate contre la discrimination directe et indirecte dans l'emploi et la profession s'agissant de tous les motifs énoncés dans la convention. Cette protection doit non seulement être prévue en droit mais également être appliquée en pratique. En ce qui concerne les travailleurs migrants, il convient d'étendre l'application du permis de travail flexible aux ouvriers qualifiés, aux travailleurs domestiques et agricoles et aux travailleurs qui ont fui leurs employeurs du fait de pratiques abusives. Tous les risques sociaux doivent être couverts, y compris la vieillesse, et les cotisations doivent être à la charge de l'employeur. Il importe d'étendre l'application de la loi sur le travail à tous les travailleurs domestiques – quel que soit leur mode de recrutement – et de les faire bénéficier de toutes les dispositions protectrices prévues par la loi, notamment le droit au salaire minimum et la limitation des heures de travail. De plus, des mesures de protection efficaces envers les femmes doivent être adoptées, notamment en ce qui concerne l'accès à certaines professions et la protection de la maternité. Enfin, le gouvernement est invité à élaborer une législation qui définit et prohibe explicitement le harcèlement sexuel.

The Employer members welcomed the commitment of the Government to continue to cooperate with the social partners and to provide additional information to the Committee of Experts regarding measures taken to ensure conformity with the Convention. They took due note of the statements made by several members of the Committee, welcoming the efforts undertaken by the Government, positively acknowledging the increased participation of women in the labour market, calling on the Committee to recognize the efforts made and encouraging the Government to continue to strengthen social dialogue and to avail itself of ILO technical assistance.

The Employer members noted in a positive spirit the Government's acceptance of a direct contacts mission, which would assist in the submission of additional information to further assess the matter.

Furthermore, they called on the Government to ensure that: (i) national legislation covered all recognized prohibited grounds of discrimination as set out in Article 1(1)(a) of the Convention, and a comprehensive definition of discrimination was formulated in the legislation in compliance with the Convention; and (ii) discrimination in employment and occupation was prohibited in law and in practice both in the private and public sectors. The Government should continue to furnish information concerning measures taken on the above and in regard to the position of women in the labour market. They also encouraged the Government to take advantage of the review of "protective" legislation to ensure, in law and in practice, respect of the principle of equal opportunity between men and women in employment and occupation.

Lastly, the Employer members urged the Government to ensure that sexual harassment was adequately prohibited in national legislation, and to provide the Committee of Experts with information on steps taken to this end.

Conclusions

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

Taking into account the Committee's conclusions of 2017, the Committee notes with interest the Government's stated commitment to accept a direct contacts mission in short order.

The Committee noted the Government's stated commitment to formulate a comprehensive definition of discrimination in line with the Convention. The Committee regretted the absence of information with respect to allegations concerning the operation of the flexi-scheme and its impact on the labour protections afforded to migrant workers.

Taking into account the Government's submission and the discussion that followed, the Committee called upon the Government to:

- provide further information 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 2018 session;
- ensure that all the outstanding cases of reinstatement and compensation for the cases falling under the scope of the Tripartite Agreements are resolved expeditiously;
- ensure that the Labour Law in the Private Sector of 2012 and Legislative Decree No. 48 of 2010 cover 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;
- repeal any provisions that constitute an obstacle to the recruitment and employment of women in order to ensure equality of opportunity and treatment in employment of women; and
- ensure that sexual harassment is explicitly prohibited in the civil or labour law and that necessary steps to introduce preventive measures are taken.

Having noted the Government's stated commitment to accept a direct contacts mission, the Committee encouraged the Government 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 2018.

The Government representative referred to his Government's opening statement which was clear and contained a lot of information on the application of the flexible work permit system. Further information would be provided in the course of the year. The fact that the flexible work permit system was a pilot being implemented for the first time in the region should be taken into consideration. His Government was ready to cooperate with the ILO and accepted the recommendations, noting that these were the same as those adopted following the previous discussion in 2017. Contact would be maintained with the Office to identify a suitable time for the direct contacts mission, which he expected would lead to a successful outcome.

Conclusions

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

Prenant en compte ses conclusions de 2017, la commission prend note avec intérêt de l'engagement pris par le gouvernement d'accepter dans un avenir proche une mission de contacts directs.

La commission a pris note de l'engagement pris par le gouvernement de formuler une définition complète de la discrimination en conformité avec la convention. La commission a regretté l'absence

d'informations au sujet des allégations concernant le fonctionnement du système de permis de travail flexible et son impact sur les dispositions de protection des travailleurs prévues pour les travailleurs migrants.

Prenant en compte la déclaration du gouvernement et la discussion qui a suivi, la commission a demandé au gouvernement:

- de fournir à la commission d'experts, pour sa session de novembre 2018, de plus amples informations sur les mesures prises pour mettre en œuvre les engagements contenus dans les accords tripartites de 2012 et 2014, engagements qui portent sur l'action du gouvernement pour respecter la convention n° 111;
- de veiller à ce que tous les cas en suspens de réintégration et d'indemnisation qui relèvent des accords tripartites soient résolus rapidement;
- de veiller à ce que la loi de 2012 sur le travail dans le secteur privé et le décret législatif n° 48 de 2010 couvrent tous les motifs de discrimination, directe ou indirecte, interdits qui figurent à l'article 1, paragraphe 1 *a*), de la convention; et de prendre des mesures pour faire en sorte que la discrimination dans l'emploi et la profession soit interdite en droit et dans la pratique;
- de veiller à ce que les travailleurs migrants ainsi que les travailleurs domestiques soient couverts par la protection de la législation antidiscrimination;
- d'abroger toutes les dispositions qui font obstacle au recrutement et à l'emploi des femmes afin de garantir l'égalité de chances et de traitement dans l'emploi des femmes; et
- de veiller à ce que le droit civil ou la législation du travail interdisent expressément le harcèlement sexuel et à ce que les mesures nécessaires soient prises pour introduire des mesures préventives.

Ayant pris note de l'engagement exprimé par le gouvernement d'accepter une mission de contacts directs, la commission l'a encouragé à donner suite à ses recommandations. La commission a demandé au gouvernement de rendre compte en détail des mesures prises pour mettre en œuvre ces recommandations, en vue de l'examen de ces mesures à la prochaine session de la commission d'experts en novembre 2018.

Conclusiones

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

Teniendo en cuenta las conclusiones de la Comisión de 2017, la Comisión observó con interés el compromiso manifestado por el Gobierno de aceptar una misión de contactos directos en un corto plazo.

La Comisión señaló el compromiso manifestado por el Gobierno de formular una definición integral de discriminación de conformidad con el Convenio. La Comisión lamentó la falta de información sobre los alegatos relativos al funcionamiento del programa «flexible» y su repercusión en las protecciones laborales que se brindan a los trabajadores migrantes.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión pidió al Gobierno que:

- comunique más información a la Comisión de Expertos, para que la examine en la reunión de noviembre de 2018, 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;
- asegure que se resuelvan rápidamente todos los casos pendientes de reintegro e indemnización incluidos en el ámbito de aplicación de los acuerdos tripartitos;
- garantice que la Ley del Trabajo en el Sector Privado, de 2012, y el decreto legislativo núm. 48, de 2010, cubran 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 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;
- derogue cualquier disposición que constituya un obstáculo a la contratación y empleo de las mujeres para garantizar la igualdad de oportunidades y de trato en el empleo de las mujeres, y
- garantice que el acoso sexual esté explícitamente prohibido en la legislación civil o laboral y que se tomen las medidas necesarias para establecer medidas preventivas.

Al tiempo que tomó nota del compromiso manifestado por el Gobierno de aceptar una misión de contactos directos, la Comisión alentó al Gobierno a dar seguimiento a sus recomendaciones. Asimismo, la Comisión pidió al Gobierno que proporcione a la Comisión de Expertos, para su examen en noviembre de 2018, información detallada sobre las medidas que adopte para aplicar estas recomendaciones.

Forced Labour Convention, 1930 (No. 29)

Convention (nº 29) sur le travail forcé, 1930

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

Belarus (ratification: 1999)

Bélarus (ratification: 1999)

Belarús (ratificación: 1999)

The Government has provided the following written information.

Belarus has staunchly and consistently supported the prohibition and eradication of forced labour. The prohibition of the use of forced labour is enshrined in the country's most important legislative instruments. Article 41 of the Constitution prohibits forced labour, with the exception of work or services required under a court ruling or in accordance with the Law on Emergencies and Military Status. The prohibition of forced labour is also covered in article 13 of the Labour Code, which defines forced labour as work which a worker is required to perform subject to the threat of violence, which includes: means of political leverage or indoctrination or punishment for the exhibition or expression of political views or ideological beliefs contrary to the established political, social or economic system; methods for mobilizing and exploiting the workforce for the needs of economic development; means of promoting workplace discipline; means of punishing people for their participation in strikes. However, the following are not deemed to be instances of forced labour: work performed as a result of a legally valid court ruling under the supervision of the authorities responsible for upholding the Law governing the execution of court rulings; work to be carried out as a consequence of legislation on military service or emergency situations.

The Government has paid great attention to the comments made by the Committee of Experts. It has analysed all of the regulatory instruments referred to by the Committee of Experts, including the aims and purposes of adopting the instruments and the practice of applying them, with the aim of harmonizing the provisions of those instruments with the requirements of Convention No. 29. As a result of this work, taking into account the position of the Committee of Experts with regard to Presidential Decree No. 9 of 7 December 2012 on supplementary measures for the development of the wood processing industry, the decision was taken to start to repeal Decree No. 9. That decision has now been implemented. Presidential Decree No. 182 of 27 May 2016 has been adopted, which makes Decree No. 9 invalid. This information was received positively by the Committee of Experts which expressed satisfaction with the measures taken by the Government with regard to Decree No. 9, as reflected in paragraph 56 of the report of the Committee of Experts.

As regards the other regulatory instruments mentioned during the discussion at the Committee on the Application of Standards in June 2016, additional study of the situation was required. This task was entrusted to the technical advisory mission of the International Labour Office, which visited the Republic of Belarus from 19 to 23 June 2017. The Government of the Republic of Belarus provided the mission with all the necessary assistance in organizing their work. The mission's report on the results of its work was submitted to the Committee of Experts. In the Government's opinion, the normative documents mentioned in the conclusions of the Committee of Experts are not at variance with the provisions of Convention No. 29.

Presidential Decree No. 3 of 2 April on the prevention of dependency on social aid has undergone conceptual changes. On 25 January 2018, the Decree of the President of the Republic of Belarus No. 1 was adopted, in accordance with which Decree No. 3 was redrafted in a new version and given a new title – “On the Promotion of Employment of the Population”. Now Decree No. 3 does not include any provisions on the payment, by unemployed citizens who are able to work, of a fee for financing public expenditures, as well as the rules on bringing to administrative responsibility for failure to pay the fee. The main task of the updated Decree No. 3 is to create more favourable conditions for citizens’ employment in the regions of the republic. In this regard, significant increase in the activity of local authorities in assisting citizens in finding a job is envisaged. At the level of each region, all the available opportunities will be used to ensure that all citizens who for some reason do not work anywhere but want to work will be assisted in finding a job. Measures of active policy in the labour market will be used: training and retraining for professions that are in demand in the labour market; advisory and legal assistance in organizing private business with the provision of financial support from the State; temporary employment of citizens, including through participation in paid public works.

The second important issue, which the new version of Decree No. 3 is designed to solve, is to create conditions that will stimulate citizens involved in the shadow economy to work legally with the payment of taxes. The Decree contains a direct material incentive for citizens to start working legally. Today, many public services in Belarus are provided to citizens at low tariffs, since the State subsidizes them from the budget. Therefore, it was decided that citizens who are able to work and who are classified as not involved in the economy in accordance with the procedure determined by the Government, will be provided with certain services at a higher, not subsidized tariff. At the moment, the procedure according to which citizens will be treated as not involved in the economy is determined by the Government. The Government has also determined the types of services that will be provided at prices ensuring full reimbursement of economically justified costs for the provision of these services, which include utilities such as: hot water, gas supply in the presence of individual gas heating appliances, as well as heat supply. This approach will be implemented starting from 1 January 2019, and as concerns gas and heat supply – starting from 1 October 2019.

Presidential Decree No. 18 on supplementary measures for state protection of children from dysfunctional families was adopted on 24 November 2006. One of the most sensitive issues in any society is the situation of children from dysfunctional families and families in which parents lead an anti-social way of life, are alcoholics or drug addicts. Unfortunately, the critical issue regarding children whose parents are alcohol abusers, drug addicts or substance abusers is their very survival and the maintenance of their life and health. According to Decree No. 18, children are in a socially vulnerable situation if parents or one parent lead an immoral way of life that is harmful to the children, or if they are chronic alcoholics or drug addicts, or in some other way are unable to perform properly their obligations to raise and maintain children. These children are subject to state protection and are placed in state childcare facilities. The Decree defines a system by which state bodies may identify dysfunctional families and take decisions to place children in childcare facilities. Decree No. 18 focuses on working with parents. It is important to enable parents from dysfunctional families to turn away from their anti-social and, often immoral, way of life. This is the only way in which the children can return to their biological families. However, many of these parents do not have work. Many of them lost their occupational skills long ago. It is extremely complicated for them to find work independently, because employers are not interested in workers of this kind. Decree No. 18 therefore provides for a work placement mechanism for parents from dysfunctional families whose children have been placed in state childcare facilities following a court order. Job placements are arranged at workplaces defined in coordination with the local authorities. Since, in accordance with Decree No. 18, a portion of the citizen’s wage is deducted to compensate for the expenses associated with maintaining their children, one of the conditions in the selection of a workplace is that the wage level is sufficiently high. At the same time, if parents whose children have been placed in state childcare facilities have a job or find themselves work independently and can cover the costs of maintaining the child, no court decision is required. The main purpose of Decree No. 18 is to improve family situations so that children can safely return to their parents. During the time that Decree No. 18 has been in force (between 2007 and 2017), a total of 40,068 children have been recognized as needing state support, of which 23,255 children (more than 58 per cent) have been returned to their families and their parents.

The Law of 4 January 2010 “On the Procedure and Modalities for the Transfer of Citizens to Medical Labour Centres and the Conditions of Their Stay” regulates issues related to the transfer of citizens suffering from chronic alcoholism, drug addiction or substance abuse to medical labour centres. Not all individuals experiencing these problems may be transferred to medical labour centres, but only those who have repeatedly, three times or more in the course of a year, disturbed public order and been found in a state of intoxication from alcohol or caused by the use of drugs or other intoxicating substances. One further condition is that the individuals have already been warned about the possibility of returning to the centre if they commit further violations, but have nevertheless committed administrative offences for similar violations within a year of that warning. In addition, citizens may be sent to medical labour centres if they are obliged to compensate the child-rearing expenses incurred by the State and have

twice violated work regulations during the year through alcohol or other substance abuse, and have furthermore been warned of the possibility of being sent to the centre, and yet have reoffended within a year of that warning. Citizens are sent to medical labour centres for a period of 12 months following a court ruling. The court may decide to extend the period of time spent in the centres or to curtail it by up to six months. Citizens placed in medical labour centres are required to undergo a medical examination to establish whether they suffer from chronic alcoholism, drug addiction, and substance abuse. Social and medical rehabilitation measures may be used in relation to them, including the provision of medicines and of medical and psychological assistance. For citizens who lead an anti-social way of life, one of the most important means that ensure their social reintegration is through work. According to the Law, medico-social readaptation activities also include vocational guidance, vocational training, retraining, advanced training and labour. Over the years of the implementation of the Law, since 2010, 2,945 citizens have undergone vocational training in medical labour centres, and 876 citizens have taken part in continuing professional training programmes on-the-job. Employment of citizens who are placed in medical labour centres is carried out taking into account their age, working capacity, state of health, specialization and qualifications. They are paid and granted leave from work and welfare-related forms of leave in accordance with labour laws.

The Government considers that Decrees No. 3 and No. 18 do not conflict with the Convention No. 29. These regulatory instruments are aimed at addressing such socially important tasks as promoting employment of the population, protecting children and combatting drunkenness and drug addiction. The approaches laid down in these instruments meet the requirements of justice and are socially justified.

In addition, before the Committee, a **Government representative** welcomed the opportunity to provide information on the application of Convention No. 29 by Belarus. In her opinion, the comments of the Committee of Experts were balanced, which could be explained by the fact that during consultations with ILO experts of the Technical Advisory Mission, the Government had been able to explain in detail its position on each piece of legislation and the Government's voice had been heard. The Committee of Experts had not pointed to the violations of Convention No. 29 per se, but rather had requested the Government to continue to provide information on the implementation of the legislation in practice. Three pieces of legislation were mentioned by the Committee of Experts. In this respect, she indicated that Presidential Decree No. 3 on the prevention of dependency on social aid had been fundamentally altered. On 25 January 2018, Presidential Decree No. 1 had been adopted, pursuant to which a revised version of Decree No. 3 had been issued under a new title – “On the Promotion of Employment of the Population”. As part of the implementation of the new Decree, ambitious and complex measures would be taken that go beyond the remit of the regional employment services. Other interested parties would need to be involved and their work coordinated. To this end, a permanent committee would be set up in each region, bringing together representatives of the executive authorities, local councils and public associations. The main way in which people would be encouraged to take up lawful labour activities was a large-scale public information campaign to explain the guarantees offered by labour and social legislation. She further recalled that in 2016, when the Committee had first discussed Presidential Decree No. 18 of 24 November 2006 on supplementary measures for state protection of children from “dysfunctional families”, the Government had provided detailed information on the objective pursued by this legislation and its application in practice. Decree No. 18 had also been discussed in detail with the experts of the ILO Technical Advisory Mission. Thus, the Office had already been given all the necessary information. She recalled that Decree No. 18 provided for a mechanism to employ parents whose children had been taken into State care. Job placements were arranged at workplaces identified in coordination with the local authorities. The list of organizations where such parents could be employed was drawn up and periodically reviewed in accordance with decisions of the regional executive committees and the Minsk municipal executive committee. Finally, the Committee of Experts had examined Law No. 104-3 of 4 January 2010 on the procedures and modalities for the transfer of citizens to medical labour centres and the conditions of their stay and the information on the conditions of stay in medical labour centres. In 2016, the Committee had suggested that the Government engage in a detailed discussion with ILO experts regarding the legislative texts mentioned in the Committee's conclusions. This discussion had taken place. No violations had been identified.

The Worker members indicated that the case had been double footnoted and discussed at the 2016 session of the Committee and an ILO Technical Advisory Mission requested by the Committee had taken place in June 2017. Belarus was again on the agenda of the Committee, not because of an overall improvement, but for shortcomings with regard to its application of the Convention. Firstly, the repeal of Decree No. 9, which had prevented workers in the wood processing industry from exercising their right to freely leave their jobs, was noted as a positive point. In this regard, more information needed to be provided on practical consequences of the withdrawal of the Decree, and on whether it had indeed led to improvements in the sector. However, many important points still posed serious problems of compliance with the Convention. Urgent action was still needed in order to bring legislation in line with the Convention. Decree No. 3 provided that Belarusian citizens who had not worked for at least 183 days in the past year should pay a special tax to finance public expenditure. The Government had justified this measure on the grounds that these citizens, as they did not work, did not pay taxes on their labour

income during the period in question. Those who were not able to pay this special tax were liable to sanctions, either in the form of a fine or of administrative detention with compulsory community service, following a decision of the Civil Court, not the Criminal Court. Moreover, the functioning of the labour centres where the persons concerned perform work was very opaque. No form of external control seemed to be applicable to what took place within them. It was thus important that health and safety inspectors could carry out checks on the working conditions in these centres. In reality, this policy represented an additional punishment, which simply criminalized poverty. Not only were workers affected by poverty, but they also had to suffer the sanctions of the public authorities who made workers pay for their own policy failures. As previously described, this was, in effect, a poverty tax. The Government was thus called on to review this policy and to make real efforts to fight against financial insecurity and poverty rather than penalizing the vulnerable and the poor. The difference was fundamental.

The Government had informed that Decree No. 3 had been withdrawn and replaced by Decree No. 1 of 2018. According to the Belarusian Congress of Democratic Trade Unions (BKDP), it still contained numerous discriminations against persons who were out of work, in particular by depriving them of free or reduced prices for certain services. This policy also aggravated gender inequality. When Decree No. 3 was still in force, peaceful protests took place. Particular concern was expressed that citizens, including members of independent trade unions, who had participated in these peaceful protests, faced reprisals in the form of administrative sanctions and legal prosecutions. The restrictions of the right to peaceful protest and the repressive measures taken, were the direct consequence of the absence of the freedom of organization for trade unions, as had been already pointed out in the conclusions of the Commission of Inquiry in 2004. It was hoped that a new regulation respecting the fundamental rights of unemployed citizens would be adopted following this repeal, and that the regulation would focus on combating unemployment and not the unemployed. The Government was urged to restore trade union rights in full and to consult all social partners in a meaningful dialogue when drafting new regulations.

Another regulation that conflicted with the Convention was Law No. 104-3 of 2010, which provided for procedures and modalities for transferring citizens suffering from addiction to medical labour centres. In these centres people were sent to work for a period of up to 12 to 18 months. The Government had responded that not all addicts were sent to these centres. Such individuals must have been arrested several times for disturbing the peace and served with a prior warning before they were sent to such a centre. According to the information provided by the Government, over 8,000 people had been sent to medical labour centres since 2016. The Government painted a very flattering picture of these medical labour centres as examples of rehabilitation programmes for people suffering from addiction. However, the reality was quite different: these centres appeared to be places where vulnerable people were forced to work, when they should really be receiving genuine medical and social support.

There was also Decree No. 18 of 2006, which was designed to enable the withdrawal of custody of children from parents with an immoral lifestyle, who suffered from addiction or who were unable to raise and care for their children. These parents were expected to contribute to the costs incurred by public institutions for the care of their children. Parents who found themselves in such a situation and were unable to reimburse the costs might be sentenced to work. Even parents who were already working faced the risk of having work imposed on them. This decision might even lead to the persons in question being dismissed from their jobs, thus leaving them entirely subject to the arbitrariness of the public authorities. Such a sentence was senseless, counterproductive and disproportionate. Moreover, parents who did not comply with the sentence were liable to criminal sanctions that could include a period of up to two years of community service or corrective labour. Apparently, there was a list of 6,770 companies willing to offer employment to people who were the subject of such decisions. It would be useful to have more information about the conditions under which these companies could make use of this vulnerable labour force. Additionally, BKDP had reported one case in which Presidential Decree No. 18 was used for political purposes: parents whose political views opposed the authorities were deprived of custody of their children despite living in a normal and healthy situation. It was hoped that the Government could provide more information in this regard.

It was notable that most issues regarding compliance with the Convention found their source in Presidential Decrees. It appeared that decrees occupied a higher place in the hierarchy of the Belarusian legal system than laws. This concentration of powers seemed to lead to too many authoritarian excesses that were putting Belarus at odds with many international standards, including Convention No. 29. The Government was thus invited to involve its social partners in matters relating to social legislation.

Decree No. 29, which had been pointed out by the Commission of Inquiry in 2004 as being especially problematic, was still of great concern to the Worker members. The Decree ordered employers to transfer all workers to fixed-term labour contracts, and in fact nullified norms of the Labour Code, which prohibited temporary contracts for any person whose job was of a permanent nature. According to Decree No. 29, a worker was not free to leave a fixed-term employment and could request early termination of the agreement only on the basis of a limited number

of specific reasons, such as illness or violation of labour laws by the employer. In practice, the legitimacy of the reason was determined by the employer. It suggested that a person working under temporary employment conditions could not quit his or her job during the term of the contract without the good will of the employer. This Decree was also used as a tool of anti-union discrimination. Transfer to this less desirable form of employment had been used to punish activists and members of independent trade unions, and a disproportionate number of trade union activists and members had not had their contracts renewed at the expiration. There was a clear link between the flagrant lack of freedom of association in Belarus and the use of forced labour.

The Employer members noted that this case was about the relationship between social measures and the general prohibition of forced labour. Convention No. 29 required member States to suppress the use of forced or compulsory labour in the shortest possible period, although recourse to forced labour could be had during a transitional period for public purposes, as an exceptional measure. On the basis of the Committee of Experts' observation, in 2016, this case had been reviewed by the Committee as a double-footnoted case, designating very serious violations. It was to be noted with satisfaction that, as noted by the Committee of Experts, Decree No. 9 had been repealed. Another text reviewed in 2016 was Decree No. 3, which had put in place payment of labour taxes, and if these were not paid, compulsory work. The information provided to the Committee of Experts, and now to this Committee, indicated that a new conceptual framework had been adopted to amend Decree No. 3. The new framework shifted the focus from fiscal measures to the promotion of employment and reduction of illegal employment. It should be recalled that the Technical Advisory Mission had strongly recommended that elaboration of the text to amend Decree No. 3 should take place in consultation with social partners. The Employer members desired further information on the new conceptual framework with a view to understanding its potential relationship to forced work and urged the Government to provide a full report with respect to the amendment process as well as the practical and legal implications. With regard to Law No. 104-3, the Employer members had previously acknowledged the Government's indication that work in medical labour centres was intended to reintegrate individuals into society and to provide them with career guidance and skills training; at that time, the Government had been asked to provide further information regarding the obligation to work during confinement. While taking note of the complex links between social measures and the obligations under Convention No. 29, the Employer members asked the Government to provide practical information on the placing of individuals in such centres. Decree No. 18 authorized the removal of children from their families and instituted a corresponding requirement for those parents to pay for the care of those children; such parents who were unemployed or unable to pay were subject to an obligation to work, pursuant to a court ruling. They noted that further information would advance understanding of the practical functioning of this Decree as it was important to ensure that its application did not exceed the purpose of rehabilitation and was not used as a method to extract forced labour. The Employer members asked the Government to review whether the provisions created conditions for forced labour in practice, and requested their continued cooperation with the ILO.

The Worker member of Belarus noted with satisfaction that the Committee of Experts had noted significant progress made towards compliance with Convention No. 29. He questioned the inclusion of his country, once again, among the cases examined by the Committee. In keeping with relevant international standards, the national legislation prohibited forced labour. In practice, there were no cases of compulsory labour in the country. Regarding several pieces of legislation examined by the Committee of Experts, it was important to highlight that Decree No. 3 had been amended by new Decree No. 1 in January 2018, following broad public consultations, and on the basis of the observations of ILO experts and the opinion of the Federation of Trade Unions of Belarus (FPB) and its member organizations. The amended Decree focused on two tasks: the promotion of employment and the encouragement of a transition from the informal to the formal economy. This would further allow the Government to better understand in which regions labour markets faced difficulties and to establish targeted national plans of action to create jobs. On the local level, interdepartmental commissions were being created in order to assist individuals in finding suitable work; these commissions included representatives of trade unions and other public organizations. Legalization of the shadow economy was a significant concern, as every citizen must pay taxes. Tax evasion and concealment of income were crimes in any country; all countries had developed tools and strategies to confront this phenomenon through creation of conditions in which citizens would be employed legally. Decree No. 1 provided that required able-bodied citizens, who had no objective reason to avoid work, to pay for communal services at full rates, without state subsidies. It did not provide for administrative or criminal penalties that had been criticized previously. The new text had simplified processes for creating businesses, which provided additional opportunities for self-employment, and for registering activities of the self-employed and of small and medium-sized enterprises. Thus, no further discussion was required before the Committee on this matter. Regarding Decree No. 18, whose objective was to protect the children removed from "dysfunctional" families, the speaker recalled that any obligation to work in order to reimburse to the State the fees covering child care and education was decided by the courts. Finally, regarding Law No. 104-3, citizens suffering from chronic alcoholism, drug addiction or substance abuse and who had been involved repeatedly in administrative and other offences were sent to the special institutions for

medical and social rehabilitation. This measure also applied exclusively on the basis of a court ruling and was under the control and supervision of relevant public bodies; it therefore did not create conditions of forced work.

The Employer member of Belarus referred to the practical steps taken by the Government, which included the repeal of Decree No. 9, the acceptance of the ILO technical assistance provided by the Technical Advisory Mission and the revision of Decree No. 3 by a new Decree adopted on 25 January 2018. The new Decree defined a set of measures to enhance the assistance in finding employment for those who wanted to work. The main role in implementing such measures was assigned to local authorities. The new Decree did not provide for the use of forced or compulsory labor, nor for the payment of a special fee for financing public expenditures. Rather, it created the situation in which it became unprofitable to work illegally. This did not contradict Convention No. 29. The employers in Belarus realized their social responsibility in the processes of labour and social rehabilitation of certain categories of citizens referred to in Law No. 104-3 and Decree No. 18. The Law provided for a way to resolve problems of alcoholism and drug addiction. Along with measures of medical nature, labour was one of the means of rehabilitation. Decree No. 18 provided for the State protection of children of “dysfunctional” families, ensuring their rights and legitimate interests. Parents who did not work and could not reimburse the State for the costs of the care of their children were subject to employment by a court decision. Both within the framework of the Law, and within the framework of the Decree, labour was used not as a punishment but an aid in the rehabilitation. Employers provided such citizens with work taking into account the state of their health and, if possible, profession, organized their vocational education or retraining, and participated in creating the necessary housing and living conditions. Despite the fact that this imposed additional burden on employers, employers in Belarus considered that both pieces of legislation were necessary. The existing legislation did not contain elements of forced labour and was supported and understood by the majority of the population as it aimed at addressing such socially important tasks as the protection of children, combating alcohol and drug addiction, and promoting employment. Employers of Belarus were committed to the collaboration with the ILO and the Committee on the basis of mutual understanding and respect.

The Government member of Bulgaria, speaking on behalf of the European Union (as well as the Candidate Countries of the former Yugoslav Republic of Macedonia, Montenegro and Albania, Bosnia and Herzegovina, and Norway), reiterated that cases of forced labour remained a persistent phenomenon in Belarus. This case was discussed for the second time since 2016, when the Committee had urged the Government to constructively engage with the ILO at the highest levels to resolve this issue before the next sitting and to avail itself of ILO technical assistance. The representative welcomed the fact that the ILO mission took place in 2017. With regard to compulsory labour imposed by the national legislation, she welcomed the fact that Decree No. 9 had been revoked and that Decree No. 3 had been suspended. She noted with concern, however, that a new Decree, replacing Decree No. 3 was adopted in January 2018. She requested the Government to provide information on the purpose of the new Decree and to ensure that its provisions did not lead to situations amounting to compulsory labour. Decree No. 18 was also a matter of concern. In this respect, she called on the Government to take the necessary measures to ensure that the implementation of this Decree did not go beyond the purpose of rehabilitating “dysfunctional” families, and in particular, that it was not used for political purposes. In line with the Committee of Experts’ recommendations, she encouraged the Government to consider revising provisions concerning the direct deduction of wages from persons in order to compensate the expenses of maintaining their children in State child-care facilities. Finally, she noted that pursuant to Law No. 104-3, persons interned in medical labour centres had an obligation to work or were otherwise subject to punishment such as solitary confinement. She thanked them for the info provided on the implementation of this Law and on the number of persons who were placed in these facilities and encouraged the Government to continue providing such information and to indicate whether the decision for the internment was of judicial or administrative nature.

An observer representing the International Trade Union Confederation (ITUC) stated that the Government had failed to comply with the Committee’s previous request to abandon forced labor practices and to bring the legislation into conformity with Convention No. 29. Edicts, decrees, and laws which had introduced forced labour had not been repealed; those that had been amended had not changed in essence. Decree No. 29, which imposed fixed-term labour contracts on all workers, continued to operate. Excessive use of such contracts amounted to the escalation of forced labour as the employees could not resign before the expiration of their contracts. Decree No. 5 was still in force. It had introduced a stringent criteria for hiring and disproportionate system of punishment and fines, which in practice meant that workers’ employment relations became coercive. There was now a threat that the norms of Decrees Nos 5 and 29 would be included in the Labour Code as the Government had introduced a draft law to that effect. The system of forced labour in medical labour centres, where alcoholics were sent, continued to function. Parents whose kids had been removed were still being forced to work. The practice of compulsory subbotnik was flourishing. Decree No. 3, which had obliged the unemployed to pay to the State a fee and had caused mass protests in the spring of 2017, had not been repealed. This Decree had become Decree No. 1, which had replaced the fee by an obligation imposed on the citizens to pay for state-provided services. Forcing the

unemployed to work was a violation of the Constitution of the country, which provided for the right, and not the duty, to work. He concluded by emphasizing that compulsory labour did not solve, but rather created problems.

El miembro gubernamental de la República Bolivariana de Venezuela declaró que el trabajo forzoso debía ser erradicado en cualquier parte del mundo. Valoró que en su informe de 2018 la Comisión de Expertos hubiera tomado nota con satisfacción de la información suministrada por el Gobierno, pues se había dejado sin efecto, en 2016, un decreto presidencial de 2012 cuestionado por la Comisión de Expertos. Se tiene presente la amplia legislación comentada, y los decretos núms. 3 y 18 prevén estrategias con criterios de justicia y con fundamento social. Teniendo en cuenta la buena disposición y el compromiso del Gobierno, la Comisión debería tener presente los aspectos positivos que se desprenden de las explicaciones y argumentos presentados en esta ocasión. El orador confió en que las conclusiones de la Comisión fueran objetivas y equilibradas. De esta manera, el Gobierno podrá considerarlas y valorarlas en el marco del cumplimiento del Convenio núm. 29, y no habrá necesidad de que este caso vuelva a examinarse en esta Comisión.

The Worker member of Turkey stated that forced labour practices were diversified by the influence of global competition and neo-liberalism and that the practices of overworking and low wage had increased. Evaluation of the forced labour situation in a country and the final decision first and foremost should be based on the labour sector of that country and opinions of the representatives of its labour force. In the context of globalization, it was the joint and unavoidable responsibility for all stakeholders in social dialogue to tackle the problem of forced labour. The submission of the FPB, the main representative of the workers in Belarus, should be the main information taken into account by the Committee. It appeared that no information or document had clearly indicated that forced labour existed in the country.

The Government member of Turkmenistan welcomed the provisions that were introduced into national legislation in order to eliminate forced labour. The legislative activities, aimed at clarifying and further adopting the amendments to Decree No. 3, was a positive reply to the previous recommendations of the Committee. The Government's collaboration with the ILO and the social partners with a view to implement international Conventions and protect labour rights was appreciated. The 2017 ILO technical mission to Belarus demonstrated the commitment of the Government to comply with its obligations. Therefore the issue of the implementation of Convention No. 29 in Belarus should be removed from the agenda of the Committee.

The Worker member of Germany indicated the right to work protected the freedom not to work, as well as the right to choose their profession freely. The prohibition of forced labour, as provided for in the Convention guarded that freedom. The Government was violating this prohibition to a considerable extent, especially with respect to persons living in precarious conditions, such as young people, people addicted to narcotic substances, and so-called "dysfunctional" families. University graduates funded with State sources would be assigned to work for one to two years after their studies. Those who did not complete this work might be required to compensate the State. The European Commission had already criticized this practice. People addicted to alcohol or other substances were admitted to so-called medical labour centres for a period of up to a year and a half, if they committed offences under the influence of the substances. They were de facto imprisoned there, and were obliged to work under often inhumane conditions. It would be completely disproportionate to deprive their freedom merely on the basis of administrative violations. Inhumane conditions at these centres, in some cases, amounted to attempted suicide in protest. Children whose parents were alcoholics, drug addicts, or were considered to have "an immoral lifestyle" might be enrolled in care facilities operated by the State. If their parents were unemployed or unable to pay the full cost for the care, they would be compelled to work by a civil court. Such a court decision might be a ground for termination of an existing employment relationship. If they refused to comply with the decision, they faced criminal consequences, which could in turn result in forced labour. Children were also victims in that case, as they were additionally traumatized by the separation from their parents. Although the Government had now withdrawn Decree No. 3, there was still a constant threat of forced labour. This situation was in stark contradiction to the basic principles of the Convention. The speaker called on the Government to bring its law and practice into line with the Convention.

The Government member of the Russian Federation considered that the Government of Belarus had taken into account the comments and recommendations of the ILO supervisory bodies and interacted constructively with the ILO and the social partners. Decree No. 9 had been repealed. The Government had also carried out a comprehensive analysis of the national legislation. In 2017, Belarus had hosted an ILO technical advisory mission. The Government's efforts to introduce elements of active labor market policies and to create conditions that would encourage people to take business out of informality could not be ignored. These measures were aimed at the future and were in conformity with the modern trends in the world of work. The steps taken by the Government deserved the most positive assessment. The speaker called on the Committee to take note of the information provided by the Government with satisfaction.

An observer representing IndustriALL expressed his deep concern about the developments taking place in Belarus. The problematic issue remained Decree No. 3, as revised by Decree No. 1 of 2018. The Government claimed that the new Decree would be beneficial to the people. However, it was difficult to understand how the revision could be considered as positive improvement, provided that the new Decree kept the same logic of punishing the unemployed workers who would have to pay full costs of public services subsidized by the State. In addition, the new Decree established a mechanism to collect private information of workers, which would be further shared at all levels of the State structure. The absence of proper protection of privacy would likely lead to a higher degree of violations of workers' rights. In fact, the newly adopted Decree would force employees to stay on jobs even if the conditions were precarious and the pay was low. Moreover, since August 2018, there had been an obvious effort to eliminate the independent trade union organizations, including member organizations of IndustriALL. The Chairperson of the Radio and Electronic Industry Workers' Union, Mr Gennady Fedynich was subject to legal prosecution, facing up to seven years of imprisonment. Although the case had been officially announced as only related to economic reasons, about 800 Radio and Electronic Industry Workers' Union members were summoned and questioned as part of the investigation. Besides, Mr Fedynich was part of IndustriALL's delegation at the 107th International Labour Conference, but could not participate in the present sitting, for the reason that he had been banned to travel abroad. In light of the above case and the fact of the union active participation in the protests against Decree No. 3, these criminal cases were clear retaliation for the previous union engagement in the protests. It was an attempt to eliminate those who could oppose the new Decree. He thus expected and demanded that the Government respected, and guaranteed fundamental trade union rights in the country.

The Government member of India appreciated a comprehensive update by the Government, and welcomed the willingness and commitment of the Government to constructively engage and cooperate with the ILO and to fulfil its obligations. He requested the Government to continue pursuing its efforts to amend relevant laws in consultation with relevant stakeholders, especially the social partners, and to continue providing information on any progress made in this regard. The speaker also called on the ILO and its member States to fully support the Government and to provide any technical assistance that it might seek in this regard. The Committee had to be a forum for constructive discussion aimed at improving compliance with international labour standards. The speaker reiterated the need for ensuring greater transparency, inclusiveness, objectivity, fairness and credibility in the ILO supervisory mechanism as part of the ILO centenary standards initiative.

An observer representing the General Confederation of Trade Unions acknowledged that steps towards implementation of international labour standards had been taken by the Government in coordination with the social partners, including trade unions. Legislative processes took time. The constructive dialogue that had been established between the Government and the ILO had led to positive outcomes beyond the application of Convention No. 29 and extended to the application of other Conventions. These included the expansion of the national tripartite council's mandate, the development of a mechanism for collective bargaining at enterprises with several trade unions, and the repeal of the 10 per cent membership requirement for establishing a trade union. These advances did not, however, mean that all problems had been resolved. Inconsistencies in the application of Convention No. 29 and the lack of conformity between certain national provisions and those of the Convention that had been identified by the Committee of Experts illustrated the need to pursue the dialogue between the ILO and the Government. Therefore, he welcomed the willingness of the ILO to provide technical assistance and trusted that a positive resolution would be forthcoming.

The Government member of the Islamic Republic of Iran took note that the prohibition of forced labour in Belarus was enshrined both in its Constitution and in its Labour Code. The Technical Advisory Mission of the ILO had visited the country in 2017. Decree No. 1 was adopted. The Government had demonstrated its willingness to improve the situation. The speaker supported the measures taken by the Government and encouraged it to continue to take further measures. He requested the ILO to further provide necessary assistance to the Government in this respect.

The Worker member of Sudan pointed out that the analysis of the local labour laws showed that there were no provisions which would lead to forced labour in the legislation. Therefore, the legislation was fully in line with the international labour standards. Belarus also fully respected all the international Conventions that it had ratified. The Technical Advisory Mission of the ILO had visited the country in 2017 and provided necessary technical assistance, which led to the improvement of the relevant legislation. He thanked the Government for all its efforts in this regard and for the information provided to the Committee.

Le membre gouvernemental de la Suisse s'est déclaré préoccupé par les dispositions de la législation nationale imposant du travail obligatoire à certaines catégories de travailleurs. L'orateur a pris note des travaux effectués par la mission consultative de juin 2017. Les changements constatés ou entrepris dans la pratique sont des signaux qui vont dans la bonne direction. Le gouvernement a assuré à la mission que des consultations publiques, y

compris avec les partenaires sociaux, seraient engagées au cours de la version modifiée du décret no 3. Aussi est-il invité à poursuivre ses efforts visant à mettre sa législation et sa pratique en conformité avec les normes internationales du travail en impliquant toutes les parties prenantes, ainsi qu'à continuer à collaborer avec l'OIT et à fournir toutes les informations requises sur les centres de santé et travail.

The Government member of China appreciated the information provided by the Government. Since the examination of the case by the Committee in 2016, progress had been made in implementing the Convention, including the improvement of legislation related to forced labour and of the capacity of law enforcement. For example, Decree No. 9 had been repealed. Decree No. 3 had been suspended and revised. To amend other relevant laws and regulations, the Government had committed to solicit opinions from social partners and the public. It was the obligation of the member States to apply the ratified international labour Conventions. To strengthen their capacity in this regard, enhanced dialogue and technical assistance was the most effective approach. He hoped that the ILO would further its cooperation with the Government and provide necessary technical assistance to solve the problem regarding the application of the Convention.

The Worker member of the Russian Federation indicated that special attention was paid to labour rights in Belarus in the Russian Federation because changes in the Belarusian legislation that worsened the situation of workers could be transferred to the Russian legal system. He recalled the concern voiced in 2016 regarding the regulation of labour relations in Belarus and the Government's intention to institute a fee for non-working citizens which, if unpaid, could entail more serious measures, including administrative arrest. Fixed-term employment contracts that offered workers no guarantee of permanent employment were the norm, and employers commonly refused to conclude a contract in writing with an employee. Yet rather than give the State Labour Inspectorate the authority to identify and suppress such cases, Decree No. 1 would, as of 1 January 2019, unjustly inflate utility payments of housing for formally unemployed citizens. Given the shortage of jobs offering decent working conditions in Belarus, such measures would put an additional burden on workers. Fears regarding Decree No. 3 proved justified. As a result of civil protests in February 2018, the Decree was suspended, but trade union activists who participated were still being persecuted on what were considered unreasonable legal grounds, setting the stage for violation of workers' rights to freedom of association. He called on the Government to take into account the conclusions of the Conference Committee and the Committee of Experts, and to make the necessary amendments to bring legislative provisions in line with the provisions of Convention No. 29.

The Government member of Kazakhstan considered that Belarus was on the path of rapid development of social dialogue at all levels of social partnership. ILO membership allowed the Government to study and apply international practice in resolving social and labour disputes, develop social partnership, improve and regulate the labour market. The Government cooperated with the ILO on various issues, including employment. The information provided by the delegation of Belarus was complete. The ILO mission in 2017, as well as the latest legislative changes inspired confidence that the Government would continue its interaction with the social partners and the ILO to remove all issues raised by the Committee. Decent working conditions could only be created through negotiations and the legislation which was in conformity with international labour standards.

La miembro gubernamental de Cuba agradeció la información proporcionada por el Gobierno. Refiriéndose a la misión consultiva de junio de 2017, subrayó que dicha misión era muestra del espíritu de colaboración del Gobierno con la OIT. Confió en que este último prosiguiera sus esfuerzos por tener mejores condiciones de trabajo y asegurar una mejor protección de niños, niñas y familias, al tiempo que valorara las necesarias modificaciones legislativas.

The Government representative thanked the members of the Committee for the discussion and indicated that all constructive suggestions and comments would be taken and studied. Belarus was a consistent supporter of the prohibition and eradication of forced labour. The prohibition of forced labour was enshrined in the Constitution as well as in section 13 of the Labour Code. Any exception to this principle could be permitted only by the court pursuant to the law on emergency and martial law. She reiterated that Decree No. 9 had been repealed, as the Committee of Experts had noted with satisfaction and thus, this case should be considered resolved. She recalled that Decree No. 29 had been the subject of criticism at the session of the Committee in 2016. The contents of the Decree had been studied by the experts of the Technical Advisory Mission, who had informed the Committee of Experts of their conclusions. Having analyzed all the necessary information, the Committee of Experts chose not to comment on Decree No. 29. The contents of an employment contract, its terms and working conditions, were determined by agreement between the parties, namely the employer and employee. Neither party had the right to coerce the other party or impose unacceptable conditions. The terms in an employment contract should take into account the mandatory minimum guarantees established by labour law. Such an approach corresponded to internationally recognized practices. The comments of the Committee of Experts had become the basis for additional and thorough analysis by the Government on the application of the national legislation. The Government had also

studied three regulatory acts – Decrees Nos 3 and 18; and Law No. 104-3 – and provided detailed information on their application, which applied to very limited categories of citizens who, without the active involvement of the state and society, could not return to normal life. Providing these individuals with an opportunity to work was one of the most important and effective means for their social rehabilitation and reintegration. This approach was consistent with the position of the Committee of Experts, which had been indicated in the 1979 and 2007 General Surveys on Convention No. 29, in particular regarding the long-term unemployed who did not want to work and, for this reason, had no livelihood. In conclusion, the Government representative assured the members of the Committee that the Government would continue to be a staunch and consistent supporter of the principles of the ILO. The Government valued its interaction with the ILO, and remained ready for further cooperation in improving social and labor relations in Belarus.

The Employer members acknowledged the submissions commending the constructive interaction between the Government and the ILO and the development of social partnership and of the labour market. They took note of the amendments to certain legislative texts, the Government's explanation of the conceptual changes to Decree No. 3, as amended by Decree No. 1, and the repeal of Decree No. 9 by Edict No. 182 of 27 May 2016. Taking into account the submissions regarding the social and rehabilitative value of work, the Employer members urged the Government to continue to take all measures to suppress the use of forced labour, and to refrain from enacting legislation that could amount to the use of forced labour. They asked the Government to provide to the Committee of Experts information confirming the amendment of Decree No. 3 by Decree No. 1, as well as details relating to the operation of the new legal framework and its effect in practice. They further requested the Government to submit information about the implementation of Law No. 104-3 in practice, including regarding the number of persons placed in medical centres and the compulsory work that formed part of this rehabilitation.

The Worker members thanked the representative of the Government for the information provided to the Committee. However, regret was expressed that the Government did not see the serious shortcomings in its regulation in relation to the Convention. In view of the limited progress on the points addressed, a number of recommendations, which had been made in 2016, needed to be reiterated. The Government was urged to take all the necessary measures to end forced labour and to refrain from adopting legislation that could give rise to forced labour. Many groups of the population were likely to be subject to a sanction imposing compulsory work. Particularly vulnerable groups were those who had not worked more than 183 days in a given period, those who suffered from addiction and parents who were unable to take care of their children. In this regard, the Government was called on to ensure that decrees and legislation fully comply with the Convention, in particular Decree No. 1 amending Decree No. 3, Law No. 104-3, Decree No. 18 and Decree No. 29. This task should be carried out in close cooperation with all social partners in Belarus. The Government was thus invited to consult all social partners when developing regulatory initiatives to ensure its compliance with the Convention. More attention needed to be paid to the situation in medical labour centres. The Government was therefore asked to provide the Committee of Experts with information on the monitoring activities carried out by the labour inspectorates in these centres. In order to eliminate all forms of forced labour, those who had imposed forced labour should be prosecuted and, if found guilty, punished with dissuasive civil and criminal sanctions. While the repeal of Decree No. 9 was now confirmed, the effects of the repeal were not yet clear. It would be useful to obtain information in this regard in order to assess whether there had been any improvement in light of the Convention. Moreover, the situation regarding the freedom of association in Belarus was extremely worrying. The exercise of this freedom was severely restricted, which did not allow workers to make their voices heard effectively. In order to implement all the above recommendations, the Government was urged to seek technical assistance from the ILO. In order to speed up the process of bringing the Belarussian legislation and practice in line with the Convention, the Government was also urged to accept a direct contact mission conducted by the ILO.

Conclusions

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

Further to the Committee's 2016 conclusions and the Government's actions as a result, the Committee noted the Government's explanation of the conceptual changes to the framework of Presidential Decree No. 3 of 2 April 2015 as amended by Decree No. 1 of 25 January 2018 and the repeal of Decree No. 9 of 7 December 2012 by Presidential Decree No. 182 of 27 May 2016. However, the Committee noted with concern the possible exaction of forced labour as a result of the operation of the other Presidential Decrees, which have not been amended.

Taking into account the Government's submissions and the discussion that followed, the Committee recommended the Government to:

- continue to take all measures to suppress the use of forced labour and refrain from enacting legislation that may amount to the use of forced labour in full compliance with Convention No. 29;
- provide to the Committee of Experts information related to the operation of the provisions of Presidential Decree No. 182 in law and its effect in practice;
- provide to the Committee of Experts information confirming the amendment of Presidential Decree No. 3 by Presidential Decree No. 1, including information related to the operation of this new framework in law and practice;
- continue to provide information on the implementation of Law No. 104-3 in practice including the number of persons who are placed in medical centres and the compulsory work that forms part of this rehabilitation; and
- continue to accept technical assistance to ensure continued measures to achieve compliance with Convention No. 29 in law and practice.

The Committee encouraged the Government to continue to constructively engage with the ILO to work to suppress the use of forced labour and to report on these measures at the next meeting of the Committee of Experts.

The Government representative indicated that her Government was committed to comply with international labour standards and would send additional information to the Committee of Experts to facilitate a better understanding of measures taken to implement the Convention. She underlined that the purpose of the measures taken by her Government was to combat certain undesirable phenomena such as alcoholism and drug addiction through assistance, rehabilitation and support services to protect children.

Conclusions

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

A la suite des conclusions de la commission en 2016 et des actions menées par le gouvernement en conséquence, la commission a pris note des explications du gouvernement à propos des changements conceptuels apportés au cadre du décret présidentiel n° 3 du 2 avril 2015 tel qu'amendé par le décret n° 1 du 25 janvier 2018 et de l'abrogation du décret n° 9 du 7 décembre 2012 par le décret présidentiel n° 182 du 27 mai 2016. Cependant, la commission a noté avec préoccupation la possible imposition de travail forcé du fait de l'application des autres décrets présidentiels, lesquels n'ont pas été amendés.

Prenant en compte les informations présentées par le gouvernement et la discussion qui a suivi, la commission a recommandé au gouvernement:

- de continuer de prendre toutes les mesures pour supprimer l'emploi du travail forcé et de s'abstenir d'adopter des textes de loi qui pourraient être assimilés à un recours au travail forcé, afin de respecter pleinement la convention n° 29;
- de fournir à la commission d'experts des informations relatives à l'application des dispositions du décret présidentiel n° 182 en droit et à ses effets dans la pratique;
- de fournir à la commission d'experts des informations confirmant que le décret présidentiel n° 3 a été modifié par le décret présidentiel n° 1, y compris des informations sur l'application de ce nouveau cadre en droit et dans la pratique;
- de continuer de fournir des informations sur la mise en œuvre de la loi n° 104-3 dans la pratique, y compris sur le nombre de personnes placées dans des centres médicaux et sur le travail obligatoire inclus dans le cadre de leur réadaptation;

- de continuer d'accepter une assistance technique pour faire en sorte que des mesures continuent d'être adoptées afin de garantir le respect de la convention n° 29 en droit et dans la pratique.

La commission a encouragé le gouvernement à continuer de collaborer de façon constructive avec l'OIT pour œuvrer à la suppression du recours au travail forcé et à faire rapport sur les mesures adoptées à la prochaine session de la commission d'experts.

Conclusiones

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

En relación con las conclusiones adoptadas por la Comisión en 2016 y las medidas adoptadas por el Gobierno en respuesta a las mismas, la Comisión tomó nota de la explicación facilitada por el Gobierno sobre los cambios conceptuales introducidos en el marco del decreto presidencial núm. 3, de 2 de abril de 2015, modificado por el decreto núm. 1, de 25 de enero de 2018, así como de la derogación del decreto núm. 9, de 7 de diciembre de 2012, reemplazado por el decreto presidencial núm. 182, de 27 de mayo de 2016. Sin embargo, la Comisión observó con preocupación la posibilidad de que la aplicación de los otros decretos presidenciales, que no han sido modificados, propicie la imposición de trabajo forzoso.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión recomendó al Gobierno que:

- siga adoptando todas las medidas necesarias, en pleno cumplimiento del Convenio núm. 29 para erradicar el trabajo forzoso y se abstenga de promulgar leyes que puedan propiciar en la práctica el recurso al trabajo forzoso;
- proporcione información a la Comisión de Expertos sobre el efecto de las disposiciones del decreto presidencial núm. 182 en la legislación y sobre sus consecuencias en la práctica;
- suministre información a la Comisión de Expertos que confirme la modificación del decreto presidencial núm. 3 mediante el decreto presidencial núm. 1 y, en particular, sobre el efecto de este nuevo marco en la legislación y en la práctica;
- siga aportando información sobre la aplicación en la práctica de la ley núm. 104-3, en especial sobre el número de personas que se encuentran en centros médicos y sobre el trabajo obligatorio que forma parte de su rehabilitación, y
- siga aceptando asistencia técnica para velar por la continuidad de las medidas encaminadas a lograr el cumplimiento del Convenio núm. 29 en la legislación y en la práctica.

La Comisión alentó al Gobierno a que continúe colaborando de forma constructiva con la OIT para erradicar el trabajo forzoso y a que transmita información sobre las medidas al respecto para que la Comisión de Expertos la examine en su próxima reunión.

Convenio sobre la fijación de salarios mínimos, 1970 (núm. 131)

Minimum Wage Fixing Convention, 1970 (No. 131)

Convention (n° 131) sur la fixation des salaires minima, 1970

Estado Plurinacional de Bolivia (ratificación: 1977)

Plurinational State of Bolivia (ratification: 1997)

Etat plurinational de Bolivie (ratification: 1977)

Un representante gubernamental señaló que la esencia del Convenio es proteger a los trabajadores y que el reclamo provenía de los empleadores. Los empleadores instrumentalizan el Convenio para cuestionar un modelo económico exitoso, añorando políticas de privilegio que les beneficiaban, y para que el Estado no fije salarios dignos

para los trabajadores. El Gobierno desarrolla políticas económicas y sociales que protegen a sectores que históricamente fueron excluidos y discriminados. El diálogo, la consulta con los diversos sectores y la búsqueda de consenso, son los métodos utilizados en el respeto a la legalidad nacional e internacional. El Convenio fue adoptado para complementar otros convenios relativos a la protección de los trabajadores contra remuneraciones indebidamente bajas. Se aplica una política de incremento paulatino y sistemático del salario mínimo y el reclamo de los empresarios parece dirigirse contra la justicia social. El Preámbulo del Convenio reafirma el rol de los Estados de proteger a los grupos asalariados, los cuales se encuentran en situación desventajosa con relación a los empleadores. El rol del Estado de proteger a los trabajadores es un mandato constitucional, que no se abandona por una inadecuada interpretación del Convenio. El objetivo central del Convenio se encuentra determinado en su artículo 1 que requiere el establecimiento de un sistema de salarios mínimos aplicable a todos los grupos de asalariados. El aspecto esencial del Convenio es la fijación del salario mínimo y no precisamente el diálogo social, que es parte de la herramienta para lograr ese objetivo. Existe un Convenio específico sobre el diálogo social que no es objeto de este examen y que no ha sido ratificado por el Gobierno. El artículo 4, párrafo 2, del Convenio se refiere a la consulta exhaustiva y a los mecanismos de establecimiento, aplicación y modificación del salario mínimo, es decir, al diseño normativo de las pautas que rigen el proceso de determinación del salario mínimo y no a su determinación anual. Desde 2006, la política salarial del Gobierno se dirige a reducir las enormes brechas económicas y a favorecer a los sectores tradicionalmente excluidos, es decir, a los que menos ganan, incrementando los salarios por encima de la tasa de inflación, preservando la sostenibilidad de la inversión pública y privada. Bajo esta premisa se realizan los incrementos anuales de los salarios. En ese marco, el representante gubernamental destacó que la interpretación jurídica del Convenio debe ser más rigurosa, y no perder de vista que su espíritu es la protección del trabajador asalariado, por causa de las asimetrías intrínsecas con el sector empleador. La fijación de salarios mínimos se desempeña en el siguiente marco institucional: 1) el artículo 49 de la Constitución dispone que la ley regulará las relaciones laborales, incluido la fijación de los salarios mínimos generales, sectoriales e incrementos salariales; 2) el artículo 52 de la Ley General del Trabajo establece que la fijación de la remuneración o salario se hará por el Gobierno central, y 3) el artículo 8 del decreto supremo núm. 28699 de 1.º de mayo de 2007 establece que los empleadores y trabajadores podrán acordar libremente las remuneraciones, y que las mismas tienen que estar por encima del salario mínimo nacional determinado por el Gobierno. El marco institucional, en consecuencia, está establecido y tiene su origen en la Constitución Política del Estado, norma que ha sido consultada con trabajadores y empleadores y con todo el pueblo, siendo el producto de una Asamblea Constituyente y de un referéndum aprobatorio.

Históricamente, en la relación entre las organizaciones de los empleadores y de los trabajadores, existieron factores favorables a los empresarios que anularon los mecanismos de la negociación colectiva por sectores económicos. Esta situación obligó a los trabajadores a recurrir al Estado para la atención de sus demandas, incluido con respecto al tema salarial. Desde 2006, el Gobierno desarrolla medidas que permiten incrementar las remuneraciones indebidamente bajas, en pleno cumplimiento con el espíritu del Convenio, respetando los mecanismos de diálogo y consultas con los sectores involucrados, en el marco de la Constitución y legislación vigente. El Gobierno cuadruplicó el salario mínimo que en 2005 era de 63 dólares de los Estados Unidos (uno de los más bajos de la región) y que actualmente alcanza a 295 dólares. Sin embargo, pese a haberse cuadruplicado, el salario mínimo sigue siendo inferior a las necesidades requeridas por el trabajador y su familia. Este incremento salarial se estableció tomando en cuenta los criterios estipulados en el artículo 3 del Convenio: *a)* las necesidades de los trabajadores y de sus familias, habida cuenta del nivel general de salarios en el país, del costo de vida, de las prestaciones de seguridad social y del nivel de vida relativo de otros grupos sociales, y *b)* los factores económicos, incluidos los requerimientos del desarrollo económico, los niveles de productividad y la conveniencia de alcanzar y mantener un alto nivel de empleo. La política salarial establecida por el Gobierno es proporcional al crecimiento económico y la producción nacional. Gracias al modelo económico social productivo y comunitario, también esto se cuadruplicó. El producto interno bruto (PIB) ha crecido de 9 568 millones de dólares en 2005 a más de 37 000 millones de dólares en 2017. Por tanto, no se trata de incrementos arbitrarios, sino incrementos fundamentados en la economía sólida y creciente. Asimismo, el incremento salarial se estableció considerando la posición de los trabajadores y de los empleadores, con quienes el Gobierno propicia diálogos y consultas recurrentes como demuestran las reiteradas mesas de trabajo establecidas al más alto nivel del Gobierno con los representantes de la Confederación de Empresarios Privados de Bolivia (CEPB). El Banco Mundial reconoce que el país se encuentra entre los primeros de la región en la reducción de la desigualdad salarial. De acuerdo con el índice de Gini Laboral, la brecha salarial en los últimos diez años mejoró del 0,53 al 0,44 por ciento. Fruto del modelo económico, se logró reducir la pobreza extrema del 38,2 al 17,9 por ciento en el periodo 2005-2017. Más de 3 millones de personas salieron de la pobreza y la mayoría de la población (58 por ciento) tiene ingresos medios que le permiten vivir bien. La política salarial genera mayor demanda interna, que es muy beneficiosa también para el sector privado cuyas utilidades se han multiplicado cuatro veces, creciendo de 8 663 millones de bolivianos en 2006 a 27 766 millones de bolivianos en 2017. El modelo económico se basa en los siguientes pilares: nacionalización de los recursos naturales e industrialización, fortalecimiento de la demanda interna, redistribución de la riqueza y enérgica inversión estatal. Estos pilares garantizan los resultados siguientes: estabilidad económica,

generación de empleo y reducción de la tasa de desempleo, constante crecimiento de la economía, los cuales contribuyen a disminuir la pobreza y los niveles de desigualdad. Como demuestran las cifras, los empresarios privados se benefician en gran medida de la estabilidad económica, política y social, y de la seguridad jurídica que brinda el Gobierno desde 2006, para realizar inversiones y emprender iniciativas nuevas con la seguridad de resultados óptimos. Los empresarios deben otorgar seguridad y estabilidad social a los trabajadores y trabajadoras que de ellos dependen, a pesar de que existen quienes provocan quiebras de empresas premeditadamente y las abandonan. El representante gubernamental lamentó las infundadas acusaciones de los empleadores con argumentos procedimentales para limitar el incremento justo y equitativo del salario mínimo de conformidad con lo establecido en el Convenio, así como la decisión de incluir este caso para discusión en la Comisión. Al contrario, se debería alentar a los gobiernos a mejorar el nivel de vida de su población, en el marco del objetivo del Convenio y a la luz de los derechos humanos.

Los miembros empleadores agradecieron las informaciones suministradas por el Gobierno. El caso, si bien, es examinado por primera vez en la Comisión, no es ajeno a los comentarios de los expertos, que han efectuado observaciones al respecto en 2013, 2014, 2017 y 2018. Los expertos ya han solicitado al Gobierno la adopción de medidas urgentes para garantizar la consulta exhaustiva con las organizaciones de empleadores y de trabajadores más representativas y su participación directa en el procedimiento de fijación del salario mínimo. También habían notado con preocupación, que la CEPB y la Organización Internacional de Empleadores (OIE), alegan que desde 2006 se ha omitido sistemáticamente la inclusión de las organizaciones de empleadores en las consultas de fijación de salarios mínimos. Este año, los expertos recuerdan nuevamente que el Convenio requiere que se consulte exhaustivamente con los actores sociales para el establecimiento, aplicación y modificación de los mecanismos de fijación, y que la participación activa de las organizaciones de trabajadores y de empleadores es esencial para que se tengan en cuenta del mejor modo posible todos los factores pertinentes en el contexto del país. Corresponde analizar si las recomendaciones de los expertos han sido consideradas. El Gobierno está muy lejos de cumplir con el Convenio, tanto en cuanto al procedimiento de fijación, como en cuanto a los criterios que se han utilizado para la fijación de salarios. En cuanto al primer aspecto, el artículo 4 del Convenio obliga a la consulta a los actores sociales, de conformidad con las normas más elementales de la OIT, en la cual el diálogo tripartito es un pilar fundamental. Las características de este diálogo son la buena fe de los interlocutores y el afán de alcanzar consensos. Cuando tal consenso no es posible, quien tiene a su cargo tomar una decisión, debe incorporar en la misma, las sensibilidades de los que han participado en el diálogo. El Convenio califica la forma de la consulta como «exhaustiva». Por lo tanto, el Gobierno, debe hacer un esfuerzo adicional en la facilitación del diálogo y en la profundización del mismo. La expresión del Gobierno según el cual la CEPB «no pidió expresamente» participar en las decisiones relativas a la fijación de salarios mínimos desconoce la obligación que le impone como responsable de la consulta exhaustiva. Los empresarios han solicitado ser parte del diálogo sobre el salario mínimo, como reflejan los informes de los expertos. Los altos funcionarios del Gobierno, como el Ministro de Economía y el Ministro de la Presidencia, en recientes declaraciones a los medios locales, aseguraron que en la toma de decisiones sobre salarios mínimos no participará el sector empresarial y que desde 2006 es, en esencia, política del Gobierno, el fijar el incremento salarial sólo con el sector de los trabajadores. El Gobierno confirma esta política ante la Comisión y pretende hacer una nueva lectura del Convenio, en la cual ya no tendría validez la consulta a los actores sociales sobre las modificaciones salariales. La Comisión no puede aceptar que un gobierno desprecie el diálogo social y debe responder con la misma drástica cuando se trata de la falta de consulta de los empleadores.

En cuanto a la inobservancia de los elementos que deben tenerse en cuenta para determinar el nivel de salarios mínimos, los expertos recogen una declaración del Gobierno en donde afirma que para la fijación del salario mínimo se considera la inflación, la productividad, el producto interno bruto (PIB), el PIB per cápita, el índice de precios al consumidor, el crecimiento económico, las tasas de desempleo, las fluctuaciones del mercado y el costo de vida. Tal afirmación no es exacta. En la legislación boliviana, existen dos referentes salariales. Por un lado, existe el salario mínimo nacional que es universal para todos los trabajadores, sin diferenciación por grupos de asalariados, como sería deseable por razones económicas y jurídicas, y permitido por el Convenio. Por otro lado, el denominado «haber básico» que se aplica a todos los trabajadores y no puede ser inferior al salario mínimo nacional. Su fijación es consecuencia de la contratación individual o colectiva entre empleadores y trabajadores. Sin embargo, se emiten anualmente resoluciones ministeriales que obligan a las partes a negociar incrementos al haber básico dentro de un plazo límite, bajo pena de aplicación de multas y sanciones al empleador.

Entre 2006 y 2018, el salario mínimo nacional subió un 312 por ciento y el haber básico un 149 por ciento, ambas cifras muy por encima de la inflación acumulada de ese período. El salario mínimo nacional es mayor que el PIB por trabajador, lo cual denota la baja productividad por trabajador. El orador se preguntó si el índice de productividad, la sostenibilidad de las empresas y la generación de más y mejores empleos, fueron elementos tomados en cuenta para la fijación del salario mínimo.

La política salarial del Gobierno explica la precarización del empleo, el incremento en las tasas de desempleo, y el avance en los indicadores de informalidad (cerca del 61 por ciento de la población ocupada). También ha subido el porcentaje de trabajadores que perciben un salario menor al mínimo nacional, justamente por el avance de la informalidad. En el caso del sector público, se identifica la caída del empleo protegido y una subida del empleo temporal. El orador notó empero que el Gobierno aplicaba los criterios del Convenio en el sector público, donde hace el papel de empleador. Las empresas públicas para aplicar aumentos salariales deben hacer un análisis sobre la utilidad neta y disponibilidad financiera en cada empresa, debiendo demostrar sostenibilidad financiera y la necesaria existencia de utilidad operativa.

El orador concluyó que el Gobierno omitía deliberadamente la consulta a la organización de empleadores y la consideración de los criterios técnicos que deberían motivar la fijación de salarios mínimos.

Los miembros trabajadores señalaron que, en 2017, el salario mínimo nacional se había incrementado mediante el decreto supremo núm. 3161, de 1.º de mayo de 2017, teniendo en cuenta un pliego de recomendaciones presentado por la Central Obrera Boliviana (COB) y, de acuerdo con los informes obtenidos, los factores socioeconómicos tales como la inflación, la productividad, el PIB, el PIB per cápita, el índice de precios al consumidor, el crecimiento económico, las tasas de desempleo, las fluctuaciones de mercado y el costo de vida. Hoy el salario mínimo se sitúa en 2 060 bolivianos, un 335 por ciento más respecto de 2006.

La fijación del salario mínimo es importante por diferentes motivos. En primer lugar, los salarios representan una fuente crucial de ingresos para los hogares, y en consecuencia tienen una enorme influencia en el nivel de vida de la población. En segundo lugar, representan una fuente de realización personal. En tercer lugar, cuando el Estado establece el salario mínimo está garantizando que el trabajador pueda cubrir las necesidades indispensables para su supervivencia.

El Preámbulo de la Constitución de la OIT proclama la urgencia de mejorar las condiciones de trabajo, en particular, mediante la garantía de un salario vital adecuado. El salario mínimo permite a los trabajadores y a sus familias llevar una vida digna, teniendo en cuenta su nivel de desarrollo económico. Si bien es cierto que los factores económicos pueden condicionar los incrementos del salario mínimo, no se puede olvidar que el salario mínimo es esencial para evitar el impacto de las contingencias económicas sobre los trabajadores y los hogares de menores ingresos y mayor vulnerabilidad.

La Recomendación sobre la fijación de salarios mínimos, 1970 (núm. 135) establece que «la fijación de salarios mínimos debería constituir un elemento de toda política establecida para eliminar la pobreza y para asegurar la satisfacción de las necesidades de todos los trabajadores». El salario mínimo tiene como objetivo fundamental proporcionar a los trabajadores la necesaria protección social respecto de los niveles mínimos permisibles de salarios.

Sin perjuicio de ello, y como mencionó la Comisión de Expertos en sus observaciones, el Convenio requiere que se consulte exhaustivamente con las organizaciones representativas de empleadores y de trabajadores interesadas para el establecimiento, aplicación y modificación de los mecanismos a través de los cuales se fijan y ajustan en el tiempo los salarios mínimo (artículo 4, 2)). Además, la participación activa de estas organizaciones es esencial para que se tengan en cuenta, del mejor modo posible, todos los factores pertinentes en el contexto del país. Por ello, la Comisión de Expertos instó firmemente al Gobierno a tomar sin demora medidas, en consulta con los interlocutores sociales, para garantizar su participación plena y efectiva en la fijación y el ajuste del salario mínimo.

El salario mínimo es una de las instituciones más importantes, y permite para su fijación, la intervención del Gobierno junto con trabajadores y empleadores. Es un estándar de orden público que intenta que el salario cubra las necesidades mínimas: alimentación, vivienda, educación, seguridad social, recreación y vacaciones. Debe ser también el punto de partida de los salarios básicos en los convenios colectivos de trabajo. La fijación de salarios mínimos contribuye además a establecer una serie de reglas de juego iguales para todos.

Los miembros trabajadores valoraron que la intención del Gobierno al fijar el salario mínimo fuese implantar políticas salariales sostenibles de cara al cumplimiento de la Agenda 2030 de las Naciones Unidas para el Desarrollo Sostenible. Las cuestiones del incremento salarial y de la desigualdad salarial ocupan un lugar preminente en la Agenda. La mejora de los salarios y las oportunidades de trabajo decente son esenciales para la erradicación de la pobreza y la reducción de las brechas de desigualdad existentes en el país.

Los miembros trabajadores señalaron avalar la importancia del diálogo social y la consulta con los interlocutores sociales previa a la fijación del salario mínimo. El diálogo social debe ser institucionalizado, es decir, contar con estructuras tripartitas permanentes para el debate sobre políticas públicas, y con una agenda programática

para dar respuesta a los problemas que afectan a la sociedad. Sin embargo, al fin de institucionalizar el diálogo social institucionalizado, se necesita buena fe, aportes y responsabilidades. En definitiva, la institucionalización del diálogo social debe servir para: 1) generar un desarrollo sostenible e inclusivo para mejorar la calidad de vida y las condiciones sociales; 2) dotar de mayor participación a los trabajadores en la distribución de la riqueza, a fin de eliminar las desigualdades actuales; 3) promover el trabajo decente y niveles de salarios que permitan una vida digna, con libertad sindical y fortalecimiento de la negociación colectiva, y 4) reducir la brecha entre la extrema pobreza y la riqueza concentrada, permitiendo la inclusión social. Sin salarios suficientes y una protección laboral adecuada no habrá una sociedad inclusiva y se pone en peligro la paz social.

El miembro empleador del Estado Plurinacional de Bolivia subrayó que en los últimos años el sector empleador boliviano había venido presentando reclamos ante la OIT, por el incumplimiento sistemático del Convenio por parte del Gobierno desde 2006, en lo que respecta a la obligación de consulta exhaustiva a las organizaciones de empleadores. El orador indicó que la política del Gobierno en materia de salario había originado consecuencias económicas negativas en varias empresas que no gozan de un mecanismo efectivo de control de legalidad ni de la seguridad jurídica para poner límite a la conducta del Gobierno. El tratamiento del caso ante la Comisión abre la expectativa de que en un foro internacional, pueda llamarse a la reflexión al Gobierno para que incluya a todos los actores en la fijación del salario mínimo.

El Convenio fija en sus artículos 1 y 4 la necesidad de efectuar una consulta exhaustiva de las organizaciones representativas de trabajadores y también de empleadores para establecer un sistema de salarios mínimos y, en su caso, los grupos de asalariados a los que se deba aplicar el mismo. En su artículo 3, el Convenio fija además los elementos a tener en cuenta para determinar el nivel de los salarios mínimos.

En cuanto a la consulta exhaustiva, a pesar de los reclamos y observaciones que la CEPB ha venido efectuando de manera insistente en los últimos años, el Gobierno no ha llevado a cabo ningún cambio. Ha mantenido su política de hacer total abstracción de la participación y consulta con las organizaciones empresariales. El Gobierno se limitó a sostener reuniones exclusivamente con las organizaciones de los trabajadores bajo el liderazgo de la COB. En ningún momento el Gobierno contó con la opinión, menos aún con la aprobación, de la CEPB, la cual se tuvo que conformar con conocer las determinaciones asumidas en la prensa nacional, así como en los boletines legales periódicamente publicados. Además, los representantes del Gobierno, de manera reiterada, han venido manifestando públicamente su absoluta negativa a aceptar la participación del sector empresarial privado en ningún tipo de discusión sobre la fijación del salario. Entre otras declaraciones públicas de Ministros de Estado en los medios de comunicación social, el Ministro de la Presidencia indicó que la fijación de salarios se hace sólo con los trabajadores señalando al respecto que es parte de un Gobierno de trabajadores y no de la clase empresarial.

El orador también indicó que desde 2006, no sólo no se ha permitido la participación del gremio empresarial en la fijación del salario, sino que, además, se ha priorizado un esquema inequitativo de participación puesto que la COB ha sido la única instancia a la que se ha recurrido para validar las medidas salariales. Definir la fijación del salario mínimo y sus incrementos sólo con los representantes de los trabajadores, desvirtúa por completo el espíritu del diálogo social y el tripartismo promovidos por la OIT en materia de fijación de políticas laborales.

El orador recordó que también se debe llevar a cabo consultas en cuanto a los elementos a tener en cuenta para fijar el nivel de los salarios mínimos. Dicha consulta valida el diálogo social como mecanismo suficiente y legítimo, para la definición del sistema de fijación del salario mínimo. El Gobierno ha aplicado incrementos desproporcionados y alejados de la realidad económica. Desde 2006 hasta el presente año, el incremento del salario mínimo nacional ha alcanzado un porcentaje acumulado de 312 por ciento como resultado global de los incrementos efectuados en cada año. Estos incrementos exceden por mucho la tasa de inflación anual y desconocen la existencia de otros factores económicos como los requerimientos de desarrollo económico, los niveles de productividad, el fomento de mayores y mejores tasas de empleo decente, la conveniencia de alcanzar y mantener un alto nivel de empleo, la preservación del empleo digno, y la sostenibilidad de las empresas. Por otro lado, el Gobierno, al fijar los incrementos salariales no considera el avance de la informalidad en el mercado laboral.

El orador indicó también que se exige al sector empleador negociar convenios cuya presentación al Ministerio de Trabajo debe hacerse dentro de fechas límites, so pena de recibir multas o sanciones económicas. Algunas dirigencias sindicales aprovechan esta situación para exigir a los empleadores incrementos mayores a cambio de cumplir con la formalidad de la firma de acuerdos. Finalmente, el miembro empleador del Estado Plurinacional de Bolivia solicitó que la Comisión se pronunciara sobre el reclamo formulado e instó al Gobierno a cumplir todos los términos del Convenio a fin de salvaguardar y ampliar el mercado laboral decente en el país.

El miembro trabajador del Estado Plurinacional de Bolivia declaró que los trabajadores están comprometidos con el cumplimiento del Convenio desde su ratificación. Una de las razones que justifica los

recientes incrementos salariales es que, a partir de la década de 1980, se generó una congelación de los salarios mínimos que en parte se atribuye a la adopción de medidas mediante las cuales se efectuó la privatización de diversas empresas estatales, por ejemplo, de algunas empresas mineras y cementeras. Dicha congelación de salarios mínimos culminó en 2005, lo que implica que los trabajadores sufrieron por muchos años. En relación a la aplicación del Convenio, el artículo 10 del Estatuto de la CEPB, indica que la CEPB «no podrá asumir representación legal por sus afiliadas, para la negociación o solución de conflictos obrero-empresariales particulares e individuales y, en consecuencia, carece de personería jurídica para admitir citaciones o notificaciones, ni aceptar demandas o pliegos petitorios de sector laboral alguno, que involucren o se formulen a sus entidades componentes o a través de la Confederación». Por otra parte, durante muchos años los trabajadores se habían visto privados de participar en el diálogo social al mismo nivel que el Gobierno y los empleadores. No ha sido sino hasta tiempos recientes que ha habido avances en cuanto a la participación de los trabajadores, ya que actualmente incluso participan en la fiscalización de empresas estatales en sectores estratégicos. Sin embargo, en lo que respecta a algunas empresas privadas, un número importante de trabajadores, más de 400, se ha visto afectado en sus actividades laborales puesto que tales trabajadores han sido obligados a tomar vacaciones colectivas o han sido despedidos con los argumentos de que las empresas se encuentran en déficit, que no podrían cumplir con el pago del salario mínimo o acordar incrementos salariales. El orador sugirió que podría adoptarse legislación para la creación de empresas sociales para que los trabajadores puedan asumir la gestión de algunas empresas que se hayan declarado en déficit. Existen actualmente, por ejemplo en el sector minero, empresas gestionadas por los propios trabajadores con autonomía técnica, económica y financiera. En tales empresas los incrementos salariales pueden o no efectuarse, ya que están sujetos a las utilidades de las mismas, es decir, si no hay utilidades no hay incrementos, y en relación a esto, los trabajadores consideran que la estabilidad laboral y la sostenibilidad de los centros de trabajo son primordiales.

El miembro gubernamental del Paraguay, hablando en nombre del Grupo de los Estados de América Latina y el Caribe (GRULAC), agradeció al Gobierno por la información proporcionada. El Convenio fue adoptado tomando en cuenta la necesidad de complementar la protección de los trabajadores contra remuneraciones indebidamente bajas. El orador también agradeció los esfuerzos realizados por el Gobierno para tomar en cuenta las posiciones de ambos interlocutores sociales en la definición del salario mínimo. Tal como señala la Agenda 2030 para el Desarrollo Sostenible, el crecimiento económico sostenido, inclusivo y sostenible es esencial para lograr la prosperidad, lo que sólo es posible si se comparte la riqueza y se combate la desigualdad de ingresos. Por ello, la estabilidad social de los trabajadores es una tarea esencial del Gobierno. Saludó también la información proporcionada relativa a los logros en materia de reducción de la desigualdad salarial alcanzados a través del incremento real del salario mínimo. El orador alentó al Gobierno a continuar con sus esfuerzos para fortalecer sus mecanismos de consulta con los interlocutores sociales.

El miembro empleador del Uruguay señaló que el Gobierno claramente y sistemáticamente no cumplía con el Convenio. El Gobierno establece salarios mínimos luego de negociaciones con el sector trabajador, sin consultar a las organizaciones de empleadores más representativas. Más allá de toda discrepancia sobre los aumentos y metodologías utilizadas para establecer salarios mínimos, la OIT debe estar alerta en las situaciones en las cuales los actores sociales no pueden manifestar su opinión. Ésta es una situación grave en la cual la OIT puede desplegar todo su potencial de ayuda por medio de las oficinas regionales para llegar a un punto de equilibrio razonable en las relaciones laborales.

Las políticas que no respetan principios fundamentales en materia de trabajo producen abusos que no se deben tolerar, independientemente del sector social que las impulse. La OIT dispone de todas las herramientas para colaborar con el Gobierno a fin de contribuir a fortalecer un sistema más armónico de relaciones laborales, en el cual el sector empleador pueda ser escuchado. Es necesario evitar violaciones de principios fundamentales en materia de trabajo.

El miembro trabajador del Uruguay recordó que el nacimiento de la OIT partió de la realidad de que en una institución como ésta se puede hacer el ejercicio de que todos somos iguales. En este contexto, el salario mínimo garantiza que aquellos que son más débiles puedan tener un piso salarial debajo del cual no pueden ser remunerados. El orador ofreció en nombre del movimiento sindical de su país, cooperación y ayuda al Gobierno y al movimiento sindical boliviano.

El miembro gubernamental de la República Bolivariana de Venezuela se adhirió a la declaración del GRULAC. El propósito del Gobierno es proteger a los trabajadores contra remuneraciones excesivamente bajas con el fin de eliminar la pobreza y que puedan hacer frente a sus necesidades y las de sus familias, y tomando en cuenta los factores económicos. De conformidad con el Convenio, la fijación de salarios mínimos debe realizarse en consulta con los interlocutores sociales, y aunque dichas consultas no sean vinculantes, contribuyen a la paz laboral y ayudan al Gobierno para que tome la decisión correspondiente, tal como lo establecen los comentarios de la Comisión de Expertos. El Gobierno, para la fijación del salario mínimo y sus incrementos, tiene en cuenta los

factores socioeconómicos tales como la inflación, la productividad, el producto interno bruto (PIB), el crecimiento económico, las fluctuaciones del mercado y el costo de vida. El orador alentó al Gobierno a fortalecer sus mecanismos de consulta con los interlocutores sociales, lo que contribuiría a mantener la paz laboral con incrementos salariales que beneficien a los trabajadores y al mundo del trabajo.

El miembro trabajador de El Salvador indicó que las leyes de cualquier país del mundo exigen que los gobernantes cumplan con mantener políticas salariales acorde a las necesidades de la población y a factores de orden macroeconómico. Conlleva a entrar en la disyuntiva entre las demandas salariales de los trabajadores y sus familias y la visión de algunos empleadores que rechazan los aumentos al salario mínimo por la tesis que las empresas no tienen capacidad de soportar el alza. El término de salario mínimo significa lo mínimo para comer, lo mínimo para vestirse, lo mínimo para seguir padeciendo pobreza y marginación. El orador preguntó cómo se podía tener una sociedad decente si se condenaba al trabajador a simplemente conformarse con el mínimo que el sistema le da. Se deben organizar sindicatos para que los empleadores y gobiernos atiendan demandas de mejoras salariales ante el costo de vida. La decisión de aumento al salario mínimo por el Gobierno tuvo a la base los elementos técnicos que la economía refleja, su crecimiento económico, la propuesta del sector laboral y por ende la dinámica del diálogo social. Al observar la tabla de salarios mínimos en América Latina se deduce que varios países con economías menos pujantes que la boliviana, tienen mejores condiciones salariales, así por ejemplo Guatemala, Honduras, El Salvador, Costa Rica y Panamá, por lo tanto merece crédito y reconocimiento la actuación del Gobierno. La economía del Estado Plurinacional de Bolivia tendrá un dinamismo positivo en el consumo y demanda de productos y servicios. Sin embargo, todavía falta mucho por hacer en la demanda de salarios y trabajo decentes.

The Government member of Egypt thanked the Government for the information provided on the measures taken to implement the Convention. She praised the efforts made by the Government to increase wages, close the economic gaps, ensure the sustainability of investments, boost investment in the public sector and increase resources in a fair manner. She encouraged the Government to commit fully and to engage in dialogue with the social partners.

La miembro gubernamental del Ecuador apoyó la declaración del GRULAC y agradeció la información proporcionada por el Gobierno. Lograr un crecimiento económico sostenido, inclusivo y sostenible, empleo pleno y productivo, y trabajo decente para todos, requiere grandes voluntades y el compromiso de los diferentes actores sociales y del Gobierno. Un diálogo social tripartito constructivo permite llegar a consensos basados en el respeto al ser humano. La oradora hizo notar los esfuerzos del Gobierno encaminado a lograr convergencia con los interlocutores sociales en la definición del salario mínimo. Asimismo, acogió con gran satisfacción los logros en materia de reducción de la desigualdad salarial alcanzados a través del incremento real del salario mínimo. Por último, la miembro gubernamental alentó al Gobierno a continuar con sus esfuerzos para fortalecer sus mecanismos de consulta con los interlocutores sociales.

The Government representative of India thanked the Government for its commitment to fulfil its international obligations and for the information provided on the positive steps undertaken to reduce wage gaps and levels of poverty and to raise standards of living. The participation of the relevant social partners, and especially those representing the most vulnerable, would contribute to the achievement of the objective of the Convention.

La miembro gubernamental de Cuba suscribiendo la declaración del GRULAC, consideró que la Comisión de la Conferencia, al analizar este caso, debía tomar en cuenta la información proporcionada por el Gobierno sobre el cumplimiento del Convenio. El Gobierno ha incrementado el salario mínimo en los últimos años de manera proporcional al crecimiento económico y la producción del país. Esto lo ha realizado mediante un proceso que considera la posición de los interlocutores sociales y que atiende al marco institucional establecido por la ley. Asimismo, elogió al Gobierno, ya que se considera entre los primeros de la región en lograr la reducción de las desigualdades salariales y de otras desigualdades, favoreciendo así la consecución de la justicia social. El Gobierno no sólo cumple con los aspectos de procedimiento, sino también con los objetivos del Convenio de mejorar el nivel de vida de los trabajadores y de la población.

El miembro empleador de Honduras señaló que el Gobierno fijó incrementos en lo que respecta al salario mínimo, sin diálogo social y sin consulta con los empleadores. Al tiempo que no se obtuvo ninguna respuesta al pedido de la CEPB de participar en la consulta, los Ministros de Estado manifiestan que, por ser expresión de un gobierno de los trabajadores, sólo deben tratar con ellos. El sector empresarial desconoce si se consideran los criterios previstos en el artículo 3 del Convenio en las negociaciones del Gobierno con la COB, es decir los factores económicos de productividad para determinar el incremento del salario. El orador también destaca que además de imponerse al sector empresarial el incremento del salario mínimo, también se le obliga a suscribir en plazos límites convenios salariales con los sindicatos bajo amenazas de multas y sanciones. La exclusión de los empleadores en la fijación de salarios mínimos no cumple con las disposiciones del Convenio y vulnera los principios de diálogo social

y tripartismo que son la piedra angular de la OIT. La Comisión debería instar al Gobierno a cumplir con el Convenio y a permitir la participación de los empleadores en la consulta.

El miembro gubernamental del Uruguay tomó nota con especial interés de las particularidades del cumplimiento del Convenio en la región, donde consideró que en muchos casos las organizaciones sindicales no cuentan con la formación, capacidades y promoción suficientes para el desarrollo pleno de los métodos de fijación de salarios mínimos. En este sentido, destacó las buenas prácticas recientes de su país en materia de diálogo social, tripartismo, consulta y negociación colectiva. El Gobierno del Uruguay se pone a disposición del Gobierno para construir un plan de cooperación con el objeto de fortalecer y desarrollar los mecanismos ya existentes en el país. El orador alentó finalmente al Gobierno a seguir con sus esfuerzos para desarrollar el diálogo social y el tripartismo.

Le membre gouvernemental de l'Algérie a exprimé son soutien au gouvernement qui confirme son engagement pour la mise en œuvre de la convention par l'adoption de mesures visant à: 1) valoriser les salaires minimaux et réduire les inégalités de salaires pour répondre aux besoins des travailleurs et de leurs familles; 2) fixer des salaires minima en consultation avec les représentants des employeurs et des travailleurs; 3) encourager le dialogue et les consultations, ainsi que le contrôle du respect des taux de salaires minima fixés. Le gouvernement est engagé dans un processus de réformes économiques et aborde un certain nombre de priorités en matière de justice sociale et de droits fondamentaux. La fixation des salaires proportionnelle à la croissance économique et à la production est conforme aux dispositions de la convention. Les mesures prises par le gouvernement ont pour objectif la cohésion sociale, la réduction du chômage et la croissance inclusive. La commission est invitée à prendre en considération les réponses détaillées du gouvernement.

Un observador representante de la Organización Internacional de Empleadores (OIE) destacó que no se trata de un caso menor. El Gobierno manifiesta poco respeto al sector privado y a los creadores de empleo decente. No se trata únicamente de un incumplimiento de la obligación de consulta para la fijación de salarios mínimos, conforme al Convenio, ni de la obligación derivada de una disposición técnica de un convenio. Se trata de una falta grave de respeto a los principios fundamentales que inspiraron la creación de la OIT. Expresiones públicas de altos dirigentes denotan un rechazable desprecio a las organizaciones empresariales. Esta preocupante actitud entra peligrosamente en la dinámica de acoso al sector empresarial y ataque a la libertad de empresa y al empleo decente. El orador pidió que estos elementos se tengan en cuenta en la redacción de las conclusiones sobre el caso.

The Government member of Bangladesh thanked the Government for the information provided and welcomed the efforts made to protect and promote workers' rights, including through increasing minimum wages since 2005. The Government had taken into account the socio-economic context as well as the position of both the social partners. Considering its compliance with the objective and procedures required by the Convention, it would be advisable to close the case.

The Government member of Iraq recalled that the Convention established that minimum wages had to be set in consultation with the social partners. While acknowledging that this could be difficult to implement in practice, he indicated that it appeared that in this case, the Government had taken into account the reservations of the employers.

El miembro empleador de México expresó su preocupación respecto a la declaración del Gobierno en la que reconoce la violación al Convenio, que ha ratificado y cuyo contenido lo obliga, y en la que manifiesta que no ha realizado, y que no tiene la intención de realizar en un futuro próximo, la consulta exhaustiva con las organizaciones más representativas. El Gobierno expresa como fundamento de su conducta que la ley lo autoriza a determinar unilateralmente el nivel de los salarios mínimos. Esto es alarmante pues no sólo se transgrede una obligación derivada del Convenio, sino que también se vulneran los principios elementales de la OIT, incluyendo el diálogo social, la consulta efectiva y exhaustiva, y que constituyen la base de las relaciones entre empleadores, trabajadores y gobiernos en el ámbito de las relaciones de trabajo. Por otro lado, es tranquilizante escuchar a los miembros trabajadores confirmar la importancia de la institucionalización de la consulta a la que el Convenio hace referencia. Asimismo, el diálogo social es esencial en las relaciones laborales, dado que permite construir acuerdos y evitar la polarización de los sectores. Su importancia se reconoce en la Declaración de la OIT sobre la justicia social para una globalización equitativa, 2008, pues es uno de los cuatro objetivos estratégicos. A ningún Estado Miembro se le puede consentir que de manera consciente y deliberada, no realice las consultas a las que se encuentra obligado bajo la justificación de que actúa en beneficio de una de las partes de la relación laboral. En consecuencia, debe defenderse una cuestión de orden y de legalidad puesto que los principios no se pueden negociar.

El representante gubernamental reiteró que el Convenio en su esencia trataba de generar condiciones de igualdad y de erradicar la pobreza y que el Gobierno tomaba en cuenta estos elementos fundamentales. El reclamo no tiene fundamento porque el Gobierno realiza consultas permanentes con todos los actores económicos para

elaborar políticas económicas, incluso con respecto al salario, en las cuales los empresarios privados tienen espacios de diálogo al más alto nivel, a veces con la presencia del Presidente. La fijación del salario mínimo sirve como un mecanismo de redistribución de la riqueza obligando a los empresarios a compartir las utilidades. Por primera vez en la historia, sus ganancias se han multiplicado por cuatro veces. La política salarial ha permitido salir de la pobreza extrema a millones de bolivianos. El Gobierno seguirá manteniendo los mecanismos previstos por la ley para la fijación del salario mínimo.

El orador consideró falsa e infundada la denuncia de una política de destrucción del sector privado porque existen mecanismos de consulta permanentes y del más alto nivel con los empresarios privados. Los empresarios han sido consultados constantemente sobre diferentes aspectos económicos nacionales. Además, hay convenios firmados con el Gobierno para preservar la estabilidad económica, incrementar la producción y mantener el empleo. En cuanto a la negociación salarial, se refirió a la información comunicada a la Comisión de Expertos. Tanto los empresarios privados como los trabajadores hacen pública sus propuestas con relación al salario mínimo. Por ejemplo, en 2017, la CEBP en reunión con los Ministros de Economía y Planificación planteó un congelamiento del salario mínimo y un incremento del haber básico del 3 por ciento. Por su parte, la COB planteó un incremento del 10 por ciento del haber básico y del 15 por ciento del salario mínimo nacional. Tomando en cuenta las posiciones de ambos interlocutores, así como parámetros técnicos y económicos, el Gobierno determinó un incremento del 3 por ciento del salario mínimo nacional y del 5,5 por ciento del haber básico.

El orador objetó que el incremento salarial pone en riesgo a la empresa privada. El Gobierno cuida la estabilidad económica y jurídica, como demuestra el incremento de empresas privadas, de aproximadamente 65 000 en 2005 a 295 000 en 2017, con un incremento del 4 por ciento entre 2016 y 2017. El número de asalariados ha crecido más de tres veces. En 2005 existían poco más de 500 000 asalariados ahora son más de 1 008 000. Esta situación se refleja también en el incremento de la seguridad social y el crecimiento del trabajo digno que es obviado por el sector empresarial.

La Declaración de Filadelfia de la OIT establece el principio fundamental en base al cual la pobreza, en cualquier lugar, constituye un peligro para la prosperidad de todos. De esto se desprende la obligación de promover la elevación del nivel de vida. Al tiempo que respeta y valora la contribución del sector privado a la economía, el Gobierno seguirá manteniendo con firmeza la decisión de reducir la pobreza y generar la igualdad económica, política y social para la mayoría de los bolivianos. Por ello, reiteró que la denuncia es infundada y con miras a cuestionar la política de justicia social y redistribución de la riqueza a la cual no se quiere renunciar.

Los miembros trabajadores, tras agradecer al Gobierno por las informaciones aportadas, señalaron una vez más que el diálogo social es la mejor herramienta para crecer con equidad. Permite a los gobiernos y a los actores sociales elaborar una estrategia común para promover el trabajo decente y por consiguiente, la inclusión y la justicia social. El diálogo social tiene una importancia decisiva en la formulación de políticas destinadas a dar respuesta a las necesidades nacionales. Tal y como ha mencionado la Comisión de Expertos en sus observaciones anteriores, el sistema de salarios mínimos previsto en el Convenio pretende actuar como medida de protección social para superar la pobreza, garantizando niveles de ingresos dignos, especialmente para los trabajadores no calificados y de baja remuneración. Tiene como finalidad proteger a los trabajadores contra el pago de remuneraciones indebidamente bajas. Como se ha dicho en esta casa, la existencia de una remuneración salarial mínima ayuda a garantizar que todos se beneficien de una justa distribución de los frutos del progreso y que se pague un salario mínimo vital a todos los que tengan empleo y necesiten esta clase de protección. La Recomendación núm. 135, con especial referencia a los países en vías de desarrollo, destaca en su Preámbulo el interés que tiene la adopción de criterios que hagan de los sistemas de salarios mínimos un instrumento eficaz de protección social para la promoción de políticas de desarrollo económico y social. Los salarios mínimos deben también ser un elemento integrante de las políticas destinadas a superar la pobreza y reducir la desigualdad, incluyendo las brechas salariales existentes entre hombres y mujeres. En ese sentido, los miembros trabajadores valoraron que el Gobierno aplique políticas salariales destinadas a preservar el valor real de la remuneración de trabajadores y trabajadoras con ingresos más bajos, que aseguren una distribución justa, reduzcan las excesivas desigualdades de los salarios y de la renta, y refuercen el consumo como pilar fundamental de una economía sostenible.

En la fijación del salario mínimo, cuestionada por los empleadores bolivianos, se han tenido en cuenta factores económicos de interés de ese sector, como son: la productividad, el PBI, el crecimiento económico y las fluctuaciones del mercado. Sin perjuicio de ello, corresponde al Gobierno cumplir con el Convenio y por ello le exhortan a dar cumplimiento debido e integral al Convenio, incorporando métodos cuantitativos objetivos para la determinación del salario mínimo que aseguren la participación activa de las organizaciones más representativas de empleadores y de trabajadores. Esta exigencia de poner en práctica procedimientos que aseguren consultas efectivas a los representantes de los empleadores y los trabajadores, es consustancial a todo el sistema normativo de la OIT, cuya pieza central es el Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144),

también ratificado por el Estado boliviano. Para concluir, los miembros trabajadores instaron al Gobierno a garantizar la participación plena y efectiva de los interlocutores sociales en la fijación y el ajuste del salario mínimo.

Los miembros empleadores declararon haber valorado las intervenciones de los miembros de la Comisión, y señalaron que debe destacarse la coincidencia entre las posiciones de los Grupos de los trabajadores, de los Empleadores y muchos de los gobiernos que intervinieron en el debate, acerca de la importancia del diálogo social y la consulta a los actores sociales en materia de salarios mínimos. De igual forma, se entiende que, en la práctica de ese diálogo, debe prevalecer la buena fe de todas las partes. Mejorar los ingresos y el nivel de vida de los trabajadores es una preocupación común a trabajadores y empleadores, y es estratégico en el objetivo de erradicación de la pobreza. Dicho fin común, no puede ser alcanzado sin tomar en cuenta las necesidades de unos y las posibilidades de otros, y por supuesto, las circunstancias económicas del país. Dejar de lado ambas visiones, constituye una pérdida neta para la sociedad en su conjunto, mientras que dejar de lado únicamente a una de las partes, constituye una grave discriminación y un sesgo inaceptable. Las intenciones de mejorar los ingresos de los trabajadores sirven de poco, si el resultado es el crecimiento del sector informal, puesto que se habría logrado mejorar el ingreso de menos personas y arrojar a la informalidad a muchos más, quienes perderían sus ingresos y garantías sociolaborales.

Por otro lado, en respuesta a la declaración formulada por el miembro trabajador del Estado Plurinacional de Bolivia relativa a la prohibición estatutaria de la CEPB, los miembros empleadores aclararon que la misma se refiere a la intervención en conflictos individuales de naturaleza laboral de sus agremiados.

Asimismo, los miembros empleadores destacaron que el caso en discusión igualmente preocupa a trabajadores y gobiernos que apuestan por la implementación de métodos democráticos para regir el destino de sus naciones. Pone en cuestión el diálogo social, que es uno de los principios fundamentales de la OIT. Actualmente, los empleadores bolivianos son silenciados por parte del Gobierno, el cual ha manifestado que no observaría el Convenio que ha ratificado. En el futuro, podrían ser silenciados los trabajadores o empleadores de cualquier otro país. La Comisión no debería dejar pasar inadvertida una situación de la presente naturaleza, ya que esto minaría la credibilidad de los mecanismos de control de normas de la OIT. Reiteraron su preocupación respecto a la declaración del Gobierno, puesto que es indudable que su conducta no variaría y es violatoria del Convenio. Es indispensable que el Gobierno con legítima voluntad de convocar y consultar exhaustivamente a los actores sociales revise los procedimientos de fijación de salarios.

Por las razones expresadas, los miembros empleadores pidieron que en las conclusiones del caso se destaque la gravedad de la situación. Pidieron a la Comisión que solicite urgentemente al Gobierno que: 1) realice consultas exhaustivas a los actores sociales en cuando a la fijación de salarios y que informe de tales acciones a la Comisión de Expertos antes de su reunión de 2018, y 2) acepte una misión de contacto directo y la asistencia técnica de la OIT. Finalmente, haciendo hincapié en la gravedad del caso, los miembros empleadores solicitaron que las conclusiones se incluyan en un párrafo especial del informe de la Comisión.

Conclusiones

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

La Comisión tomó nota con preocupación de la situación de diálogo social disfuncional y de incumplimiento de las disposiciones del Convenio.

La Comisión recordó la importancia de que se consulte exhaustivamente a las organizaciones de empleadores y de trabajadores representativas interesadas, así como los elementos que deben tenerse en cuenta para determinar el nivel de los salarios mínimos establecidos en el artículo 3 del Convenio.

Tomando en consideración las informaciones presentadas por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión instó al Gobierno a que proceda sin demora a:

- **llevar a cabo consultas exhaustivas de buena fe con las organizaciones de empleadores y de trabajadores más representativas sobre la fijación de salarios mínimos;**
- **tener en cuenta, al determinar el nivel de salario mínimo, las necesidades de los trabajadores y de sus familias, así como los factores económicos en los términos que establece el artículo 3 del Convenio;**

- recurrir a la asistencia técnica de la OIT para garantizar sin demora el cumplimiento del Convenio en la legislación y en la práctica, y
- aceptar una misión de contactos directos de la OIT.

La Comisión recomendó al Gobierno que, antes del 1.º de septiembre de 2018, envíe a la Comisión de Expertos una memoria detallada sobre los progresos realizados en la aplicación de estas recomendaciones.

El representante gubernamental agradeció a la Comisión por sus trabajos. Tomó nota de las conclusiones con preocupación considerando que éstas son inconmensurables y no reflejan la discusión. No se explica en las conclusiones cuáles son las disposiciones del Convenio que no se cumplen. Se afirma que el diálogo social es disfuncional sin concretar lo que no funciona. En relación con el artículo 3 del Convenio, el orador reiteró que se cumplía con este artículo a través del mecanismo institucional de fijación de salarios derivado, no sólo de la ley y de acuerdos, sino también de la propia Constitución Política del Estado, norma que es el producto de una Asamblea Constituyente y de un referendo aprobatorio. Esta información proporcionada por el Gobierno tampoco ha sido tomada en consideración. La Comisión debe adoptar conclusiones técnicas y tomar en cuenta los argumentos presentados por el Gobierno. Es de lamentar que se haya instrumentalizado un convenio que pretende proteger los derechos de los trabajadores. Una prueba de esta instrumentalización se muestra en el hecho de que las conclusiones no se refieren a las cifras presentadas por el Gobierno. El orador indicó que el Gobierno va a proceder al análisis de las conclusiones y a examinar cómo implementarlas.

Conclusions

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

The Committee noted with concern the dysfunctional operation of social dialogue and the current non-compliance with the provisions of the Convention.

The Committee recalled the importance of full consultation with the representative organizations of employers and workers concerned, as well as the elements to be taken into consideration in determining the level of minimum wages as set forth in Article 3 of the Convention.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government without delay to:

- carry out full consultations in good faith with the most representative employers' and workers' organizations with regard to minimum wage setting;
- take into account when determining the level of the minimum wage the needs of workers and their families as well as economic factors as set out in Article 3 of the Convention;
- avail itself of ILO technical assistance to ensure without delay compliance with the Convention in law and practice; and
- accept an ILO direct contacts mission.

The Committee recommended the Government to submit a detailed report to the Committee of Experts by 1 September 2018 on the progress made in implementing these recommendations.

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 préoccupation la situation de dysfonctionnement du dialogue social et l'actuelle absence de conformité avec les dispositions de la convention.

La commission a rappelé l'importance de la pleine consultation des organisations représentatives d'employeurs et de travailleurs intéressées, ainsi que les éléments à prendre en considération pour déterminer le niveau des salaires minima tels qu'énoncés à l'article 3 de la convention.

Prenant en considération les informations fournies par le gouvernement et la discussion qui a suivi, la commission a instamment prié le gouvernement de prendre sans délai les mesures suivantes:

- consulter pleinement et de bonne foi les organisations d'employeurs et de travailleurs les plus représentatives au sujet de la fixation des salaires minima;
- prendre en considération, pour déterminer le niveau du salaire minimum, les besoins des travailleurs et de leurs familles et les facteurs d'ordre économique, conformément à l'article 3 de la convention;
- se prévaloir de l'assistance technique du BIT pour garantir sans tarder le respect de la convention, en droit et dans la pratique;
- accepter une mission de contacts directs de l'OIT.

La commission a recommandé au gouvernement d'adresser à la commission d'experts des informations détaillées sur l'avancée de la mise en œuvre de ces recommandations, avant le 1^{er} septembre 2018.

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)

Botswana (ratification: 1997)

Botswana (ratification: 1977)

Botswana (ratificación: 1977)

A **Government representative**, Minister of Employment, Labour Productivity and Skills Development, recalled that in 2017 the Committee had recommended the Government to: take appropriate measures to ensure that the labour and employment legislation granted members of the prison service the rights guaranteed by the Convention; ensure that the Trade Disputes Act (TDA) was in full conformity with the Convention and engage in social dialogue, with further technical assistance of the ILO; amend the Trade Unions and Employers Organisations Act (TUEO Act), in consultation with employers' and workers' organizations, to bring those laws into conformity with the Convention; and to develop a time-bound action plan together with the social partners in order to implement the Committee's conclusions. The speaker indicated that since then, consultations had been ongoing between the Government and the representatives of employers and workers on the process to amend the labour laws. In particular, the Government and the social partners had met seven times between July 2017 and April 2018, clearly showing the Government's commitment to move forward. Although the process of reviewing the labour laws had been slow at the beginning, meaningful progress had been made in October 2017 when a tripartite time-bound action plan, as requested by the Committee, had been adopted by the tripartite parties and provided to the ILO Decent Work Team for Eastern and Southern Africa. There had been general consensus among the representatives of the Government and the social partners on the need to review the labour laws in order to fill the gaps, incorporate various Court decisions and make the laws compliant with the ILO Conventions ratified by Botswana.

In April 2017, during the mission of the ILO Decent Work Team for Eastern and Southern Africa to Botswana, it had been resolved that the focus of the review would be on the Employment Act and the TUEO Act. However, the tripartite partners had acknowledged that some provisions in those laws could have a bearing on the provisions of other labour laws and it had therefore been agreed that the review could be extended to include such other laws as the Public Service Act (PSA) and the TDA to the extent necessary, so as to ensure harmonization and consistency. In order to carry out the review, the Government and the social partners had agreed to establish a Labour Law

Review Committee (LLRC) consisting of members from the Government, employers and workers, the purpose of which was to spearhead the labour law review process. The tripartite action plan envisaged that the Bills on the amendment of the laws would be submitted to the November 2018 session of Parliament. The Government and the social partners had also agreed to engage an expert to assist in the review process, had developed the Terms of Reference for Review of Labour Laws, which had been provided to the ILO in March 2018 and, with the facilitation of the ILO Decent Work Team for Eastern and Southern Africa, had also agreed on the expert to be engaged. During the Government's engagement with employers' and workers' representatives, it had become clear that the amendment of the TDA, in particular the review of the list of essential services, had been of critical importance to workers and the Government had therefore deemed it necessary to relook at the list of essential services. As such, the TDA and the PSA would form part of the laws that would be reviewed.

Finally, the speaker emphasized once again that the framework for the review of the labour laws had been agreed with the social partners, that the action plan had been communicated to the ILO, which had facilitated the engagement of an expert, and that the tripartite parties had agreed on the expert and were awaiting confirmation from the ILO on when the expert would commence the task of facilitating the review of the labour laws. He also reiterated the Government's engagement to ensuring that progress was made towards the full implementation of its commitments.

Les membres travailleurs ont rappelé les recommandations formulées par la commission lors de la discussion de ce cas en 2017 et ont constaté que celles-ci sont restées lettre morte. Le gouvernement n'a pas communiqué de rapport sur l'application de la convention ce qui a amené la commission d'experts à réitérer sa précédente observation. Cette situation est regrettable.

S'agissant, premièrement, du problème récurrent de l'exclusion du droit de se syndiquer des salariés de l'administration pénitentiaire, le gouvernement estime que le service pénitentiaire fait partie des forces tenues à la discipline. Or cette situation est contraire aux articles 2 et 9 de la convention. Si l'article 9 prévoit une dérogation pour les forces armées et la police, cette dérogation doit recevoir une interprétation restrictive. Il faut remarquer à ce sujet que ce n'est pas le fait que l'armée et la police soient soumises à une discipline qui justifie qu'elles fassent l'objet d'une dérogation, mais plutôt la nature des activités qu'elles exercent. Il est donc indifférent que l'administration pénitentiaire soit soumise ou non à un régime de discipline. En outre, il n'y a pas de lien organique entre ces différentes catégories (forces armées, police, prison). Par conséquent, la thèse du gouvernement selon laquelle le personnel pénitentiaire est exclu du droit de se syndiquer au motif que celui-ci est considéré comme faisant partie des forces de l'ordre est incompatible avec la convention, et ceci même si la Cour constitutionnelle a admis cette exclusion. Les membres travailleurs ont souligné que dans d'autres administrations des travailleurs avaient subi des pressions en vue de mettre fin à leur affiliation syndicale. Leur employeur les a menacés de perdre des avantages sociaux s'ils ne renonçaient pas à leur affiliation à un syndicat. Une action judiciaire a été introduite à ce propos.

S'agissant, deuxièmement, du droit des organisations syndicales d'organiser des actions et, en particulier, de la définition de la liste de services essentiels et du pouvoir discrétionnaire du ministre de déclarer un service essentiel, malgré des positions divergentes sur le droit de grève, les membres employeurs et les membres travailleurs ont pu adopter des conclusions consensuelles sur ce point lors de l'examen du cas en 2017 et ont invité le gouvernement à mettre sa loi sur les conflits du travail en conformité avec la convention.

Toujours sur le plan législatif, les problèmes de conformité de la loi TUEO, liés à la disposition qui n'accorde certaines facilités qu'aux syndicats représentant au moins un tiers des salariés de l'entreprise considérée, n'ont pas été réglés. Si l'instauration des seuils de représentativité n'est pas en soi incompatible avec la convention, cette possibilité est soumise à des conditions telles que le caractère précis et objectif des critères utilisés ou encore que la distinction opérée se limite à certains privilèges. Dans le cas du Botswana, la loi ne fixe pas un seuil minimum d'effectif pour constituer un syndicat mais pour accorder certains privilèges comme, par exemple, le fait d'accéder aux locaux de l'entreprise pour recruter des membres, de tenir des réunions ou de représenter ses membres en cas de plaintes, de sanctions disciplinaires ou de licenciement. Or ces privilèges constituent des aspects fondamentaux et élémentaires du travail syndical et ne pas en bénéficier rend presque impossible pour un syndicat de recruter des membres ou de s'implanter au sein d'une entreprise. Parfois, même si le syndicat remplit ces critères, l'employeur refuse de lui octroyer ces privilèges. Autre disposition de la loi TUEO, qui est contraire à l'article 3 de la convention, est celle qui habilite le greffier des syndicats à inspecter les livres et documents d'un syndicat à tout moment raisonnable. A cet égard, il y a lieu de rappeler que les organisations doivent disposer de l'autonomie et de l'indépendance nécessaires. Un contrôle ne peut constituer qu'une mesure d'ordre exceptionnel qui doit être strictement encadrée. Enfin, s'agissant du nouveau projet de loi sur la fonction publique qui, selon le gouvernement

a fait l'objet de consultations préalables avec les partenaires sociaux, il est indispensable que le gouvernement fournisse une copie de la dernière version de ce projet ou une copie de la loi dès qu'elle aura été adoptée.

Pour conclure, en 2017, le représentant gouvernemental a affirmé qu'il fallait attendre le résultat d'une prochaine discussion ouverte avec les partenaires sociaux. Les membres travailleurs ont partagé cette préoccupation liée à la nécessité de garantir la concertation avec les partenaires sociaux et ont reconnu les difficultés et écueils que peut rencontrer un gouvernement dans ses démarches à cet égard. Toutefois, compte tenu du fait qu'un grand nombre de points discutés ont été portés à l'attention du gouvernement depuis dix-sept ans, le temps que prend la concertation sociale ne peut être invoqué au détriment de la garantie des droits fondamentaux des travailleurs.

The Employer members recalled that, although the case had first been discussed by the Conference Committee in 2017, it had been previously subject to nine observations of the Committee of Experts. It was being discussed again because nothing had happened in the meantime, despite the provision of technical assistance by the ILO on a number of occasions. It was noted that a recent change of presidency had had a beneficial effect on the Government's commitment to change. The Committee of Experts' requests to the Government reflected concerns relating to compliance with the Convention in practice and in law.

With respect to practice, the Committee of Experts had reported violations of the Convention on several occasions including favouritism of certain trade unions, dismissals of striking workers, police repression of pickets and a refusal to allow public sector unions to address their concerns to Parliament. There were several aspects of concern to the Employer members, the first relating to the requirement of Article 3 of the Convention which permitted workers and employers to set up organizations free from official interference. While favouritism and restrictive criteria for establishment did not meet such standards and should be avoided, that did not mean that there should be no criteria. It was common for unions to be subject to the same criteria as any other not-for-profit organization. Similarly, unilateral access by public authorities to the books and accounts of a union could be regarded as interference by the authorities in clear contravention of Article 3 of the Convention. Regard should be had to the practice common in many countries of requiring regular reports rather than permitting access by the authorities. Acknowledging the establishment of the LLRC, the Employer members urged the Government to progress in the review of labour legislation so as to remove any inhibition to the free establishment or operation of trade unions.

The reference in the Committee of Experts' observation to instances of repression was more difficult to deal with as without more evidence it was hard to assess whether the instances complained of contained violence or other unlawful acts that would have attracted legitimate attention from the authorities. Consistent with the Employer members' firm view that the Convention did not regulate the right to strike, as well as with the view expressed in the Government statement to the 2015 tripartite meeting on the Convention that the scope and conditions of the right to strike were regulated at the national level, there was little more that the Employer members could add on the subject. The Government was encouraged to ensure that actions taken with respect to protests were commensurate to the source and nature of the protest and the national laws that governed them. The same applied to essential services, which could be designated by a country. In many countries, the right to organize and to take industrial action was typically denied to the armed services and the police, which was unequivocally a decision to be taken by the nation concerned. It was also common to designate certain other services as essential because any disruption of them for more than a short period would cause economic harm or endanger the lives, safety and health of the population. Botswana had designated a large number of services as essential and, while that approach did not in itself contravene the Convention, it did raise questions as to why, particularly when those services included banks and diamonds operations.

The history of the case also related to the Government's designation of the prison services as a "disciplined force" in the same manner as the armed services and the police. The Employer members disagreed with such designation as the prison service was not charged with preserving and maintaining law and order in the constitutional sense applied to the armed services and the police. Nor, as observed by the Committee of Experts, was the prison service covered by the same legislation as the armed services and the police. However, the Employer members were restricted in commenting further as that was a matter for the national legislature. Similarly as in 2017, the Government was urged to review the list of essential services and to ensure that any restrictions placed upon them would be commensurate with their impact on the health and welfare of the citizens and the economy.

With regard to the compliance of national law with the Convention, the Government had previously indicated that it was focused on amending the Employment Act and the TUEO Act, but meaningful dialogue with the social partners had yet to occur. Moreover, both employers and workers had previously expressed deep concern that focusing only on those two Acts would achieve little. In April 2018, the Government had asked for further assistance

from the ILO that would be provided. The speaker applauded the broadening of the review exercise, encouraged the Government to engage in social dialogue with the representative organizations of employers and workers willing to advance the underlying issues and noted the increased willingness on the part of the Government to do so.

The Worker member of Botswana denounced that the Government was not complying with the Convention and had largely not followed the conclusions of the Committee, applying delaying tactics, and showing a negative attitude towards the supervisory bodies. Upon return from the 2017 Conference, the Government had held a press conference in which, falling short of denouncing the ILO, the Minister had stated that its findings were merely recommendatory and not binding. Despite that attitude, in July 2017, the trade unions submitted for tripartite discussion proposals to give effect to the Committee's conclusions. At first, the Government had frustrated those efforts and only in October 2017 had the proposals been discussed and the parties had agreed to form a tripartite LLRC, as well as to a time-bound workplan to complete the review. The LLRC had been given the mandate to agree on the terms of reference for a consultant to assist in reviewing the laws but the Government had sought in bad faith to unilaterally impose the terms of reference on the social partners, seeking to exclude from the scope of the review the TDA, the PSA and the Prisons Act. The workers' representatives, supported by Business Botswana, had recalled that the Committee's conclusions had called for the review of those Acts but the Government had refused to amend them and, not even willing to dialogue on the issue, had referred to its old argument that the prison service belonged to the disciplined forces. In its 25 April 2018 response to an enquiry of the Botswana Federation of Public Sector Unions (BFTU) on the matter, the Government had claimed that unionization implied industrial action and that it would compromise national security. Such a flawed reasoning was contrary to Article 9 of the Convention, as well as to national constitutional provisions on civil liberties.

Moreover, since the last discussion by the Committee, infractions of the Convention had continued. In January 2018, the Government had notified trade unions and federations that it would inspect trade union books, accounts and documents pursuant to section 49 of the TUEO Act and had insisted on such unlawful inspections despite the BFTU's submissions that they were contrary to the Convention and would encroach on the independence and autonomy of trade unions. The BFTU was also deeply concerned with the deregistration of the Public Sector Bargaining Council (PSBC), an institution which nurtured and consolidated industrial democracy.

Furthermore, the Government had published the Public Service Bill (PSB) to amend the PSA, without consulting any tripartite body. The PSB undermined the role of the social partners in the appointment of the PSBC secretariat and encroached on union autonomy by dictating who could represent them or negotiate on their behalf. The Committee must therefore compel the Government, as a matter of urgency, to halt the continued violations of the Convention and to allow the terms of reference for the labour law review to be subjected to tripartite structures and to encompass the various laws the Committee had called to amend, as well as the PSA, with precise timelines.

The Employer member of Botswana stated that the tripartite partners had met to address the recommendations issued by the Committee in 2017 and a tripartite task force had been established to spearhead a comprehensive review of the labour laws. Although much time had been lost on building consensus on the parameters of the review, there was confidence that the task force would rapidly oversee the labour law review, especially considering that the country's new leadership was inclined to openly engage with the workers, and that it would report progress to ILO supervisory bodies. As the review of the labour laws was not only a chance to address the conclusions of the Committee but also to align national employment laws and policies with the needs of a modern and competitive economy, the speaker pleaded with the Committee to give the country time to address its recommendations and expressed the employers' continued availability to work with the Government and the workers on the issue. Finally, a note of caution was sounded as it would not be easy to reach consensus on the classification of prison officers given the divergent legal opinions on the matter but the deep tradition of consultation should allow for advancements.

La membre gouvernementale de la France s'est référée aux faits d'entraves au libre exercice des activités syndicales et, en particulier, à l'impossibilité pour le personnel pénitentiaire de s'affilier à une organisation syndicale ainsi qu'à la définition très large des services essentiels qui conduit à écarter de nombreux travailleurs de l'exercice du droit de grève. A cet égard, aucun élément qui permettrait de considérer que la situation a évolué n'a été apporté. L'oratrice a souligné l'importance qu'il convient d'accorder au plein exercice de la liberté syndicale à travers le dialogue social effectif et équilibré, et les protections et facilités qui doivent être accordées aux représentants des travailleurs. De même, il y a lieu de souligner que le droit de grève constitue un élément essentiel de la liberté syndicale au sens de la convention et de rappeler l'importance qui s'attache à son respect dans le cadre de l'application de cette convention. La liberté d'association et le droit de grève qui s'y rattache sont des droits fondamentaux au travail portés par les huit conventions fondamentales dont il faut promouvoir la ratification universelle. Par conséquent, le gouvernement du Botswana doit tenir compte des demandes formulées par la

commission d'experts et revoir la législation de manière à permettre aux travailleurs dont les fonctions ne peuvent raisonnablement pas être assimilées à des services essentiels de pouvoir exercer librement une activité syndicale.

The Worker member of South Africa expressed concern that the various pieces of legislation identified by the Committee of Experts as needing urgent and real amendments – the TDA, the Prison Services Act and the PSB – had been designed to reduce workers' rights, which was injurious to work morale, industrial democracy and productivity. It was also worrying that the Government continued to ignore genuine efforts by the national social partners, especially the workers, as well as the Committee of Experts and the Conference Committee.

The right of workers to organize, form organizations of their choice and have representation, including collective bargaining rights, constituted an irreducible minimum for advancing shared progress. An example was provided of a trade union from South Africa which organized workers from the police and prison services and it was highlighted that trade union membership and activities of those workers had never posed a threat to the stability and cohesion of the country or compromised their professionalism in carrying out their official duties. It was therefore not useful for the Government of Botswana to argue that workers in prison services were members of a disciplined force that could not be allowed to freely and genuinely organize. The tendency to systematically and administratively stifle and shrink spaces for civil liberties, including the rights of workers in prison services, was dangerous for economic and societal stability. Therefore, the Committee was strongly urged to call on the Government to preserve and respect the sanctity of the provisions of the Convention, which was unambiguous, persuasive and practical as to the rights of workers to freely organize and bargain, and to take measures to protect those provisions without let or hindrance.

The Government member of Zimbabwe thanked the participants for their interventions that dwelt on the core elements of the issue discussed, which was of a legislative nature. Legislative reforms could not be completed overnight given the plethora of bodies involved, including tripartite structures, the Cabinet, the Parliament and their relevant subcommittees. The Government had informed the Committee about the roadmap, in particular the work being undertaken by the tripartite LLRC, which it had put in place together with the social partners to address the concerns raised by the ILO supervisory bodies. The Government had also stated that it was working together with the ILO field offices, including in relation to the labour law expert to be hired by the ILO to assist in elaborating the labour law reform. While appreciating the collaboration between the Government and the ILO, the speaker urged the latter, including through field offices, to continue supporting the Government and the social partners in the reform process.

The Worker member of Kenya indicated that the trade union organizations of the East African Trade Union Confederation (EATUC) perfectly understood the rationale and principles for essential services in the public services. Workers delivering essential services were conscious that their critical services, their professional commitment and willingness to serve people and their communities, contributed to the attainment of individual, community and national aspirations. Nevertheless, like every other worker, they had workplace rights to safeguard, which were not to be frozen, discounted and undermined simply because the workers were providers of essential services. Such rights should be well preserved, respected and enjoyed. However, the Government had continued to do the opposite, as called out in the report of the Committee of Experts.

Experience had shown that workers who did not enjoy strike actions undertook efforts to avoid them as much as possible but they also had the right to withhold their services where such efforts failed, so as not to open gates for the abuse of other rights. The rationale for classifying essential services as was done in the TDA was incomprehensible, impossible to accept and did not contribute to industrial relations and work place harmony. It was difficult to see how diamond sorting, cutting and selling services, government broadcasting services, the Central Bank of Botswana, veterinary services and railway operations constituted essential services, as their interruption would not endanger the life, personal safety or health of the whole or part of the population. Recalling the Government's assertion to the Conference Committee that legislative amendments would be made to the list, the speaker confirmed with regret that no progress had been made in that regard and asked the Committee to insist on real and tangible progress.

The Worker member of Ghana, speaking on behalf of the Organization of Trade Unions of West Africa (OTUWA), expressed concern about the TUEO Act, highlighting in particular its section 43, which provided for inspection of accounts, books and documents of a trade union by the Registrar at "any reasonable time". The provision was a clear interference by the Government in the internal affairs of trade unions with the real consequence that union activities would be self-censored to favour the Government and not union members. Even when the unions mustered the courage to assert their rights, there was the real and very high likelihood that the Government

would retaliate by instigating false allegations relying on the broad power to inspect union accounts, books and documents.

The speaker also noted previous comments of the Committee of Experts indicating that legislative provisions regulating in detail the internal functioning of workers' and employers' organizations posed a serious risk of interference and were therefore incompatible with the Convention. For instance, in Ghana, the legal framework allowed unions to enjoy the greatest possible autonomy with a view to enabling them to function effectively and the social partners filed their annual financial and other reports with the sole objective of protecting the interests of union members and guaranteeing the union's democratic functioning. Union activities and resources were from and for its members who had the primary right to scrutinize and hold leaders accountable for running the organization. Governments should not include language in the legislation which could create any second level financial accountability mechanism as a pretext to interfere in legitimate trade union activities and the Government was called on to amend the relevant legislation.

An observer representing Public Services International (PSI) indicated that the PSBC had been established in 2011, pursuant to the PSA, with the mandate to negotiate, conclude and enforce collective agreements. In August 2013, the office of the Director of Public Service Management (DPSM) had sent a letter to a member of the PSBC, the Botswana Federation of Public Service Unions (BOFEPUSU), stating that the Government was withdrawing from the PSBC, thereby rendering it dysfunctional, since the PSBC could only pass a lawful resolution if signed by both the employer and the trade union parties. The BOFEPUSU had taken the matter for review to the High Court, which had held that the withdrawal of the employer prejudiced the BOFEPUSU. After the decision of the High Court, the Government had deregistered the BOFEPUSU as a Federation, that decision had been appealed and the courts had again considered the deregistration illegal.

In May 2017, the BOFEPUSU had withdrawn its membership from the PSBC following the Government's decision to unilaterally award a 3 per cent salary increase to public servants outside the purview of the PSBC. The High Court had held that the Government was not permitted to grant unilateral wage increases to public servants during the period when wage negotiations were in progress as it constituted negotiating in bad faith. The High Court had also stated that granting unilateral increase in the manner in which it had been done, had seriously undermined the trade unions and had dented their integrity and credibility by demonstrating that union representatives were not effective in bargaining and thereby dissuading employees from joining trade unions. In addition, the High Court had urged the Government and the unions to revisit the situation, so that the fair and inclusive negotiating forum could be reconstituted. Despite the judgment, the Acting Commissioner of Labour and Social Security had dissolved the PSBC in November 2017, even though unions had been collaborating together with the Minister of Employment, Labour Productivity and Skills Development to resume its operations and the Acting Commissioner had been notified of such efforts. The unions had since appealed to the Minister to rescind or revoke the Commissioner's decision to cancel the PSBC but to no avail.

The speaker further recalled that the revision of the labour legislation was a great opportunity for the Government and the social partners to adopt legislation in line with the ILO standards ratified by the country. Nevertheless, the Government's behaviour clearly showed a deliberate attempt to undermine social dialogue and Botswana's obligations under the Convention.

An observer representing Education International (EI), speaking on behalf of the Botswana Secondary Teachers Union (BOSETU) and the Botswana Teachers' Union (BTU), stated that a high number of employees, including teachers, had been placed under the category of essential services through the amendment of section 46 of the TDA. Such widespread extension of the essential service status to almost 85 per cent of workers in the public service was meant to freeze the rights of workers to organize and effectively bargain, infringing the Convention. Consequently, teachers and support staff in education would remain not only weak but also vulnerable, their working conditions would deteriorate and it would have dire consequences on the quality of education, which was a public good.

The speaker noted with regret the disagreements over the terms of reference of the tripartite LLRC, which had been established to review the labour laws to ensure their compliance with the Convention. The reasons of the disagreement had been the decision of the Government to exclude the TDA and the PSA from the review, even though section 46 of the TDA on essential services was a key aspect of the case and it was therefore unacceptable for it to be excluded from the review.

In addition, the Government had dissolved the PSBC, the only tripartite bargaining structure that had been available in the public sector. As a result, there was no bargaining in the public service in Botswana. Furthermore,

contrary to the Convention, a decision of the authorities to inspect union books had been adopted, which represented an interference in trade union affairs. The Committee was requested to ask the Government to include the TDA, the PSA and the PSB in the labour legislation review.

An observer representing IndustriALL Global Union referred to the continued violation of workers' rights in Botswana reported by its affiliates which resulted from the Government's continued failure to abide by the provisions of the Convention and by the Committee's requests. In 2017, the Committee had noted various submissions concerning new amendments to the TDA, but no concrete progress had been reported to date, in spite of the abundant goodwill and disposition of the social partners, especially the workers.

Expressing his deep concern by the attitude of the Government, the speaker noted in particular that the TDA had a sweeping broad application across all sectors and it was a threat to economic and labour peace. Reports from affiliates in the country pointed to members and workers in the diamond and mining industry experiencing violations deriving directly from the TDA, including the case of a government-owned mining company having fired and declared 5,702 workers redundant without following the procedures. Economic hardship was no reason to undermine workers' rights. Workers with positions in the bargaining unit in the diamond cutting, sorting and sales services had been abusively re-classified as workers in "essential services" with the effect of denying their right to bargain with employers and to strike. They had been unable to get an audience with the Commissioner of Labour and Social Security or any attention to their grievances, the administration of disputes related to essential services being treated as an act of magnanimity. The Government was asked to take appropriate measures to ensure that the TDA was in full conformity with the Convention and to engage in genuine social dialogue with national unions.

Le membre travailleur du Burkina Faso a souligné que, si l'information sur le changement de l'équipe politique est un indicateur à considérer, celui-ci n'est pas pour autant suffisant, en particulier si l'on tient compte du principe de la continuité de l'Etat et du fait que le gouvernement a considéré lors d'une conférence de presse en 2017 que les conclusions de la commission étaient de simples recommandations qui n'engageaient pas les autorités du pays.

Se référant au processus de codification du «vivre ensemble» à travers l'adoption de normes, l'orateur a souligné qu'il avait été considéré que le principe de la liberté syndicale était au cœur des valeurs de l'OIT et que, par consensus tripartite, la convention n° 87 avait été adoptée pour réglementer l'exercice de la liberté syndicale et des droits syndicaux. Dans ce contexte, il est important de rappeler que les conventions sont des traités internationaux juridiquement contraignants et que les pays les ayant ratifiées s'engagent à les appliquer en droit et en pratique. Toutes les autorités du pays doivent contribuer au respect des engagements internationaux pris par leur gouvernement à travers la ratification d'une convention. Or le manque de gouvernance vertueuse dans le respect des engagements internationaux pris et de la parole donnée est pratique courante et constitue un danger. Le mouvement ouvrier doit agir et faire en sorte que les syndicats des travailleurs occupent bien leur place. Il est pour cela essentiel que le Bureau produise une brochure simple, rappelant ce qu'est une convention et ce qu'est la hiérarchie des normes pour un pays l'ayant ratifiée, afin d'éveiller les consciences des jeunes travailleurs.

The Government member of Iraq recalled that the Convention was a fundamental one and referred to fundamental freedoms. The Convention had just been ratified by Iraq. The right to organize and to freedom of association was essential and should be guaranteed even when a small group of workers was concerned. The Government and the social partners should pursue their efforts to better implement the Convention and adopt texts in line with it. The speaker expressed deep gratitude to the ILO and its various bodies for the enormous efforts invested in implementing international labour standards with a view to meeting the objective of social justice.

The Government representative expressed appreciation for the contribution of the different speakers, especially those who supported the Government in its endeavour to advance in the labour law review process. He also expressed regret at the fact that the observations from the workers had not taken into account the progress made, especially considering that legislative changes could not occur overnight. The country's consultative approach to decision-making, as had been mentioned by the Employer member of Botswana, was emphasized.

Most of the issues raised in the discussion concerned legislative issues and therefore needed to be subjected to social dialogue, preferably through the LLRC. However, it was unfortunate that some issues that had already been resolved through tripartite means, such as the Terms of Reference for Review of Labour Laws that formed the basis for ILO technical assistance, were being denied by workers in Botswana. Furthermore, the Worker member of Botswana had made some statements which were not factual.

With regard to the PSBC mentioned by several speakers, it was clarified that: (1) the PSBC had been established in 2011 when the Government as the employer and the public service unions had created its Constitution through collective bargaining and one of the powers bestowed on the Council by its Constitution had been the authority to decide which unions should or should not be admitted to it; (2) in May 2017, the BOFEPUSU AJA had given notice of resignation from the PSBC with immediate effect, as a joint arrangement between four public service unions, members of the PSBC; (3) as of May 2017, the Government had become the only member of the PSBC, which could thus not function or carry out its mandate and the Government had made an application to the Commissioner of Labour to cancel the registration of the PSBC Constitution; (4) the cancellation of the PSBC Constitution had afforded an opportunity to the Government as the employer and all public service unions to craft a new constitution through collective bargaining so as to ensure that in the future, it would not cease to function as a result of a voluntary withdrawal of one of its members; and (5) the Government was hopeful that the new Constitution would be agreed upon and the PSBC would once again be functioning by the end of August 2018.

In conclusion, it was pointed out that social dialogue was a delicate process that required mutual trust and good faith among the parties involved. As previously mentioned, the Government had met with the social partners on numerous occasions and together had achieved several milestones but it appeared from the intervention of the Worker member of Botswana that there were deeper and more serious underlying problems that needed to be addressed by the tripartite partners, with the assistance of the ILO expert. However, the formalization and institutionalization of the mechanism for the review of labour laws clearly demonstrated the Government's commitment to implement the Committee's recommendations, as well as to examine other labour laws, such as the PSA.

The Employer members noted that Botswana had been going through a process of change in Government, in will and in attitude, but that it had not translated into concrete outcomes. Nevertheless, it was appreciated that the Government had sought ILO assistance and hope was expressed that the outcome of such assistance would translate into real progress. Referring to particular aspects of the case, the speaker highlighted that there were many ways of settling the issues at stake. The threshold for setting up unions did not have to be so high but some thresholds could be set; as to the inspection of accounts, books, and documents of a trade union, it would be possible to balance the information the Government deemed necessary and the observance of the Convention. The different views expressed on how progress had been achieved showed an absolute need for addressing the issues in a tripartite manner and the Government was urged to engage in social dialogue with the representative organizations of employers and workers.

Les membres travailleurs ont considéré qu'en l'absence d'évolution concrète il y a lieu de réitérer les mêmes demandes que celles formulées lors de la discussion de 2017. Il s'agit d'abord d'inviter le gouvernement à 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, et notamment le droit de se syndiquer. Le gouvernement doit également mettre la TDA en totale conformité avec la convention et entamer un dialogue social, avec l'assistance technique renouvelée du Bureau. Il doit en outre procéder à la modification de la loi TUEO, en concertation avec les organisations d'employeurs et de travailleurs, afin de mettre cette législation en conformité avec la convention, notamment en abrogeant l'obligation faite aux organisations de tenir leurs livres et documents à disposition du greffier qui peut les examiner à tout moment raisonnable. De même, ne sont pas compatibles avec la convention et doivent être supprimés les facilités et avantages accordés uniquement aux syndicats représentant au moins un tiers des salariés de l'entreprise. Compte tenu du manque de progrès, le gouvernement doit être appelé à mettre tout en œuvre afin de concrétiser les recommandations qui seront adoptées par la commission.

Conclusions

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

The Committee welcomed the Government's agreement to broaden the scope of the labour law review.

Taking into account the Government's submissions and the discussion that followed, the Committee called upon the Government to:

- **take appropriate measures in consultation with the most representative employers' and workers' organizations to ensure that the labour and employment legislation grants members of the prison service that are not considered to be part of the police the rights guaranteed by the Convention;**

- amend the Trade Unions and Employers' Organizations Act, in consultation with employers' and workers' organizations, to bring it into conformity with the Convention;
- provide further information on the Court of Appeal ruling on the invalidity of statutory provisions;
- ensure that the registration of trade unions in law and in practice conforms with the Convention; and
- process pending applications for the registration of trade unions, in particular in the public sector, which have met the requirements set out by law.

The Committee called upon the Government to address these recommendations within the framework of the ongoing labour law review and in full consultation with the social partners. 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 2018.

The Government representative acknowledged the recommendations of the Committee and confirmed that his Government was pursuing labour law review through the tripartite Labour Law Review Committee. The Government was committed to engaging with the social partners with a view to submitting a report to the Committee of Experts' meeting in November 2018 and would continue to resort to the tripartite structures to progress with the legislative agenda and reforms, including the labour law review, during the November sitting of Parliament.

Conclusions

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

La commission s'est félicitée que le gouvernement ait convenu d'élargir la portée de la révision de la législation du travail.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a prié le gouvernement de:

- prendre les mesures appropriées en consultation avec les organisations d'employeurs et de travailleurs les plus représentatives pour veiller à ce que la législation sur le travail et l'emploi accorde aux membres des services pénitentiaires, qui ne sont pas considérés comme faisant partie des forces de police, les droits garantis par la convention;
- modifier la loi sur les syndicats et les organisations d'employeurs, en consultation avec les organisations d'employeurs et de travailleurs, pour la rendre conforme à la convention;
- fournir un complément d'information sur la décision de la cour d'appel dans laquelle elle a prononcé la nullité de dispositions statutaires;
- s'assurer que l'enregistrement des syndicats est, en droit et dans la pratique, conforme à la convention; et
- traiter les demandes en suspens d'enregistrement des syndicats, en particulier dans le secteur public, qui ont satisfait aux exigences établies par la loi.

La commission a demandé au gouvernement de donner suite à ces recommandations dans le cadre de la révision en cours de la législation du travail et en pleine consultation avec les partenaires sociaux. La commission a prié instamment le gouvernement de continuer à se prévaloir de l'assistance technique du BIT à cet égard et de faire état des progrès accomplis à la commission d'experts avant sa prochaine session en novembre 2018.

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 saludó el compromiso manifestado por el Gobierno de ampliar el ámbito de revisión de la legislación laboral.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que se entabló seguidamente, la Comisión instó al Gobierno a que:

- adopte, en consulta con las organizaciones más representativas de empleadores y de trabajadores, medidas apropiadas para asegurar que la legislación laboral y en materia de empleo reconozca a los trabajadores del servicio penitenciario que se considera que no pertenecen al cuerpo de policía los derechos garantizados por el Convenio;
- enmiende la Ley de Sindicatos y Organizaciones de Empleadores, en consulta con las organizaciones de empleadores y de trabajadores, con miras a ponerla en conformidad con el Convenio;
- suministre más información acerca de la sentencia del Tribunal de Apelación sobre la nulidad de disposiciones legales;
- asegure que el registro de los sindicatos en la legislación y en la práctica sea conforme con el Convenio, y
- tramite las solicitudes pendientes de registro de los sindicatos, en especial los del sector público, que cumplan los requisitos establecidos en la legislación.

La Comisión instó al Gobierno a que dé seguimiento a estas recomendaciones en el curso de la actual reforma de la legislación laboral y en amplia consulta con los interlocutores sociales. La Comisión instó al Gobierno a que siga recurriendo a la asistencia técnica de la OIT a este respecto y comunique los progresos a la Comisión de Expertos antes de su próxima reunión, en noviembre de 2018.

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

Convention (nº 19) sur l'égalité de traitement (accidents du travail), 1925

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

Malaysia – Malaysia Peninsular (ratification: 1957)

Sarawak (ratification: 1964)

Malaisie – Malaisie péninsulaire (ratification: 1957)

Sarawak (ratification: 1964)

Malasia – Malasia Peninsular (ratificación: 1957)

Sarawak (ratificación: 1964)

A Government representative indicated that the Government had noted the concerns raised by the Committee in 2017 and had noted its conclusions requesting to re-establish equality of treatment by extending the coverage of the Employees' Social Security Scheme (ESS) to foreign workers. The Government had in fact agreed to extend the protection of the ESS, which would come under the Social Security Organization (SOC SO), to foreign workers and had taken serious efforts over the past year to that effect. However, that process needed to be done in a just and fair manner and at a pace that was comfortable to both employers and workers, as well as the insurance panels, system provider and the SOC SO. A period to ensure the smooth transition of foreign workers to the ESS was needed, for the establishment of implementation mechanisms, databases and roadmaps, and the organization of engagement sessions with stakeholders and the social partners to accommodate the change. Over the past year, the Government had taken several steps to strengthen and enhance the existing Workmen's Compensation Scheme (WCS) with the objective of its phasing-out during a transition period of a maximum of three years. This transition

period was needed in view of three main factors. First, the SOCSO had only recently been tasked with the implementation of the Employment Insurance System and needed a certain time for the funds to be sustainable and the administrative matters related to the Employment Insurance System to operate smoothly. In addition, the existing Social Security Act would need to undergo certain amendments. Secondly, there existed contractual obligations with the insurance panels and the system provider of the e-compensation scheme. Lastly, employers needed to be provided with ample time to adjust to the changes that would occur with the shifting from the WCS to the ESS.

In light of the recent changes that had occurred in Government, that transition plan would be submitted to the new administration for consideration and approval. The Government was ready to take immediate action which included further deliberations and engagement with the social partners. No foreign worker should have been left without coverage for both employment and non-employment injuries. It was the responsibility of states to protect the rights of foreign workers and prevent all forms of discrimination, but it should be noted that access to medical care had always been made available to all workers, regardless of their status. The Government fully supported the principles of equality of treatment and was committed to comply with the request of the Committee to ensure the access of foreign workers to accident compensation. The Government had already sought ILO technical expertise and was ready to forge closer collaboration upon guidance and approval from the new administration. Discussions would be held and technical assistance be sought from the Office on the matter under discussion with a view to develop appropriate mechanisms to overcome any issues that might arise.

The Worker members stated that, for over two decades, the ILO supervisory mechanisms had addressed the persistent issue of equal treatment of migrant workers, in particular with respect to employment injury. Since 1993, the Committee of Experts had addressed the transfer of foreign workers, employed in Malaysia for up to five years, from the ESS, which provided for periodical payments to victims of industrial accidents, to the WCS, which guaranteed only a lump sum payment of a significantly lower amount. Lowering the protection afforded to migrant workers was a clear breach of Article 1 of the Convention, which obliged ratifying state to grant to migrant workers, who suffered injury due to industrial accidents happening in its territory, or to their dependents, the same treatment in respect of workmen's compensation as it granted to its own nationals. The Committee had discussed this case on multiple occasions, requesting the extension of the coverage of the ESS to migrant workers and to develop, in consultation with the social partners, laws and regulations that would ensure the removal of discriminatory practices between migrant and national workers. It had also noted with deep regret that the Government had taken no measures to implement the conclusions of the Committee, nor had it responded to the Committee of Expert's express request to provide a detailed report on the application of the Convention.

For many years, millions of migrant workers had been affected by this discriminatory treatment, which had filled substantial shortages in the supply of low-skilled labour for key economic sectors. It was estimated that around 20–30 per cent of the country's workforce was constituted of migrant workers coming from a number of different countries such as Cambodia, Indonesia, Lao People's Democratic Republic, Myanmar, the Philippines, Thailand and Viet Nam. In addition to the 2 million legally registered migrant workers, there were also several millions of undocumented migrant workers. It was estimated that 1–4 million undocumented migrant workers that were engaged in the most hazardous jobs were not eligible for any compensation. Approximately one third of the workers in the agricultural, manufacturing and construction sectors were migrant workers, with migrant workers making up to 70 per cent of workers in the agricultural sector. Although these industries had contributed 297 billion ringgits (€63 billion) or 35.7 per cent of Malaysia's gross domestic product in 2014, the rate of occupational accidents was extremely high in those sectors. According to official data, between January and October 2017, the Department of Occupational Safety and Health had recorded 1,645 workplace accidents causing permanent or temporary disability and 46 fatal accidents in the manufacturing sector alone. In the same period, the construction industry and the agricultural sector had claimed the lives of 63 and 18 workers, respectively. Given that official statistics only took into account investigated accidents, it was estimated that the real number of workplace accidents was even higher.

Despite these appalling numbers and the enormous contribution of migrant labour to the economic growth and development of Malaysia over the years, the Government continued to deny equal and fair treatment to migrant workers. If under the ESS, a permanently injured worker was entitled to a periodical cash benefit of 90 per cent of his/her "assumed average daily wage" (section 22b and the fourth Schedule of the Social Security Act), permanently injured migrant workers in the same situation would only be entitled to a lump sum payment of only 62 months' salary or 23,000 ringgits (around €4,900) under section 8 of the Workmen's Compensation Act (WCA). The payment of a lump sum instead of periodic payments in itself amounted to a differentiation in the quality of the protection provided, as existing global evidence demonstrated. Furthermore, the level of the lump sum payment provided to migrant workers was a mere fraction of the amount to which Malaysian workers were entitled in the exact same situation. An actuarial simulation undertaken by the ILO, estimated that a national worker was entitled to receive a total of 425,000 ringgits, with periodic payments calculated as a lump sum. According to that simulation,

migrant workers were entitled to about 23,000 ringgits which meant that they were only entitled to 5.4 per cent of the benefits that Malaysian workers were entitled to. Such a level of discrimination between workers in the twenty-first century was shocking and appalling to say the very least.

With regard to medical care, Malaysian workers were entitled to free treatment of injuries at any public hospital or clinic with the medical bill settled by the ESS fund. Under the WCS, medical expenses for work injuries were borne by the employer, which exposed migrant workers to possible abuses, as employers might refuse to pay for the necessary treatment. In addition, migrant workers could only claim refunds for medical costs after they had fully recovered and even then, it took usually several months for them to be refunded, leaving them with no means of survival in the meantime. Undocumented migrant workers ran the risk of being arrested while attempting to access medical treatment. Furthermore, a national worker who sustained a workplace injury causing a temporary inability to work of at least four days was entitled to temporary disability benefits equivalent to 80 per cent of his/her wage. Migrant workers temporarily incapacitated due to workplace injury were only entitled to half-monthly payments equivalent to a third of their monthly wage.

It should be noted that migrant workers were subject to other forms of unequal treatment. As the Committee noted in its 2016 review of the application of the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), in the country, migrant workers still faced with a number of practical obstacles to collective bargaining, in particular due to insecure employment contracts and vulnerability due to anti-union discrimination. In addition, the estimated 300,000 to 400,000 migrant domestic workers employed in Malaysia were still denied basic labour protection under national laws, and suffered from abusive working conditions, including cases of forced labour. The Government had taken severe measures with regard to undocumented migrant workers. In July 2017, the Malaysian authorities had arrested over 3,300 undocumented migrant workers who had failed to register for an E-card. Due to their fear of detention and deportation, many migrant workers had gone into hiding, which severely limited their access to labour protection.

The Worker members expressed their deep concern at the situation of migrant workers who constituted a significant part of the working population of the country. Despite numerous discussions in the Committee, the technical advice provided by the ILO and the Government's statements to take the measures, they had not materialized so far. They urged, with the greatest insistence, the Government to bring its legislation and social security institutions into conformity with the Convention and to ensure equal treatment between migrant and national workers with respect to occupational injuries, in an effective and expeditious manner. As party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Malaysia was required to undertake legislative reforms to eliminate all discriminatory provisions. The new Government had renewed Malaysia's commitment to undertake such necessary reforms. They expected that the Government would fully honour its commitments by taking swift and concrete action to eliminate all forms of discriminatory against migrant workers.

The Employer members mentioned the numerous observations that had been made by the Committee of Experts over a number of years. In addition to the technical issues as raised by the Worker members, it was important to consider the context of the situation. The examination of the case concerned Malaysia and Malaysia – Peninsular, that is, Peninsular Malaysia and East Malaysia. Malaysia was a federal state. It was made up of 13 federal states and three federal territories, divided between two regions. Governance of the state was divided between the federal and the state governments, while the federal government had direct administration of the federal territories. Of particular note was the fact that the states of East Malaysia (Sabah and Sarawak) had separate immigration policies and controls, and a unique residency status. Visas were required for travel between those two states or between either state and Peninsular Malaysia, which created a number of issues, including in terms of administration of the schemes at national level. The situation leading to the discussion of the case had begun in 1993 when foreign workers were transferred from the ESS, which provided for periodical payments to victims of industrial accidents, to the WSC, which guaranteed only a lump sum payment of compensation for industrial accidents.

Over the years, the supervisory bodies had expressed concern at the differences in those schemes, as the workers had elaborated. The Government's intention to carry out reforms and to align or realign the provisions applicable to foreign workers with the scheme for national workers had to be welcomed. However, they also noted that as far back as 2011, the Government had indicated that a technical committee within the Ministry of Human Resources, including all stakeholders, had considered the three following options: (1) extension of the ESS to cover foreign workers; (2) creation of a special scheme for foreign workers under the ESS; and (3) raising the level of benefits provided by the WSC to an equivalent level to those provided by the ESS. This was not the first time that the Government had provided information in the same vein, and concrete movements were not expected. It had to

be noted that the Government had expressed its willingness and commitment to address the situation before the present Committee.

They were aware that making those changes was easier said than done, considering a number of existing challenges. Under the ESS, workers were required to contribute for a minimum of 24 months before they or their family could get any benefits under the scheme, in case of industrial accidents or occupational diseases. Foreign workers were often not long enough in the country to have access to those benefits, while under the FWSC, they were covered immediately in case of injuries. While there were differences in the monetary compensations as elaborated by the workers, other components also had to be taken into account. Since foreign workers were generally contracted for less than 24 months, it had become evident that the ESS scheme was not suitable for them, at least in the current form. Taking into account the large number of migrant workers concerned and their statistically high accident rate, achieving the objective of equity required reconciliation of three main factors: first, the administrative and practical difficulties that had impeded equal treatment of migrant workers, including that migrant workers were typically in Malaysia for project-type work, usually less than 24 months. Also, if they were incapacitated in industrial accidents, they were often repatriated making compensation an administrative challenge. Second, there was the question of whether or not the Convention required absolute equality of treatment. The actual requirement of the Convention was that workers had to receive the same treatment, which was often not possible for practical reasons. That raised the question of broader interpretation, for example whether treatment of equal value was as acceptable as exactly the same treatment. Third, irrespective of the interpretation chosen, and given that the ESS scheme was difficult to apply to workers who were not in the country for the minimum qualifying period, it was essential to determine the actuarial equivalence of the lump sum paid under the WCS to migrant workers to the value of the periodical payments. The comparison between the value of periodic benefits and that of a lump sum benefit was a particularly delicate and technical question. Depending on the answer, it was possible for the WCS to be viewed as a valid way of managing employment injury and invalidity benefits for foreign workers in Malaysia. This could require the adjustment of the payment. But the quantum of compensation was not the only consideration, coverage was also important. The ESS scheme applied only to workplace accidents (including commuting) that resulted in at least four sick-days' leave whereas no such restrictions applied to the WCS. With respect to coverage, the WCS was arguably more favourable to foreign workers than the ESS was to nationals.

A number of other member States with federal/state jurisdictions faced similar challenges. This was indeed the reason why a number of such states did not ratify Conventions unless their federal laws required compliance by states. However, since it was arguably outside the mandate of the Committee to request that member States change their constitutions, it should be recognized that a solution to that issue was unlikely to involve applying the domestic scheme directly to migrant workers. Instead, a hybrid solution should be sought to achieve a sustainable outcome, taking into account the practical challenges. In conclusion, the Committee should acknowledge the Government's commitment to make progress on the issue, as well as its commitment to the value of equivalence. The Government should, as soon as possible, provide plans and processes how it intended to achieve progress.

The Worker member of Malaysia stated that Malaysia was a major destination country for migrant workers in Asia. There were about 2 million migrant workers with regular immigration status, while it was estimated that there were about 4 million migrant workers in an irregular situation, with an accurate number of the latter still being unavailable. The Committee had examined this case for the first time in 1996 after the downgrading of migrant workers from the ESS to the WCS in 1993. The compensation for workplace accidents involving migrant workers had continued to remain blatantly unequal. For example, national workers under the ESS had two forms of payment, temporary disablement and invalidity payment. They also had other additional benefits such as medical benefits, constant attendance allowance, vocational rehabilitation, dependants' funeral and education benefits. On the other hand, migrant workers were entitled to a one-off payment under an insurance scheme that had to be purchased by employers – on the condition that employers had purchased it. The insurance benefit entitlements were only provided from about US\$2,500 to 6,281 for accidental death or permanent disability sustained during working hours. Migrant workers could also claim meagre sums for medical treatment and approximately US\$1,206 could be claimed for repatriation and funeral expenses. If migrant workers were injured outside working hours, they had to sustain permanent disability to benefit from an insurance which was supposed to cover loss of pay, compensation, treatment cost and repatriation.

Migrant workers in Malaysia were largely employed in dangerous jobs without sufficient protective equipment or training and they also lived in very poor conditions. High incidence of workplace accidents and commuting accidents had been documented, with the largest number of occupational injuries and deaths occurring in the manufacturing, construction and agricultural sectors, all of which were major sectors of employment for migrant workers. In 2018, the death of three migrant workers had caught media attention. The 28-year-old Adelina had died on February 2018 at Taman Kota Permai Bukit Mertajam as a result of abuse. A post-mortem report found that she

had died of organ failures, and the police did not rule out the possibility that other than being beaten and slapped, the maid's health had also been neglected, including by not giving her proper food and shelter over a couple of months. The family had been paid an amount equivalent to three years of wages that had not been paid and compensation for the family, which had included the costs for repatriation and funeral. Also, an Indian migrant worker, Mr Lathif, a 22-year-old documented worker in Malaysia since January 2018, had been pinned under an overturned tractor while working in an oil palm plantation. He had died in May 2018 as a result of his serious injuries. The meagre compensation sum had yet to be paid to the family. Moreover, Haironnissa, an Indonesian migrant worker had died due to high fever while in service. The panel clinic doctor had refused to refer her to hospital for further treatment. Her supervisor and production officer had failed to assist her, and she had died after her parents had taken her back to Indonesia. Action was still pending for the investigation of the company.

Since January 2018, the Malaysian Trades Union Congress (MTUC) had received 42 cases concerning occupational accidents of migrant workers. 60 per cent of those workers had suffered salary deduction, inadequate access to medical treatment and were unable to work. No steps had been taken to implement the objectives of the Eleventh Malaysia Plan (2016–20), namely: (1) developing and implementing a comprehensive immigration and employment policy for migrant workers; (2) engaging with the tripartite constituents; and (3) providing the Committee with the detailed report requested in 2011 and 2017. This was the fifth time since 1996 that the Committee had examined the Government's failure to comply with the Convention.

While the issue remained unresolved, the life, safety and security of migrant workers continued to be at stake. After 60 years, the Government had been replaced. The new Government should undo the wrong that had been done and reinstate the equality of treatment of migrant workers in conformity with the Convention as per the recommendation of the Committee of Experts without any further delay.

The Employer member of Malaysia noted that, currently, foreign workers in Malaysia were insured under the WCS, put in place by the WCA. The scheme had been working well, as foreign workers were provided with a lot of benefits, including: lump sum payment for injuries or death; payments for injuries sustained during work; and payment for repatriating the deceased body to the country of origin in the event of death. Likewise, the Labour Department was empowered to speedily assess claims for workmen's compensation, receive payments from the respective insurance company and execute the disbursement of workmen's compensations to the dependents of deceased workers. Finally, the insurance premium under the WCS, ranging from 68 to 72 ringgits per employee per year, was fully paid by the employers. More concretely, the types of benefits and compensation under the WCS were the following: (1) in the case of temporary disablement: half-monthly payments up to 165 ringgits for up to five years; (2) in the event of permanent total disablement: payments in the amount of wages for 60 months or 23,000 ringgits (whichever amount was inferior); if in need of constant personal assistance, an additional 25 per cent would be added to the compensation; (3) in the event of permanent partial disablement: a percentage of 23,000 ringgits depending on the degree of physical impairment/loss of earning capacity; (4) in the case of death during work or commuting: payments in the amount of wages for 60 months or 18,000 ringgits (whichever amount was inferior); (5) in the case of death or permanent total disablement: 23,000 ringgits; and (6) repatriating expenses for death or permanent total disablement: 4,800 ringgits.

Taking into account those benefits and the accident coverage, it was ironic that the Committee had insisted on multiple occasions that foreign workers be placed under the SOCSO coverage, without examining whether that was really beneficial for foreign workers. For example, under the Employment Injury Scheme, the coverage was limited to workplace employment injury which included commuting injury, which had to fulfill the criteria that the sick leave arising from employment injury had to be at least four days of unavailability for work, as compared to the WCS which provided for 24 hours coverage. In view of the above, while the examination by the Committee was based on the technical issues of equality of treatment, there was no realization that placing foreign workers under the SOCSO would be to their detriment. The insistence of the Committee to examine the present case would eventually result in foreign workers being covered by the Employment Injury Scheme applicable for workplace employment injury only, instead of the WCS which provided for 24 hours coverage with a list of benefits as stated earlier which are indeed superior and more beneficial than the benefits under SOCSO's Employment Injury Scheme.

The Government member of Bulgaria, speaking on behalf of the European Union (EU) and its Member States (as well as Montenegro, Bosnia and Herzegovina, and the European Free Trade Association (EFTA) countries, Norway and the member of the European Economic Area) stated that the EU–Malaysia Partnership and Cooperation Agreement concluded two years ago had further strengthened the bilateral cooperation with the EU and had encompassed a wide range of areas, including human rights and sectoral cooperation on labour and employment. Nevertheless, it was deeply regrettable that the case had already been discussed the year before in the

Committee and that the discriminatory treatment of foreign workers was a longstanding issue that had persisted since 1993, despite recurrent calls from the Committee to put an end to this practice.

Since the detailed report as requested by the Committee had not been provided by the Government, the speaker was bound to reiterate the same comments as in the previous year: Migrant workers provided much needed skills and made invaluable contributions to the social and economic development of Malaysia and 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 contributing, among other things, to an increased risk of accidents and health problems. She therefore urged the Government to take prompt measures to extend the social security scheme for national workers to foreign workers, in order to put an end to that discriminatory practice and ensure equal treatment of foreign workers with regard to accident compensation in particular. Closing the intervention, the speaker reiterated the commitment of the EU to a constructive engagement and partnership with Malaysia.

The Government member of Thailand, speaking on behalf of the Association of Southeast Asian Nations (ASEAN) member States, welcomed the progress made by the Government and its willingness to extend the social security scheme to foreign workers, as well as the initiated few actions on the way forward. The Government should be encouraged to continue its efforts towards realizing its commitment with respect to the Convention, in particular to ensure equal treatment of foreign workers with regard to accident compensation. The Committee should consider the efforts made by the Government.

The Worker member of the United States recalled that there were two distinct workers' compensation systems in Malaysia: one for Malaysians, the other for registered migrant workers. Unregistered migrant workers were not covered by any kind of accident compensation, even though they outnumbered the registered migrant workers by an estimated 2 to 1. If one wanted to be cynical about it, there were actually three schemes in Malaysia: the ESS, WCS and nothing at all. There was no accountability for employers when purchasing the workers' compensation insurance: if an employer purchased no insurance, inadequate insurance or insurance with exclusions (for example, for injuries that occurred without the proper safety equipment), it was only the injured worker that suffered. Moreover, the registration of migrant workers was tied to specific employers. If a worker was injured during work done for another employer, he would not only no longer be covered by the WCS but would face the risk of getting arrested in case of seeking medical attention and being deported. The WCS set a maximum limit for lump sum payments, which were abused by employers. For example, a Nepali construction worker had a workplace accident that had resulted in the loss of four fingers. The medical costs had been more than the 25,000 ringgits provided by the insurance policy. His employer not only had used the entire lump-sum payment to pay for the medical expenses but was now charging the worker for the expenses in excess of the policy. The worker was, in fact, paying for the injury, rather than being compensated for it. Sadly, under the WCS, that was a "best case" scenario as that worker's employer had purchased an insurance policy for the maximum amount.

In the absence of labour inspections, there was no way to hold employers accountable for compliance with the minimum guarantees under the WCA, which was already in violation of the Convention and did not cover two-thirds of the migrant workforce of the country. There was also no way for workers to lodge complaints for inadequate insurance, and particularly no way for them to do so without fear of retaliation. Not only was the existence of two accident compensation schemes for national and migrant workers plainly discriminatory and in violation of the Convention, it was also exploitative of migrant workers. The WCA was a legal means of refusing to take care of workers injured at work and instead provided a convenient way to dispose of obligations once the lump sum was paid. It was that kind of exploitation that the Convention sought to eliminate.

The Worker member of Singapore noted that although the laws did not explicitly discriminate against migrant workers, in practice, the rights of migrant workers were not fully protected due to the inaction of the Government. There were several examples. First, according to the Employee Provident Fund Act, 1991 (Act No. 452), contributions to the Employee Provident Fund were mandatory, whereas they were voluntary for migrant workers. Moreover, migrant workers could withdraw savings only upon death, in the event of mental or physical incapacitation, or upon return to their country of origin. Secondly, pursuant to the Trade Union Act, 1959 (No. 262), Malaysian workers could organize and form trade unions, while migrant workers only had this right if their employers had no objection. Additionally, the Ministry of Home Affairs had set an absolute prohibition on migrant workers from joining any sort of association. Thirdly, under the Employment Act, 1955, every worker had to have a contract of employment clearly naming the employer. However, migrant workers were faced with the absence of employment contracts or contracts with less favourable conditions as agreed before departure from their country of origin. Some employers did not renew the permit of workers, resulting in migrants losing their legal status. Migrant workers were also experiencing issues regarding the right to collective bargaining, non-payment of

wages, unfair dismissals and lack of protective workplace equipment. The speaker referred to a pending complaint at a regional Labour Department concerning a Nepali worker who had been injured, who had not received any salary during his period of medical leave, and who had to pay for his medical expenses. Without paying 3,000 ringgits to the placement agency, he would not be able to return to his country. As a result of an investigation by the Regional Labour Department, various labour law violations had been determined. Discriminatory practices as described above were occurring to migrant workers on a daily basis. Considering that the issue under the Convention had been persisting for more than 20 years, he called on the Government to restore migrant workers under the SOCSO and to ensure equal treatment and protection of migrant workers.

The Worker member of Australia stated that the significantly inferior compensation rights of migrant workers was a direct breach of the Convention and remained of serious concern. According to estimates, between 4 and 6 million migrant workers were working in Malaysia. A large percentage of them were engaged by outsourcing or recruitment agencies, with more than 2,000 agencies in Malaysia alone. Legislative changes had made migrant workers employees of those agencies rather than of the employers for whom they provided labour, with those agencies organizing the legal documents. Although illegal, many migrant workers faced debt bondage arrangements. The withholding of passports was common and human trafficking occurred on an increasing scale. An Amnesty International Report in 2010 had found that migrant workers were highly depended on the agents because, if they left or were dismissed by the agency their status changed to being illegal. Referring to the example of a Nepalese migrant worker employed by a recruitment agency, who did not know the name of his employer, which made the claiming of accident compensation difficult, she emphasized that the current system undermined the transparency regarding the incidence of injury of migrant workers. Outsourcing also further limited the capacity of the labour inspectorate, which already carried out very few labour inspections. Despite past offers of ILO technical assistance, the breaches of the Convention had persisted.

The Worker member of Indonesia, speaking on behalf of the Indonesian Workers Welfare Union (IWWU), the Cambodian Labour Confederation (CLC), the Confederation of Trade Unions of Myanmar (CTUM), the Federation of Korean Trade Unions (FKTU), the Korean Confederation of Trade Unions (KCTU), the Federation of Free Workers (FFW) and the Center of United and Progressive Workers (SENTRO), highlighted that despite the vital role of migrant workers in the development of the South-East Asian region, they were often subject to abuses. Malaysia had benefited greatly from the employment of migrant workers in several economically important sectors such as manufacturing, construction and plantations. However, the situation regarding migrant workers, particularly with respect of employment injury compensation, was not in line with the Convention and more appropriate and bold actions should be taken. The high incidence of workplace accidents and deaths among the foreign workers in Malaysia was of serious concern. In a current side event, the International Labour Conference, the interregional trade union organizations (Asia and the Pacific, Africa, America, Arab, South-East Asia and South Asian) had signed a memorandum of understanding (MOU) to join and coordinate efforts with a view to better promote the protection of migrant workers across the region. During the signing ceremony of that MOU, the Director-General had expressed the ILO commitment to support this initiative. The Government should show similar commitment to ensure that the issues of migrant workers would be effectively addressed.

The Government representative stated that all comments made during the discussion would be taken seriously as they would help the Government to improve the situation in the country. Support was sought from the Employer and Worker members of the country, particularly the latter, to act as a catalyst in realizing the transfer of the protection of foreign workers by the ESS. Managing the welfare of foreign workers had always been a priority of the Government as provided for in the Eleventh Malaysia Plan (2016–2020). The Government was committed to this priority despite the recent changes in the administration and would ensure that the quality of protection towards all workers in the country was in line with international labour standards, particularly those Conventions that had been ratified by the country. The Government had agreed to expand the coverage of the ESS to foreign workers, which would be done in a progressive and cautionary manner. He concluded by assuring the full and undivided commitment of the Government to undertake efforts to ensure that Malaysia would adhere to the principles of the Convention.

The Employer members stated that the main issues raised in the discussion related to the different benefits to which foreign and national workers were entitled, and the practical challenges relating to the reintroduction of the equal treatment between foreign and national workers. The discussion had shown the many instances and scenarios that could occur with regard to documented and undocumented foreign workers. The Government had to address these challenges, in cooperation with the social partners. It also had to give genuine consideration on how to deal with the individual situation of the foreign workers that had been injured, that were in a desperate situation, and that were prohibited from access to social security benefits. Such situations also occurred in many other countries and not only Malaysia, but the individuals affected needed consideration. The issues surrounding the case

had been raised many times by the ILO supervisory bodies and the Committee had to be realistic in recognizing that changes would not be immediate. While the commitment of the Government had been heard before, the new Government had given its firm commitment to achieve outcomes. Between the obligations arising from the commitment in the CPTPP and the Convention, the only way for the Government was to go forward.

The Worker members stated that the Committee had abundantly discussed the long-standing and persistent issue in its previous sessions, including last year, and had consistently urged the Government to bring its legislation into conformity with the provisions of the Convention. The speaker welcomed the answers provided by the Government formulated in a positive and constructive approach. However, it was a fact that despite having benefited from ILO technical assistance on the matter in 2016, the Government had taken no concrete steps to address the situation and ensure equal treatment between migrant workers and national workers with respect to workplace injury compensation. The required steps to remedy the situation were quite simple and had to involve the re-introduction of all migrant workers in the ESS, so as to guarantee equal treatment between migrant workers and national workers regarding accident compensation. Their reintegration in the ESS would be in line with the principles of the Convention and in fact, it had been recommended by the ILO technical team in 2016 as the most effective solution. Recalling that urgent action was required on the issue, the speaker called on the Government to demonstrate its commitment to give full effect to the Convention by taking immediate and effective steps to ensure that the Convention's requirement for equal treatment of migrant workers and national workers with respect to workplace accident compensation was met. In view of the persistence of the situation, but welcoming the positive approach, the speaker urged the Government to accept a direct contacts mission to assess progress before the next International Labour Conference. The speaker thanked the Government for the response and expressed the hope that the situation would positively evolve in coming years.

Conclusions

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

The Committee welcomed the Government's stated commitment to ensure the Convention's requirement for equal treatment of migrant workers and national workers.

Taking into account the Government's submissions, the discussion of the case that followed, and the 2017 conclusions of the Committee, the Committee urged the Government to:

- 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;
- engage in genuine consultations 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; and
- take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury.

The Committee called upon the Government to accept an ILO direct contacts mission 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.

La commission s'est félicitée de l'engagement pris par le gouvernement de garantir l'égalité de traitement entre les travailleurs migrants et les nationaux prescrite par la convention.

Prenant en compte les exposés du gouvernement, la discussion du cas qui a suivi et les conclusions de la commission de 2017, la commission a prié instamment le gouvernement de:

- prendre des mesures pour élaborer 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 aux travailleurs migrants de façon effective;
- entamer de véritables consultations 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'accident 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 pour faire en sorte que les travailleurs migrants aient accès aux soins médicaux en cas d'accident du travail.

La commission a invité le gouvernement à accepter une mission de contacts directs de l'OIT en vue d'appliquer ces recommandations et mettre au point des mécanismes qui permettent de résoudre les questions pratiques que pose la couverture des travailleurs migrants par le 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.

La Comisión saludó el compromiso manifestado por el Gobierno de velar por el cumplimiento del requisito sobre la igualdad de trato entre los trabajadores migrantes y los trabajadores nacionales previsto en el Convenio.

Teniendo en cuenta las informaciones proporcionadas por el Gobierno, la discusión del caso que tuvo lugar a continuación y las conclusiones de la Comisión en 2017, la Comisión instó al Gobierno a que:

- tome medidas para formular y comunicar su política de regulación de 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, extendiendo la cobertura del régimen de seguridad social de los empleados a los trabajadores migrantes de manera que sea efectiva;
- inicie consultas genuinas con las organizaciones de empleadores y de trabajadores para elaborar una legislación que garantice la eliminación de prácticas discriminatorias entre los trabajadores migrantes y los trabajadores nacionales, especialmente en relación con los accidentes en el 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 las indemnizaciones en el extranjero, y

- **adopte las medidas legislativas y prácticas necesarias para velar por que los trabajadores migrantes tengan acceso a atención médica en caso de accidentes del trabajo.**

La Comisión invitó al Gobierno a que acepte una misión de contactos directos de la OIT con miras a aplicar estas recomendaciones y a establecer mecanismos para resolver las cuestiones prácticas que dificultan la aplicación del régimen de seguridad social nacional a los trabajadores migrantes.

Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144)

Tripartite Consultation (International Labour Standards)
Convention, 1976 (No. 144)

Convention (n° 144) sur les consultations tripartites relatives
aux normes internationales du travail, 1976

El Salvador (ratificación: 1995)

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Una representante gubernamental, Ministra de Trabajo y Previsión Social reconoció el profesionalismo y la objetividad con la que la Directora del Departamento de Normas Internacionales del Trabajo presidió la misión de contactos directos llevada a cabo en julio de 2017. En su informe, la Comisión de Expertos reconoce como caso de progreso el caso de El Salvador sobre el cumplimiento del Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144) por las acciones que se han impulsado para activar el Consejo Superior del Trabajo (CST) y avanzar en el cumplimiento efectivo de dicho Convenio. Por esta razón, el Gobierno se sorprendió de verse incluido nuevamente en la lista corta de casos individuales de la Comisión de Aplicación de Normas, puesto que el Gobierno, no sólo ha expresado su compromiso para encontrar las soluciones para activar el CST y fomentar el diálogo, sino que además ha procedido a la ejecución de dichas acciones. Con esa misma determinación y en base a los principios, vocación democrática y transparencia que orientan la gestión del Gobierno, se aceptó la realización de la misión de contactos directos, la cual ha sido una oportunidad para que dicha misión conociera «in situ» las acciones y compromisos de las instancias del Gobierno directamente relacionadas con el cumplimiento del Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87) y el Convenio núm. 144.

Respecto a la recomendación de la misión de contactos directos referida a la inactividad del CST, y retomando lo sugerido por la citada misión, en octubre de 2017 se solicitó la cooperación técnica de la OIT al Departamento de Normas, la cual fue aceptada. En dicha solicitud se pidió el acompañamiento en tres procesos que se celebrarían con el sector laboral y con las gremiales empresariales en relación con: i) la reforma al reglamento del CST; ii) la formulación de propuestas de reformas legislativas para la ampliación del derecho de libertad sindical, y iii) la realización de acciones formativas y de fomento del diálogo social. Pese a los retrasos en la coordinación para iniciar dicha cooperación, ya se ha realizado una primera ronda de consultas con el sector laboral para iniciar una propuesta de reforma del Código del Trabajo. Es de lamentar que la representación de las federaciones querellantes del caso núm. 3054 ante el Comité de Libertad Sindical no asistieran a la primera reunión, aun cuando habían sido convocadas. Al respecto, y con la expectativa de realizar una efectiva coordinación con la cooperación técnica de la Oficina, se continuarán las acciones llevadas a cabo en el marco del seguimiento a las conclusiones de la misión de contactos directos en los próximos meses.

En relación con las memorias que han de presentarse en virtud del artículo 22 de la Constitución de la OIT y las consultas sobre las mismas, el Ministerio de Trabajo y Previsión Social (MTPS), pese a que las memorias son remitidas anualmente a las organizaciones de empleadores y de trabajadores para su consulta, no se han recibido aportes o valoraciones sobre las mismas por parte de tales organizaciones. De igual manera, las señaladas memorias constituyen información de carácter público, de forma que están a disposición de quienes las solicite por los canales correspondientes.

Por otra parte, e independientemente de las constantes quejas de la Asociación Nacional de la Empresa Privada (ANEP) y de las federaciones y confederaciones afines a la misma, el Gobierno, en coherencia con su compromiso con los trabajadores, está implementando medidas con miras a garantizar una vida digna y el acceso a un trabajo

decente. En este sentido, se han logrado avances y se han tomados decisiones en espacios tripartitos que mantienen una agenda activa de trabajo y en los que participa la ANEP de forma permanente. Entre los señalados avances, se encuentra la aprobación del incremento del salario mínimo por el Consejo Nacional del Salario Mínimo (CNSM), gracias al cual más de 240 000 trabajadores han incrementado sus ingresos y mejorado la calidad de vida de su familia, de los cuales el 45 por ciento son mujeres. Además, el Instituto Salvadoreño del Seguro Social (ISSS) ha aprobado dos nuevos regímenes especiales de seguridad social para trabajadores del sector informal y personas migrantes y sus familias. Por otro lado, gracias a las gestiones realizadas por el Gobierno y las condiciones generadas para la inversión productiva, los empleos aumentaron. En particular, entre 2009 y 2008 se crearon 138 293 empleos formales, el 79 por ciento en el sector privado. Según la Encuesta de Hogares de Propósitos Múltiples (EHPM) 2017, la pobreza disminuyó en un 11 por ciento: del 40 por ciento de los hogares en 2008 al 29 por ciento en 2017. Desde el Fondo Social para la Vivienda (FSV) se están implementando medidas, tales como la apertura de líneas de crédito, para garantizar el derecho al acceso a una vivienda digna de los trabajadores y sus familias. Por otro lado, el Instituto Salvadoreño de Formación Profesional (INSAFORP) está innovando los procesos formativos para que de manera progresiva se adapte la mano de obra a las necesidades del mercado laboral. Por último, la representante gubernamental proporcionó información estadística destacando los avances alcanzados en materia laboral en los últimos cuatro años, tales como la colación de 70 170 personas en puestos de trabajo, 33 369 de los cuales son mujeres y 36 801 hombres; la realización de 119 316 inspecciones y reinspecciones realizadas en 9 367 lugares de trabajo multados por incumplimientos y violación de la legislación laboral; y la cooperación con más de 20 000 empresas privadas para el fomento del empleo a través del Sistema Nacional de Empleo (SisNE).

Todo ello, pone de manifiesto que el Gobierno no ha cesado de coordinar, dialogar e impulsar iniciativas conjuntas tanto con los trabajadores como con los empleadores y con todos aquellos sectores comprometidos con el desarrollo del país. No obstante, el diálogo social a través del CST, y en función de las competencias que éste tiene para el cumplimiento de las normas internacionales de trabajo, requiere de la voluntad política de la ANEP y sus gremiales, así como de las federaciones y confederaciones afines a ellos. El Salvador cuenta con la apertura, la convicción y la constatación histórica de que el diálogo social es el fundamento de la democracia y de la paz. Sin embargo, el tripartismo requiere de la participación de tres partes, y si una de las partes no tiene ni la voluntad política ni la vocación democrática para su aplicación, es imposible que se efectúe y se consolide.

En consecuencia, la representante gubernamental hizo un llamamiento a las organizaciones de empleadores, para que se incorporaran al CST, tomando en cuenta que no deben ser electos, ya que el reglamento vigente les concede ese derecho. Su participación en el CST resulta crucial, considerando la voluntad y el deber que tienen como mandantes de la OIT, para asegurar que las normas internacionales del trabajo se apliquen en El Salvador. Agradeció nuevamente a la Oficina por el apoyo brindado con la finalidad de llevar a cabo cooperaciones técnicas en el marco del cumplimiento de los Convenios núms. 87 y 144, y de la promoción del Convenio sobre la protección de la maternidad, 2000 (núm. 183) y el Convenio sobre las trabajadoras y los trabajadores domésticos, 2011 (núm. 189). Finalmente, reiteró el compromiso del Gobierno con el diálogo social en pro del avance y desarrollo del país y de garantizar que los trabajadores y trabajadoras tengan acceso a una vida digna.

The Worker members recalled that this was the fourth consecutive year that the case was being examined by the Committee. In 2017, the Committee had urged the Government to: (i) reactivate, without delay, the Higher Labour Council (CST); (ii) ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives in compliance with the Convention, without intimidation; (iii) ensure adequate protection for the premises of the representative workers' and employers' organizations from violence and destruction; and (iv) report in detail on the application of the Convention in law and practice to the Committee of Experts. They welcomed that the Government had in the meantime accepted a direct contacts mission, which had taken place in July 2017. The mission had suggested that the Government avail itself of ILO technical assistance to implement the Committee's recommendations. It was to be welcomed that the Government had now requested technical assistance and was collaborating with the ILO to give full effect to the Convention. The current comments of the Committee of Experts focused on two elements: effective tripartite consultations and adequate procedures for the election of representatives of social partners to the CST. It was regrettable that despite repeated discussions in the Committee, the Government had failed to hold tripartite consultations with respect to the matters concerning the activities of the ILO. The ratification of ILO Conventions was no compensation for the absence of consultations, which had to start without any further delay. While other tripartite bodies, such as the Salvadorian Social Security Institute, the Housing Social Fund and the National Minimum Wage Council were fully functional and effective, the challenges with respect to the CST had not entirely been resolved.

They understood that the main obstacles for the operationalization of the CST concerned the difficulties with respect to the procedures in relation to the election of representatives of social partners. While there were no

complaints with respect to the election of employer representatives to the CST, there were still questions with respect to the election of worker representatives. They understood from the Government's submission before the Committee that it had requested trade unions to present their proposals for the worker representatives in the CST, that three relevant nomination proposals had been received in May 2017, and that the Government had subsequently determined the members of the CST based on criteria such as membership and number of collective bargaining agreements. Subsequently, by applying the criteria of representation, the first list had been allocated with five titular representatives, the second list with two titular representatives and the third with one titular member. The worker members had been sworn in. The employer side had decided not to attend the first meeting of the CST due to its concern over the non-conformity of the workers' representation mechanism. While the concerns from the employer side were understandable, that issue was really for the trade unions to decide. Appreciative of the attempts undertaken by the Government to resolve the impasse, it was important that the criteria for representativeness were transparent and objective. The procedure and the criteria chosen had to be based on the consensus of the workers and had to enjoy their trust. The Government had to take a proactive role in facilitating consensus seeking instead of imposing criteria, which as presented did not in themselves seem particularly objectionable, unilaterally.

In their view, the actions so far taken by the Government had been delayed and lacked the transparency needed for building trust with the social partners. The implementation of the recommendations of the 2017 direct contacts mission was crucial to achieve real progress. In particular, the mission had recommended that a working group might be set up with all the federations and confederations concerned, including those that did not have representation in recently sworn members, to determine procedures and criteria of representativeness. As it had been the case with the other tripartite structures functioning in El Salvador, they remained convinced that improving social dialogue would ease many disputes in the country.

Los miembros empleadores indicaron que la Comisión conoce por segundo año consecutivo este caso; antes, se examinó en 2015 y 2016 el Convenio núm. 87. En la anterior Conferencia el Gobierno dio explicaciones sobre el cumplimiento del Convenio; se hicieron varias recomendaciones y se decidió el envío de una misión de contactos directos. Corresponde ahora analizar el cumplimiento de las recomendaciones de esta Comisión del año pasado, así como las de la misión de contactos directos. Como punto de partida se urgió al Gobierno reactivar sin demora el CST, recomendación sobre la cual la misión de contactos directos insistió, con la indicación de que se hiciera mediante el diálogo social a fin de asegurar su pleno funcionamiento. A la fecha el CST no está operando. No obstante, el Gobierno da cuenta que ha hecho la designación de sus miembros. Es importante destacar que el Convenio que se examina es sobre diálogo social, lo cual está en la naturaleza misma de la Organización. La sola pertenencia a la OIT es ya un principio de compromiso de los Estados para efectuar consultas a los actores sociales en las materias de su interés. Estas deben hacerse a los legítimos representantes de los trabajadores y empleadores; ésta es una obligación de los Estados y un derecho de los actores sociales. En el presente caso, el Gobierno hizo la designación de los trabajadores sin que se conozcan los criterios de representatividad que utilizó, si es que se basó en algún criterio. Tanto así que los tres grupos mayoritarios de trabajadores manifestaron a la misión de contactos directos que desconocen los criterios utilizados por el Gobierno y uno de ellos disputa la designación. Los trabajadores habían señalado al Gobierno como el responsable de la paralización del CST. Esas dudas han sido señaladas por los empleadores a quienes les supone un problema la interlocución en tales condiciones.

En la raíz del problema está que no han sido explicados los criterios para la designación, si es que existen. El establecimiento de reglas claras, estables y conforme a derecho, para la reactivación y pleno funcionamiento del CST fue requerido por la misión de contactos directos hace varios meses. Se informó que la revisión estaría por iniciar y ello a instancias de la Oficina de la OIT de San José. Lo anterior genera dudas justificadas sobre la voluntad del Gobierno para obrar en consecuencia de las recomendaciones de los órganos de control. Sobre el mismo tema, el Gobierno dice que, además del CST, existen cinco entes tripartitos y 17 instituciones autónomas tripartitas, las cuales se encuentran en pleno funcionamiento. La información que tienen los empleadores parece contradecir esa afirmación del Gobierno.

En marzo de este año la ANEP y la Organización Internacional de Empleadores (OIE) presentaron al Director General de la OIT una solicitud de intervención urgente, precisamente, por interferencia gubernamental en las elecciones de representantes en el CNSM, en el Instituto de Acceso a la Información Pública, en la Junta Directiva de la Comisión Ejecutiva Portuaria Autónoma y en la Junta de Directores de la Superintendencia General de Electricidad y Telecomunicaciones. Sobre el particular hay que recordar las conclusiones del año pasado y las observaciones de la misión de contactos directos, en el sentido de que el Gobierno debe garantizar la libertad y autonomía de la elección de los representantes de trabajadores y de empleadores. En todas esas instituciones los delegados del sector empleador no fueron designados por la organización más representativa, la ANEP, sino por el Presidente de la República con base en sendos decretos legislativos hechos a la medida para cada una de tales instituciones, a fin de permitir la designación presidencial inconsulta. Todos los decretos tenían vicios de

constitucionalidad, lo cual fue declarado por la Sala de lo Constitucional. Lamentablemente, según el fallo de ese alto tribunal, debe ser hasta el vencimiento del plazo del mandato de los actuales directores — y no representantes de los empleadores — que se puede hacer la designación de los legítimos representantes conforme la legislación original. Esto tampoco ha sucedido, pues una vez vencido el plazo en cinco de las organizaciones antes referidas, el Gobierno ha realizado diferentes actos de clara injerencia, en violación abierta a la recomendación de la misión de contactos directos y al fallo judicial referido, con el fin de evitar la participación del sector empleador. En algunos casos simplemente no efectúan las designaciones y en otros, llega a extremos que deben ser puestos en conocimiento de la Comisión, para que no quede lugar a duda de la falta de voluntad gubernamental para cumplir con sus obligaciones derivadas de la membresía de OIT y de la ratificación de sus convenios.

En relación con el caso de la Superintendencia General de Electricidad y Telecomunicaciones, la ley establece que en la junta directiva deben participar un director propietario y un suplente electos por las asociaciones gremiales del sector privado legalmente establecidas en el país. El Gobierno, sabiendo que la organización más representativa de empleadores es la ANEP, hecho reconocido sin discusión por todos los gobiernos anteriores y sin disputa alguna por otra organización de empleadores de aquel país, facilitó la rápida e irregular creación de una serie de supuestas asociaciones que se presentaran a la elección de los representantes empleadores, asegurándose una mayoría a fin de imponer delegados afines al Gobierno. Esto fue puesto en conocimiento de la Fiscalía con la finalidad de que se castigue a los responsables de los delitos cometidos en la simulación de actos y falsificación de documentos necesarios para la creación de las supuestas organizaciones de empleadores. Por otro lado, se obstaculizó a las asociaciones que forman parte de la ANEP la emisión de credenciales, con lo cual se les impidió la participación en la votación. Esto último es contrario a lo requerido por la misión de contactos directos.

Los hechos presentados dan cuenta de un claro desprecio por el diálogo social y por el cumplimiento de las obligaciones asumidas por el Gobierno al ratificar el Convenio que promueve la consulta tripartita, pilar fundamental de la misma y por el que se pretende fomentar la gobernabilidad y la buena marcha de las relaciones laborales de los países. Una actuación sesgada como es el presente caso, mina la confianza entre los actores sociales y el Gobierno, y promueve la gestión autocrática de éste. La OIT no puede ser indiferente ante una realidad como la que se muestra, en claro detrimento del diálogo social y del legítimo derecho de la organización de empleadores del país. Podría tratarse de cualquier organización profesional, sean de empleadores o de trabajadores y con el mismo rigor debe actuar esta casa; el riesgo de no hacerlo es la pérdida de credibilidad en el sistema.

Finalmente los miembros empleadores urgieron al Gobierno para que sin demora ponga en práctica las recomendaciones de la misión de contactos directos, particularmente la reactivación del CST, así como garantizar la libertad y autonomía de las organizaciones de empleadores y de trabajadores en la designación de los foros de diálogo social, absteniéndose de cualquier clase de injerencia.

Un miembro trabajador de El Salvador recordó que el país había padecido una guerra civil producto de las condiciones de marginación, extrema pobreza y explotación que sufrían la mayoría de la población y del cierre total de los mecanismos democráticos y de expresión social. El costo de los acuerdos de paz fue de más de 80 000 muertos, además de desapariciones y ejecuciones sumarias. Durante las décadas de los años ochenta y noventa, siguiendo las recomendaciones de instituciones financieras, se implementó una reestructuración económica consistente en la aprobación e implementación de políticas neoliberales. A través de dichas políticas se privatizaron, entre otros sectores, el sector financiero, el sector de las telecomunicaciones, el sector energético y el sistema de pensiones. Asimismo, se impuso el dólar como moneda oficial y se adoptaron tratados de libre comercio. Como consecuencia, se produjo el despido masivo de trabajadores y trabajadoras, se deterioraron sus condiciones de vida, se incrementaron las migraciones y se ocasionó una pérdida de los derechos de seguridad social adquiridos gracias a la acción de los sindicatos. En este contexto, las instancias tripartitas fueron empleadas por el Gobierno y las organizaciones de empleadores para servir a sus propios intereses, ya que únicamente participaban en dichas instancias por parte del sector trabajador, aquellas organizaciones de trabajadores afines a los mismos, sin dejar espacio a las organizaciones más representativas de trabajadores.

No obstante, desde 2009, las organizaciones más representativas de trabajadores del sector público han logrado participar en la adopción de políticas que contribuyen a la mejora de la calidad de vida de los trabajadores. Un ejemplo de ello, es la aprobación del acceso a la Seguridad Social de los trabajadores del sector informal y de las personas migrantes bajo regímenes especiales y la adopción en 2017 del incremento del salario mínimo, del que se beneficiaron más de 250 000 trabajadores. Dicho incremento salarial, alcanzado gracias a la participación de los sindicatos y su compromiso con la justicia social, responde de manera coherente y justa a las exigencias de la Constitución y de la realidad económica del país. Debido a tales avances, la ANEP se opone a que las instancias tripartitas funcionen con la participación activa y plural de sindicatos y sectores que no les son afines. Además, se han eliminado las prácticas discrecionales de elección de representantes de las organizaciones de trabajadores en las

instancias tripartitas y se ha iniciado un proceso efectivo de participación plural con las diferentes corrientes sindicales. Sin embargo, el sector empleador pretende apartar a las organizaciones de trabajadores más representativas de la toma de decisiones en las instancias tripartitas. Por ello, las organizaciones de empleadores se niegan a incorporarse al CST y al CNSM, incumpliendo lo dispuesto en el Convenio.

En relación con los sindicatos del sector privado, el orador destacó el reducido número de los mismos y se refirió a diversos casos en los que las organizaciones de empleadores habían acosado, despedido e interpuesto demandas de prisión contra dirigentes sindicales. En uno de los señalados casos, la empresa se había negado a reintegrar en sus puestos de trabajo a toda la junta directiva sindical de la empresa, que había sido despedida, pese a mediar una orden de la Corte Suprema de Justicia. En cuanto al funcionamiento de las instancias tripartitas de El Salvador, tales como el ISSS, todas ellas funcionan correctamente a excepción del CST debido a la negativa de las organizaciones de empleadores a participar en el mismo. Las organizaciones de empleadores, y en particular la ANEP, no deben tener ninguna injerencia en las decisiones de los trabajadores sobre la elección de sus representantes. Contrariamente a los anteriores mecanismos de elección de representantes en las instancias tripartitas, el procedimiento actual es participativo y democrático y emplea criterios universales de representatividad.

Por otro lado, con miras a garantizar que el país siga en la ruta de la gobernabilidad y el desarrollo sostenible, es necesario el fortalecimiento del diálogo social, de la negociación y del consenso, así como el respeto de la legislación salvadoreña y de los instrumentos que emanan de la OIT. En ese sentido, el orador hizo una llamada al Gobierno para que continuara cumpliendo con las solicitudes de la Comisión de Expertos en relación con: i) el fomento de la participación de los sectores empleador y trabajador en la toma de decisiones, y ii) la activación de los procedimientos de interacción de las instancias tripartitas en la mayor brevedad, a pesar de la negativa de la empresa privada de participar en dichas instancias. Solicitó también al Gobierno que a través del MTPS, ente al que se le debía de otorgar un mayor presupuesto, pusiera un mayor énfasis en el efectivo cumplimiento de la legislación laboral en el sector público y privado, y garantizase un mayor número de inspecciones en las empresas. Por último, la empresa privada, como pilar importante de la economía, debe realizar esfuerzos para alcanzar consensos en las instancias tripartitas, respetando la independencia de las organizaciones de trabajadores, la pluralidad, la democracia y la diversidad de opiniones. Los valores elementales de humanismo, solidaridad y respeto mutuo obligan a los trabajadores, empleadores y gobiernos a actuar de conformidad con la Constitución que establece que el trabajo no es una mercancía, así como a luchar contra el trabajo precario, el deterioro del medio ambiente y la explotación infantil.

El miembro empleador de El Salvador recordó que la Comisión venía examinando durante cuatro años consecutivos las reiteradas violaciones por parte del Gobierno a diversos convenios. El año anterior, el Gobierno fue examinado bajo la clasificación de «doble pie de página», y la Comisión urgió para que se llevara a cabo la misión de contactos directos, lo que denota la gravedad de las reiteradas violaciones al Convenio por parte del Gobierno. Este Convenio, relativo al diálogo social y la consulta tripartita, se materializa en El Salvador en una entidad tripartita denominada CST. Desde 2013, esta entidad tripartita no funciona como consecuencia de una decisión unilateral del Gobierno de exigir unanimidad a los sindicatos de trabajadores en la elección y nombramiento de sus representantes. Sin embargo, la verdadera razón es que el Gobierno no quiere diálogo social ni consulta tripartita.

El año pasado, después de constatar la inexistencia de consultas efectivas con organizaciones de trabajadores y de empleadores representativas e independientes, la Comisión instó al Gobierno a que: i) reactivase sin demora el CST, y ii) velase por que se realizaran avances concretos en lo que respecta a la libertad y autonomía de las organizaciones de empleadores y de trabajadores para designar a sus representantes, sin ser objeto de intimidación. Además, la Comisión solicitó una vez más al Gobierno que aceptase el envío de una misión de contactos directos a El Salvador. En julio de 2017, se llevó a cabo la misión de contactos directos, en la que se celebraron algunas reuniones tripartitas. En una de las reuniones, los representantes de los trabajadores nombrados por el Gobierno como integrantes del CST, reconocieron que desconocían los criterios que había usado el Gobierno para su designación. Esta injerencia por parte del Gobierno, quedó recogida en el informe final de la misión. Asimismo, en su informe final, dicha misión recomendó al Gobierno: i) reactivar el CST, y ii) garantizar, tanto en la legislación como en la práctica, la libertad y autonomía de las organizaciones de empleadores y de trabajadores en la elección de sus representantes.

Un año después de la adopción de las conclusiones por la Comisión, el Gobierno no sólo ni ha implementado ninguna de las recomendaciones, a excepción de la celebración de la misión de contactos directos, sino que ha actuado de forma contraria a las mismas. Por ejemplo, el Gobierno elaboró una Política de empleo decente, que fue lanzada públicamente en septiembre de 2017, sin que los interlocutores sociales hubieran sido consultados

previamente. Una semana antes del lanzamiento de la citada política de empleo, sin haber tenido la oportunidad de participar en la formulación de la misma y desconociendo su contenido, la ANEP recibió una nota del Gobierno solicitando que realizara observaciones al documento con miras a contar con su apoyo en el lanzamiento público de la política de empleo. En este sentido, el miembro empleador destacó que no es posible que un Gobierno elabore una política de empleo sin consultar a las organizaciones más representativas de empleadores y de trabajadores con el objeto de tener plenamente en cuenta sus experiencias y opiniones y, además, de lograr su plena cooperación en la labor de formular la citada política y de obtener el apoyo necesario para su ejecución. Otro ejemplo, en mayo de 2018, la ANEP fue invitada, con menos de dos horas hábiles de anticipación, a participar en la revisión de un documento denominado Pacto nacional de empleo, que sería presentado públicamente al día siguiente de la revisión. La falta de anticipación de la convocatoria es una muestra clara, no sólo de la falta de respeto por los interlocutores sociales, sino también por el diálogo social, las consultas tripartitas y las obligaciones contraídas por el Gobierno de El Salvador como Miembro de la OIT. Asimismo, al tiempo que tenía lugar la celebración de la misión de contactos directos, el Gobierno adoptó una serie de medidas con la finalidad de evitar que los empleadores, siguiendo lo dispuesto en la legislación, nombraran un director propietario y un director suplente en la Superintendencia General de Electricidad y Telecomunicaciones (SIGET), que constituye el ente regulador de electricidad y telecomunicaciones en El Salvador. En un breve espacio de tiempo, se crearon 60 asociaciones, conformadas por jóvenes de 18 a 20 años, con domicilio en 17 municipios del país caracterizados por los escasos recursos y el alto índice de informalidad. Las asociaciones fueron creadas en protocolos de abogados empleados públicos de empresas estatales reguladas por la SIGET. Las 60 asociaciones participaron en la elección y ganaron. Por consiguiente, el Gobierno no sólo se niega a dialogar con los legítimos representantes de los empleadores, sino que además crea falsas asociaciones para suplantar a los interlocutores legítimos. Frente a tales hechos, las organizaciones de empleadores recurrieron a la Sala Constitucional de la Corte Suprema, quien dictó medidas cautelares, y a la Fiscalía General para que realizase las investigaciones penales correspondientes.

En enero de 2018, siguiendo lo establecido en la legislación, la ANEP nombró un director en el Fondo de Conservación Vial (FOVIAL), y propuso ternas en la Corporación Salvadoreña de Turismo (CORSATUR). Cinco meses después, el Gobierno no ha juramentado tales puestos ni convoca sesiones. En cuanto a la elección de representantes en el seno del Instituto de Acceso a la Información Pública y del CNSM, las organizaciones de empleadores continúan tramitando recursos constitucionales al respecto. En lo que se refiere a la Comisión ejecutiva portuaria autónoma la situación es más complicada. En definitiva, el Gobierno se niega a cumplir el fallo de la Sala de lo Constitucional de la Corte Suprema por el que se declaró la inconstitucional de los decretos de 2012, y por el que se devolvió la facultad a las organizaciones de empleadores de proponer y nombrar de manera libre y autónoma a los directores en las entidades públicas autónomas. En resumen, la lista de violaciones a los convenios por parte del Gobierno es larga, por ejemplo, la ANEP ha estado un año sin recibir credencial.

The Government member of Bulgaria speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Norway, Serbia and the former Yugoslav Republic of Macedonia recalled the commitment undertaken by the Government under the trade pillar of the EU–Central America Association Agreement to effectively implement the fundamental ILO Conventions. It was regrettable that the case had already been discussed at the Committee in 2017, in which the Committee had urged the Government to reactivate the CST and ensure positive developments on the right of social partners to appoint their representatives. However, it had to be welcomed that a direct contacts mission had taken place in July 2017, and that the Government had attempted to reactivate the CST during an inaugural meeting in June 2017, in which the employers had however not participated, alleging non-conformity of the workers' representation mechanism.

Social partners had the right to freely appoint the representatives of their choice in joint and tripartite bodies without interference from the Government. As an essential measure to build trust among the different stakeholders, she urged the Government to take measures to include all social partners in consultations related to employment and labour policies, in a transparent manner before a decision was taken. The Government should reconstitute the CST as a matter of urgency. To this end, it should promptly establish, in consultation with social partners, clear and transparent rules for nomination of their representatives to the CST, based on the criteria of representativeness of organizations and in compliance with the Convention. Furthermore, the Government should explore all possible ways to promote social dialogue, and all social partners should engage in tripartite dialogue in a constructive manner. She strongly encouraged the Government to continue to avail itself of ILO technical assistance, and emphasized the commitment of constructive engagement with the country, including through EU and Member States cooperation projects, which were aimed to strengthen the Government's capacity to address all issues raised in the observation of the Committee of Experts.

La miembro gubernamental del Paraguay, 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. Asimismo, se remitió al informe de la Comisión de Expertos en relación con: i) la inclusión de El Salvador entre los casos de progreso en los que la Comisión de Expertos expresó su satisfacción respecto a algunas de las medidas positivas adoptadas por el Gobierno en respuesta a sus comentarios; ii) la celebración, en respuesta a las conclusiones de la Comisión del año pasado, de una misión de contactos directos realizada en julio de 2017; iii) la expresión por parte del Gobierno durante la misión de contactos directos de su voluntad de realizar las gestiones indicadas y acordadas en el marco de dicha misión a fin de continuar fomentando el diálogo social y los acuerdos entre los sectores, contribuyendo de esta manera a la activación del CST; iv) la solicitud de asistencia técnica por parte del Gobierno en octubre de 2017, la cual ya está siendo proporcionada por medio de la Oficina de San José. Por último, la oradora expresó su confianza en que el Gobierno continuaría cumpliendo con el Convenio.

El miembro gubernamental de Panamá se adhirió a la declaración del GRULAC, y manifestó haber escuchado con atención las informaciones brindadas por el Gobierno y los planteamientos realizados por los miembros empleadores y trabajadores en los que puede observarse una diversidad de opiniones. En las condiciones actuales la instauración del diálogo resulta compleja. Sin embargo, el Gobierno se ha esforzado por reactivar el CST, el cual es el mecanismo establecido para llevar el tripartismo a la práctica. Se espera que dicho mecanismo pueda funcionar respetándose la voluntad de los salvadoreños, y sin injerencia de partes ajenas. Asimismo, felicitó a la OIT por el acompañamiento realizado en el terreno y reiteró su apoyo al Gobierno en sus esfuerzos de crear justicia social y de cumplir con lo establecido en el Convenio.

El miembro trabajador de Guatemala manifestó su preocupación en relación con la evolución de las relaciones de trabajo en El Salvador, en particular cuando los interlocutores sociales cuestionan la representatividad de los demás. En dicho país, como en Guatemala, se han tenido demasiados años de guerra, muertos y víctimas, por lo que se valora altamente la paz y la necesidad de transformar la forma de relacionarse dentro de un marco democrático y de respeto. Para poder hablar de libertad sindical y representatividad de las organizaciones de empleadores y de trabajadores, primero se debería consolidar un marco jurídico y social que permita que las organizaciones existan, se desarrollen, realicen sus actividades y no sean perseguidas ni ellas ni sus afiliados. Organizar un sindicato de trabajadores, sobre todo en el sector privado, todavía implica un alto riesgo, puesto que probablemente la reacción de la empresa sería el despido o la aplicación de represalias que han sido comunicadas una y otra vez a las autoridades nacionales y a la OIT. En algunos casos, la actividad sindical implica riesgos de vida, como lo ha demostrado el asesinato de sindicalistas salvadoreños y guatemaltecos, cuyos casos ven pasar los años sin que las autoridades diluciden responsabilidades materiales e intelectuales sobre sus muertes. Por otro lado, el orador expresó que compartía las recomendaciones realizadas por la misión de contactos directos en 2017, donde se alienta a las autoridades competentes a que, en consulta con las organizaciones de empleadores y de trabajadores concernidas, se tomen las medidas necesarias para asegurar el pleno respeto de la autonomía de las organizaciones de empleadores y de trabajadores en la designación de sus representantes. Asimismo, el diálogo social es muy importante como para verse paralizado por aspectos procedimentales. Si alguno o algunos de los sectores que participan o son invitados a los espacios de concertación tienen dificultades internas para ser considerados representativos, ello debe ser superado entre las mismas organizaciones del sector, en la forma y en los tiempos que se consideren adecuados. Finalmente, hizo un llamamiento a todas las partes a superar las dificultades y retomar los procesos de diálogo que se han promovido, porque es la única vía posible y concreta para atender la tarea fundamental de mejorar las condiciones de vida y de trabajo de millones de salvadoreños y salvadoreñas que actualmente padecen una situación personal difícil y, muy alejada del trabajo decente que recomienda la OIT.

El miembro gubernamental de Honduras reiteró su apoyo al Gobierno manifestado en la declaración del GRULAC, respecto al cumplimiento del Convenio. El Gobierno en base a lo solicitado por la Comisión el año pasado y a las recomendaciones de la misión de contactos directos llevada a cabo en julio de 2017 ha realizado acciones dentro de las cuales se mencionan consultas institucionales y validaciones de procedimientos en materia laboral, así como la convocatoria efectuada por el Gobierno a los representantes de los tres sectores para la celebración de la primera sesión de instalación del CST. Al respecto, lamentó la no realización de dicha sesión y exhortó al Gobierno a mantener sus iniciativas de llamar al diálogo tripartito para alcanzar la pronta reactivación y el pleno funcionamiento del CST, y a permitir la implementación de buenas prácticas de consultas con los interlocutores sociales, asegurando así una plena participación tripartita. En un espíritu constructivo, la obligatoriedad de la consulta tripartita persigue alcanzar procedimientos efectivos en la promoción de la aplicación de las normas internacionales del trabajo. Es por ello que la toma de decisiones para el debido cumplimiento de convenios fundamentales, de gobernanza y técnicos, no sólo requiere de la voluntad manifiesta de los gobiernos a realizar las gestiones indicadas y acordadas, sino también necesita del compromiso de los mandantes tripartitos y de la asistencia técnica de la OIT. Finalmente, el Gobierno debe continuar sus esfuerzos en la implementación de medidas necesarias y el establecimiento de mecanismos de diálogo que contribuyan a una concertación social de soluciones tripartitas.

Una observadora, en representación de la Organización Mundial de Trabajadores (WOW), y hablando en nombre de la Unión Nacional de Trabajadores de Venezuela (UNETE), la Central regional de la Alternativa Democrática de las Américas (ADS) y algunos sindicatos de El Salvador, declaró que, en El Salvador, los últimos nueve años han significado un franco retroceso en materia de tripartismo, diálogo social, libertad sindical y firma de convenciones colectivas. En julio de 2017, la misión de contactos directos formuló una serie de recomendaciones, las cuales no han sido acatadas por el Gobierno, ya que el CST luego de un año de su juramentación no se ha reunido. No se había realizado ninguna consulta con las federaciones y confederaciones sindicales para la determinación de los procedimientos de elección de los representantes en el CST, sino hasta el 17 de mayo de 2018, fecha en la que el MTPS convocó a los representantes sindicales a una reunión con una consultora para abordar la reforma del reglamento, pretendiendo aparentar que están acatando las recomendaciones de la misión de contactos directos, lo cual demuestra que únicamente se pretende engañar a la Comisión, puesto que desde la última Conferencia no se había realizado ninguna acción en este sentido.

La situación en el país ha empeorado. Por ejemplo, se ha obstaculizado el proceso de inscripción legal a diferentes organizaciones, imponiendo requisitos que no están establecidos en la legislación; se han realizado observaciones diversas a las actas de asambleas sindicales de aquellos sindicatos que los funcionarios consideran malos sindicatos; se han tomado hasta sesenta o noventa días sin que se entreguen las respectivas credenciales, obstaculizando con ello la representación sindical al dejar a las organizaciones sin las credenciales; se ha dado un trato discriminatorio al exigir requisitos extras sólo a los sindicatos identificados como no afines; no se cumple con los contratos del sector público, se realizan maniobras para no negociar colectivamente, como en los casos del Fondo Solidario para la salud (FOSALUD); se ejerce constante intromisión en la autonomía sindical que condiciona la independencia y el ejercicio libre del derecho de sindicación por parte del Ministerio de Gobernación y Desarrollo Territorial y del MTPS. El Gobierno no ha tomado ninguna medida para asegurar la plena aplicación de los convenios en la legislación y en la práctica, no ha realizado el proceso de sumisión de los convenios para su eventual ratificación por las instancias correspondientes. El diálogo social es el gran ausente, como pone de manifiesto el hecho de que se ha aprobado una política y un pacto nacional de empleo, sin consultar con todas las organizaciones de trabajadores. Además, se pretende aprobar una ley de servicio público, que en su esencia destruye a las organizaciones sindicales, se les veda el derecho a negociar colectivamente, se elimina la estabilidad laboral de los servidores públicos y se viola flagrantemente los convenios de la OIT.

El Gobierno debe realizar reformas a la legislación nacional encaminadas a eliminar los obstáculos a la libertad sindical. Por ejemplo, debe generar acciones tendientes a que se disminuya el número de miembros para constituir un sindicato, lo que está dejando sin poder ejercer su derecho de sindicación a empleados municipales y del Gobierno central cuyas instituciones cuentan con un número menor de 35 trabajadores los cuales tampoco pueden conformar sindicatos de empresas. De igual manera, se debería eliminar la exigencia de que para poder ser directivo sindical se debe ser salvadoreño por nacimiento, puesto que no permite que los trabajadores migrantes de otros países que laboran en la industria de la construcción y en labores agropecuarias puedan ser directivos sindicales; o la posibilidad de sólo afiliarse a un sindicato, aunque laboren los trabajadores en dos sectores diferentes de la economía, así como la obligatoriedad de elegir anualmente a las juntas directivas sindicales, federales y confederales.

La miembro gubernamental de la República Dominicana se adhirió a la declaración del GRULAC, y manifestó su apoyo a las informaciones brindadas por el Gobierno con respecto a la aplicación del Convenio. Reconoció las medidas positivas adoptadas por el Gobierno, que evidencian de manera expresa la voluntad del mismo de fomentar y fortalecer el diálogo social y el acuerdo entre los sectores, favoreciendo además la activación del CST. Asimismo, agradeció a la OIT por su contribución en el fortalecimiento de la capacidad de los gobiernos a través de la cooperación técnica y que actualmente está siendo proporcionada al Gobierno.

El miembro trabajador de la República Bolivariana de Venezuela indicó que se observa la voluntad del Gobierno y de los trabajadores de promover el diálogo social a través del CST. El diálogo debe ser honesto, sincero y responsable pero está siendo utilizado como una herramienta para menoscabar los derechos alcanzados en la lucha de los trabajadores. En este caso y otros, se observa la posición de los empleadores de romper el diálogo social cuando, por fin, algunos gobiernos lo practican y cumplen con los convenios de la OIT. Cuando se logra superarlos, los empleadores niegan que hayan sido consultados y evitan el diálogo acusando a estos gobiernos de injerencistas. En los casos de asesinatos de sindicalistas, estudiantes, maestros, ecologistas y periodistas, no se observa la misma contundencia. La protección de los sindicalistas, luchadores sociales y ecologistas es necesaria, como lo es igualmente imponer sanciones severas a quienes violen, por ejemplo, el derecho humano al trabajo decente, el derecho a la vida, a la educación, a la salud y a la vivienda. También, es necesario reconocer a los gobiernos, que junto con sus trabajadores y empleadores honestos, superan y mejoran los convenios de la OIT.

La miembro gubernamental de Cuba se adhirió a la declaración del GRULAC y agradeció las informaciones suministradas por el Gobierno. Lo consignado en el informe de la Comisión de Expertos, que examina la implementación por El Salvador de las conclusiones de 2017 de la Comisión de la Conferencia debe tomarse en consideración. En dicho informe se incluye al país en la lista de casos en los que la Comisión de Expertos ha manifestado su satisfacción por las medidas adoptadas y los procesos implementados por el Gobierno en respeto del tripartismo y del diálogo social. El Gobierno ha manifestado con ello su buena voluntad en cuanto al cumplimiento del Convenio. La asistencia técnica y la cooperación de la OIT pueden contribuir en dicho proceso.

El miembro trabajador del Paraguay, hablando en nombre de la Confederación Nacional de Trabajadores (CNT) y la Alternativa Democrática de las Américas (ADS), expresó su preocupación acerca de la ausencia de voluntad del Gobierno para adoptar las medidas necesarias para fomentar y garantizar las consultas efectivas y el diálogo social con las organizaciones de trabajadores y de empleadores, además de no seguir las reglas que servirían como base para el desarrollo de un diálogo maduro, violentando así a la libertad sindical. La situación en el país es alarmante, ya que el Gobierno no cumple con el Convenio y transgrede y vulnera el espíritu y los principios de diálogo social y consulta efectiva, que son pilares de la OIT y del trabajo de esta Comisión. El Gobierno no sustentó los procesos de concertación social y participación tripartita llevados a cabo, perjudicando a las organizaciones de trabajadores y de empleadores, así como a la comunidad internacional. Son importantes los organismos nacionales e internacionales en las que los gobiernos pueden garantizar la existencia de consultas y colaboraciones incluyentes y efectivas para el correcto desarrollo del interés común, sin que se adolezca de prácticas discriminatorias, respetando a la libertad sindical y el tripartismo para lograr mejores nacionales que transformen de manera positiva y exitosa las relaciones de trabajo. El diálogo social desempeña un papel crucial para promover el trabajo digno y decente, en condiciones de garantía, libertad, seguridad y dignidad. El Gobierno debe convertir su voluntad en la fuerza motriz más poderosa.

El miembro empleador de Honduras recordó que el año pasado el caso fue examinado bajo la clasificación de doble nota a pie de página y la Comisión urgió al Gobierno nuevamente para que se llevara a cabo la misión de contactos directos antes de finales de 2017. Esto denota la gravedad de las reiteradas violaciones por parte del Gobierno al Convenio y a los principios de la OIT. Asimismo, la Comisión, después de constatar la inexistencia de verdaderas consultas con organizaciones de trabajadores y de empleadores representativos e independientes, instó al Gobierno a: i) reactivar sin demora el CST, y ii) velar 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, sin ser objeto de intimidación. La misión de contactos directos en su informe final recomienda: reactivar el CST, garantizar la libertad y autonomía de la elección de los representantes de trabajadores y de empleadores, y hace un llamado al Gobierno para, que tanto en las leyes como en la práctica, se garantice el pleno respeto de la autonomía de las organizaciones de empleadores y de trabajadores en la designación de sus representantes. Es preocupante que el Gobierno no haya adoptado ninguna recomendación de la Comisión y de la misión de contactos directos, e incluso desconoce los fallos de sus propios entes de control constitucional, violentando con ello el cumplimiento de las normas de trabajo y destruyendo la confianza que debe imperar en el diálogo social. La Comisión tiene el deber de promover el cumplimiento de las normas internacionales del trabajo, a través de mecanismos que se consideren apropiados. Ante estas acciones reincidentes del Gobierno, el orador pidió: i) que en forma enérgica se exija el cumplimiento de las recomendaciones de la Comisión de la Conferencia y de las de la misión de contactos directos; ii) que el Gobierno convoque a los legítimos actores sociales representativos, y iii) que en un plazo no mayor de dos meses presente los informes que correspondan al cumplimiento de las recomendaciones de la Comisión de Expertos.

El miembro trabajador del Brasil expresó su solidaridad con los trabajadores de El Salvador, esperando que el Gobierno asegure la aplicación del Convenio. Asimismo, el Gobierno debe establecer y garantizar todas las condiciones para que esto se efectúe de manera plural, transparente y democrática. La participación de los sindicatos ha sido fundamental en el país para el mejoramiento de los salarios mínimos, y el acceso a la seguridad social para trabajadores informales y migrantes, por lo que es necesario fortalecer la presencia sindical en el sector privado. Los empleadores no deben defender el tripartismo solamente cuando les propicie beneficios y para permitir que las organizaciones más representativas de trabajadores se incorporen a todas las instancias tripartitas. Es necesario que dichas instancias actúen con la participación activa y plural de sindicatos, gobiernos y empleadores en busca del diálogo social y el espíritu del tripartismo para lograr la gobernabilidad, la justicia social, el desarrollo sostenible y la continuación de los avances concretados.

La representante gubernamental declaró haber escuchado con atención las intervenciones relativas al caso y resaltó que diversas iniciativas habían sido realizadas y que continuarían impulsándolas hasta lograr una solución para la activación del CST. El Gobierno seguiría solicitando la cooperación técnica y la mediación de la OIT, sobre todo, porque las gremiales empresariales atienden convocatorias para abordar las temáticas discutidas, solamente, cuando la OIT les convoca a conversar con el MTPS. Las argumentaciones expresadas respecto a un procedimiento

de elección en la queja presentada por la ANEP y en la declaración del miembro empleador relativas a la SIGET, carecen de fundamento y constituyen un desacuerdo por interés sectorial. En El Salvador, la formación de organizaciones y de gremiales no constituye un delito, como lo fue durante la década de los gobiernos militares resultando en un conflicto armado. El Gobierno es un garante de la libertad de asociación, de la libre expresión y de los derechos civiles y políticos, los cuales son derechos constitucionales porque fueron parte de los resultados del diálogo y la negociación consagrados en los Acuerdos de Paz. Incluso, la Corte Suprema de Justicia emitió una medida cautelar para que la elección se suspendiera, no por las organizaciones creadas, sino por existir un conflicto de interés entre una de las personas electas y las funciones de la SIGET. El mismo órgano mandató a la Asamblea Legislativa para emitir una disposición transitoria a la ley de creación de la SIGET para que habilitara a los directores que concluyeron su período en diciembre de 2017. Dichas medidas están siendo cumplidas por la SIGET y han sido tomadas mientras se resuelve el proceso de amparo presentado ante la Corte Suprema de Justicia. Por lo anterior, es necesario que todas las instancias respeten el debido proceso y que la inconformidad por la participación de organizaciones no afines al sector empleador, no significa que éstas, necesariamente, sean ilegales o que transgredan lo establecido por el Convenio. Asimismo, la electricidad y las telecomunicaciones, no son de interés exclusivo del sector empresarial, sino también de interés nacional, puesto que no son solamente un recurso económico, sino que constituyen un recurso para el desarrollo y el bienestar de la población. Por lo tanto, diversos sectores tienen el legítimo derecho de participar, de expresar sus criterios y que se consideren en la toma de decisiones.

En cuanto a lo referido por los miembros empleadores en relación a la injerencia del Gobierno en los procesos de elección, es importante mencionar que los criterios considerados para la designación de los representantes del sector trabajador han sido retomados de la costumbre internacional y con el fin de dar objetividad al mandato emitido por las conclusiones de OIT, referidas a: i) instalar sin demora el CST, y ii) la resolución de la Sala Constitucional de la Corte Suprema de Justicia que indica que el MTPS tiene la obligación de implementar y sustentar los procesos de concertación social y participación tripartita, frente a situaciones que obstaculizan el funcionamiento del CST. En la misma resolución se indica que se deben propiciar los espacios de diálogo entre las organizaciones sindicales involucradas y facilitarles los medios necesarios para que puedan acordar y aplicar procedimientos claros y permanentes de elección de sus representantes, a fin de garantizar la designación y participación del sector trabajador en el aludido órgano consultivo.

En ese sentido, los criterios como el número de afiliación sindical, número de sindicatos federados y número de contratos colectivos que representaba cada una de las ternas presentadas, fueron los que orientaron dicha designación. Dichos criterios fueron tomados de los datos registrados en el MTPS y de la información emitida por las organizaciones sindicales que estaban inscritas. El Gobierno debe garantizar los procesos que son mandatados por la Asamblea Legislativa a través de la legislación y de la Corte Suprema de Justicia. Por ello, no se ha trastocado lo que establece el reglamento del CST, cuyos vacíos de procedimiento para la delegación del sector laboral se habían mantenido desde 1994, y que habían dado lugar a la inactividad de dicha instancia. Por otra parte, el Gobierno ha brindado la garantía absoluta a los empleadores para su participación. El Gobierno ha respetado la legislación y no ha adoptado procedimiento de elección alguno que sirva a intereses específicos.

Los miembros empleadores celebraron nuevamente el acuerdo en esta Comisión sobre la importancia del diálogo social y el respeto a la independencia de las organizaciones de trabajadores y de empleadores. Es preocupante, por otro lado, escuchar voces de trabajadores independientes que afirman sufrir actos de discriminación como los que han señalado los empleadores, lo cual nos da cuenta de la gravedad del presente caso. Esta Comisión se ha pronunciado sobre la importancia del diálogo social, base fundamental de esta Organización. Para que el mismo sea fructífero debe contar con la participación de buena fe de los legítimos representantes de las organizaciones de empleadores y de trabajadores independientes, pero sobre todo con la convicción del Gobierno sobre la necesidad de facilitarlo y de intentar llegar a consensos. En definitiva, en mucho depende de la verdadera vocación democrática del Gobierno, con miras a cumplir de buena fe con sus obligaciones derivadas de sus compromisos internacionales, pero más importante, con el afán de enriquecer la visión sobre los temas de interés nacional y lograr gobernabilidad. No se trata de cumplir con un aspecto meramente formal y, menos aún, de pretender hacerlo mediante la convocatoria de entidades sin representatividad alguna, o peor, constituidas arbitrariamente para el efecto, mostrando una vocación de diálogo que no se tiene. Preocupan las declaraciones del Gobierno de hace unos minutos, en donde claramente las están validando como organizaciones representativas de empleadores.

Los miembros empleadores reiteraron que el Gobierno no puede sustraerse del cumplimiento de sus obligaciones por el solo hecho que uno o ambos actores sociales pudiera resultar un interlocutor incómodo, por intentar defender sus legítimos intereses. Esta Comisión no puede dejar inadvertida una situación como la referida en este caso en los términos más severos; esto abonaría en la destrucción del diálogo social y en la pérdida de confianza en los mecanismos de control. En esta ocasión se discrimina a los empleadores de El Salvador, luego

podrían ser los trabajadores o los empleadores de cualquier parte del mundo. Desde el año pasado que discutimos este caso y desde que la misión de contactos directos emitió sus recomendaciones, no se aprecia en el Gobierno la voluntad de cumplir a cabalidad y de buena fe con sus obligaciones derivadas del Convenio. Es deber de la Comisión recordarle en términos muy claros, la necesidad de que modifique su actitud y que la adecue a derecho.

Por lo anterior, los miembros empleadores pidieron que en las conclusiones de este caso se destaque la gravedad de la situación del diálogo social en el país; que se urja nuevamente al Gobierno para que reactive sin demora el CST, a través de las organizaciones más representativas de trabajadores y de empleadores y mediante el diálogo social, a fin de asegurar su pleno funcionamiento; igualmente, que sin demora alguna desarrolle, en consulta con los actores sociales, reglas claras, estables y conforme a derecho para la reactivación y pleno funcionamiento del CST. Además hay que urgirlo para que se abstenga de interferir en la constitución de las organizaciones de empleadores y que facilite, de conformidad con la ley, la debida representación de las organizaciones legítimas de empleadores, emitiendo las credenciales correspondientes; que nombre sin demora a los representantes de las organizaciones legítimas de los empleadores en los foros de diálogo social en donde tales designaciones están pendientes de realizarse; hacer un llamado para que acepte la cooperación técnica de la Oficina. Finalmente, por la gravedad del caso, los miembros empleadores pidieron que las presentes conclusiones figuren en un párrafo especial del informe de la Comisión.

The Worker members recognized the efforts made by the Government to comply with the Convention. In previous years, the technical assistance provided by the ILO and a direct contacts mission had indeed contributed to build trust and strengthen tripartite social dialogue in El Salvador. However, there were still significant shortcomings that needed to be overcome without delay. Unfortunately, for too long, social partners in the country had been deprived of the chance to have their views heard in relation to the instruments adopted by the Committee. They therefore urged the Government to immediately create the conditions to allow such consultations to take place. Despite some positive engagement from the Government, there were still real doubts with respect to the criteria and procedures for the election of the worker representatives in the CST. The direct contacts mission that had visited the country in July 2017 had produced recommendations to the Government that were fully supported by the Workers' group. The mission had indicated the need for effective consultation with the confederations and federations concerned for the determination of stable election procedures with precise, objective, and pre-established representativeness criteria. In addition, the mission had recommended the establishment of a working group open to all registered confederations and federations, to agree jointly clear and permanent criteria and procedures for the appointment of their representatives.

They understood that ILO technical assistance was currently being provided in order to set up consultations with the social partners for the reform of the Council's regulations to implement those recommendations. Both the employers and government authorities should respect that process and the choices made by the workers to allow the CST to finally start functioning. In that regard, all necessary steps should be undertaken, as recommended by the Committee of Experts, to investigate and resolve all the allegations of interference in the CST. The Employers' group had spoken about the challenges they were experiencing with regard to various bodies at national level and the allegations of interference by the Government. They expressed the hope that the Government would engage with the employers swiftly in order to find a satisfactory resolution. However, it had to be pointed out that those bodies did not deal with the matters listed under Article 5 of the Convention and should therefore not distract from the other very important issues discussed. They once again urged the Government to work with the ILO through technical assistance in order to establish long overdue progress on that matter.

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 observó con preocupación que el diálogo social funciona de forma deficiente y se incumplen las disposiciones del Convenio.

Teniendo en cuenta la información presentada por el Gobierno y la discusión, la Comisión instó al Gobierno a que:

- **se abstenga de interferir en la constitución de las organizaciones de empleadores y facilite, de conformidad con la Ley, la debida representación de las organizaciones legítimas de empleadores, emitiendo las credenciales correspondientes;**

- **elabore normas claras, objetivas, previsibles y jurídicamente vinculantes en consulta con los interlocutores sociales para asegurar la reactivación y el pleno funcionamiento del Consejo Superior del Trabajo;**
- **reactive nuevamente y sin demora el Consejo Superior del Trabajo por medio de las organizaciones más representativas de trabajadores y de empleadores y a través del diálogo social, y garantice el pleno funcionamiento de dicho órgano;**
- **designe sin dilación a representantes de las organizaciones patronales más representativas en el Consejo Superior del Trabajo en los casos en que dichos nombramientos no se hayan realizado, y**
- **recurra a la asistencia técnica de la OIT.**

La Comisión recomienda al Gobierno que presente una memoria detallada a la Comisión de Expertos antes de su próxima reunión, que se celebrará en noviembre de 2018.

Una representante gubernamental, Ministra de Trabajo y Previsión Social, tomó nota de las conclusiones y reiteró que el Gobierno está firmemente comprometido con el fiel cumplimiento del Convenio. El Gobierno ha impulsado el diálogo social tripartito en la agenda nacional para el logro de la justicia social y laboral y seguirá realizando las gestiones de cooperación técnica para que los interlocutores sociales tengan las herramientas técnicas para su ejercicio. En El Salvador, existe la libertad de organización; no se niega a nadie ese derecho, y las gremiales que representan el sector empresarial tienen participación activa y garantizada en todos los espacios tripartitos y en casi todos los espacios paritarios. En el caso del Consejo Superior del Trabajo, el reglamento establece la participación de las gremiales de la ANEP (CASALCO, CAMAGRO, Cámara de Comercio y ASI) — y de la misma ANEP — las cuales, a pesar de no haber asistido a la sesión de instalación, ya han enviado sus representantes para participar en dicha instancia. A diferencia del sector laboral, que no cuenta con un procedimiento de elección, no existe ningún impedimento para la delegación del sector empresarial. La oradora celebró la existencia de los órganos de control que acompañan a los países en el cumplimiento de los Convenios. Asimismo, éstos no deberían utilizarse como espacios para abordar desacuerdos que se pueden resolver, precisamente, a través de la participación activa y efectiva en las instancias que ya están estructuradas para ello. Agradeció a los oradores que reconocieron las gestiones realizadas por el Gobierno para avanzar en el cumplimiento del Convenio así como la cooperación técnica recibida de la Oficina.

Conclusions

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

The Committee noted with concern the dysfunctional operation of social dialogue and the current non-compliance with the provisions of the Convention.

Taking into account the Government's submissions and the discussion, the Committee called upon the Government to:

- **refrain from interfering with the constitution of employers' organizations and to facilitate, in accordance with national law, the proper representation of legitimate employers' organizations by issuing appropriate credentials;**
- **develop, in consultation with the social partners, clear, objective, predictable and legally binding rules for the reactivation and full functioning of the Higher Labour Council (CST);**
- **reactivate, without delay, the CST, through the most representative organizations of workers and employers and through social dialogue in order to ensure its full functioning;**
- **appoint without delay representatives of the most representative employers' organizations in the CST where such appointments are still pending; and**
- **avail itself of ILO technical assistance.**

The Committee recommends that the Government submit a detailed report to the Committee of Experts before its next session in November 2018.

Conclusions

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

La commission a noté avec préoccupation le dysfonctionnement du dialogue social et l'actuelle absence de conformité avec les dispositions de la convention.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement de:

- s'abstenir de s'ingérer dans la constitution des organisations d'employeurs et de permettre, conformément à la loi, la représentation adéquate des organisations légitimes d'employeurs en délivrant des pouvoirs en bonne et due forme;
- élaborer, en concertation avec les partenaires sociaux, des règles légalement contraignantes, claires, objectives et prévisibles pour une réactivation et un fonctionnement à part entière du Conseil supérieur du travail;
- réactiver, une nouvelle fois et sans délai, le Conseil supérieur du travail par le truchement des organisations de travailleurs et d'employeurs les plus représentatives et par le biais du dialogue social, afin d'assurer son fonctionnement à part entière;
- nommer sans délai les représentants des organisations d'employeurs les plus représentatives au Conseil supérieur du travail où ces nominations sont attendues; et
- se prévaloir de l'assistance technique du BIT.

La commission recommande au gouvernement de soumettre un rapport détaillé à la commission d'experts avant sa prochaine réunion en novembre 2018.

Equal Remuneration Convention, 1951 (No. 100)

Convention (n° 100) sur l'égalité de rémunération, 1951

Convenio sobre igualdad de remuneración, 1951 (núm. 100)

Georgia (ratification: 1993)

Géorgie (ratification: 1993)

Georgia (ratificación: 1993)

A **Government representative** presented the measures undertaken to ensure gender equality and equal remuneration for men and women in the labour force. In line with international commitments, Georgia had made significant progress in adopting legislative changes and implementing policy reforms to foster gender equality and encourage economic empowerment of women. National laws and policies had been elaborated to ensure and promote gender equality, to prohibit all forms of discrimination towards women and girls, and to encourage women's participation in political, economic and social processes. National legislation protected gender equality in all spheres, including labour and employment. The Constitution recognized equality of all people before the law: (i) pursuant to article 14, everyone was free by birth and equal before the law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, and place of residence; (ii) pursuant to article 38, all citizens were equal in social, economic, cultural and political life, irrespective of their national, ethnic, religious or linguistic affiliation; and (iii) article 30 specified that the protection of labour rights, fair remuneration, safe and healthy working conditions and the working conditions of minors and women were determined by the Labour Code.

The fundamental principles defined in the Constitution were further elaborated in different legal acts. Many of the rights and protections to enable gender equality in labour relations were provided for in the Labour Code and the Law on the Public Service, which determined equality in the public sector concerning access to employment, terms of employment and working conditions, including remuneration and career development. The Law on Gender Equality constituted a core legal instrument for fostering gender equality, including equality in employment; the Law on the Elimination of All Forms of Discrimination was also an important mechanism for the protection of women and girls from direct and indirect discrimination and unequal treatment.

Nevertheless, there remained legislative and policy gaps related to gender equality. The Government continued to harmonize the legal framework with international standards, pursuant to the timeline for the transposition of European Union (EU) Directives, as agreed in the EU–Georgia Association Agreement. The Government had committed to implement the EU Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The Directive defined that for the same work or for work to which equal value was attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration had to be eliminated. The Government, in close cooperation and consultation with the social partners, was working on the transposition of the Directive into national legislation. On 27 October 2015, a new Law on the Public Service had been adopted, which stipulated that the remuneration system for public servants was based on the values of transparency and fairness, grounded on the principles of equal pay for equal work.

In 2018, in order to further strengthen anti-discrimination and equal rights at work, amendments to the following laws had been elaborated with active participation of the social partners, and submitted to Parliament: the Labour Code; the Law on the Elimination of All Forms of Discrimination; the Law on the Public Service; and the Law on Gender Equality.

The legislative framework alone did not guarantee enjoyment of equal rights and non-discrimination and without effective enforcement mechanisms the progress could not be achieved. The main institutional frameworks to promote and enhance gender equality were the Council for Gender Equality in the Parliament and the newly established Inter-Agency Commission on Gender Equality, Violence Against Women and Domestic Violence, within the executive branch. Both institutions were in charge of inter-agency coordination, monitoring the implementation of laws and development of national action plans on gender equality. In this respect, a two-year work plan on gender equality had been adopted recently with a special focus on awareness-raising campaigns. In addition, the Gender Equality Department of the Public Defender's Office served as an independent monitoring body on gender issues. Finally, the Government representative reiterated the commitment to steady progress towards achieving gender equality and complying with international labour standards.

The Employer members recalled that this fundamental Convention had been ratified by Georgia in 1993. Since 2002, the Committee of Experts had repeatedly expressed concerns at the absence of national legislation giving full expression to the principle underlying the Convention. It was the first time that the application of the Convention by Georgia was examined by the Conference Committee. They recalled that the Convention required, by means appropriate to the methods in operation for determining rates of remuneration, to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. According to the Committee of Experts, while the Constitution, the Labour Code, the Law on Gender Equality and the Law on the Elimination of All Forms of Discrimination included certain provisions relating to equality, they did not specifically commit to the principle of equal remuneration for men and women for work of equal value, and the Government had not advised whether any consideration was being given to reviewing the relevant provisions in this respect.

Observing the existing legal prohibition of discrimination of women and girls and the adoption last month of an Action Plan referred to by the Government, the Employer members appreciated the Government's recognition of legislative gaps and its reaffirmed commitment to work on the issues raised by the Committee of Experts, to implement related EU Directives and to undertake tripartite consultations in this respect with the social partners and the Council for Gender Equality. The Employer members encouraged the Government to take steps without delay to ensure that national legislation committed to the principle of equal remuneration for men and women for work of equal value. As regards the gender pay gap in Georgia, however, its root causes remained unclear, and it appeared to prevail in the public sector. They encouraged the Government to provide information to the Committee of Experts of the work undertaken to implement the 2014–16 National Action Plan on Gender Equality, which, inter alia, aimed at promoting gender equality in the economic sphere. Information should also be provided on the steps taken to better understand the source of the gender pay gap and on concrete measures adopted to tackle it. The Employer members concluded by expressing their appreciation with the Government's commitment and invited the Government to continue to work with the ILO in a constructive manner.

The Worker members recalled that, over the years, the Committee of Experts had noted shortcomings with respect to Georgia's implementation of the Convention in practice, highlighting specifically the incompatible legislative framework and severe inequalities. In 2012, the Public Defender had exposed the persistent gender segregation in the labour market. The situation clearly had not improved since. The labour market participation rate for women between the ages of 15 and 64 stood at about 60 per cent, 18 to 20 percentage points below male participation rates. Records showed that traditional household responsibilities, especially childcare, reduced female labour force participation significantly. Despite relatively similar levels of education between men and women, occupational segregation remained rife, with certain sectors predominantly female (education, health and social services) and others predominantly male (transportation, construction, public administration and manufacturing). They regretted that the gender pay gap between men and women remained high, around 37 per cent, and was clearly attributable to the industrial and occupational sex segregation, both vertical and horizontal, within and across establishments and sectors. Even at the enterprise level, the Bureau of Statistics had found that 60 to 67 per cent of eligible men received bonuses, premiums or health insurance under various conditions, whereas the rate was between 33 and 41 per cent for women in similar situations. Female representation in decision-making positions remained shockingly low.

The Worker members underlined the legislative and regulatory gaps in relation to the Convention, as highlighted by the Committee of Experts: (i) section 2(3) of the Labour Code of 2006 prohibited discrimination of any kind in employment relations but this was not sufficient because the principle of "equal pay for men and women for work of equal value" went beyond that of "equal pay for equal work", in order to allow comparisons between work of a different nature by determining their value. This facilitated the entrance of women into male-dominated occupations, which were usually of a higher economic value, instead of just ensuring that pay was equal in a particular job or sector of work; (ii) recognizing the persistence of social and cultural inequalities between men and women, sections 4 and 6 of the Law on Gender Equality of 2010 specifically guaranteed gender equality; prohibited workplace violence, intimidation, and harassment; and ensured equal opportunity in employment. This was good but not sufficient. Ensuring equal opportunity did not guarantee equal remuneration for work of equal value, nor did it guarantee the enhancement of the capabilities of women to take advantage of the opportunities granted; (iii) the Law on the Elimination of All Forms of Discrimination provided for the elimination of all forms of discrimination to ensure equal rights for natural and legal persons; (iv) article 38 of the Constitution, as well as the Law on the Public Service and the future law on remuneration for public institutions, protected the equality of all citizens and created the framework for addressing the issues of sex-based discrimination in employment without, however, addressing the principle of equal remuneration between men and women for work of equal value specifically.

As indicated, these laws were necessary to address the inherent biases of discrimination but not sufficient to ensure equal pay for men and women for work of equal value. Indeed, reports revealed that substantial gender gaps in average monthly nominal wages existed even in female-dominated sectors. Even among men and women with similar levels of education, significant inequality remained in the average salary distribution, notably because men mostly occupied private sector jobs, whereas women were more evenly distributed in the private and public sectors.

The Government was encouraged to review and amend these laws, in consultation with employers' and workers' organizations, in order to promote more proactive measures for raising awareness on, and enforcing the application of, the principle of equal remuneration for men and women for work of equal value, including through legally established or recognized machinery for wage determination and job evaluation and/or collective agreements at the national, sectoral and enterprise level. The Worker members noted the adoption of the 2014–16 National Action Plan on Gender Equality and the establishment of both the Inter-Ministerial Commission on Gender Equality and Women's Empowerment and the Inter-Agency Coordinating Council for the Government's Action Plan on the Protection of Human Rights. Despite these efforts, the systemic nature of the situation had not changed: institutions for the enforcement of measures to address gender equality and anti-discrimination remained weak or non-existent. The abolition of the Labour Inspection Services raised concerns about institutional inefficiency and ineffectiveness, despite the National Programme for Monitoring Labour Conditions and the Department of Inspection of Labour Conditions set up under the auspices of the Ministry of Labour, Health and Social Affairs. This new Department's mandate focused on safety conditions and related complaints and did not specifically address sex-based occupational segregation and pay gap concerns. There were no adequate and effective enforcement mechanisms to apply the principle of equal remuneration between men and women for work of equal value despite the endemic and persistent nature of sex-based occupational discrimination and inequalities. She recalled that, according to the Public Defender, the recommendations of the Labour Inspectorate had to be made binding in the Labour Code to ensure that recommendations were enforced.

The Worker members urged the Government to realize the full scope of the Convention and to take concrete steps to review the national framework in order to address the root causes of gender discrimination, gender

stereotypes regarding women's aspirations, preferences and capacities, as well as the promotion of women's access to a broad range of employment opportunities at all levels.

The Employer member of Georgia stated that the gender policy had always been one of the top priorities of the Georgian Employers Association (GEA), but that it needed joint efforts. The GEA intended to develop the adequate approach through specific activities. First, it was necessary to conduct surveys in the business world to find out the real situation with regards to payment policies, careers and social conditions. Based on the result of these surveys, the adequate activities and measures could be implemented, such as education on the best international practices related to the implementation of the Convention and the ensuing determination of possible steps and measures in Georgia; training activities at company level; and conducting social and gender audits with a view to developing action plans for tackling gender issues. Secondly, a special working group should be established within the Government, where adequate legislative proposals could be developed supporting the social conditions of employed women. Specific activities should also be conducted together with trade unions in certain sectors with respect to management and trade union leadership, and local gender policies should be developed in collaboration with the local authorities. Thirdly, youth entrepreneurship and related education with a focus on social and gender thematics should be supported. The speaker finally expressed his belief that, together, the social partners could devise and implement actions that would lead to a tangible improvement of the situation.

The Worker member of Georgia appreciated the consideration given to the issue by the ILO and its constituents and stated that without due attention from international labour institutions and the democratic community, problems that were perceived as of little relevance at the moment, tended to gradually and extensively erode standards and conditions of work.

The current problem of imbalance in wages between men and women remained more than alarming. Even despite positive trends over the past decade, the wage difference remained 52 per cent, whereas it had reached 104 per cent in 2006. The factors that had resulted in such a huge wage gap were clear and obvious: the year 2006 was the exact year the labour inspection had been abolished. The absence of an authority in charge of supervision of labour relations implied the lack of compliance with basic labour standards and rights, including the principle of equal pay. Although, due to a commitment under the EU–Georgia Association Agreement, the labour inspection had been re-established, its current mandate did not comply with ILO standards since it did not have the power to conduct inspections to monitor compliance with requirements of labour legislation. Moreover, the speaker emphasized that the most pressing issue remained the lack of a real and effective social dialogue which would facilitate the resolution of many existing problems hampering the prosperity and economic stability of the country. Despite the fact that the Convention had been ratified in 1993, the persistence of such a large wage inequality demonstrated that international Conventions were being ratified only formally. Over the past twenty years no working mechanisms to define “work of equal value” had been established, and no relevant policies or awareness-raising campaigns had been undertaken to address issues on equality and protection of women's rights in labour relations. With respect to equal pay, it should also be noted that the current legal instruments determining the minimum wage, had been adopted back in 1999. Thus, in the private sector, the minimum wage amounted to US\$8 per month, and in the public sector to about US\$55. Notwithstanding years of constant demands to establish an adequate minimum wage level, the authorities had persistently ignored the numerous appeals from trade unions, human rights activists, non-governmental organizations and even large transnational corporations.

On the basis of official data provided by the Statistical Department of Georgia, it was possible to evaluate the real picture at national level of gender inequality in the world of work. For example, in 2016, the average monthly nominal salary of men had been about US\$450, and for women US\$295. The speaker emphasized that although the Government committed to radically change the current situation, the trade unions did not have illusions regarding elimination of gender discrimination through a one-time solution. That required an integrated approach and a long-term and active policy. It was necessary that societies in the whole world, especially conservative and traditional ones with obsolete stereotypes, including in Georgia, reconsider their views on the role and rights of women in modern life. That goal could be achieved only with the joint efforts of all national and international institutions, and the entire civilized world, in order to eradicate all forms of discrimination, and above all, violations of women's rights and freedoms everywhere.

The Government member of Bulgaria, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Montenegro and Norway, stated that national legislation did not give full expression to the principle of equal remuneration for men and women for work of equal value, and expressed concern over the fact that this issue had been raised several times by the Committee of Experts without being addressed by the Government. The legislative package submitted to Parliament at the end of 2017, which included amendments to the Labour Code, the Law on Gender Equality, and the Law on the Elimination of All Forms of Discrimination, should address the gaps identified by the Committee of Experts and by the Public Defender. Measures should be

taken in consultation with the social partners without delay, in order to further review the legislation, including section 57(1) of the Law on the Public Service, and bring it in full compliance with ILO Conventions, in particular with the principle of equal remuneration for men and women for work of equal value.

The gender wage gap was persistent and significant in every sector of the labour market, including in female-dominated sectors. This phenomenon did not only concern wages, but also social benefits and bonuses. The underlying causes were perhaps linked to occupational gender segregation and gender discrimination. Despite existing legal provisions, gender-based discrimination was still very common in practice at the recruitment stage and in job advertising.

The speaker called on the Government to take measures to reduce the gender pay gap and address its underlying causes, and to promote women's access to a wider range of job opportunities at all levels, including management. She also called for concrete follow-up to the recommendations made by the Public Defender, in particular to improve awareness among employers. Finally, the speaker called on the Government to take measures to ensure effective enforcement of the principle of equal remuneration for work of equal value, including adequate labour inspections, awareness-raising campaigns on the laws and procedures available, and strengthening the capacity of judges and other authorities to detect and address pay inequalities between men and women.

The Worker member of Norway, speaking on behalf of the Worker members of the Nordic countries, expressed his deep concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for work of equal value in Georgia. The Georgian Trade Union Confederation (GTUC) had actively worked to improve the conditions for women in the workplace and had encouraged women to increase their trade union participation. Statistics and facts regarding gender equality in the country were lacking, and the level of awareness around gender issues and women's rights needed to be increased. Available statistics showed that women's position in the labour market was very precarious: women were the first to lose their jobs when companies fired people, they often took jobs far below their skill level, and earned only about 60 per cent of what men earned. In the informal sector, where women constituted 50 per cent of the workers, the protection mechanisms were virtually absent, and workers were particularly vulnerable to discrimination. Women in the informal sector had to survive on very low wages and were often subjected to sexual harassment. Considering that there was widespread discrimination in employment in Georgia, both in terms of recruitment, selection and wages, the speaker urged the Government to give full legal expression to the principle of equal remuneration for men and women for work of equal value, therefore strengthening women's economic freedom, ensuring women a place in law-making processes and participation in the labour market on equal terms with men. In Georgia, a substantial gender gap in average monthly nominal wages existed in every sector of the labour market, including in female-dominated sectors such as education and health care, and even among men and women with similar levels of education. The Government had not indicated whether any consideration had been given, in consultation with the social partners, to reviewing the provisions of the Constitution, the Labour Code and the Law on Gender Equality. Moreover, the Law on the Elimination of All Forms of Discrimination, while including a general prohibition of discrimination based on sex, did not refer to the principle of equal remuneration for men and women for work of equal value. The speaker appealed to the Government to enforce the conclusions to be adopted by the Committee and to amend the national legislation so as to ensure conformity with the Convention.

The Worker member of the United States indicated that there were problems in law and practice. The principle of equal remuneration for men and women for work of equal value was not sufficiently reflected in the general prohibition of discrimination contained in existing labour legislation, including the Law on the Elimination of All Forms of Discrimination of 2014. The lack of a systematic approach, in law and in practice, to ensuring equal remuneration for men and women for work of equal value was illustrated by the statistics on wages and other compensation reported by the Committee of Experts. For example, in 2016, women earned on average 65 per cent of men's salary, while men were approximately two times as likely as women to receive bonuses, premiums and employer-paid health insurance.

The solution to the problem was not only a legislative matter. With respect to enforcement, the Labour Inspection Service had been dismantled in 2006 and reconstituted in 2015. Since 2015, a sufficient labour inspectorate (beyond the monitoring of health and safety conditions and forced labour), had not been established. Its mandate was still insufficient to monitor compliance with a full range of labour standards, including those covered by the Convention. As a result, there was no adequate and effective enforcement mechanism to ensure the application in practice of the principle of equal remuneration for work of equal value. Labour inspection institutions had to be rebuilt for ensuring compliance with new legislation that would define equal pay clearly and in compliance with the Convention, articulating the key concept of "work of equal value". The methodological shortcomings to evaluate the value of jobs were a challenge not only for legislators, but also for the labour inspectorate charged with monitoring compliance.

It was therefore necessary to aim at full compliance with the Convention for public and private sectors, as the Government implemented its “State Strategy of Labour Market Formation and its Implementation Action Plan 2015–18” by amending the Labour Code to align it with international labour standards. In addition, it was necessary to provide the labour inspectorate with sufficient methodology guidance, training and budget to ensure that the new legislation was applied in practice.

In addition to these measurable quantifiable challenges on wages and benefits, the country faced cultural challenges in addressing entrenched and often implicit bias against women. The underlying causes of those inequities, had to be addressed by recognizing them and engaging in awareness-raising activities. According to national trade unions, many employers treated women as “problem-causing” workers, who would often be absent and demanding additional privileges, such as maternity leave. Such situations led to gender discrimination in employment, retribution and career advancement. The underlying causes of those inequities were a concern for everybody. There were no concrete policies in place to provide meaningful assistance to all workers regarding work–life balance and the combination of family responsibilities with occupational duties. Until such measures were taken, women were often charged with family responsibilities and expectations in practice, which entailed lower levels of promotion and remuneration.

The Government representative, duly noting the valuable comments of the Committee, reiterated that her Government acknowledged the existence of legislative and policy gaps and was taking significant steps and measures to harmonize national legislation with international labour standards and international best practices. However, the root causes of the established gender pay gap lay in gender discrimination, the social norms of society and the social role of women therein. The speaker highlighted the ensuing importance of developing strategies and awareness-raising campaigns with a view to changing attitudes and to mainstreaming gender into social and labour policies. The Government was taking action to foster women’s participation in the labour market and had already determined women and youth as the target population for empowerment. She highlighted the Government’s readiness to work towards improving the legislative framework and institutionalizing the implementation mechanisms in the area of gender equality, in particular by strengthening the capacity of the newly established labour inspection and by gradually broadening its mandate to a fully-fledged labour inspectorate that would also cover issues such as the gender pay gap and women’s rights at the workplace.

The Worker members stated that, when examining cases on the application of the Convention, the larger context of women’s empowerment and gender non-discrimination should not be forgotten. The Convention rightly placed remuneration at the heart of combating discrimination against women. Historical attitudes and stereotypes had consigned women to certain jobs, and this kind of segregation had traditionally subordinated women’s aspirations to that of men and lowered their social and economic standing. As a result, jobs predominantly performed by women were undervalued in comparison to work of equal value performed by men. To tackle this, the Convention required that wage rates be determined according to objective criteria, free from gender bias, and that these rates be established excluding any consideration related to the gender of the worker. Achieving this would serve as an important contribution in combating occupational gender segregation and other forms of unequal treatment.

They called on the Government to take concrete steps in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value by amending the Labour Code, the Law on Gender Equality, the Law on the Elimination of All Forms of Discrimination, and the Law on the Public Service. Moreover, adequate and effective enforcement mechanisms should be put in place to ensure that the principle of equal remuneration was applied in practice, and awareness-raising measures should be adopted to ensure that workers could avail themselves of the rights they had under the Convention. The Worker members hoped that more detailed information would be received from the Government about the specific measures taken in order to reduce the gender pay gap and to address its underlying causes. In that regard, it would be beneficial for the Government to avail itself of ILO technical assistance.

The Employer members welcomed the Government’s efforts and its constructive approach to the issue of gender equality at the workplace as regards equal opportunity and treatment. However, they concurred with the Worker members that the main obligation under the Convention, over and above gender equality, was to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. Therefore, the Employer members encouraged the Government to take steps to ensure, in consultation with the social partners, that national legislation committed expressly to the principle of equal remuneration for men and women for work of equal value; and to provide a full report to the Committee of Experts on the legislative amendments envisaged to this end. They further encouraged the Government to supply information concerning the recently adopted National Action Plan on Gender Equality, in particular its impact on the efforts to ensure respect for the principle of equal remuneration for men and women for work of equal value.

Noting the concerns raised by the Committee of Experts and the interventions made concerning the gender pay gap, the Employer members believed that a better understanding of the root causes of the gender pay gap in Georgia would be helpful, and cautioned that some of the causes could be extraneous to the principle underlying the Convention and rather be related to occupational gender segregation, distinct participation of men and women in the private and public sectors, or discrimination in employment based on sex, as covered by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Lastly, the Employer members expressed their optimism and encouraged the Government to avail itself of ILO technical assistance and to continue the implementation process in close cooperation and consultation with the social partners.

Conclusions

The Committee took note of the submissions of the Government representative and the discussion that followed.

The Committee welcomed the legislative efforts of the Government to ensure gender equality, however it noted that the Government has not made efforts to ensure the application of the principle of equal remuneration for men and women for work of equal value as required by Convention No. 100. The Committee noted with concern the abolition of the Labour Inspection Service and the absence of an equivalent replacement to ensure the enforcement of the rights and principles protected by the Convention.

Taking into account the Government's submissions and the discussion that followed, the Committee recommended the Government to:

- ensure that national legislation, in particular the Labour Code, the Law on Gender Equality, the Law on Elimination of All Forms of Discrimination and/or the Law on the Public Service, expressly commits to the principle of equal remuneration for men and women for work of equal value in consultation with the social partners;
- implement effective enforcement and detection mechanisms to ensure that the principle of equal remuneration for men and women for work of equal value is applied in practice;
- take steps to raise awareness among workers, employers and their organizations of the laws and procedures available in order to allow them to avail themselves of their rights;
- continue to provide information on decisions handed down by the judiciary, and cases handled by the Office of the Public Defender;
- continue to provide gender-disaggregated data on labour market participation and remuneration;
- provide the Committee of Experts with information related to the 2018–20 Georgian National Action Plan on Gender Equality adopted in May 2018 and its potential impact on the principle of equal remuneration for work of equal value in law and practice; and
- avail itself of ILO technical assistance in implementing these recommendations.

The Committee encourages the Government to report on the measures taken to implement these recommendations to the Committee of Experts before its November 2018 session.

A Government representative thanked the Committee for the fair and constructive recommendations contained in the conclusions. He mentioned that his Government was pursuing reforms as a priority to harmonize law and practice with international labour standards and the standards of the European Union (EU) following the signature of an association agreement between Georgia and the EU.

Conclusions

La commission a pris note des informations soumises par la représentante gouvernementale et de la discussion qui a suivi.

La commission a accueilli avec satisfaction les mesures législatives prises par le gouvernement pour parvenir à l'égalité de genre. Elle a toutefois relevé que le gouvernement n'a rien fait pour garantir l'application du principe de l'égalité de rémunération entre hommes et femmes pour un travail de valeur égale, comme l'exige la convention n° 100. Elle a pris note avec préoccupation de la suppression du service de l'inspection du travail, qui n'a pas été remplacé par un service équivalent chargé de garantir le contrôle de la protection des droits et des principes visés par la convention.

Prenant en compte les informations communiquées par le gouvernement et la discussion qui a suivi, la commission a recommandé au gouvernement de:

- veiller à ce que la législation nationale, en particulier le Code du travail, la loi sur l'égalité de genre, la loi sur l'élimination de toutes les formes de discrimination et/ou la loi sur la fonction publique, consacre expressément le principe de l'égalité de rémunération entre hommes et femmes pour un travail de valeur égale, en consultation avec les partenaires sociaux;
- mettre en place des mécanismes de contrôle et de détection efficaces afin de veiller à ce que le principe de l'égalité de rémunération entre hommes et femmes pour un travail de valeur égale soit appliqué dans la pratique;
- prendre des mesures pour faire connaître les lois et les procédures applicables aux travailleurs, aux employeurs et à leurs organisations, afin qu'ils puissent se prévaloir de leurs droits;
- continuer à fournir des informations sur les décisions rendues par les tribunaux et sur les cas traités par le bureau du Défenseur public;
- continuer à fournir des données sur la participation au marché du travail et la rémunération ventilées par sexe;
- fournir à la commission d'experts des informations sur le Plan d'action national sur l'égalité de genre (2018-2020), adopté en mai 2018, et sur les effets qu'il pourrait avoir sur le principe de l'égalité de rémunération entre hommes et femmes pour un travail de valeur égale, en droit et dans la pratique; et
- se prévaloir de l'assistance technique du BIT pour mettre en œuvre les présentes recommandations.

La commission invite le gouvernement à faire rapport à la commission d'experts sur les mesures prises pour donner suite aux présentes recommandations, avant sa session de novembre 2018.

Conclusiones

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

La Comisión saludó los esfuerzos legislativos del Gobierno para velar por la igualdad de género; sin embargo, observó que el Gobierno no ha realizado esfuerzos para asegurar la aplicación del principio de igualdad de remuneración entre hombres y mujeres por un trabajo de igual valor, tal como exige el Convenio núm. 100. La Comisión tomó nota con preocupación de la eliminación de los Servicios de Inspección del Trabajo y de la ausencia de una instancia equivalente que los sustituya para asegurar la aplicación de los derechos y principios protegidos por el Convenio.

Teniendo en cuenta las informaciones proporcionadas por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión recomendó al Gobierno que:

- vele por que la legislación nacional, en particular el Código del Trabajo, la Ley sobre Igualdad de Género, la Ley sobre la Eliminación de todas las Formas de Discriminación y/o la Ley sobre la Administración Pública, incorpore expresamente el principio de igualdad de remuneración entre hombres y mujeres por un trabajo de igual valor, en consulta con los interlocutores sociales;
- ponga en práctica mecanismos efectivos de control del cumplimiento y de detección, a fin de velar por que el principio de igual remuneración entre hombres y mujeres por un trabajo de igual valor se aplique en la práctica;

- adopte medidas para sensibilizar a los trabajadores, los empleadores y sus organizaciones respectivas acerca de las leyes y procedimientos existentes, con objeto de que puedan ejercer sus derechos;
- continúe proporcionando información sobre las decisiones de la autoridad judicial, y sobre los casos gestionados por la Oficina del Defensor Público;
- continúe proporcionando datos desglosados por sexo sobre la participación en el mercado de trabajo y la remuneración;
- envíe a la Comisión de Expertos información en relación con el Plan de acción nacional sobre la igualdad de género 2018-2020, adoptado en mayo de 2018, y sobre su posible impacto en el principio de igualdad de remuneración por un trabajo de igual valor en la legislación y en la práctica, y
- recurra a la asistencia técnica de la OIT para aplicar estas recomendaciones.

La Comisión alienta al Gobierno a que informe a la Comisión de Expertos, antes de su reunión de noviembre de 2018, sobre las medidas adoptadas para aplicar estas recomendaciones.

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

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

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

Greece (ratification: 1962)

Grèce (ratification: 1962)

Grecia (ratificación: 1962)

A **Government representative**, Minister of Labour, Social Security and Social Solidarity, stated that the late submission of the country's report had been due to human resources constraints and administrative changes at the Ministry of Labour pursuant to ILO recommendations, under the ongoing technical assistance project on labour administration. Nevertheless, the Government had managed to submit all reports requested under article 22 of the ILO Constitution for 2017, along with the report requested under article 19, the Annual Review, and all questionnaires on the preparation of the items of the present session of the Conference, as well as the country's response to the Committee of Experts' comments regarding the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), due in 2018.

She emphasized that the current Government had promoted collective bargaining and fostered social dialogue. The restoration of two key principles of collective bargaining (the extension principle and the principle of favourability) had been set as a top priority by the Ministry of Labour, since those had been suspended by the previous government in 2011. Indeed, the Government had set collective labour rights at the epicentre of its growth strategy, in order for workers to pursue, through negotiations, a fair share of the wealth produced. The Government had been involved in long and tough negotiations with its creditors, namely the European Institutions and the International Monetary Fund (IMF), who strongly believed that a coordinated system of collective bargaining would hinder the country's return to growth and prevent unemployment from dropping. Finally, the Government's persistence to restore the system of collective bargaining had been successful, after many months of negotiations. Legislation, entering into force in August 2018, had already been adopted, restoring the two abovementioned fundamental principles.

The speaker considered that, even more important than the legislation itself, was the political mobilization that had taken place on the issue in 2017, and during the negotiations with the country's creditors for the need to restore the collective bargaining system. Under the second round of negotiations, the labour market issues had been strongly debated and prolonged, due to efforts to address the points raised by the Committee of Experts. The Government had been supported by the International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC), several members of the European Parliament, the President of the European Commission and the ILO. The issue of collective bargaining had become emblematic, identified as part of the core of the European social model and it was therefore surprising that, after such efforts, the Government had been called to provide explanations for the violation of the Convention.

For the past eight years, Greece had been under successive Economic Adjustment Programmes, a funding package from the Troika, consisting of the European Commission, the European Central Bank (ECB) and the IMF. As part of the conditions for receiving funding, the country had signed a Memoranda of Understanding (MoU) with the above creditors, under the terms of undertaking specific legislative, economic and political reforms. The reform package had been applied from 2010 to 2014 and aimed at reducing labour costs, not only by wage cuts, but also by imposing general restrictions on labour rights. In order to achieve the required internal devaluation, a number of severe measures had been adopted during that period, dismantling core elements of the Greek employment protection system. The result was severe deregulation of the labour market and of the legal framework, leading to violations of the Convention. More specifically, the reforms adopted in 2011 had led to the abolition of the extension and favourability principles, as well as to limitations to the time extension and after-effect of collective agreements. As a result, collective bargaining had stopped being a reality in the country. Bargaining coordination had dropped, earning inequality and low-pay incidence had increased significantly. At the same time, bargaining coverage had declined from approximately 85 per cent to less than 30 per cent of the workforce and individual contracts had been the largest share of the working population's employment reality. Accordingly, real annual salaries had decreased by 18 per cent and part-time work rose by 28 per cent. However, those policies had not been able to effectively contain rising unemployment, which reached 27.9 per cent and around 60 per cent among the youth. The Greek system of collective bargaining had experienced a "disorganized decentralization". Trust among the social partners, and between the social partners and the State had been considerably and negatively affected. That had been the reality that the Government had tried to reverse, in 2015, when a change of paradigm had taken place in Greece with a new Government focused on social rights. The new Government's objective had been to alleviate the major humanitarian crisis that had led to the collapse of the Greek society between 2010 and 2014, and to pursue the recovery of the economy by reducing the high unemployment and empowering the workforce. The above negotiations had indeed resulted in the restoration of the two abovementioned fundamental principles: the extension of collective bargaining and the favourability principle. As already noted, the restoration of those principles had been legislated since May 2017 and would be put into force in August 2018. The last technical details had been agreed upon with the social partners recently, leaving no doubt that collective bargaining would be reinstated in the country in August 2018.

Moving on to the issue regarding the arbitration system in Greece, the speaker recalled that arbitration had always been a part of the Greek legal framework for resolving collective disputes. Article 22, paragraph 2, of the Greek Constitution provided that the general working conditions shall be determined by law, supplemented by collective agreements, and when free collective bargaining failed, by rules determined by arbitration. Since 1990 that system had been entrusted to an autonomous organization called Organization for Mediation and Arbitration (OMED), governed fully by the social partners. The Government was aware that the Committee of Experts had stated many times that the right of unilateral recourse to arbitration had not been considered compatible with the Convention. Nonetheless, the specific requirements of the Greek Constitution, as well as the repeated rulings of the Greek Supreme Courts, had to be respected by the Government. The Supreme Courts had ruled that the Convention's provisions and guidelines had already been implemented through the provisions of the Greek Constitution for free bargaining and arbitration and that there was no issue with respect to compatibility. In 2012, when the former Government had tried to abolish the unilateral recourse to compulsory arbitration, the full plenary of the Council of State had cancelled, in 2014, the abolition, ruling that it contradicted the provisions of the Greek Constitution. Furthermore, according to ruling No. 2307/2014 in Greece: (a) the establishment of an arbitration system was a constitutional obligation; (b) unilateral recourse to arbitration was also a constitutional right; and (c) the scope of arbitral decisions should cover all issues that could be negotiated during collective bargaining and could not be limited only to the determination of wages. Pursuant to those constitutional obligations, the existing legal framework provided that the right of unilateral recourse to arbitration was only given to either party when: (i) the other party refused to participate in the mediation process; or (ii) after the submission of the mediator's proposal. That meant that the right could only be exercised when all possibilities for free negotiations had been exhausted.

In addition, a number of other provisions also restricted the role of arbitration in order to foster free collective bargaining, such as a second degree arbitration established (on appeal). That appeal would be examined by a five-member Commission, consisting of two arbitrators, two Supreme Court judges (from the Council of State and Areios Pagos) and one Counsellor of the Legal Council of the State. Moreover, mediators' proposals as well as arbitral decisions had to be fully justified and documented. Further, the judicial control of arbitral decisions had been increased and strengthened. Finally, in light of the provisions of the Convention, as well as the requirements of the Greek Constitution, the Government had recently initiated a tripartite dialogue on the basis of an independent expert's study on mediation and arbitration in collective bargaining. Following the tripartite dialogue, the Ministry of Labour was planning to introduce further amendments to arbitration, with a view to further enhancing free bargaining and good-faith negotiations between the parties and strengthen the mediation procedure. Through such amendments to the mediation procedure, free collective bargaining was expected to be further enhanced and

arbitration would be limited to playing a supplementary role, in line with the Committee of Expert's recommendations, while preserving the constitutional particularities of Greece.

The speaker concluded by emphasizing the importance that the current Government gave to collective bargaining and to social dialogue. Under extremely hard conditions, the Government was reinstating a coordinated system of collective bargaining and guaranteeing the necessary legal requirements to foster social dialogue.

Les membres travailleurs ont regretté que le gouvernement ne se soit pas acquitté de son obligation de faire rapport, condition sine qua non d'un contrôle effectif de l'application des normes de l'OIT.

Faisant référence à l'observation de la commission d'experts, ils ont rappelé que, compte tenu du fait que les petites entreprises sont majoritaires sur le marché du travail grec, l'abandon du principe de faveur (loi n° 3845/2010), conjugué avec la possibilité pour les associations de personnes de conclure une convention collective d'entreprise, lorsque celle-ci n'a pas de syndicat (loi n° 4024/2011), avait des effets préjudiciables graves pour tout le fondement de la négociation collective dans le pays. Les chiffres repris dans le rapport de la commission d'experts sont jugés assez édifiants à ce propos: sur les 409 conventions collectives conclues en 2013, 218 l'ont été par des associations de personnes, et seulement 191 par des syndicats. Or le droit à la négociation collective garanti par l'article 4 de la convention est un droit prévu pour les organisations de travailleurs, et il est évident que des associations de personnes ne sont pas des organisations de travailleurs à proprement parler. A l'occasion d'observations précédentes de la commission d'experts, le gouvernement avait expliqué qu'une association de personnes est créée indépendamment du nombre total de travailleurs et pour une durée déterminée; que trois cinquièmes des travailleurs au moins sont requis pour créer une association de personnes, et que ces travailleurs sont protégés contre le licenciement antisyndical et peuvent déclencher des actions de grève, lorsque ceci n'est pas prévu par la législation. Les membres travailleurs considèrent que ces explications ne sont guère convaincantes. La recommandation (n° 91) sur les conventions collectives, 1951, prévoit certes que, en l'absence d'organisations de travailleurs, il est possible pour les représentants des travailleurs intéressés, dûment élus et mandatés par ces derniers en conformité avec la législation nationale, de conclure des conventions collectives. Toutefois, il ressort des travaux préparatoires de cette recommandation que cette possibilité a été introduite afin de prendre en considération les cas des pays où les organisations syndicales n'ont pas atteint un niveau de développement suffisant et afin que les principes posés par la recommandation puissent être appliqués dans ces pays. Or la Grèce n'est certainement pas un pays où les organisations syndicales sont insuffisamment développées, et la législation nationale prévoit que, pour les travailleurs dans les PME, la représentation se fait via les syndicats sectoriels.

Les membres travailleurs se sont également référés à la convention (n° 154) sur la négociation collective, 1981, ratifiée par la Grèce, qui prévoit en son article 3, paragraphe 2, que des mesures appropriées devront être prises, chaque fois qu'il y a lieu, pour garantir que la présence de représentants non syndicaux ne peut servir à affaiblir la situation des organisations de travailleurs intéressées. Il en résulte trois conséquences: i) les principes et normes de l'OIT impliquent que les Etats sont tenus de promouvoir et développer la négociation collective. ii) cette négociation doit se faire à un niveau qui permette de faire participer les organisations des travailleurs; et iii) le fait de prévoir via la législation que des accords au niveau de l'entreprise peuvent déroger aux accords sectoriels et nationaux, dans un contexte où les organisations syndicales ne sont pas présentes au niveau de l'entreprise, constitue une violation des conventions et recommandations de l'OIT.

Les membres travailleurs ont en outre souligné que le Comité de la liberté syndicale avait eu l'occasion d'observer, dans des cas concernant l'Espagne et la Grèce, que «la mise en place de procédures favorisant systématiquement la négociation décentralisée de dispositions dérogatoires dans un sens moins favorable que les dispositions de niveau supérieur peut conduire à déstabiliser globalement les mécanismes de négociation collective ainsi que les organisations d'employeurs et de travailleurs et constitue en ce sens un affaiblissement de la liberté syndicale et de la négociation collective à l'encontre des principes des conventions n°s 87 et 98». Dès lors, il incombe au gouvernement de prendre les mesures appropriées afin de promouvoir de manière effective le droit à la négociation collective avec les organisations de travailleurs.

S'agissant du recours à la procédure d'arbitrage obligatoire, les membres travailleurs ont estimé que la nature du système existant avait pour effet de renforcer la position des employeurs en leur permettant de ne pas participer aux procédures de résolution des différends. Aussi est-il demandé au gouvernement, dans la réponse que ce dernier va apporter à la décision du Conseil d'Etat jugeant inconstitutionnelle la suppression du recours institutionnel à l'arbitrage, d'adopter une approche consistant à restaurer des mécanismes de négociation collective effectifs.

Enfin, pour ce qui est de la protection contre le licenciement antisyndical soulevé dans l'observation de la commission d'experts, les membres travailleurs considèrent qu'elle s'inscrit dans le cadre de la mise en œuvre des formes de travail flexibles (flexibilité dans la prérogative de la direction d'une entreprise de mettre un terme aux

contrats de travail à plein temps, imposition unilatérale d'horaires de travail réduits, durée plus longue du recours autorisé aux agences de travail temporaire, allongement de la période d'essai et de la durée maximale des contrats à durée déterminée). Toutes ces modalités ont pour conséquence de rendre les travailleurs plus vulnérables aux pratiques déloyales et aux licenciements injustifiés. Il est dès lors nécessaire que des mesures soient prises afin de veiller à ce que les travailleurs bénéficient d'une protection adéquate contre les discriminations portant atteinte à la liberté syndicale.

Les membres travailleurs ont terminé leur propos en faisant observer que la question de la décentralisation de la négociation collective et celle du rôle joué par les associations de personnes ne sont pas seulement le fait du gouvernement. Il s'agit de mesures conditionnelles, de diktats, imposés à la Grèce depuis 2010 dans les négociations avec la Commission européenne, la Banque centrale européenne et le Fond monétaire international. Il y a lieu de préciser que l'achèvement du programme d'ajustement n'implique nullement la fin des mesures conditionnelles imposées par les créanciers qui réaffirment que la Grèce restera sous stricte surveillance. Dès lors, l'examen du cas de ce pays constitue plutôt une opportunité pour les membres travailleurs de rappeler que la logique de l'austérité avec toutes ses conséquences dramatiques sur les travailleurs et les sociétés sont incompatibles avec les principes et normes fondamentales de l'OIT.

The Employer members stated that they shared the concern of the Worker members and of the Committee of Experts that the Government had not submitted a report to the Committee of Experts in time for that Committee to fully consider the issue. That limited the Conference Committee's ability to consider recent information. The Convention required that measures appropriate to national conditions be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Referring to the decision of the Council of State on the unconstitutionality of the provision in Act No. 4046 of 14 February 2012 providing for the suppression of unilateral recourse to compulsory arbitration, the Employer members indicated that the Government appeared to be encouraging the use of compulsory arbitration as a replacement for voluntary negotiation. The Committee of Experts had noted the issues raised by the Hellenic Federation of Enterprises and Industries (SEV) and its concern regarding the Government's insistence in keeping regulations allowing unilateral recourse to compulsory arbitration to circumvent collective bargaining. The Employer members expressed their concern that no response had been provided to the concerns raised by the SEV.

The Employer members expressed surprise that the Government had indicated that one of its top priorities was the restoration of a system of collective bargaining, as the Government had also indicated that arbitration had always been a part of the Greek legal system, even if the Committee of Experts had made numerous observations that a system of compulsory arbitration did not meet the obligation under the Convention. The Government had stated that it considered the decision of the Council of State in light of its Constitution. The Government's statement appeared to imply that it had discharged its obligations under the Convention, as a result of recent amendments, and that the onus then fell on workers' and employers' organizations. Compulsory arbitration had a distortionary impact on the labour market and could materially affect the outcome of negotiations. In 1978, the mission report of the International Programme for the Improvement of Working Conditions and the Environment (PIACT) concerning Greece had stated that systematic recourse to compulsory arbitration resulted not only in excluding the establishment of a tradition of dialogue between the social partners, but also in deterring the labour organizations from designing policy. The prediction that systematic recourse to compulsory arbitration would stifle collective bargaining had been accurate.

The Employer members disagreed with the Worker members' assertion that the status quo favoured employers in the country. However, they agreed that the Government should reinstate effective collective bargaining mechanisms. Legislative provisions that allowed either party to unilaterally request compulsory arbitration for the settlement of a dispute or collective agreement did not promote voluntary collective bargaining, stifled collective bargaining and were contrary to the Convention.

The Employer members urged the Government to ensure that neither a decision of a national court nor any legislative amendments imposed compulsory arbitration for the settlement of disputes or collective agreements as the normal course. They further called on the Government to discuss the existing arbitration system with the social partners with a view to achieving compliance with international labour standards. Full and robust social dialogue with workers' and employers' organizations at the national level was necessary to resolve the concerns identified on the use of compulsory arbitration, including its scope. Lastly, the Employer members called on the Government to take immediate measures in that respect and to provide a full report on the measures taken to the Committee of Experts in advance of its session in 2018.

The Worker member of Greece expressed appreciation for the support provided by the ILO in supervising compliance with labour standards and providing technical assistance and noted that the Government had not resolved human resources issues in the country leading to non-compliance with its ILO reporting obligations. Collective bargaining destabilized by repeated statutory limitations had still not been effectively restituted and the significant interventions in the voluntary nature of collective bargaining and in the principle of the inviolability of freely concluded collective agreements, raised by the Committee on Freedom of Association, had not been effectively addressed. A number of issues were at stake, including the statutory infringement to set the minimum wage at poverty levels and further reduce it for young workers; the evisceration of the National General Collective Agreement (NGCA) by removing the right of its signatory social partners to bargain collectively; erosion of sectoral collective bargaining; annulment of fundamental principles protecting terms of pay and work, such as the extension of collective agreements and the favourability principle; and conferral to non-elected associations of persons the ability to conclude binding enterprise-level agreements. Those measures had deprived the social partners of the fundamental right and means to advance and defend their economic and social interests, resulting in a decline in collective bargaining coverage from over 80 per cent of the workforce to just over 30 per cent. Furthermore, successive measures had wiped out remaining institutional safeguards that had been ensuring a level playing field at labour markets, bearing upon collective dismissals, pension cuts and the right to strike, and the authorities had ignored the strong appeal by the Committee on Freedom of Association to review, with the social partners, all the contested measures and their impact. To address the adverse cumulative impact of the measures on the exercise of the right to bargain collectively and conclude collective agreements, it was necessary to ensure the unequivocal compliance of domestic law and practice with the Convention and the national constitutional order. Although the adoption of section 5 of Act No. 4475/2017, reinstating the extension of collective agreements and the favourability principle, was welcomed, the Government had undertaken to streamline and codify existing labour law which implied the consolidation and perpetuation of every harmful legislation since 2010, including provisions that overtly violated the Convention.

With regard to the arbitration procedure, the Government did not fully comply with the decision of the Plenary of the Council of State No. 2307/2014 and the nature of the existing system was mainly subsidiary. The labour market was fully deregulated, workers suffered significant institutional disadvantage and abusive employer practices hindered the conclusion of collective agreements, for instance, employers avoided participation or denied their designation as an employer organization. In 2013, the Committee requested the Government to establish a functioning model of social dialogue to promote collective bargaining but tripartite social dialogue had degenerated in a superficial fragmented procedure and any existing dialogue should be credited only to the social partners and the ILO.

Consequently, the Committee was called on to: reaffirm previous recommendations and conclusions by the ILO supervisory bodies and request the tripartite review of the mentioned measures based on their impact assessment, with a view to rendering legislation and practice compatible with the rights enshrined in the Convention; emphasize that collective bargaining institutions could not be effectively restored without repealing all statutory interventions that violated the Convention, including associations of persons, and section 2(7) of Act No. 3845/2010 derogating the scope of collective agreements; reiterate that public authorities should refrain from any interference restricting the right to free collective bargaining or impeding its lawful exercise; and renew its emphasis on the need to reinstate the standing and practice of tripartite social dialogue, urging the State to respect the autonomy and the representativeness of the social partners, as well as collective bargaining outcomes.

The Employer member of Greece recalled the two main issues discussed: firstly, enterprise-level collective agreements and associations of persons and secondly, the issue of compulsory arbitration. With regard to the competence of associations of persons to represent workers at the level of a firm where a trade union did not exist, such measures were in full accordance with ILO standards, actively promoted collective bargaining and social dialogue and should therefore not be changed. Special regulations allowing trade union sections in small companies would, in the country's specific context, be seen as a Government intervention in the way workers organized of their own free will and there should thus be no legislative amendments, irrespective of whether a favourability principle existed in the laws or not.

The existing system, to the extent that it included unilateral recourse to compulsory arbitration, had been found by ILO supervisory bodies to be against ILO standards. The arbitration system was dominant and central in Greek industrial relations but recourse to compulsory arbitration stifled the development of collective negotiations and in practice caused absence of industrial action and of development of collective bargaining. Although from an employer's viewpoint, practically eliminating industrial action might appear as positive, near-zero strikes on salary issues was a symptom that the system had consistently provided easy solutions accommodating the workers' side and constituted a fundamental distortion of the collective bargaining environment. Such distorted environment was

one of the main reasons explaining why social dialogue between workers and employers had been almost non-existent in the past ten years.

Act No. 4303/2014 adopted after the 2014 Council of State decision had reinstated compulsory arbitration but it was essentially the same as the previous laws that had been found by ILO bodies to infringe the Convention and the Government intended to keep it that way. However, even in the framework of that decision, the situation could be improved drastically by adjusting the scope of compulsory arbitration to be as close as possible to ILO standards. The proposal was for compulsory arbitration to be accepted as the ultimate measure for resolving collective disputes strictly in the following cases: (1) where the employer was an entity belonging to general government or where it provided essential services; (2) in sectors of the economy where the resolution of a collective dispute was necessary for reasons of public interest that was at risk at the moment of the dispute – apart from general government and essential services, a collective dispute at firm- or occupational-level could not be conceived as putting at risk the public interest and compulsory arbitration should thus not be allowed for disputes at those levels; for sectoral, regional or national-level disputes, risk of public interest should be proven, if it was to merit recourse to compulsory arbitration; (3) if one of the parties refused in bad faith to enter into negotiations; (4) if negotiations had definitively failed and such failure had been proven by several cumulative conditions (at least one year had passed since the expiration of the previous collective agreement; the minutes of negotiations showed that one side refused to accept the realistic proposals of the other; and all means of union pressure had been used). Unilateral recourse to compulsory arbitration was thus not acceptable if strike action had not been undertaken to exert pressure on the employer. Although the proposal would not achieve full compliance with ILO standards, it could present significant improvement as an interim measure, until an opportunity arose to settle the matter at the level of the Constitution or its interpretation.

Furthermore, substantial improvements should be made in the existing framework of the OMED, including procedures to establish true representativeness for both sides of the dispute, strong safeguards for ensuring independence and professional qualification of arbitrators and mediators, standards for decisions to be adequately substantiated concerning their economic impact and full-scale self-government of the OMED by the social partners regarding its administrative or legal setup, funding and internal processes of arbitration and mediation.

In December 2017, the SEV had extended to the General Confederation of Greek Workers (GSEE) a formal invitation to discuss a brand-new arbitration system but since the GSEE had expressed the wish to return to the initial system that had existed before the crisis and to abolish the reforms of Act No. 4303/2014, which had brought back compulsory arbitration but had some marginal improvements over the old system, the discussion had not continued. As for the Government, it lacked any willingness to make the slightest move in the indicated direction, as demonstrated by the absence of any reference to the proposed changes in a technical document drafted with the country's creditors, which thus represented an explicit binding commitment of the Government to continue flouting the Convention, as well as Convention No. 154 for the foreseeable future. To conclude, the speaker suggested that if the Government was sincere about reviving collective bargaining, it should start by taking steps to comply with the Convention and if the workers believed in free collective bargaining as the main pillar for effective social dialogue, they should find the courage to denounce compulsory arbitration.

The Worker member of the United Kingdom recalled that the ability for independent trade unions and employers to engage in free collective bargaining to defend and promote their members' interest was a core value of the ILO. Effective collective bargaining systems ensured that workers and employers had an equal say in negotiations and that the outcomes were fair and equitable. It was deeply regrettable that labour law reforms introduced since 2010 at the request of Greece's creditors and the Troika had led to the dismantling of collective bargaining machinery and significantly weakened the position of workers in the labour market, depriving them of the institutional means needed to address economic hardship. In 2012, the national minimum wage – which had previously been set by collective bargaining, and had provided a safety net for low-paid workers – was substantially reduced. The collective bargaining system had been seriously weakened with the removal of mechanisms for the extension of sectoral-level agreements and precedence being given to enterprise-level agreements. Reforms had also limited the duration and content of collective agreements, as well as their effect on individual contracts after their expiry and imposed severe restrictions on the right for parties unilaterally to request arbitration. Those measures had discouraged free collective bargaining as they permitted employers to impose lower wages and worse working conditions and compelled trade unions to either accept employers' terms or risk even greater salary losses and fewer negotiating rights. Moreover, there was no guarantee that lower salaries agreed at a sectoral level would not be further reduced through the proliferation of less favourable enterprise-level agreements. The dismantling of collective bargaining institutions, the accompanying wage suppression and other austerity measures had had wide-ranging impacts, including a dramatic increase in the risk of poverty or social exclusion. Consequently, the speaker called upon the Government to refrain from interfering with the collective autonomy of the social partners and reinstate the collective bargaining machinery as a matter of urgency.

The Employer member of Spain indicated that non-compliance of a Member State of the European Union with ILO standards for so many decades was worrying, not only for the Greek employers. The crisis of recent years had shown the interconnection between the economies of European countries. In periods of crisis it was all the more important for social partners to have a shared understanding of the problems in each country, as it was not possible to achieve results without such collective understanding and sharing the responsibility for the solution. The lack of a culture of effective collective negotiations was probably one of the reasons of the delay in approving structural reforms. Social dialogue could not be built instantaneously but needed preconditions and was based on the gradual construction of mutual trust and respect among social partners engaging in continuous exchanges through collective negotiations. True social dialogue would be beneficial both to the Greek economy and to other partners in the European Union. Moreover, compulsory arbitration was contrary to the *acquis communautaire*. The ETUC had reiterated that the requirement for compulsory arbitration to be abolished raised no misgivings and that its abolition would bring the situation in line with ILO Conventions and the European Social Charter. In conclusion, there was support for the proposals of the SEV to urge the Government to comply with ILO and European standards.

The Worker member of Germany indicated that the reforms adopted by Greece since 2010 had been in conflict with the Convention. Under pressure from the Troika, the Government had weakened the validity of the NGCA and replaced negotiations of the social partners on minimum wage setting by legislation. The Government had also eliminated the favourability principle and weakened enterprise collective agreements. The negotiating position of the independent trade unions had been undermined by allowing associations of persons to act and negotiate as workers' representatives. The devastating effects of the decentralization of collective bargaining were undeniable. Enterprise collective agreements had become the predominant form of collective bargaining, accounting for over 90 per cent of all agreements in 2015. Almost half of them had been negotiated with associations of persons. The number of sectoral collective agreements had fallen from 65 in 2010 to only 12 in 2015. In view of the disproportionate number of small and micro-enterprises in Greece, coverage under collective bargaining agreements had decreased from 85 per cent before the crisis to an estimated 10 per cent in 2016. Wage cuts were highest where negotiations were carried out at the enterprise level and with associations of persons rather than with representative unions. Dialogue through collective bargaining had become difficult or in some instances had completely stopped. The continuation of that situation put at risk collective rights and the democratic participation of workers. Therefore, the speaker called upon the Government to restore the institutional framework as soon as possible, so that a functioning social partnership and free collective bargaining could be guaranteed at all levels, in particular at the enterprise and national levels. Furthermore, the representation of workers' interests by associations of persons instead of by trade unions should be legally prohibited. The speaker called on the Member States of the European Union to support Greece in re-establishing a peaceful society and rebuilding a democratic and fair collective bargaining system.

La membre travailleuse de la France a estimé qu'il était regrettable que les programmes d'ajustement économiques mis en œuvre en Grèce depuis un certain nombre d'années aient fait l'économie d'un dialogue social effectif, constat partagé à la fois par les travailleurs et les employeurs. En dépit des recommandations des organes de contrôle formulées à plusieurs reprises, les seuls formats de dialogue social effectif sont ceux qui impliquent la présence du BIT dans le cadre de l'assistance technique. Les accords bipartites entre travailleurs et employeurs sont tout simplement ignorés et des mesures concernant le droit du travail, et la négociation collective ont été prises en dehors de toute consultation avec les partenaires sociaux. Ces derniers ont clairement demandé de réinstaurer un dialogue social tripartite effectif dans le cadre d'un accord sur la négociation collective générale en mars 2018, demande déjà formulée dans des déclarations communes en 2015 et 2016. Alors que la Grèce a ratifié la convention (n° 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976, les partenaires sociaux ne sont même pas conviés à travailler sur les rapports dus par la Grèce. L'oratrice a demandé la restauration du dialogue social tripartite dans un cadre structuré et dont les procédures respectent l'expérience et les connaissances des partenaires sociaux.

Le membre employeur de la France a déclaré que la question de l'arbitrage obligatoire en Grèce devait être examinée au regard des conventions n°s 98 et 154, toutes deux ratifiées par la Grèce, ainsi qu'au regard de la recommandation (n° 92) sur la conciliation et l'arbitrage volontaires, 1951, et de la recommandation (n° 163) sur la négociation collective, 1981. Le recours unilatéral à l'arbitrage obligatoire est un problème persistant et contraire aux principes fondamentaux de l'OIT. En résumé, la législation grecque accorde le droit d'entrer, sans consentement de l'autre partie, dans un processus de médiation et, par la suite, dans un processus d'arbitrage, si la convention collective n'aboutit pas. La décision arbitrale est ensuite assimilée à une convention collective normalement conclue, même en l'absence de l'accord des parties, et possède la même force contraignante qu'une convention collective. L'orateur a montré qu'il existait des contradictions juridiques évidentes entre les instruments précités et la législation nationale et a souligné que le gouvernement ne répondait pas aux préoccupations exprimées par la SEV, quand elle affirme que le recours à l'arbitrage obligatoire unilatéral vient étouffer la négociation collective. Il est temps que le gouvernement prenne des mesures en vue d'assurer la mise en conformité de la législation avec les

conventions de l'OIT, l'histoire ayant prouvé que le système d'arbitrage obligatoire, par sa nature même, minait la négociation collective, principe fondamental du dialogue social.

The Worker member of Portugal, also speaking on behalf of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Workers' Union of Spain (UGT-E), stated that the labour market restructuring explicitly imposed by Greece's creditors violated core ILO Conventions and deprived workers of institutional means to defend themselves and to bargain collectively. Combined with a sizeable informal economy, the dismantling of collective bargaining magnified the negative cumulative impact on employment, exacerbated already existing disparities and severely compromised the right to work. Statistics were provided on the unemployment rate in the country which, despite a recent decrease, amounted to the highest in the European Union. Unemployment was often long-term and touched over 1 million people, in particular young people, showing that it increasingly acquired structural characteristics. Furthermore, while full time jobs decreased, the number of part-time workers, rotation and shift jobs – the so called flexible forms of employment – increased and such precarious jobs could not contribute to sustainable job growth. The deregulation of labour relations had thus led to the worsening of the basic protection indicators of employment and a dramatic increase of enterprise-level collective bargaining agreements.

The Worker member of Sweden, speaking on behalf of the ETUC, stated that the rule of law could only be upheld if member States complied with international legal standards, even in times of economic difficulties. The case concerned human rights. The collective bargaining system in Greece had been radically restricted and dismantled, leading to violations. Greek trade unions had taken various legal measures with a view to reinstating the industrial relations system and the right to collective bargaining as well as the guarantee and enforcement of agreements. As a result, since 2011, national courts, international supervisory bodies and special procedures had identified violations of international standards on human rights, including labour and social security rights. Such bodies had expressed deep concern regarding the impact of austerity measures and deep regret when their recommendations had not been followed. Nonetheless, there had been no progress regarding respect in practice for the rights guaranteed in the Convention. That included the decision to establish the minimum wage by law without bargaining with the social partners and allowing enterprise agreements to be concluded with associations of persons that did not have guarantees with regard to elections and representativeness. The ETUC had criticised austerity measures and had expressed its solidarity and support for the GSEE, asking the Government to proceed in full and frank dialogue with that Confederation. Human rights needed to be guaranteed and respected. The speaker concluded by urging the Government to take the necessary measures in order to comply with the Convention, including through amending its legislation.

An observer representing Public Services International (PSI) and Education International (EI) regretted that once again the Government had not submitted its report to the Committee of Experts, thus avoiding its obligations under the ILO Constitution and Conventions. That prevented an honest discussion regarding the public sector, where the enforcement of the Memoranda of 2010 was having devastating consequences. There were no collective bargaining agreements in the public sector in Greece, including in public education. It was to be recalled that in Greece over 95 per cent of schools were public and teachers' salaries and working rights were determined by regulations of the Ministry of Finance and the Ministry of Labour. Equal rules applied to all public servants across all public sectors. All collective bargaining agreements had been abolished since the enforcement of the Memoranda of 2010 and replaced by individual contracts of employment. However, even before the enforcement of the Memoranda, the salary increases for all public servants were unilaterally decided by the State without any consultation. With regard to teachers, some further increases had been given after large-scale strikes and mobilizations. But in the last one, the Ministry of Education had issued civil mobilization orders for teachers, abolishing de facto their right to strike, a decision that had later been supported by the courts. Social dialogue did not exist anymore. For instance, while the Federation of Secondary School Teachers (OLME) participated in the National Council of Education and had to be invited in the Committee for Education Affairs of the Parliament to be consulted on every new legislative act put forth, the State was not required to take into consideration the OLME's views. In 44 years of union action some form of dialogue had been established between the union and the sole employer of public school teachers in Greece, the Ministry of Education. Yet, that dialogue could not be defined as "social dialogue" in the strict sense because it did not lead to an agreement between both parties. True social dialogue needed to be genuine, meaningful and effective.

The Government representative reiterated that the extension principle and the principle of favourability that had been suspended since 2010 and 2011 respectively, would be restored in August 2018, after the exit from the economic adjustment programme. Furthermore, it was not true that supervision would be strict after exiting the programme; on the contrary, it would be limited only to the achievement of fiscal targets. In the current Government's view, both principles were extremely important for a stable, effective and coordinated system of collective bargaining, and that had been the reason for the Government's insistence on their restoration. The

principles reversed the power imbalance between the parties; fostered social dialogue and incentivized the parties to engage in it; they unified rules and created a level playing field; they reduced income inequality and achieved a fair distribution of national income. Supplementary to the restoration of collective bargaining principles, a rise in minimum wage was under way. Moreover, there were a number of economic/efficiency benefits in having coordinated collective bargaining structures, such as reduction in transaction costs, higher productivity, lower unemployment and social peace. Hence, the re-establishment of an organized and fully functioning system of free collective bargaining had always been and still remained at the core of the holistic growth strategy that the Government had drafted and presented to the Eurogroup the past month. The strategy was based on a model of socially fair and sustainable growth, in which social rights were prerequisites, not bottlenecks, to economic growth.

To this end, she recalled the support the Government had received in its efforts there had been the following: (a) a joint statement by the European Commission President, Mr Jean-Claude Juncker, and the Greek Prime Minister in May 2015; (b) a press release statements and letters to the President of the European Commission by a number of members of the European Parliament in December 2016; (c) a statement by ETUC in 2016; and (d) a joint press release by ETUC and ITUC in 2017, whereas the National Workers' Confederation (GSEE) remained silent.

Regarding the issue of unilateral recourse to compulsory arbitration, the Government planned to introduce some further amendments to arbitration with a view to enhance free bargaining and good-faith negotiations between the parties. The amendments included the following: (1) the mediator would have the ability to refrain from any proposal, blocking temporally the path to arbitration, if it was reasonably believed that there was still room for negotiation in good faith between the parties. In such a case, the parties would return to direct negotiations; (2) unilateral recourse to compulsory arbitration would be only permitted: (i) to whichever party had come to mediation, if the other party had refused to participate; or (ii) to whichever party had accepted the mediator's proposal, which the other party had rejected. The first condition penalized the party that had shown bad faith by refusing to participate in the mediation process, while the second ensured that the right of unilateral recourse to compulsory arbitration was only given to the party that had shown good faith and a consensual behaviour by accepting the mediator's final proposal.

The speaker questioned the Employer members' argument that arbitration undermined collective bargaining and pointed out that statistical data proved that mediation and arbitration had a supplementary role to collective bargaining. Arbitral decisions in general represented only a small part of the total collective bargaining agreements. In particular, during the past 28 years the average rate of arbitral decisions had been 12 per cent. Since 2014, only 7.7 per cent of collective disputes had led to mediation and only 2.3 per cent of them had been resolved with an arbitral decision. Finally, over 55 per cent of the cases which had led to mediation and arbitration, had been resolved on the basis of consensus by the parties without the need of an arbitral decision. The speaker also reiterated that the amendments to the arbitration processes had been decided following extensive tripartite dialogue which had included the SEV. A few of the proposals submitted by the SEV had been taken on board, while the majority had been considered contrary to both the Greek Constitution and the Council of State's ruling previously mentioned. The Government was however proceeding to limit the scope of unilateral recourse to arbitration.

The speaker concluded that the above proved the Government's goal, strategy and priorities to enhance workers' bargaining power, increase their income and thus set the preconditions for a socially fair and inclusive growth. It was important that those preconditions had been set, as the Greek economy was entering a phase of strong recovery. Recession was behind and the country had returned to positive growth rates. The Government had taken all the measures for the new growth model to become a reality. It was now up to the social partners to use in good faith the tools given to them, and to proceed with collective agreements that would serve social peace and promote social justice.

The Employer members recalled that several speakers had highlighted the lack of social dialogue at the national level. They had noted with concern that the Government's intervention suggested a resistance to adopting measures to come into full compliance with the Convention with respect to the issue of compulsory arbitration. The Employer members further reiterated their concern that the Government had not submitted a report on the application of the Convention to the Committee of Experts. While statistical information had been provided to the Conference Committee, it was necessary that the information be submitted to the Committee of Experts. Referring to the obligation under Article 4 of the Convention to encourage and promote the full development and utilization of machinery for voluntary negotiation, it was stated that the use of recourse to compulsory arbitration in the Greek system did not promote voluntary negotiation and that the Committee of Experts had repeatedly stated that the obligations in the Convention were not consistent with regular and repeated recourse to compulsory arbitration. It was the Employer members' position that compulsory arbitration was not compatible with Article 4 of the Convention, and that existing law and practice in Greece did not seem to be justified by any acceptable exception. Therefore, the Government should introduce changes that banned unilateral recourse to compulsory arbitration, in

line with the requirements of the Convention. The Government's reference to the ruling of the Council of State on constitutional obligations was not a complete answer on that issue. The Employer members urged the Government to re-establish without delay the ban on unilateral recourse to compulsory arbitration, requested it to report to the Committee of Experts on measures taken in that respect and to avail itself of ILO technical assistance in order to come into compliance with the Convention.

Les membres travailleurs ont souhaité lever le malentendu concernant le recours à l'arbitrage obligatoire. Ils n'ont pas soutenu que celui-ci était favorable aux employeurs; en revanche, c'est le contexte et la situation générale dans laquelle se trouve le marché du travail grec qui leur sont favorables. Il ressort des discussions au sein de la commission que l'arbitrage obligatoire prévu en Grèce vise à pallier les insuffisances des mécanismes de négociation collective. Les membres travailleurs ont ensuite réitéré qu'un pays comme la Grèce, dont le marché du travail est composé essentiellement de petites entreprises et qui décide de confier la négociation collective à des associations de personnes, ne garantit pas ce droit de manière effective. Si la convention ne s'oppose pas à ce qu'une négociation puisse se mener à des niveaux différents, le choix du niveau de la négociation doit être laissé aux parties, et les autorités ne peuvent fixer de manière unilatérale et générale que les accords conclus au niveau inférieur peuvent déroger aux accords supérieurs. C'est aux parties elles-mêmes qu'il revient de décider s'il y a lieu ou non de permettre à des accords sectoriels ou d'entreprise de déroger aux accords généraux. Cette décision est donc elle-même soumise à la négociation collective.

Au moment de répondre à la décision du Conseil d'Etat concernant l'arbitrage obligatoire, il appartient au gouvernement d'adopter une approche globale passant par la réinstauration des mécanismes de négociation collective effectifs. Il lui appartient également de veiller à prendre les mesures nécessaires pour protéger les travailleurs contre tout acte de discrimination antisyndicale. Ce point revêt une importance particulière eu égard à la situation de l'emploi en Grèce et à la multiplication des formes flexibles de travail. La commission se doit de réaffirmer les recommandations et conclusions antérieures des organes de contrôle de l'OIT et de demander l'examen sans retard des mesures susmentionnées dans le cadre d'un examen tripartite fondé sur leur analyse d'impact, en vue de rendre le système législatif et la pratique compatibles avec les droits consacrés par la convention. Il importe enfin de réaffirmer que les pouvoirs publics devraient s'abstenir de toute ingérence qui restreindrait le droit à la libre négociation collective ou entraverait son exercice légal et de rétablir d'urgence le statut et la pratique du dialogue social tripartite, afin de montrer que l'Etat respecte l'autonomie collective, la représentativité et les résultats de la négociation collective.

Conclusions

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

The Committee expressed concern regarding the Government's submission related to the compulsory arbitration system and the decision of the Council of State concluding that the provision in Act No. 4046, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional.

The Committee also expressed concern regarding the Government's failure to provide a report to the Committee of Experts in time for its most recent session in November 2017.

Taking into account the Government's submissions and the discussion that followed, the Government was urged to:

- ensure that unilateral recourse to compulsory arbitration as a way to avoid free and voluntary collective bargaining is employed only in very limited circumstances;
- ensure that public authorities refrain from acts of interference, which restrict the right to free and voluntary collective bargaining, or impede its lawful exercise;
- provide information on the number of collective agreements signed, the sectors concerned and the number of workers covered by these collective agreements;
- provide information and statistics related to complaints of anti-union discrimination and any remedial action taken;
- avail itself of ILO technical assistance to ensure the implementation of these measures; and

- report to the Committee of Experts on the implementation of these recommendations before its next session in November 2018.

Taking into account the Government's failure to meet its reporting obligations in 2017, the Committee urged the Government to comply with its reporting obligations to the Committee of Experts in the future.

Conclusions

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

La commission s'est dite préoccupée par la déclaration du gouvernement sur le système d'arbitrage obligatoire et par la décision du Conseil d'Etat aux termes de laquelle la disposition de la loi n° 4046 qui prévoyait la suppression du recours unilatéral à l'arbitrage obligatoire a été déclarée inconstitutionnelle.

La commission s'est également dite préoccupée par le fait que le gouvernement n'a pas communiqué en temps voulu de rapport à la commission d'experts pour sa dernière session, en novembre 2017.

Prenant en compte les éléments fournis par le gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement de:

- s'assurer que le recours unilatéral à l'arbitrage obligatoire en tant que moyen d'éviter la négociation libre et volontaire ne soit utilisé que dans des circonstances très limitées;
- s'assurer que les autorités publiques ne commettent pas d'actes d'ingérence restreignant le droit de négociation libre et volontaire ou en empêchent l'exercice licite;
- fournir des informations sur le nombre de conventions collectives conclues, sur les secteurs concernés et sur le nombre de travailleurs couverts par lesdites conventions;
- fournir des informations et des statistiques sur les plaintes pour discrimination antisyndicale et sur les mesures correctives prises;
- se prévaloir de l'assistance technique du BIT pour garantir l'application de ces mesures; et
- faire rapport à la commission d'experts sur la mise en œuvre de ces recommandations avant sa prochaine session en novembre 2018.

Prenant en compte que le gouvernement n'a pas satisfait à ses obligations de faire rapport en 2017, la commission l'a prié instamment de respecter à l'avenir ses obligations de faire rapport à la commission d'experts.

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 expresó su preocupación por la información proporcionada por el Gobierno relativa al sistema de arbitraje obligatorio y la decisión del Consejo de Estado en la que se concluye que la disposición que figuraba en la Ley núm. 4046, que preveía la supresión del recurso unilateral al arbitraje obligatorio, es inconstitucional.

La Comisión también expresó su preocupación por que el Gobierno no hubiera presentado una memoria a la Comisión de Expertos a tiempo para su reunión más reciente, de noviembre de 2017.

Teniendo en cuenta la información proporcionada por el Gobierno y la discusión que tuvo lugar a continuación, se instó al Gobierno a que:

- vele por que el recurso unilateral al arbitraje obligatorio como medio de evitar la negociación colectiva libre y voluntaria se emplee únicamente en circunstancias muy limitadas;
- vele por que las autoridades públicas se abstengan de actos de injerencia que limiten el derecho a la negociación colectiva libre y voluntaria o que obstaculicen su ejercicio legal;
- aporte información sobre el número de convenios colectivos suscritos, los sectores concernidos y el número de trabajadores cubiertos por esos convenios colectivos;
- aporte información y estadísticas en relación con las quejas de discriminación antisindical y con las medidas de reparación aplicadas;
- recurra a la asistencia técnica de la OIT para asegurar la aplicación de estas medidas, e
- informe a la Comisión de Expertos sobre la aplicación de estas recomendaciones antes de su próxima reunión, que se celebrará en noviembre de 2018.

Teniendo en cuenta que el Gobierno incumplió su obligación de presentar memorias en 2017, la Comisión instó al Gobierno a que en el futuro cumpla con su obligación de enviar memorias a la Comisión de Expertos.

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)

Japan (*ratification: 1965*)

Japon (*ratification: 1965*)

Japón (*ratificación: 1965*)

A Government representative of Japan indicated that the basic labour rights of the national public service employees were, to some extent, restricted. They were, however, compensated by the National Personnel Authority (NPA) Recommendation System and other measures. Specifically, remuneration, working hours, leave, and other working conditions were revised through laws adopted by the Diet on the basis of the NPA Recommendations. The NPA was a third party body, independent of employers and employees, which made its own decisions. In particular, with respect to the level of remuneration of national public service employees, the NPA made its Recommendations with the aim of achieving a balance in remuneration levels between the public and private sectors by eliminating the wage gaps between the two sectors. For this purpose, the Authority conducted nationwide surveys in consultation with representatives of employers and workers, and compared in detail remunerations in the public and private sectors. Upon receiving the NPA's recommendations and after consultation with employees' organizations, the Government revised remuneration scales through bills which were submitted to the Diet for adoption. The Government, in principle, respected the NPA Recommendations. The National Public Service Act had been revised in 2014, establishing the Cabinet Bureau of Personnel Affairs. Even after this amendment, the Government had been revising remuneration in accordance with the NPA's recommendations. While the fiscal conditions remained tight, both base pay and bonuses had been increased every year for the last four years. The speaker was therefore of the view that the NPA continued to provide compensatory measures. The Government was also confident that working conditions for the national public employees were appropriately maintained through the deliberation of relevant bills which were prepared by the Government based on the Recommendations by the NPA, a neutral and independent entity. With respect to the issue of the autonomous labour–employer relations system, the Government would continue to have social dialogue with employees' organizations for a careful examination of these issues, requiring. In particular, the following concerns needed to be addressed: the cost of negotiation, which might lead to some confusion, possible effect of prolonged labour–employer negotiations on the normal operation of services, the risks associated with a failure to reach an agreement and the concerns that it might become standard practice for cases to move to arbitration.

With respect to fire-defence personnel, she recalled that the fire-defence service was considered to be of a similar nature to the police; thus firefighters did not have the right to organize. The service had been historically part of the police system. In Japan, one of the countries most frequently hit by natural disasters, the fire defence service had to respond under harsh conditions and in a close cooperation with the police and the self-defence forces. When the Great East Japan Earthquake had hit in 2011, the emergency fire response teams had been mobilized by an order of Commissioner of the Fire and Disaster Management Agency (FDMA) pursuant to the Fire and Disaster Management Organization Act, as amended in 2003. The manner in which the firefighters engaged with the police and defence forces when conducting extremely dangerous operations should be recognized. For these reasons, the right to organize was not granted to the fire defence personnel. However, the Fire Defence Personnel Committee (FDPC) system was established as an alternative. The role of the FDPC was to examine proposals on working conditions by the fire service personnel and to submit its views on them to the chief of fire service. This system had been introduced by an amendment to the Fire and Disaster Management Organization Act following an agreement between the Minister of Internal Affairs and Communications and the President of All Japan Prefectural and Municipal Workers Union (JICHIRO) that such a system would be accepted nationally. The system was fully functioning for resolution of problems related to working conditions and other matters. During its 20-year existence, the FDPC had examined some 110,000 proposals and considered about 40 per cent of them to be “appropriate for implementation”. Over 50 per cent of those had been implemented and dealt with matters considered to be urgent by the fire defence personnel, such as the need for measures to deal with harassment or to promote active participation of women. Thus, the FDPC system contributed to the realization of demands of the personnel. The speaker emphasized that the Government endeavoured to improve the FDPC system and to that effect had conducted an additional survey in January 2018 with a view to identifying areas for improvement. The survey questionnaire for the special survey had been jointly prepared in close consultation with JICHIRO. On the basis of the results obtained, the Government had been exchanging views with representatives of firefighters, JICHIRO, and of the employer. All agreed that there was a need to further improve the policy so as to ensure better communication, transparency in the procedures, and an environment in which the personnel would feel safe expressing their views. The Government intended to produce a plan to improve the FDPC and to revise the FDPC system operational policy in the summer of 2018, in further consultations with the social partners. In addition to that consultation, the Government will start new regular social dialogue on the FDPC with representatives of firefighters, workers’ representatives such as JICHIRO and with employers’ representatives. She recalled that Japan had ratified the Convention in 1965, in view of the conclusion of the Committee on Freedom Association that had indicated twice that it would cause no problem in the application of the Convention to view the fire service of Japan as “certain services assimilated to the police.”

Equally, prison officers were not granted the right to organize, to bargain collectively or to strike as they fell, for the purpose of this Convention, under the definition of “the police”. Just as police officials, prison officers were allowed to carry and use weapons. They were responsible for incarcerating people sentenced to imprisonment, investigating crimes occurred in penal institutions, arresting the suspects and carrying out duties of the judicial police officials in penal institutions.

Up-to-date information concerning the above matters would be provided as much as possible to the Committee of Experts. The speaker concluded by requesting the ILO to take into account the views of the Government and the unique circumstances of the country and to await for the conclusion of the national consultations.

The Employer members recalled that since 1989 the application of the Convention had been the subject of 19 observations of the Committee of Experts and had been discussed in the Conference Committee in 1989, 1993, 1995, 2001 and 2008. In their 2017 observation, the Committee of Experts had identified two main issues, notably the denial of the right to organize of public service employees, on the one hand, and to prison officers and firefighters on the other. Considering the need for flexibility in determining the meaning of the term “police” in line with the national context, it appeared reasonable for the Government to consider prison officers in the category of police and thereby exclude them from the right to organize in the form of a trade union. The Government had been requested to consider, in close consultation with the social partners, which categories of prison staff could be considered part of the police – thus exempt from Convention – and which could not. For those not to be covered by the Convention, the Government could be asked to establish a compensatory scheme; for the others, the Government should ensure the rights provided in the Convention. Although firefighters had traditionally not been recognized in the exemption from the right to organize for armed forces, the Government considered them part of the police: in circumstances of natural disaster, they had similar responsibilities to protect life, body and property. Furthermore, the Government had ratified the Convention on the understanding that firefighters would be considered part of the police; it also referred to the FDPC system that had been introduced pursuant to a 1995 agreement that applied nationwide. Therefore, the Government perhaps had justification for taking into account the history and circumstances of its ratification, as well as the traditional view of firefighters in Japan. The Employer members had articulated their

position on this in the 2008 discussion and, regarding the FDPC, highlighted a new level of engagement on the part of the Government. In order to comply with the Convention firefighters must have the right to organize, which did not necessarily require the right to form a trade union. Rather, an organization such as the FDPC might satisfy that obligation, provided that firefighters were allowed, not necessarily to form a trade union, but to organize themselves in relation to their occupation. The Government had also set up fact-finding missions about how that system worked. Information should be provided on that initiative, as well as feedback from the fact-findings surveys. On this basis, the Employer members considered that the Japanese context must be carefully assessed in future to better understand the issue.

Finally, the Committee of Experts had identified the denial of the right to organize to public service employees, noting that they should enjoy the right to strike without risk of sanctions. The Employer members reaffirmed that their position had not changed since the 2008 discussion: the right to strike was not an express part of the Convention and therefore did not fall within the scope of issues on which the Committee of Experts should provide observations. Whether public service employees had a right to strike was to be determined at the national level. They expressed concern that the Committee of Experts had included it in their observation, and would not elaborate further on the matter. Finally, the Government should continue its constructive engagement with the ILO with regard to firefighters and prison officers to ensure compliance with the Convention.

The Worker members recalled that Japan had ratified the Convention more than 53 years ago. The issues before the Committee, namely the right of firefighters and prison personnel to form genuine workers' organizations and the right of public servants to organize and exercise their right to strike, had been pending before the ILO supervisory bodies ever since. The Committee had examined the application of the Convention in Japan on numerous occasions and called on the Government to ensure that public servants were guaranteed the rights under the Convention and that firefighters enjoyed the right to organize without interference from the public authorities. Notwithstanding repeated discussions of this case and the very serious and diligent engagement and patience demonstrated by the national trade unions, no progress had been made to ensure that workers could enjoy the rights under the Convention. Firefighters and prison staff were excluded from the right to join or establish trade unions under the National Public Service Act (article 108-2) and the Local Public Service Act (article 52(5)). Both Acts dated back to 1948 and excluded these categories of workers from the right to organize and join organizations for the purpose of maintaining and improving working conditions through negotiations with the relevant authorities. The Government attempted to justify the exclusion of prison staff and firefighters under Article 9(2) of the Convention by arguing that these categories of workers performed duties that were included in the duties of the police. However, the Committee of Experts, as early as 1973, had stated that it did not consider that the functions of fire defence personnel were of such a nature as to warrant their exclusion from the application of the Convention. It had called on the Government to take appropriate steps to ensure that the right to organize was recognized for these categories of workers. The Ministry of Internal Affairs and Communications had issued a report in December 2010 revealing that there were no practical obstacles to granting the right to organize to firefighters. Nevertheless, the Government had decided to drop the Bill on Labour Relations of Local Public Service Employees, which would have had granted this right, and instead had called on further exchange of views on the subject. The Worker members expressed their deep disappointment at the lack of progress, which casted doubt on the Government's commitment to genuine, effective and efficient consultations and commitment to resolve this situation. Furthermore, regarding firefighters, the Government appeared to believe that the FDPC system it had set up was an appropriate means for allowing staff participation in the determination of working conditions. However, this system could by no means be considered to be a valid alternative to the right to organize as these committees were not freely established by workers and had no negotiating or decision-making powers. The outcome of their meetings, in the form of recommendations, were submitted to the FDMA, which enjoyed discretionary powers as to their implementation. While the Government was protracting to taking concrete steps towards giving effect to the Convention, workers were facing the consequences of the denial of their most fundamental rights. The lack of workplace democracy and the restrictions placed on workers' ability to voice collective concerns had created an abusive working environment in the firefighting services. Incidents of verbal and physical violence and harassment by managers had become commonplace and in one instance had led to a suicide. The Government bore its share of responsibility for such abuses. The Worker members strongly condemned Japan's failure to guarantee freedom of association to firefighters and prison staff in law and in practice. Japan could not continue to claim to be a free and open society while denying the most basic rights to its workers and exposing them to abuse. While the Government insisted that granting to firefighters the right to organize could interfere with emergency relief operations, it was egregious to deny the trade union rights on this account. Indeed, in a state of emergency, firefighters, Japan Self Defence Forces and the local police were mobilized to rescue human lives and firefighters' professionalism had never and should never be compromised because they had joined a union.

There were also limitations and obstacles preventing workers in the public service from enjoying the right to strike. This had been reinforced through the ongoing Government's work-style reform initiative. Pursuant to article 98 of the National Public Service Act, public officials may not engage in strike action and article 110 made it a criminal offence, punishable by up to three years imprisonment or a fine of up to one million yen, to instigate or to incite strikes. Furthermore, the legal framework for promoting autonomous negotiations over working conditions remained inadequate. Only blue-collar public sector employees may engage in collective bargaining. Despite the longstanding nature of these issues and consultations with the social partners, the Government dropped the package of reform bills, adopting instead the Amendment Act in April 2014, which provided that the Cabinet Bureau of Personnel Affairs would continue to make efforts to reach an agreement. The Government was still deliberating over the issue and was unable to point at any tangible progress. While tripartite consultations over legislative matters, in particular involving labour relations, were to be encouraged, these were virtually meaningless and could, in fact, be an obstacle, if they did not lead to any concrete action. The Government appeared to believe that the functions of the NPA was an adequate compensatory measure for the restrictions on basic labour rights of public sector workers. The NPA was a Government agency, its members were selected from the Diet rather than on a tripartite basis. There were no consultations with the most representative workers or employers' organizations. The NPA had the mandate to ensure working conditions and basic work related standards for public sector workers by making recommendations to the Government and municipal authorities. The implementation of recommendations adopted was entirely left up to political decisions and the process for deciding on whether and how recommendations were implemented was not transparent. By failing to ensure that it had the confidence of the social partners and that once decisions were taken, they were binding and fully and promptly implemented, the NPA fell short of the standard for compensatory measures under the Convention. The Government should take without further delay the necessary measures to demonstrate its respect to fundamental rights of workers and commitment to an open and democratic society.

The Employer member of Japan regretted that the workers concerned and the Government had been unable to address the problem and that the latter was brought before the Committee. Taking the case before the ILO would not necessarily result in finding a solution. Japanese employers fully supported the information provided by the Government. As regards the situation of firefighters, he recalled that their role was different from those in other countries and considered that national contexts should be taken into consideration. Efforts had been made by all stakeholders concerned. On 1 June 2018, the opposition parties, backed by JTUC-RENGO, had submitted a bill providing for the right to collective bargaining for all workers and abolishing the NPA. Japanese workers needed to convince the population with a view to obtaining their support so that the Parliament would be prepared to discuss the bill. While the comments and recommendations from the supervisory bodies were not binding, they could be fully observed if they had taken into account national circumstances. This also applied for the rights of prison officers which had never been discussed at the national level. The speaker expressed his strong belief that parties would better address their problem by themselves rather than relying on international forums.

The Worker member of Japan indicated that Japan had continued to violate Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in respect of basic labour rights for public employees. The violations included denial of the right to form organizations without prior approval and the appointment of full-time union officers by the authority. The right to organize of firefighting personnel and prison officers was denied by law. Attempts to assist in improving the situation had been made through reports and recommendations of the supervisory bodies, including the Dreyer Commission that had visited Japan for fact-finding and conciliation. The issues remained unresolved. The Government had submitted to the Diet bills to reform the national public service (June 2011) and the local public service (November 2012), drafted in consultations between the Government and relevant unions including JTUC-RENGO. These bills, if adopted, would have granted the right to organize to firefighting personnel. The bills, however, lapsed due to the dissolution of the House of Representatives in November 2012. The Committee of Experts had noted this situation with regret. No legislative measures had been proposed since then. During the recovery and reconstruction process after the Great East Japan Earthquake of 11 March 2011, public service employees, including firefighters, performed their duties despite lack of previous experience and sufficient information. This was above all due to their strong sense of mission to protect the lives and properties of citizens. The Government and other parties had asserted that granting the right to organize would have hampered discharging the duties of firefighters. However, the performance of duties and the guaranteeing of the right to organize were entirely separate matters. The speaker called for an immediate granting of the right to organize to the fire defence personnel. The speaker also referred to a case of national forest service employees, whose trade union rights had been curtailed. They had the right to conclude collective agreements. However, they had lost this right when the source of funding for the national forest service had been changed from a special account to a general account.

The speaker recalled the autonomous labour–employer relations system provided for under section 12 of the Basic Act on the Reform of National Civil Service. Since 2014, the Government had been reiterating that there was a need to continue careful consideration of the situation; to that end, it had conducted surveys and exchanged views on an ad hoc basis. It was to be regretted, however, that no tangible results had been achieved so far. JTUC–RENGO had reported this inaction and the lack of any intention of the Government to resolve the issues before the Committee of Experts and the Committee on Freedom of Association.

In conclusion, the speaker expressed the hope that the discussion and conclusions of the Committee would lead to a sincere response and commitment from the Government to resolve the issues concerning basic labour rights of the public service employees. JTUC–RENGO reiterated its readiness to make every effort in this regard.

The Government member of Norway, speaking on behalf of the Nordic countries, Denmark, Finland, Iceland, Norway and Sweden, recalled that this was a longstanding case which dealt with the right to organize, especially for firefighters and prison guards, and the right to strike in the public sector. In the Nordic countries, all public employees have the right to organize. The right to organize of public employees was important in order to ensure that there was an independent and strong voice at all levels, including at the workplace. In the Nordic countries, the processes of collective bargaining and workplace consultations were in many ways the same in the public and private sectors. However, public service had its own particularities and there were services where the right to strike could be restricted. The Committee of Experts had accepted that the right to strike could be restricted or prohibited in the public service for public servants exercising authority in the name of the State or when a total and prolonged stoppage could result in serious consequences for the public. A negotiated minimum service could be maintained in some cases. In relation to the situation in the Nordic countries, the right to strike in the public sector was extensive, but still met the public interest. There were few restrictions, imposed by law, through ad-hoc laws or agreed between the social partners in collective agreements. The Government was encouraged to ensure continued social dialogue and progress in this matter.

The Worker member of Poland pointed out to the lack of progress despite the fact that the Committee had repeatedly examined this case, most recently in 2008, when it had called on the Government to ensure that public servants had the rights guaranteed under the Convention and that firefighters enjoyed the right to organize without interference from the public authorities. Nevertheless, both were still excluded from the right to join or establish trade unions under the Local Public Service Act and the National Public Service Act. Already in 1973, the Committee of Experts had considered that the functions of fire defence personnel were not of such a nature as to exclude this category of workers under Article 9 of the Convention. The exclusion of police or armed forces could be justified only on the basis of their responsibility for the external and internal security of the State. Furthermore prison officers, by the nature of their duties, were included in the category of police and denied the right to organize. That was not in accordance with the ILO standards. The speaker condemned the Government's failure to guarantee freedom of association to firefighters and prison staff in law and in practice and called on the Government to consult with social partners including representatives of firefighters and prison officers with a view to finding a solution.

The Worker member of Singapore, speaking on behalf of the worker members of France, the Australian Council of Trade Unions (ACTU), the Cambodian Labour Confederation (CLC), the Confederation of Indonesian Prosperity Trade Union (KSBSI), the Federation of Korean Trade Unions (FKTU), the Korean Confederation of Trade Unions (KCTU), the Malaysian Trade Unions Congress (MTUC), the Confederation of Trade Unions of Myanmar (CTUM), the Pakistan Workers' Federation (PWF), the Federation of Free Workers (FFW) (Philippines), and the Singapore National Trades Union Congress (SNTUC), stated that Japan's public service employees faced restrictions on the basic labour rights. A third party organization had been established as a compensatory measure to regulate salaries and working conditions of public employees, matters which would normally be settled through labour–management negotiations. The Committee of Experts had been clear that mechanisms of compensatory measures must ensure impartial and speedy conciliation and arbitration procedures, in which the parties had confidence and could participate at all stages, and in which the awards, once made, were binding and fully and promptly implemented. In that sense, the compensatory measures proposed by the Government fell short. Specifically, the NPA, a third-party organization, had been established under the jurisdiction of the Cabinet, which appointed the commissioners. This had resulted in an organization lacking in impartiality. Further, the ability of the parties to participate at all stages of the procedures should not be limited to simply participating in meetings; the parties should be able to exchange opinions, persuade, consent and make concessions, without which, the confidence of the people concerned could not be earned. In addition, while the NPA made annual salary recommendations, these were not binding on the Government, who was also the employer. In this respect, it should be recalled that while the Government had the financial authority and responsibility, the inseparable issues of salaries and working conditions were to be settled through labour–management negotiations; thus both parties had a shared responsibility over that matter. To conclude, she emphasized the importance of basic labour rights, open labour relations and

labour–management relationship where the parties shared the responsibility over the matters of their mutual interests for a well-functioning democracy.

An observer representing Public Service International (PSI) recalled that while the right of firefighters to organize had been discussed at length by the Committee on Freedom of Association since 1954, the Committee of Experts since 1973, and this Committee since 1973, no concrete steps towards the full application of the Convention had been taken by the Government. To address the issue, in 1996, the Government had established the FDPC system with the purpose of achieving mutual understanding by eliciting opinions from the firefighters. The Government emphasized the smooth operation of this system and its success to improve wages, working conditions, clothing, equipment and other facilities to justify the rationality of not conferring the right to organize to firefighters. However, the recognition of firefighters’ right to organize and attempts to improve current working conditions and the workplace environment were different matters. The Committee of Experts and the Committee on Freedom of Association had considered that when the right to engage in labour disputes was restricted, the existence of compensatory measures was a necessary condition. These could not apply to the right to organize, as compensatory measures would assume the denial of the right itself. In other words, the FDPC was not a compensatory mechanism as it denied the right to organize. Although the Committee of Experts and the Committee on Freedom of Association had provided some positive assessments of the operational status and effects of the FDPC system, they continued to call on the Government to ensure that firefighters enjoyed the right to organize and the right to collective bargaining. A tripartite expert meeting, held in April 2018, had confirmed the relevance of the obligations under Conventions Nos 87 and 98 when adopting the ILO Guidelines on decent work in public emergency services, which included firefighters. The Committee’s conclusions should therefore be directed at ensuring that the Government complied with the Convention.

The Worker member of the United Kingdom stated that freedom of association, enshrined in the ILO Constitution and recognized by the Declaration of Philadelphia, was essential to any free and open society, and central to dispute resolution and to promoting democracy. The Government’s failure to provide firefighters with the right to organize was therefore of serious concern, and had been repeatedly criticized by the ILO supervisory bodies since the early 1970s. In the United Kingdom, the Fire Brigades Union (FBU) negotiated with employers over pay and working conditions through the National Joint Council for Local Authority Fire and Rescue Services. In order to protect the lives and safety of the population, firefighters exercised their right to take industrial action while entering into voluntary agreements to return to work in the event of major incidents. A 2010 Japanese Government survey on the impact of conferring the right to organize on firefighters in 22 countries had identified no adverse effects, suggesting that the current ban was based, not on evidence, but on the Government’s own views. It sought to justify those by aligning firefighters with military personnel and police, given the public nature of their duties. Such arguments could be self-defeating: in the United Kingdom, effective social partnership had proved vital to improving fire services, as when the FBU worked with fire authorities to investigate deaths while on duty in order to prevent future fatalities. Depriving firefighters of the right to organize on such grounds was inconsistent with Article 9 of the Convention. The Government’s failure to comply was serious and warranted criticism. The speaker called on the Government to extend the rights to join trade unions and to negotiate collectively as a matter of urgency.

An observer representing Education International (EI), speaking on behalf of the Japan teachers union, Nikkyoso, addressed the lack of basic bargaining rights in the public sector, the inadequate system for overtime compensation and the disparities between public and private workers in this regard. Teachers and education stakeholders had to be involved in the reforms affecting their sector. Their lack of involvement was detrimental to the quality of education. According to the ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and comments from the ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), reforms and decisions regarding the status and working conditions of educational personnel should be negotiated between the unions and the Government. However, in Japan, educational personnel did not enjoy basic labour rights; decisions regarding salaries were left to third-party organizations; and overtime was not compensated. A recent survey had shown that 72 per cent of elementary school teachers and 86 per cent of junior high school teachers worked more than 60 hours per week. The restoration of labour rights of all public service employees was necessary so as to ensure the effective application of the Convention as well as to redress the persistent inequality between public and private sector employees.

The Government representative stated that with respect to the autonomous labour–employer relations system it was essential to achieve “the understanding of the people” as provided for in Article 12 of the Civil Service Reform Law. The understanding of the people had not yet been attained, and the Government needed to continue with the careful examination of the matter. The Government would endeavour to maintain good relations with employees’ organizations and to strive for mutual understanding through social dialogue on various matters

including the autonomous labour/employer relations system. The speaker reiterated the unique background of the fire service in Japan. The fire defence personnel did not have the right to organize because the firefighting service was considered to be of a similar nature to the police. The service had been historically part of the police system and played an important role in emergency situations. She also reiterated the usefulness of the FDPC system, a compensatory mechanism for the absence of the right to organize. She also mentioned the effective measures taken by the Government to eliminate harassment in the fire service headquarters, in addition to the FDPC. Considerations were currently given to improving the system's operation. The Government had been engaging in social dialogue with representatives of firefighters, labour representatives such as JICHIRO and with employers' representatives on the FDPC and would continue this social dialogue on the FDPC on a regular basis.

The Worker members reiterated that firefighters and prison staff continued to be denied their most fundamental right to join or form a trade union. There were also serious limitations imposed on the basic rights of public sector workers as well as the absence of the autonomous labour–employer relations system. The Government had failed to make the distinction between employees exercising authority in the name of the State and workers engaged in essential services, who would require compensatory guarantees if their right to strike was legitimately limited and all other employees in the public services who should be able to exercise the right to strike. The Government appeared to believe that the institutions set up to represent the interest of workers constituted adequate compensatory measures. However, these institutions lacked autonomy, independence and were therefore not sufficient in advancing collective rights and interests of workers. Japan's laws and practices were not in conformity with the Convention. The Worker members deplored the fact that no meaningful progress had been made on these issues and expected the Government to finally take the necessary measures to ensure that firefighters and prison staff may form and join the organizations of their own choosing. The Government must urgently enter into time-bound consultation with the social partners in order to establish the autonomous labour–employer relations system to ensure basic labour rights for public service employees. This process must be completed within the next two years. The Government should report progress to the Committee of Experts by 2020. Workers in the public sector who were not exercising authority in the name of the State and who were not working in essential services in the strict sense of the term must have the right to strike and to exercise industrial action without risk of sanction. The procedures of the NPA were flawed and should be reviewed in consultation with the social partners to ensure impartial and speedy conciliation and arbitration procedures in which the parties had confidence. They expressed the hope that this discussion would be taken as an important opportunity by the Government in order to ensure the effective application of this fundamental Convention once and for all. This required a real commitment from the Government to engage its social partners in a dialogue to make tangible progress. The Government must fulfil its obligations and report on the measures taken thereon in its next report. The Worker members called on the Government to accept an ILO direct contacts mission to support and assess progress made.

The Employer members recalled the divergence of views with regard to the right to strike and the impact of that on the discussion of the case. The comments of the Committee of Experts concerning the right to strike of members of essential services, and issues related to that, fell outside the scope of the express provisions of the Conventions. They were to be left to the Government to regulate at the national level. Given the restriction on the right to organize of firefighters, the Government had established the FDPC system as a compensatory scheme. A number of interventions had discussed the effectiveness of that system. In light of the criticisms of the system's functioning by trade unions, the Employer members understood that the Government planned a new initiative which included fact-finding surveys of the system's operation. The Government should take those steps and provide information about it in time for examination by the Committee of Experts. Finally, with respect to prison officers, it could be argued that, by the nature of their duties, prison officers were part of the police as they were responsible for the internal security of the State, and therefore covered by Article 9 of the Convention. The Employer members noted that more information was needed: while certain categories could be considered police, others could not. They encouraged the Government to give due consideration to the situation of those prison officers exempted from full application of the Convention, and encouraged it to provide information, before the next meeting, about the compensatory scheme that allowed some participation of officers. The Employer members were encouraged by the constructive attitude and the stated commitment of the Government to move this issue forward, and they looked forward to more information.

Conclusions

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

The Committee noted the Government's submissions that a special survey was conducted in January 2018 to identify problems concerning the functioning of the Fire Defence Committee System, that it consulted workers and employers several times on this issue since March 2018 and the Government's stated commitment to produce a plan to improve the functioning of the Fire Defence Committee in continued consultation with employers and workers.

The Committee observed with concern that the Committee of Experts' comments had been referring for decades to discrepancies between the legislation and practice concerning the rights of firefighters and prison officers to establish and join organizations of their own choosing. The Committee noted the lack of meaningful progress in taking necessary measures regarding the autonomous labour-employer relations system.

Taking into account the Government's submissions and the discussion that followed, the Committee called upon the Government to:

- examine carefully the autonomous labour-employer relations system, in consultation with the social partners, taking into account the Government's statement that there are various issues with regards to this system;
- provide information on the initiative discussed above to identify problems concerning the functioning of the Fire Defence Committee System and measures taken as a result;
- hold consultation with the social partners at national level on the view of the Government that firefighters are considered police and how this view corresponds to the application of the Convention and provide information on the outcome of this consultation;
- consider, in consultation with the social partners, what categories of prison officers are considered part of the police, thus exempted from the right to organize, and those categories that are not considered part of the police, and having the right to organize; and
- consider, in consultation with the social partners, if the procedures of the National Personnel Authority ensure impartial and speedy conciliation and arbitration.

The Committee called upon the Government to develop a time-bound action plan together with the social partners in order to implement these recommendations and report to the Committee of Experts before its next meeting in November 2018.

The Government representative indicated that, regarding the labour-employer System, article 12 of the Civil Service Reform Law prescribed that the Government could not take any steps towards achieving an autonomous labour-employer System unless the people of Japan were confident that it was necessary. As currently such confidence was lacking, the Government would need to be cautious in this regard. The Government, as an employer, promised to engage in a continuous effort to maintain appropriate working conditions of public service employees under the current system. She also indicated that the Government would improve the operation of the FDPC system as an alternative to granting the right to organize.

Conclusions

La commission a pris note des informations que la représentante gouvernementale a fournies, ainsi que de la discussion qui a suivi.

La commission a relevé, dans les exposés du gouvernement, qu'une enquête spéciale a été menée, en janvier 2018, pour cerner les problèmes de fonctionnement du système de la Commission du corps des sapeurs-pompiers, et que le gouvernement a consulté les travailleurs et les employeurs à plusieurs reprises sur ce point depuis mars 2018. Elle a également relevé que le gouvernement s'est engagé à élaborer un plan

d'amélioration du fonctionnement de cette Commission, au moyen de consultations suivies avec les employeurs et les travailleurs.

La commission a constaté avec préoccupation que les commentaires de la commission d'experts font état, depuis des années, de contradictions entre la législation et la pratique en ce qui concerne le droit des sapeurs-pompiers et des agents pénitentiaires de constituer des organisations de leur choix et de s'y affilier. La commission a pris note du fait qu'il n'y a eu guère d'avancée significative au sujet de l'adoption des mesures nécessaires concernant le système autonome de relations professionnelles.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a prié le gouvernement:

- d'analyser minutieusement le système autonome de relations professionnelles, en consultation avec les partenaires sociaux, étant donné que le gouvernement a déclaré que ce système pose différentes questions;
- de fournir des informations sur le projet précité qui vise à cerner les problèmes de fonctionnement du système de la Commission du corps des sapeurs-pompiers, et sur les mesures qui en découleront;
- de tenir des consultations avec les partenaires sociaux au niveau national quant à l'opinion du Gouvernement que les sapeurs-pompiers sont considérés comme des policiers et quant à la façon dont cette vision correspond à l'application de la convention, et de fournir des informations sur l'issue de ces consultations;
- d'étudier, en consultation avec les partenaires sociaux, quelles catégories d'agents pénitentiaires sont considérées comme faisant partie de la police, et donc exclues du droit de s'organiser, et celles qui ne le sont pas, et qui ont le droit de s'organiser;
- d'étudier, en consultation avec les partenaires sociaux, si les procédures de l'Autorité nationale du personnel assurent l'impartialité et la célérité de la conciliation et de l'arbitrage.

La commission a prié le gouvernement d'élaborer un plan d'action assorti de délais, avec les partenaires sociaux, en vue de donner suite aux présentes recommandations et de faire rapport à la commission d'experts, avant sa prochaine session, en novembre 2018.

Conclusiones

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

La Comisión tomó nota, por un lado, de la información presentada por el Gobierno, según la cual, se llevó a cabo un estudio especial en enero de 2018 para detectar problemas relativos al funcionamiento del sistema de comités del personal de extinción de incendios y se ha consultado en varias ocasiones desde marzo de 2018 a los trabajadores y empleadores al respecto y, por otro lado, del compromiso del Gobierno de elaborar un plan para mejorar el funcionamiento de dichos comités en consulta continua con los empleadores y los trabajadores.

La Comisión observó con preocupación que hace décadas que en los comentarios de la Comisión de Expertos se hace referencia a discrepancias entre la legislación y la práctica en lo referente al derecho de los bomberos y los funcionarios de prisiones de constituir los sindicatos que estimen convenientes, así como el de afiliarse a estos. La Comisión señaló la falta de progresos significativos a la hora de tomar medidas necesarias en relación al sistema autónomo de relaciones entre trabajadores y empleadores.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que se entabló seguidamente, la Comisión pidió al Gobierno a que:

- examine detenidamente, en consulta con los interlocutores sociales, el sistema autónomo de relaciones entre trabajadores y empleadores, tomando en consideración las declaraciones del Gobierno sobre las distintas cuestiones que entraña;

- aporte información sobre la iniciativa mencionada anteriormente destinada a detectar problemas relativos al funcionamiento del sistema de comités del personal de extinción de incendios y acerca de las medidas que se han adoptado a raíz de dicha iniciativa;
- celebre consultas con los interlocutores sociales a escala nacional sobre la opinión del Gobierno de que debe considerarse que los bomberos son policías y sobre en qué medida este punto de vista se ajusta a la aplicación del Convenio, y suministre información sobre el resultado de estas consultas;
- evalúe, en consulta con los interlocutores sociales, qué categorías de funcionarios penitenciarios puede considerarse que pertenecen a la policía, y por lo tanto están excluidas del derecho de sindicación, y cuáles puede considerarse que no pertenecen a la policía, y por lo tanto gozan del derecho de sindicación, y
- examine, en consulta con los interlocutores sociales, si los procedimientos de la Autoridad Nacional del Personal ofrecen un mecanismo rápido e imparcial de conciliación y arbitraje.

La Comisión instó al Gobierno a que elabore, en colaboración con los interlocutores sociales, un plan de acción sujeto a un calendario para aplicar estas recomendaciones e informe al respecto a la Comisión de Expertos antes de su próxima reunión en noviembre de 2018.

Employment Policy Convention, 1964 (No. 122)

Convention (n° 122) sur la politique de l'emploi, 1964

Convenio sobre la política del empleo, 1964 (núm. 122)

Libya (ratification: 1971)

Libye (ratification: 1971)

Libia (ratificación: 1971)

A Government representative of Libya expressed surprise that the Committee on the Application of Standards had included his country in the list of cases prepared by the social partners, as his Government had never disavowed its ILO constitutional commitments. Referring to the Committee of Experts' comments regarding the complicated situation in the country, the speaker hoped that his Government would soon be able to provide detailed and comprehensive information on its envisaged labour market strategy and means of achieving its employment goals. Indeed, the National Reconciliation Government recognized by the international community encountered difficulties in being accepted in some parts of the country which made it challenging to undertake any surveys, studies or to acquire detailed and adequate information. Hence, more time than usual was called for. Moreover, the existence of a parallel government placed some labour offices in the municipalities (which were affiliated to the Ministry of Labour of the National Reconciliation Government but were geographically under the control of the parallel government) in a difficult situation with regard to administrative procedures.

Regarding the reference made by the Committee of Experts regarding the Government's establishment in 2012 of a committee to revise the Labour Market Strategy, the speaker stated that the National Planning Council had issued the Libyan National Strategy for Human Development and Empowerment for 2013–14 (the "Strategy"). The Strategy focused, among other things, on: (a) transformational training for graduates whose qualifications did not meet the labour market requirements; (b) encouraging self-employment through the creation of small and medium-sized enterprises; and (c) establishing a comprehensive database for human resources and job opportunities to determine the extent of the developmental and economic reality in the country in order to identify the human resource requirements. The Strategy also specified six main strategic goals in relation to training and the workforce which were to: (a) increase the rate of full and decent employment for all those able to work; (b) address the problems of seasonal and disguised unemployment and consider activating the social security law to avoid criminal behaviour that could result from an interruption of income; (c) emphasize the adoption of vocational guidance and orientation methods for new entrants to the labour market and enlarge the participation of the private sector in the fields of vocational and technical training; (d) increase the number of seminars and studies dealing with human resources and enabling participation in them at home and abroad as well as working to review the policies, activities and procedures of recruitment and development of legislation to respond to globalization and liberalization of world trade and the information age; (e) change the path of women's work through empowerment and capacity building: (i) participate effectively in economic activity; (ii) affirm the trend towards equality of opportunity; (iii) change the

stereotypical image of women's work; and (iv) reorganize the labour market to respond to the requirements and methods of economic activity in the era of globalization and informatics; and (f) consider the growing number of persons of working age as an opportunity rather than a problem and develop methods and mechanisms of training and vocational and technical rehabilitation, which respond to the introduction of advanced methods in the field of training, continued distance training, transformational training and other training modalities.

Concerning the latest statistics of the labour market, despite the difficulties on the ground, the Information and Documentation Centre in the Ministry of Labour and Rehabilitation (the "Centre") issued some statistics. These, however, did not cover the entire country and related only to the western region of the country. The Centre clarified that the number of jobseekers who had been registered up to 31 December 2017 reached 137,000, but that 12,000 were excluded, as they were found to be holding two jobs although civil servants were prohibited by law from doing so. Another 11,000 jobseekers were excluded from the total due to their double registration in areas where labour offices had been newly introduced. Therefore, the number of registered researchers in the western region alone totalled 88,000 jobseekers. Moreover, the Libyan Multi-Purpose Survey Project 2017–18 was being implemented and the survey results were expected to assist in the development of an employment policy with the participation of the social partners.

As for small and medium-sized enterprises, the National Programme for Small and Medium Enterprises was established to develop a culture of innovation in the community and to create a supportive environment for small and medium-sized enterprises. In October 2017, the National Reconciliation Government launched a pilot programme to finance small and medium-sized enterprises with the aim of providing job opportunities to youth and limiting unemployment. The programme would provide financial loans to entrepreneurs through commercial banks backed with guarantees from the Lending Guarantee Fund. In addition, business incubators were to be set up throughout the country to provide assistance for the rehabilitation of projects, and to train those responsible for the projects and prepare plans for them. Commercial banks would undertake to finance up to 60 per cent of the project's cost, provided that supporting project funds contributed 30 per cent of the total value of the project and the beneficiary of the project paid 10 per cent of the remaining cost.

Regarding the comments in the Committee of Experts' report observing that the number of persons with disabilities had increased in recent years due to the ongoing conflict, it was worth noting that a special programme had been created for people with disabilities. The General Authority of Families of Martyrs, Amputees and Missing Persons (the "Authority"), in collaboration with the National Programme for Small and Medium Enterprises, had established a special programme for entrepreneurs, known as "Support Me".

On the issue of migrant workers and their presence in the informal economy, the speaker noted that irregular migrants were reluctant to regularize their situation through registration due to their fear of repatriation and their desire to migrate to Europe through the country as one of the transit States south of the Mediterranean. In spite of this, the Government, in cooperation with neighbouring countries, countries of origin and relevant international organizations, had made significant and positive progress in reducing irregular migration, urging migrants to obtain legal status in the country so as to enjoy their rights guaranteed by law for voluntary employment or voluntary repatriation.

The Presidential Council of the National Reconciliation Government attached special importance to the right of women and persons with special needs at work without neglecting the rights to education, health, development and other rights that respect the religious and cultural identity of the Libyan people. In this regard, the Presidential Council of the National Accord Government issued Decree No. 210 of 2016 on the establishment of a support and empowerment unit for women employed in state institutions. The resolution aimed at implementing policies and programmes to empower women in their political, economic and social rights and at removing obstacles that limit the exercise of their role in a positive and effective manner.

In conclusion, the speaker considered it important that the ILO and the international community continue to provide the necessary support to the Presidential Council of the National Reconciliation Government to: (a) build and develop institutions and strengthen its authorities throughout the State; (b) support its policy to implement an effective disarmament, reintegration and a decent work programme for young people, respect for human rights; and (c) the preservation of dignity and progress in development. More time would, therefore, be requested to respond to the observations of the Committee of Experts.

The Worker members indicated that the leader of the most representative union of the country was unable to attend the International Labour Conference due to the Government's failure to submit the name for accreditation and that the relevant complaint would be registered with the appropriate bodies.

The speaker acknowledged the conflict situation in the country. According to the reports of the United Nations Support Mission in Libya (UNSMIL), ongoing hostilities across the country continued to result in significant civilian casualties and constantly destabilized the UN-backed National Accord Government. In the month of April alone, there had been 31 civilian casualties. The Government had very limited effective control over security forces. The conflict had destroyed the economy and impaired the delivery of public service. There were reports of over 200,000 internally displaced people. Law enforcement and the judicial services were barely off the ground. The Government reported that companies had left, young people with disabilities resulting from the war were on the rise and the migration situation was out of control. Despite an improvement in the conditions of the country in 2011 and 2012 when the war and mayhem commenced, the current situation became dire. The Government, therefore, had a duty to continue to push for more progress towards stabilizing the country and ensuring economic growth and employment.

The Committee of Experts had called on the Government, over a period of years, to inform the ILO of the general situation and trends in the Libyan labour market and the manner in which it achieved its employment objectives in accordance with the Convention which required each ratifying State to adopt and pursue a frontline policy designed to promote full, productive and freely chosen employment to address unemployment, underemployment and to raise levels of living within member States. The Convention also challenged the dogma that economic growth, guided only by the invisible hand of market forces, would naturally lead to higher levels of employment and improved living standards for all. It obliged member States to adopt an employment policy aimed at ensuring that: (i) there was work for all who were available for and seeking work; and that (ii) such work was as productive as possible; and (iii) the existence of a free choice of employment with the fullest possible opportunity for each worker to qualify for, and to use his/her skills and endowments in, a job for which he/she was well suited. In this process, mutual relationships between employment objectives and other economic and social objectives were to be observed and the stage and level of economic development duly taken into account.

The Government had indicated that the 2004 Employment Policy had undergone several amendments to take current reality into account. The Government further indicated that it had commissioned a committee in 2012 to modify the labour market strategy focused on: (a) measures to address unemployment arising from the halting of development projects due to the war; (b) education and training programmes to address labour market needs; and (c) measures targeting the informal economy and the participation of migrants in labour-intensive activities to achieve full employment. Complying with the Convention would provide the Government with an opportunity to place employment at the heart of economic and social development policies. Based on the assumption that there was a unified Government able to achieve some reasonable stability to ensure some level of macro-stability, the economic prognosis for the country forecasted a growth of 15 per cent in 2018, and an average 7.6 per cent in 2019–20. It was expected that both the fiscal and current account balances would significantly improve, with the budget and the current account running surpluses as from 2020 onwards. However, it was expected that high inflation and weak basic service delivery would likely increase poverty and exacerbate socio-economic exclusion. The speaker drew the Government's attention to the security crisis that could engender an economic hopelessness, and recommended that the Government be guided by the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), which sets out measures to be taken to generate employment and decent work for the prevention, recovery, peace and resilience in crisis situations arising from conflicts. Pursuant to Recommendation No. 205, the Government was urged to: (i) promote full, productive, freely chosen employment and decent work as vital elements to promoting peace, preventing crises, enabling recovery and building resilience; (ii) ensure good and stable governance and combat corruption and clientelism; and (iii) respect, promote and realize fundamental principles and rights at work, other human rights and other relevant international labour standards as appropriate and applicable.

In this vein, the speaker expressed his concern that the law regulating labour relations limited the right of workers to form and join independent unions. The right to strike was also significantly restricted. The existing labour law required that all collective agreements conform to the "national economic interest", which threatened free collective bargaining allowed under the law regulating labour relations. The law also gave the Government the power to set and cut salaries without consulting workers. These actions and legal provisions violated the Convention which provided in its Article 3 that representatives of employers and workers, in particular, should be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies.

The Committee of Experts had pointed out that the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), as providing important guidance for the Government. It required member States, in consultation with the most representative organizations of employers and workers, to promote full, productive and freely chosen employment, and to ensure greater access to income-earning opportunities and wealth creation leading to productive and sustainable employment and to increase economic participation of disadvantaged and

marginalized groups in society in the economy. The Committee of Experts had also indicated that there was a need for the Government to establish a labour market information system in compliance with Article 2 of the Convention. Data from the labour market situation and trends were the basis for economic planning, useful comparisons over time, employment target setting and assessing the impact of policy measures. The Government also needed to pay attention to the increasing number of young persons with disabilities as a result of the conflict. The Convention required workforce needs to be met, which meant that labour market measures such as skills development, counselling and other forms of training should be provided for people with disabilities to ensure that they could thrive in the labour market. Regarding the migration crisis in the country, the Government should take account of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), which called for policies to be adopted to ensure that international migration took place under conditions designed to promote full, productive and freely chosen employment. In that light, the Government should be supported to fulfil its duty to adopt measures to respond to the needs of all categories of persons with difficulties in finding employment, including migrant workers.

To conclude, the speaker recalled the short-term measures taken by the European Union to support the Government to enforce border controls to curb the use of the country's territory as a transit route for migration to Europe. The long-term and more sustainable strategy should be in line with Recommendation No. 169 to adopt measures, including the implementation of economically and socially viable public investment and special public works programmes, particularly with a view to creating and maintaining employment, raising incomes, reducing poverty and better meeting basic needs.

Los miembros empleadores recordaron que desde la ratificación del Convenio núm. 122 por Libia en 1971, la Comisión de Expertos había publicado seis observaciones y 12 solicitudes directas respecto al cumplimiento de dicho Convenio tanto en la legislación como en la práctica por Libia. Se trata de la primera vez que el caso de Libia en relación con el presente Convenio de gobernanza es examinado ante la Comisión de Aplicación de Normas.

Asimismo, el orador se refirió a lo establecido por los artículos 1 y 3 del Convenio referido, entre otros aspectos, a la obligación de formular y llevar a cabo, en consulta con los interlocutores sociales, una política activa de empleo concebida para fomentar el pleno empleo, productivo y libremente elegido que tenga debidamente en cuenta el nivel y la etapa de desarrollo económico, así como las relaciones mutuas existentes entre los objetivos del empleo y otros objetivos económicos y sociales.

En relación con los señalados artículos del Convenio, la Comisión de Expertos en su informe tomó nota de la información proporcionada por el Gobierno en su memoria sobre: i) la introducción de varias enmiendas a la política activa de empleo con miras a armonizarla con la realidad en el terreno y lograr los objetivos de empleo planteados, centrando la misma en varios pilares que incluyen medidas para combatir el desempleo derivado de la paralización de proyectos de desarrollo debido a la guerra, medidas educativas y de formación y otras centradas en la economía informal y en la participación de migrantes en actividades de mano de obra intensiva; ii) la mayor incorporación de mano de obra femenina al mercado de trabajo, que ha crecido en más de un 250 por ciento entre 2007 y 2012, y iii) el incremento del número de jóvenes con discapacidad como consecuencia del conflicto, así como el crecimiento de la inmigración irregular.

En lo que respecta al Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182), la Comisión de Aplicación de Normas examinó en 2017 el caso de Libia en relación con el incumplimiento de dicho Convenio por parte del Gobierno. Durante el examen del caso, se puso de manifiesto que el país se encuentra sumido en un estado de guerra interna, afrontando la peor crisis política y una escalada de violencia que incluye bombardeos a hospitales y escuelas. Al respecto, los miembros empleadores lamentaron que estos luctuosos episodios se configuraran cuando no existe un estado pleno de derecho, no hay interlocutores válidos y existe un estado de guerra en el que coexisten dentro del mismo territorio varios gobiernos y guerrillas internas. Es necesario un apoyo internacional urgente y sostenido para poner fin al ciclo de caos y abusos generalizados que afecta a Libia. El Estado de derecho, aspecto fundamental que nunca debe perderse, y un gobierno único y efectivo es el comienzo de cualquier solución que pretenda alcanzarse frente al caos en el que se encuentra Libia. Es difícil que el Gobierno pueda intervenir eficazmente en el mercado de trabajo sin que previamente cese el estado de guerra interna y retome el dominio de su territorio.

En este contexto, los miembros empleadores se refirieron al Preámbulo de la Recomendación núm. 205 en cuanto dicho instrumento destaca la importancia de: i) el empleo y el trabajo decente, como elementos centrales para promover la paz, prevenir situaciones de crisis provocadas por los conflictos, posibilitar la recuperación y potenciar la resiliencia; ii) la formulación de respuestas, por medio del diálogo social, a las situaciones de crisis provocadas por los conflictos, en consulta con las organizaciones de empleadores y de trabajadores más representativas y, según proceda, con las organizaciones pertinentes de la sociedad civil; iii) la creación o

restablecimiento de un entorno propicio para las empresas sostenibles, teniendo en cuenta la resolución y conclusiones relativas a la promoción de empresas sostenibles, adoptadas por la Conferencia Internacional del Trabajo en su 96.^a reunión (2007); iv) la existencia de servicios públicos accesibles y de calidad en la recuperación económica, el desarrollo, las iniciativas de reconstrucción, la prevención y la resiliencia, y v) la cooperación internacional y las alianzas entre las organizaciones regionales e internacionales para asegurar que se emprendan iniciativas conjuntas y coordinadas.

Reconociendo la complejidad de la situación existente en el país, indicaron que esperaban que el Gobierno se encontrara pronto en condiciones de comunicar a la Comisión de Expertos información relativa a la estrategia de mercado de trabajo, la manera en que se estimaba que se lograrían los objetivos de empleo, el progreso realizado en la compilación y análisis de los datos del mercado laboral, las medidas adoptadas para promover el establecimiento y desarrollo de las pequeñas y medianas empresas y aquellas adoptadas para incrementar la participación en el mercado de trabajo de las personas en situación de vulnerabilidad, así como información estadística actualizada. Al respecto, invitaron al Gobierno a que recurriera a la asistencia técnica de la Oficina.

Finalmente, los miembros empleadores hicieron un llamamiento urgente a la comunidad internacional y a las organizaciones de empleadores y de trabajadores para colaborar de manera coordinada con miras a poner fin al conflicto armado tan pronto como sea posible. Asimismo, hicieron un llamamiento a la OIT para que a través de la asistencia técnica apoyase activamente al Gobierno con el objetivo de reestablecer la institucionalidad laboral en Libia a fin de que pueda alcanzarse el objetivo del pleno empleo productivo y libremente elegido en Libia, en cumplimiento con lo establecido en el Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144).

The Worker member of Italy recalled that, in its comments, the Committee of Experts took note of the information provided by the Government in relation to the establishment in 2012 of a commission to modify the labour market policy, which included measures such as the promotion of the participation of migrants in labour-intensive activities. However, such commitment did not materialize.

According to the 2018 Amnesty International report, at least 7,000 migrants and refugees were languishing in Libyan detention centres where abuses were rife with food and water in short supply. According to the UNHCR, only in April 2018, the Coast Guard intercepted 1,485 women, men and children at sea and brought them back to the country. Once intercepted, refugees and migrants were transferred to detention centres run by the Department for Combating Illegal Migration (DCIM). Furthermore, in its 2017 observation on the application of the Forced Labour Convention, 1930 (No. 29), by Libya, the Committee of Experts observed that migrants had been subjected to financial exploitation and forced labour.

While acknowledging the complexity of the situation unfolding in the country, the speaker stressed that any labour market strategy or employment policy developed by the Libyan authorities should not compromise human and workers' rights or promote exploitation. Instead, it should ensure basic respect for human rights and access to basic public services for the most vulnerable groups. The speaker added that the Government could not be considered a safe country to be assigned the responsibility of managing migratory movements along the central Mediterranean route to Europe. In light of bilateral relations with the European Union, it was unacceptable to tolerate pushbacks or collective expulsions. New safe and regular channels to Europe for migrants and refugees should be established, including through humanitarian resettlements and visas.

The speaker also raised a concern regarding the application of Article 3 of the Convention by Libya, which requires member States to take fully into account the views of social partners when designing and implementing an active employment policy. Finally, the speaker concluded that it was regrettable that the General Federation of Libyan Trade Unions could not express its views in this respect, as they were not allowed to be members of the Libyan delegation.

The Government member of Egypt appreciated the information provided by the Government which outlined its efforts in providing employment opportunities and welfare to vulnerable groups. Of particular importance was the strategy issued by the Government to: (a) develop human resources with an interest in vocational training; (b) encourage small and medium-sized enterprises to address unemployment; (c) empower women and ensure their effective participation in the labour market; and (d) establishment of the special financial programme for persons with disabilities to enable them to set up their own projects. All of these efforts were undertaken by the Government in spite of the difficult circumstances that the country was facing. This demonstrated the Government's full awareness of the importance of providing decent and productive work for every jobseeker and these factors should be taken into consideration when examining the country's case. The Government was encouraged to continue its

efforts to attain the projected goals of its labour market strategy. In this regard, the Office was urged to provide the Government with the necessary technical assistance.

An observer representing the International Transport Workers Federation (ITF), also speaking on behalf of the Dockers' and Seafarers' Union of Libya, considered that all the participants were united in recognizing the complexity of the situation in the country. The economy had been decimated by years of conflict. The participants also recognized the Government's efforts to generate employment and decent work to resolve its predicament.

With regard to the participation of women in the labour market in Libya, the speaker highlighted that while the proportion of economically active individuals in the country was only 46 per cent of the total working-age population, the figure for women was less than 27 per cent which made the total number of women in the workforce barely a third of that of men. Moreover, according to a recent report of the Friedrich Ebert Foundation, female labour market participation in the country was limited to only four sectors: public administration, education, health care and social security. In this respect, the speaker indicated that there were certain administrative practices that encouraged women's employment only in certain sectors. The unsavoury phenomenon of violence and harassment against women workers constituted another deterrent to female labour market participation. In order to promote productive employment for women, it was important to *put in place programmes providing education and vocational training, as well as to re-establish the rule of law to guarantee women's security*.

In relation to the maritime sector in the country, the speaker highlighted that Libya was one of the North African countries with a coastline on the Mediterranean Sea basin, whose waters were commonly associated with the perilous journeys that desperate migrants experiencing conflict and hardship had to make. At the time, out of the country's 16 ports, 14 were in operation. However, underinvestment and a lack of resources made some port operators struggle to pay their workers not to mention poor infrastructure in some ports which led to significant occupational safety and health deficits, as well as security concerns. Marine insurers and unions alike continued to advise shipowners to warn crews of the volatility of the situation, including oil smuggling activities off the western coast of the country. The maritime sector was seen to have great potential. It was, therefore, hoped that a holistic approach would be adopted to develop a policy that would fully revive the ports and shipping industries, in order to create long-term, stable and productive employment.

While fully cognizing the difficulties on the ground, it was necessary that the Government put in place an employment policy, in consultation with the social partners, with a view to stimulating economic growth and development and overcoming unemployment and underemployment in accordance with the Convention. In doing so, the Government should be directed by Recommendation No. 205, which had provided guidance to the ILO member States on the measures to be taken to generate employment and decent work for the prevention, recovery, peace and resilience in crisis situations arising from conflicts. Trade unions and international workers' organizations were ready to provide assistance in order to ensure decent work for all workers.

The Government member of Iraq welcomed the information provided by the Government. Given the difficult situation in the country due to the war and the consequent lack of security, sufficient time should be provided to the Government to reply to the comments of the Committee of Experts. Technical assistance of the ILO was highly appreciated in order to enable the country to implement the Convention.

Le membre travailleur du Burkina Faso a indiqué que l'importance de la prise de parole sur la mise en œuvre de la convention est triviale. Il convient, au nom de la morale, de la dignité et l'intégrité humaine, de s'incliner devant la mémoire de tous les Libyens massacrés au cours de l'agression impérialiste du peuple libyen, de même que de ceux et celles qui continuent de perdre leur vie en raison des dégâts collatéraux liés à cette déstabilisation. L'immobilisme des institutions internationales et surtout africaines face à cette désarticulation politique, économique, sociale et militaire dont les conséquences humaines sont inestimables dans le pays et dans la bande sahélo-saharienne est regrettable. Dans ce contexte, la question de l'emploi se pose de façon cruelle. L'adoption d'une politique d'emploi, prenant en compte les aspirations profondes du peuple libyen, pour le développement de leur pays, dans le respect des valeurs humaines de solidarité, est une exigence d'extrême urgence. Cela doit aussi se faire dans le respect de la convention et de la recommandation y relative.

Face aux cas d'esclavage ayant cours dans le pays, il y a lieu d'encourager et d'exprimer sa solidarité avec le peuple libyen dans sa lutte pour la reconstruction du pays sur la base des valeurs humaines d'égalité, d'intégrité et de solidarité. L'orateur a invité instamment les syndicalistes et autres organisations de la société civile libyenne à rester solidaires et à résister aux ravages de l'impérialisme, et a demandé au BIT d'apporter son assistance technique.

Le membre gouvernemental de l'Algérie s'est félicité du rapport du gouvernement et des efforts déployés malgré la situation transitoire que connaît le pays pour mettre en place une politique d'emploi et de développement du personnel qui vise la promotion du développement de la formation, ainsi que la lutte contre le chômage. Soutenir les petites et moyennes entreprises, promouvoir l'entrepreneuriat des femmes, créer une base de données des ressources humaines pour favoriser l'autonomisation et le développement pour la période 2013-2040 contribuera à faire émerger une nouvelle vision de politique publique à court et à moyen terme faisant de l'emploi un levier de cohérence politique économique.

Les mesures prises par le gouvernement pour développer les informations sur le marché du travail et assurer un suivi et une évaluation de la politique de l'emploi au travers de la collecte de données précises au moment de l'application de celle-ci sont notées avec satisfaction. En outre, la réalisation des études, la fourniture de données sur l'orientation des politiques de l'emploi et l'enregistrement des offres de travail en collaboration avec les partenaires sociaux et avec le centre d'information et de documentation du ministère du Travail sont hautement appréciés. Dans ce contexte, le programme pilote, lancé en 2017 pour financer les petites et moyennes entreprises afin d'améliorer l'employabilité, l'esprit d'entreprise et l'initiative dans le domaine du travail autonome des femmes, des hommes et des jeunes, est très louable.

Les mesures prises par le gouvernement pour gérer le dossier des travailleurs migrants clandestins, en collaboration avec les pays voisins, les pays d'origine et les organisations internationales, sont vivement saluées. Il s'agit également de promouvoir la relation entre la migration et le développement et de renforcer la base de données concernant ces travailleurs.

L'orateur a conclu qu'il n'y a pas de stabilité économique et sociale sans création d'emplois et que le travail décent est la pierre angulaire de la cohésion sociale. Pour atteindre ces engagements, il est nécessaire de soutenir les efforts du gouvernement pour la stabilisation politique, sociale et économique du pays. L'assistance technique du BIT est hautement appréciée pour mettre en œuvre ces engagements.

The Government representative thanked all the participants in the discussion and stressed that the National Reconciliation Government was committed to pursue its cooperation with the ILO. The 2018 National Report on Human Development was expected to be issued in a short space of time. It aimed at establishing frameworks to improve the labour market and the economic competitiveness at national level. Moreover, a report on the application of the Convention would be submitted to the Committee of Experts at its next session. The speaker underscored the commitment of the Government to implement a national employment policy in line with the Convention. Although the country's economy depended on oil, and such resource had been facing instability in the international market, the Government would, nevertheless, continue to take the necessary measures in order to reduce the unemployment rate. The Government would also be committed to pursue consultations with the social partners to achieve social peace and social protection. The data extracted from the 2017–18 survey would develop indicators on the labour force in different regions of the country. He reaffirmed the Government's commitment to ensure equal levels of development, with special attention to remote areas.

Los miembros empleadores señalaron que la información proporcionada por los participantes en sus intervenciones ponía de relieve la situación por la que atraviesa Libia. Todos los participantes están de acuerdo respecto al estado en el que se encuentra Libia y los esfuerzos que el Gobierno está llevando a cabo con miras a generar empleo. El Gobierno solicita tiempo para cumplir con los objetivos establecidos en el Convenio y asimismo solicita la asistencia técnica de la OIT para alcanzar los mismos. Esto último, parece mostrar la buena voluntad del Gobierno para solucionar los problemas vinculados al cumplimiento del Convenio por los que atraviesa. En este escenario, los miembros empleadores reiteraron lo ya expuesto en su primera intervención en relación con el reconocimiento de la complejidad de la situación que prevalece en el país. Esperaban que el Gobierno se encontrara pronto en condiciones de comunicar las informaciones solicitadas por la Comisión de Expertos en su informe, con ayuda de la asistencia técnica de la OIT que ellos mismo habían solicitado y de las organizaciones de trabajadores y de empleadores. En particular, esperaban que el Gobierno pudiera brindar información sobre la estrategia del mercado de trabajo, la manera en que se estima que se lograrán los objetivos de empleo establecidos en el Convenio, el avance en la compilación de la información sobre la situación del mercado de trabajo, las medidas adoptadas para impulsar el desarrollo de las pequeñas y medianas empresas (pymes) y aquellas adoptadas para promover la participación en el mercado de trabajo de las personas en situación de vulnerabilidad, así como datos estadísticos actualizados sobre la situación del mercado de trabajo.

The Worker members emphasized that in the midst of conflict international labour standards were actually more relevant. The Government had indicated that it had taken steps to modify the labour market strategy and to amend the employment policy, taking into account the current reality, including unemployment, underemployment and workforce skills development. The Convention prohibited discrimination in employment against women, young

people, workers with disabilities, older workers and migrants. The Government thus should provide information on the strategies to increase labour market participation of persons vulnerable to decent work deficits, including statistical data segregated by age and sex. It confirmed that the process of modifying the labour market strategy and amending the employment policy was inclusive and carried out in consultation with workers' and employers' organizations, as required by Article 3 of the Convention.

Article 1 of the Convention requires governments to ensure full, productive and freely chosen employment. In this regard, the Government was called upon to: (a) avail itself of the guidance of relevant ILO Recommendations, such as Nos 169, 189 and 205; (b) pay special attention to the over 200,000 internally displaced and the overall migration crisis; (c) ensure that young people and migrant workers had access to employment opportunities; (d) provide an updated and detailed information on the labour market strategy and the employment policy and the manner in which employment objectives were being realized; and (e) provide the Committee of Experts with up-to-date statistics on the employment situation, taking account of the level and trends of employment, unemployment and underemployment, as well as available skills of the working population, especially young persons. For this purpose, the Government should establish a systemized means of collecting data to enable analysis and assessment of the employment situation in the country, as well as empirical measurement of its compliance with the Convention. The Committee of Experts had highlighted the peculiar role of small and medium-sized enterprises and, therefore, the relevance of the guidance provided by Recommendation No. 189. The Government should thus provide information on the steps and programmes it developed to encourage the setting up of small and medium-sized enterprises.

The Government was urged to seek ILO assistance and support to help address the issues raised relating to compliance with the Convention.

Conclusions

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

The Committee highlighted the impact and consequences of conflicts on poverty and development, decent work and sustainable enterprises, and recognized the importance of employment and decent work for promoting peace, enabling recovery and building resilience.

Taking into account the Government's submission and the discussion, while acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the Committee requested the Government to provide information regarding:

- updated statistics on the labour market, disaggregated by sex and age;
- information on the labour market strategy and the way in which employment objectives are expected to be achieved;
- information on progress made in the compilation and analysis of labour market data; and
- information on measures to promote the establishment and development of small and medium-sized enterprises as well as measures introduced to increase the participation in the labour market of people in vulnerable situations.

The Committee urges the Government to submit a detailed report to the Committee of Experts for its next session in November 2018.

The Committee urged the Government to avail itself of ILO technical assistance to adopt and implement without delay an active policy designed to promote full, productive and freely chosen employment in consultation with the most representative employers and workers organizations.

Finally, the Committee called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of re-enforcing the labour administration system in Libya so that full, productive and freely chosen employment could become a reality in Libya as soon as possible.

The Government representative recalled that as already indicated, the deadline of November 2018 was too short and more time was needed for his Government to respond to the request by the Committee of Experts. In spite of this short deadline, his Government would do its utmost to implement the recommendations of the Conference Committee.

Conclusions

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

La commission a souligné l'impact et les conséquences des conflits sur la pauvreté et le développement, le travail décent et la viabilité des entreprises, et a reconnu l'importance de l'emploi et du travail décent pour promouvoir la paix, permettre le redressement et renforcer la résilience.

Prenant en compte la déclaration du gouvernement et la discussion, tout en reconnaissant la complexité de la situation sur le terrain et la présence d'un conflit armé, la commission a prié le gouvernement de fournir:

- des statistiques actualisées sur le marché du travail, ventilées par sexe et par âge;
- des informations sur la stratégie relative au marché du travail et sur la manière dont les objectifs en matière d'emploi devraient être atteints;
- des informations sur les progrès réalisés dans la collecte et l'analyse de données sur le marché du travail; et
- des informations sur les mesures visant à promouvoir la création et le développement de petites et moyennes entreprises, ainsi que sur les mesures prises pour accroître la participation des personnes en situation de vulnérabilité au marché du travail.

La commission prie instamment le gouvernement de soumettre un rapport détaillé à la commission d'experts pour sa prochaine session en novembre 2018.

La commission a prié instamment le gouvernement de se prévaloir de l'assistance technique du BIT pour adopter et mettre en œuvre sans retard une politique active visant à promouvoir le plein emploi, productif et librement choisi, en consultation avec les organisations d'employeurs et de travailleurs les plus représentatives.

Enfin, la commission a appelé l'OIT, la communauté internationale et les organisations d'employeurs et de travailleurs à collaborer afin de renforcer en Libye le système d'administration du travail pour que, ainsi, le plein emploi, productif et librement choisi, devienne dès que possible une réalité en Libye.

Conclusiones

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

La Comisión puso de relieve el impacto y las consecuencias de los conflictos en la pobreza y el desarrollo, el trabajo decente y las empresas sostenibles, y reconoció la importancia del empleo y del trabajo decente para promover la paz, permitir la recuperación y fomentar la resiliencia.

Teniendo en cuenta la información proporcionada por el Gobierno y la discusión, la Comisión, al tiempo que reconoce la complejidad de la situación que prevalece en el terreno y la existencia de un conflicto armado, pide al Gobierno que suministre información en relación con:

- estadísticas actualizadas sobre el mercado de trabajo, desglosadas por sexo y edad;
- la estrategia del mercado de trabajo y la manera en que se espera lograr los objetivos del empleo;
- los progresos realizados en la compilación y análisis de datos sobre el mercado de trabajo, y

- las medidas adoptadas a fin de promover el establecimiento de pequeñas y medianas empresas y su desarrollo, y las medidas introducidas para aumentar la participación en el mercado de trabajo de las personas en situaciones de vulnerabilidad.

La Comisión insta al Gobierno a que presente una memoria detallada a la Comisión de Expertos para su examen en su próxima reunión, que tendrá lugar en noviembre de 2018.

Asimismo, la Comisión insta al Gobierno a que recurra a la asistencia técnica de la OIT para adoptar y aplicar sin demora una política activa encaminada a promover el pleno empleo, productivo y libremente elegido, en consulta con las organizaciones más representativas de empleadores y de trabajadores.

Por último, la Comisión insta a la OIT, a la comunidad internacional y a las organizaciones de empleadores y de trabajadores a que concierten esfuerzos con el objetivo de reforzar el sistema de la administración del trabajo en Libia, a fin de que el pleno empleo, productivo y libremente elegido sea una realidad en Libia lo antes posible.

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

Convention (nº 98) sur le droit d'organisation et de négociation collective, 1949

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

Brazil (ratification: 1952)

Brésil (ratification: 1952)

Brasil (ratificación: 1952)

The Government has provided the following written information.

In its report to the 107th Session (May–June) of the International Labour Convention, issued last February, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), commenting out of the regular reporting cycle, referred to Articles 611-A (prevalence of collective bargaining over legislation), 442-B (self-employment) and 444, single paragraph (relationship between individual contracts and collective agreements) of the Labour Code as amended by Law 13467 (2017).

Labour reform in Brazil: Context and objectives

- The previous Brazilian labour legislation, which dated back to 1943, went through some changes over the years, but needed to be updated in order to address requirements of the economy of the twenty-first century.
- The intervention of labour courts cancelling clauses agreed in collective bargaining led to frequent complaints by trade unions. In this context, ABC metalworkers' unions, which are the cradle of the Brazilian trade union movement, proposed in 2011 the adoption of the Collective Bargaining Agreement with Specific Purpose (ACE), aiming at the prevalence of the collective bargaining over the law, having as the only limitation the rights enshrined in article 7 of the Federal Constitution, precisely the aspect that the labour reform has implemented.
- Labour reform (Law 13467; entry into force in November 2017) stems from many years of discussions regarding challenges of the Brazilian labour market, shortcomings of the labour legislation and concerns about the functioning of the labour justice system.
- Such issues became particularly pressing in a context of deep economic recession: In 2016 unemployment rose to 11.3 per cent – the highest since modern records commenced in 1992 – an increase of 82 per cent since 2012. Other relevant factors impacting the labour market include: 44 per cent of participation of informal jobs in the total amount of jobs, while 60 per cent among unskilled workers; high degree of judicialization; lowest labour productivity since the seventies (near 1 per cent per year); high turnover of labour; underuse of collective bargaining and lack of legal certainty for its implementation.

- Inclusive, comprehensive and extensive consultation with social partners is a key feature of labour reform in Brazil. The proposal of modernizing labour legislation was elaborated after a series of debates organized by the Ministry of Labour and by the Chief of Staff of the Presidency in December 2016, with the participation of representatives of trade unions and employers.
- Subsequently, during the legislative process in 2017, 17 public hearings, seven regional seminars and over 40 meetings with interested stakeholders took place in Parliament and in different states, leading to the approval of the Bill by a significant majority at the Chamber of Representatives and at the Federal Senate.
- Labour reform seeks to provide more flexibility, increased labour productivity, legal certainty and rationality to both labour market and legal system, with enhanced safeguards against breaches of the law and full respect of fundamental principles and rights at work.
- A central aspect of labour reform in Brazil is the strengthening of Conventions and collective agreements between unions and employers, aiming at the possibility for each category to negotiate, collectively, the best terms to reconcile employment quality and increase of productivity, without affecting the rights of workers.

CEACR – Mandate and reporting cycles

- As consistently stated in CEACR reports, the mandate of the Committee refers to the application of Conventions “in law and practice” through an impartial analysis.
- The assessment of the Brazilian case by the CEACR fails to meet that mandate, and minimal fairness requirements, on many accounts.
- The CEACR offered no explanation for the exceptional measure of breaking the cycle and prematurely commenting on the reform before the Government’s due report on the application of Convention No. 98; moreover, the wider context of Brazil’s reform has not been taken into account at all.
- Clearly, there has not been sufficient time for an evaluation of all relevant aspects of the implementation of the new Brazilian legislation. At the time the Committee met in November 2017, Law 13467 had entered into force a few days earlier.
- Additional time would have been required to allow for an adequate and balanced understanding of the effective legal framework, including high court decisions, and its impact on the labour market.
- Respecting regular reporting cycles would have facilitated a comprehensive evaluation, in 2019–20, of the reform’s application of Convention No. 98 principles. Brazil presented its last report on Convention No. 98 in 2016 and its subsequent reporting obligation would normally fall on 1 September 2019. The CEACR would thus publish comments in February 2020 and any possible CAS discussion would only take place at the 109th Session of the ILC (2020).

Relationship between Labour Law and Collective Agreements (Article 611-A of Law 13467)

- According to the experts, article 611-A, despite safeguards contained in article 611-B of the Labour Code, breaches “the general objective of Conventions Nos 98 and 154 and the Labour Relations (Public Service) Convention, 1978 (No. 151)”, which “is to promote collective bargaining with a view to agreeing on terms and conditions of employment that are more favourable than those already established by law” [...].
- The analysis by the experts is seriously flawed by the complete absence of efforts to refer to the ordinary meaning of the text of the relevant Convention No. 98, as required in international law.
- In this respect, it should be stressed that nothing in the text of Article 4 of Convention No. 98 or any other agreed language by tripartite bodies indicates that collective bargaining is limited to more favourable conditions than “those already established by the law”: Article 4: “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

- On the contrary, the spirit of Article 4 and the Convention as a whole, according to recommendations of the Committee on Freedom of Association, censors limitation of the scope of negotiations and invalidation of collective agreements’ by courts and executive authorities.
- In that same vein, the ILO Policy Guide on Collective Bargaining (2015) states: “The collective bargaining framework needs to give the negotiating parties full latitude to decide the subjects they wish to include on their bargaining agenda. Measures taken to restrict the scope of negotiable issues are generally considered by the ILO’s supervisory bodies to be incompatible with international labour standards and principles on the right to collective bargaining.”
- In addition, the first part of the text of Article 4 expressly relates measures to promote voluntary negotiations to “appropriate national conditions” – a term with both legal and practical connotations, requiring due considerations of the complexity of the situation on the ground before any conclusion is drawn (once again, the CEACR report is completely silent in an essential aspect for the correct interpretation of the relevant obligations under Convention No. 98).
- In this line of thought, it would be paramount to assess the context of the Brazilian reform and the wider framework of fundamental principles and rights at work enshrined in the Brazilian Constitution of 1988 (the breadth and detail of constitutional labour rights are unique features of our legal system). Relevant constitutional provisions, Article 611-B of the new legislation (excluding about 30 fundamental workers’ rights from negotiation) and all legal remedies available in Brazil ensure thus a system of safeguards that ought to be considered in any thorough examination of the application of Convention No. 98 in law and practice (an examination that is completely absent in the CEACR report).
- In robust and well developed systems of labour rights, such as the Brazilian one, the Committee’s interpretation of Article 4 would amount to a severe, erroneous limitation of the scope of collective bargaining, against the text and the spirit of Convention No. 98.
- The reference to the “*travaux préparatoires*” of Convention No. 154 (of 1981) is another serious legal flaw in the analysis undertaken by CEACR. In no way would the “*travaux*” be an appropriate ground for restricting the outcome of collective bargaining:
 - (i) As a subsequent Convention, it cannot determine the meaning intended by the members who participated in the setting of Convention No. 98 (of 1949) nor those who later ratified it (Brazil ratified Convention No. 98 in 1952, 29 years before the adoption of Convention No. 154).
 - (ii) According to the Vienna Convention on the Law of Treaties recourse to the “*travaux*” consists in a supplementary form of interpretation, subordinate to the ordinary meaning, and to be used either to confirm the text of the very treaty under interpretation (i.e. Convention No. 154, and not another one, let alone a pre-existent one, such as Convention No. 98) or in cases of ambiguity and obscurity of that text.
 - (iii) If, for the sake of argument, one were to consider Convention No. 154, one should give precedence to the text of Article 9 of that instrument, rather than its “*travaux préparatoires*”: “This Convention does not revise any existing Convention or Recommendation.”
 - (iv) Even when considering such “*travaux*” one should read its full text (Report IV(1) of the 67th Session of the ILC – 1981), particularly paragraphs 58 and 65. One shall note that the discussion was more nuanced: a prohibition of outcomes that could derogate from provisions of the law was not even considered and, in any case, no party envisioned the specific legal clause contained in the Brazilian legislation.

Relationship between individual contracts and collective agreements (Article 444, single paragraph, Law 13467)

- The Committee also “recalls that legislative provisions which allow individual contracts of employment to contain clauses contrary to those contained in the applicable collective agreements (although it is always possible for individual contracts of employment to contain clauses that are more favourable to the workers) are contrary to the obligation to promote collective bargaining, as set out in Article 4 of the Convention”.
- It should be recalled that Article 4 of Convention No. 98 does not refer to individual contracts of employment.

- The possibility established in Article 444 (not 442, as wrongly recorded at the report) of the amended labour legislation is only applicable to a small proportion of the Brazilian population (0.25 per cent) at the very top layer of income, and with a higher level degree, who are generally employed in positions of management.

Independent contractors (Article 442-B of Law 13467)

- The Committee also states that “the Convention applies to all workers, with the sole possible exception of the police and the armed forces (Article 5) and public servants engaged in the administration of the State (Article 6)”.
- The new text of Article 442-B (not 444-B, as wrongly recorded at the report) simply clarifies the legal status of the independent contractor (“*autônomo*”, in Portuguese).
- Contrary to what the experts conclude, nothing in that provision contradicts Convention No. 98: if the contractor does not hold a subordinate position vis-à-vis his or her contracting party, he or she will not be deemed an employee. Moreover, Article 511 has not been amended by the new legislation and thus independent contractors (“*trabalhadores autônomos*”, in Portuguese) can still be organized in trade unions.

Committee on the Application of Standards (CAS)

- According to the CEACR’s own comments, Brazil has until 1 September 2018, to submit its full report on the application of Convention No. 98, so as to respond to the social partners’ and the Committee’s observations.

As we have advocated, the limited time and resources of CAS should be devoted to serious cases. Thus, Brazil’s inclusion on the “short list” of the CAS amounts to passing judgment on the Brazilian situation before hearing the Government, in breach of the most basic standards of due process.

- In comparative analysis of other cases and comparable situations, the CEACR has not used incisive language in relation to Brazil. While expressions such as “deep concern”, “deep regret”, “urges” and “firmly urges [various courses of action]”, “persistence and gravity of allegations” are relatively widespread in the report, none of them have been applied to the Brazilian case. These expressions indicate a clear sense of seriousness and/or urgency, which should be duly taken into consideration by the social partners in drafting the long and short lists.

Conclusions

- By failing to take into account the application of Conventions in practice and in the national context, the observations of the experts, at best, are premature, and contradict the Committee’s own mandate. In addition, they propose a legally flawed interpretation of Convention No. 98 that departs from the ordinary meaning of the text of the instrument.
- It also departs from consistent recommendations of the Committee on Freedom of Association and technical texts of the ILO itself.
- There is no reason whatsoever to assume, as suggested by the experts, that the new labour legislation in Brazil would discourage collective bargaining. Workers retain the ability and option, in a voluntary negotiation, to prefer legal provisions wherever they are deemed more favourable than the terms proposed by the other party.
- Conversely, revising relevant articles of the Labour Code with the modifications introduced by the labour reform (or Law 13467/2017), as the Committee suggests, would discourage negotiations, as it would allow the judiciary to review and annul collective agreements, as has happened recently, and significantly reduce the scope of what can be negotiated, which would have negative effects on the labour market.
- In fact, labour reform has consecrated a formula that reconciles free and voluntary negotiations with the protection of workers’ rights (many of them enshrined in our Constitution). It is worth noting that the very same principle (prevalence of negotiation over legislation), as introduced in the Labour Code, had also been a claim by metalworkers’ unions in the state of São Paulo in 2011, in proposing the Collective Bargaining Agreement with Specific Purpose (ACE).

- By providing legal certainty and reliability to collective bargaining, without unprotecting workers, the labour reform effectively abides by and promotes Convention No. 98, in line with our international obligations.
- It is important to emphasize that in no way are workers unprotected under Brazilian new legislation. Labour unions can freely negotiate the issues that interest them and still remain covered by the provisions of the Labour Code in all other issues not negotiated or agreed to in collective bargaining. Brazil's legal protection system and constitutional guarantees ensure a high level of protection in any scenario. Besides, the collective negotiation process itself ensures that the workers' best interest is reflected on the final agreements: first, by the bargaining power of its union, which must be representative; by the legal requirement that the collective agreement be approved by a general assembly of the category and, finally, by the system of judicial control exercised by the Labour Prosecutor's Office and the Labour Courts.
- Brazil has shown continuous willingness to foster social dialogue throughout and beyond the process leading to the adoption of the labour reform. In June 2017, the Ministry of Labour created the National Labour Council to discuss all pressing issues of the world of work, and from October onwards the standing orders of the Council were agreed to by tripartite constituency, rendering them fully operational.
- Finally, it is important to note that since the entry into force of the Brazilian labour reform, there have been a number of legal actions filed in the Supreme Court claiming the unconstitutionality of the new provisions, but none of them are related to the issues brought to the attention of the CEACR. Instead, most of them had to do with the end of trade union's compulsory contribution.
- Brazil is ready to continue in conversation with social partners and civil society on all aspects of our legislation.

In addition, before the Committee, **a Government representative**, Minister of Labour regretted that the case was discussed for political considerations. That could have a negative impact on the quality of the system, and Brazil had always supported the strengthening of the ILO system of supervision.

Brazil was a founding member and had ratified 97 Conventions, 80 of which were in force. It was one of the States most exposed to the supervisory system. Its performance in the context of the ILO supervisory mechanisms was exemplary. Each year, the Government submitted all reports due, demonstrating the full implementation of the instruments ratified. In addition, the Tripartite Commission on International Relations, where ILO standards and their application were widely discussed, in full implementation of the social dialogue promoted by Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), met periodically.

With all those credentials, and with no reason to justify the urgency of such an examination, it was difficult to understand why the Committee of Experts, not fulfilling its mandate to examine the application of ILO instruments in law and in practice, did not wait for the regular reporting cycle to examine Act No. 13.467/17. Concerning some important aspects, that law was prejudged a few days after its entry into force. The analysis was conducted with such excessive speed that the articles of the legislation examined were swapped. Because the country committed to the ILO and its system of standards supervision, the biased, partial and non-technical treatment of the case caused great discomfort. The ILO was captured in a political game that combined partisan motivations and corporatist interests. Workers were not impaired by our modernization, but only those unions dependent on the State and lacking real commitment to workers.

Out of the more than two dozen of "Direct Actions of Unconstitutionality" (judicial review proceedings) proposed in the Federal Supreme Court against several points of the reform, none dealt with the points analysed by the Committee of Experts. Two-thirds of them dealt with the end of the union tax, which was a very controversial measure not questioned by the Brazilian Unions in their submissions to the Committee of Experts. That measure brought Brazil closer to the practice of the vast majority of the countries in the world and promoted the autonomy and independence of trade unions, established in the Convention. He affirmed that questioning this measure would expose the fragility of the whole case raised by union confederations (*centrais sindicais*). The reform abolished a provision which was created in the 1940s by a government that wanted to keep trade unions under control.

The Committee of Experts stated that the possibility, by means of collective bargaining, of derogations to the rights and protection afforded to workers by the labour legislation would discourage collective bargaining and would therefore be contrary to the objectives of the Convention. He regretted that the Committee of Experts seemed to have endorsed the political thesis that the reform would lead to precarious work. However, that could be possible only if trade unions would voluntarily agree to the terms of an agreement less favourable than the existing legal provisions; if labour inspection did not function; if labour judicial bodies did not exist; and if the Federal

Constitution was torn apart. The Committee of Experts did not consider that trade unions were not obliged to agree to conditions less favourable than those defined by law. Negotiation without the possibility of reciprocal concessions, only conferring advantages to one party, would not offer the other party any incentive to negotiate. It was a basic principle of any negotiation to have concessions from each side.

In a country like Brazil, with extremely broad and detailed labour legislation, restricting collective bargaining only to points not covered by legislation or above legal provisions would reduce their range and scope of application in an irrational way. That would be contrary to the Convention as it established that governments had to promote negotiations as comprehensive as possible, as recognized in the ILO Handbook on the subject and reaffirmed repeatedly in recurrent recommendations of the Committee on Freedom of Association.

The Committee of Experts did not refer to a broad set of labour rights that had been granted constitutional protection in the Brazilian legal system and could not be revoked by any reform, not even by a constitutional reform. Those rights were included in Act No. 13.467/2017. Eighty Conventions in force were part of the legal system in Brazil and were not affected by the reform. In the General Survey of 2018, the Committee of Experts recognized that constitutional protection guaranteed to those rights in Brazil was an example to emulate. Those rights were not subject to derogation and had been expressly excluded from the possibility of any negotiation. That proved that the aim of the reform was not to revoke any right but, by consolidating them, to guarantee as much space as possible for collective bargaining, thus implementing more effectively the Convention.

The Committee neglected to mention that, in the past, it was common that the judiciary in Brazil would make void labour clauses of collective agreements or entire agreements, without any objective legal reasoning. That created legal uncertainty and discouraged collective bargaining. Collective bargaining could be effectively fostered, as advocated by the ILO, only by granting force of law to collective bargaining and protecting the autonomy of the parties, through the primacy of the negotiated over the legislated. It was surprising that union leaders questioned that point, since the law incorporated a proposal originally made in 2011 by one of the largest and strongest unions in the country, the ABC metalworkers union of São Paulo.

It was alleged that the primacy of the negotiated over the legislated opened the possibility for unions to negotiate to the disadvantage of the workers. However, that was not the experience of collective bargaining in Brazil. Studies showed that in 2016, the year of a strong economic crisis, in more than half of the collective agreements, unions negotiated wage increases above inflation, while the vast majority succeeded in securing job preservation at a time when layoffs were high. Trade unions in Brazil had already integrated the provisions contained in the new legislation into their collective agreements. Collective bargaining had not been discouraged with the new legislation. He stated that when practical analysis belied the theories that best served political interests, some deemed best to ignore practice and cling to theories.

In addition to the constitutional guarantees, workers were protected by the system of registration of collective agreements by the Ministry of Labour, which required proof that the agreement was approved by a representative assembly of the category; by the labour inspection system, composed of professionals able to identify and administratively combat fraud and violations; by the labour prosecutor's office, a unique institution that could bring a lawsuit when it perceived non-compliance to legal precepts, as it had done; and by the labour judicial system, with specialized professionals who, in 2017, before the new law entered into force, received more than 4 million new lawsuits.

The Committee did not mention that in Brazil there were 17,509 registered union entities and many had done very little for their constituency. It was not difficult to understand why there were so many, differently from the rest of the world. Since it benefited from a mandatory tax, in order to exist a union did not have to be representative or defend the workers' interests. The income guaranteed by the State, which in 2017 reached more than 4 billion Reais (or \$1.25 billion), provided a sufficient reason for its existence, in a clear distortion of the values that should guide and justify workers' organizations. Labour reform ended the state of affairs while unions would have to work much more and workers and employers as a whole would benefit. For that reason, the same reform that favoured collective bargaining, also promoted union independence, which was at the heart of the Convention. It was clear that there were no technical reasons why the case of Brazil should be examined by the Committee at this time and it was regrettable that the ILO had been politically manipulated. This was possible through political bargaining kept in secret rather than on technical merits. Hasty and technically flawed analyses could be sufficient to expose a country, if political interests so required, and force it to provide clarification to the Committee. In an election year, the process was described as inquisitorial in the Brazilian press, regardless of the country's commitment to fulfilling its obligations. Such a system did not meet the demands and challenges of the world of work, nor the expectations placed in the ILO. With the ILO approaching its first centenary, the time had come to reform the system so as to

make it more consistent with the world of work and with democratic and inclusive principles, such as the due process of law, which was required of all agencies of the UN system.

For many years, GRULAC had denounced this state of affairs and had been solemnly ignored. The time had come to start listening, because otherwise the system of standards supervision would run the grave risk of losing credibility, and thereby becoming irrelevant. In a tripartite organization, it was astonishing that there was nothing tripartite in the regular system of standards supervision. Unlike other agencies, governments had no role in the selection of the Committee of Experts members or in the definition of working methods. Unlike other agencies, there was no real universal method of supervision. It was always the same group of countries that allegedly failed to respect commitments. That situation privileged selectivity against transparency and universality.

He reiterated the lack of consensus in the current working methods of the Committee. If the level of compliance and support for ILO instruments was to be increased, the perspectives of governments had to be included in selecting the lists of cases, to meet technical criteria; in the drafting of conclusions, to be effectively implemented; and in working methods in general, to be honoured. The composition of the Committee of Experts had to be revised to reflect the diversity and technical quality expected. The criteria for selecting the lists of cases to examine had to be re-examined in order to ensure that decisions were exclusively of a technical nature. Brazil had a keen interest in continuing the debate with social actors in order to improve its labour legislation and it is prepared to do so. He expressed its continuous commitment to the obligations undertaken with the ILO and reiterated that the modernization of the legislation did not violate any Convention. On the contrary, Act No. 13.467/2017 promoted and strengthened collective bargaining, giving full effect to the Convention. He urged a profound change in the supervisory system before it was too late and expressed the readiness of his Government to participate in good faith in a collective effort to improve the supervisory system for all.

The Worker members noted that it was the first time in 20 years that the Committee was discussing the application of the Convention in Brazil. Noting that the country had been on a steady path towards social progress and a global leader in this regard, they were therefore deeply disappointed by the regressive legislative steps undertaken, which would have the effect of dismantling collective bargaining rights and the strong industrial relations tradition built over the past two decades. In 2016, Brazilian trade unions had already transmitted information to the Committee of Experts to report the severe shortcomings and flaws of the bills which were before Congress at that time. Considering that the introduction of a general possibility of lowering through collective bargaining the protection established for workers in the legislation would have a strong dissuasive effect on the exercise of the right to collective bargaining and could contribute to undermining its legitimacy in the long term, the Committee of Experts had requested the Government to take these comments into account during the examination of the bills. Even if it was eventually not discussed by the Conference Committee in 2017, Brazil had been listed on the preliminary list of cases. Despite these warning signals, the Government had adopted the problematic amendments on 13 July 2017, without taking into account the comments of the Committee of Experts. Both social partners had provided their views on the legislative reform, which was passed before the 2017 session of the Committee of Experts. The Worker members therefore did not agree that this case, which had a history within the supervisory system, had been dealt with prematurely by the Committee of Experts. They also strongly disagreed with the criticism related to the treatment of the case outside of the regular reporting cycle. Recalling that the criteria for breaking the reporting cycle were reproduced every year in the General Report of the Committee of Experts, they considered that the case of Brazil met the criteria that observations referring to legislative proposals or draft laws may be examined by that Committee even in the absence of a reply from the Government. The development of a mechanism to break the reporting cycle enjoyed tripartite support. It had been introduced as a safeguard when the Governing Body had extended the reporting cycle for certain types of Conventions to ensure that effective supervision of the application of ratified Conventions was maintained. They would never accept that an individual case would be used to attack the well-recognized and supported impartiality and independence of the Committee of Experts.

The Workers members were deeply concerned that the far-reaching legislative amendments, which were introduced hastily and without prior genuine and meaningful consultation, would effectively result in the dismantling of the collective bargaining framework in Brazil and undermine the rights of workers. With reference to the Government's statement that the legislation had been elaborated after a series of debates organized by the Government in December 2016, with the participation of representatives of trade unions and employers, they wished to remind the Government that "debates" cannot substitute genuine and effective consultations and that the most representative trade unions were not part of these debates. Moreover, the draft Bill had only seven articles at that time, whereas the law, as enacted, was very extensive, with more than 100 articles. In addition, the Labour Relations Council, which was the official tripartite body where ILO matters were discussed, had not been convened after April 2016. When the new National Labour Council was created on 1 June 2017, the Bill had already been approved in the lower house.

They considered that the amendments run counter to the objective and spirit of the Convention. New section 611A of the Consolidation of Labour Laws (CLT), which established as a general principle that collective agreements prevailed over the legislation and that collective agreements, negotiated by workplace delegations at the enterprise level, prevailed over collective agreements, made it possible through collective bargaining not to give effect to the protective provisions of the legislation. While Act No. 13.467/2017 contained a list of subjects in respect of which collective bargaining prevailed over the law, that list included many aspects of the employment relationship, such as working-time arrangements. Since that list was merely illustrative, it could be broadly extended by the parties. The sole limit to these deviations was a closed list of rights referred to in section 611B, which contained 30 rights, enshrined in article 7 of the Federal Constitution of Brazil. Moreover, section 611A specified that the absence of compensatory measures was not a reason for the clauses of collective agreements to be found void, even where they derogated from the rights set out in the law. The Worker members wished to recall that the overall aim of Article 4 of the Convention was the promotion of good faith collective bargaining with a view to reaching an agreement on terms and conditions of employment that were more favourable than those envisaged in law. By allowing for less favourable derogations in collective agreements on virtually all subjects of the employment relationship, the Government deprived workers of their fundamental right to collective bargaining and failed to ensure the effective realization of a minimum set of rights which would apply equally to all workers in Brazil. Moreover, new section 444 of the CLT, which stated that workers who had a higher education diploma and received a wage that was at least two times higher than the ceiling for benefits from the general social security scheme may agree to derogate from the provisions of the legislation and collective agreements in their individual contracts of employment, was not in conformity with Article 4 of the Convention and with the Collective Agreements Recommendation, 1951 (No. 91), which laid down the principle of the binding effects of collective agreements and their primacy over individual contracts of employment where the latter were less favourable. In addition, by expanding the definition of autonomous workers who did not enjoy the right to organize and bargain collectively to include workers who were engaged exclusively and permanently for an enterprise, new section 442B of the CLT diluted the collective representation of workers through misclassification.

The Worker members were deeply concerned by the profound and broad-reaching changes implemented by the legislative reform which eroded collective bargaining rights previously guaranteed to workers. With reference to the Government's argument that the reform had been necessary due to the overall context of economic recession, they noted that even though the number of collective agreements had decreased by 29 per cent since the adoption of the reform, the economic situation in the country had not improved. Unemployment and the informality rate had even risen. No country had ever achieved sustainable economic progress by depriving workers of their fundamental rights. Reiterating their deep concern with the retrograde practices in a country which used to be championing fundamental rights at work, they called on the Government to urgently take the necessary steps in order to reform the legislation and to bring it into line with the Convention before any further harm was inflicted on the workers of Brazil.

The Employer members expressed concern with the observation adopted by the Committee of Experts on the application of the Convention by Brazil. While recognizing the authority of the Committee of Experts to examine a situation outside of the regular reporting cycle in exceptional cases, they were concerned with the exercise of this discretion in the present case. While one national trade union had criticized the labour reform, the national employers' organization had sent information to express satisfaction at the modernization of the outdated labour relations system. Moreover, despite the fact that it had not received a response from the Government to the diverging opinions of the social partners, the Committee of Experts had adopted an observation, only a few days after the labour law reform had come into effect. In addition, 2017 had not been a reporting year on the Convention for Brazil, which was up to date with its reporting obligations. In view of the lack of information on the position of the Government, a direct request might have been the more appropriate first step in the examination of the situation. In view of the sensitivity of the case, they regretted that its discussion by the Conference Committee was based on incomplete information. The Committee was therefore not in a position to examine the case in a proper and balanced manner. Examining the case in the regular cycle would have allowed a comprehensive evaluation of the impact of the reforms on the application of the Convention, both in law and in practice. The Employer members had taken careful note of the Government's statement. Additional information was necessary to fully understand the labour law reform.

The Employer members noted that the labour law reform established as a general principle that collective agreements prevailed over national legislation, except for the constitutional rights referred to in section 611B of the CLT. In that respect, the Committee of Experts had observed that the general objective of the Convention was to promote collective bargaining with a view to agreeing on terms and conditions of employment that were more favourable than those already established by law. The Employer members recalled the requirements of Article 4 of the Convention which provided that member States must take measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations

and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. In their view, there was no absolute requirement that the outcome of collective bargaining must be on terms and conditions that would be more favourable than those established by law. A mechanism that allowed for the prevailing effect of collective agreements promoted in law the principle of collective bargaining. It might create an incentive for additional voluntary collective bargaining. It was not yet possible to analyse the effect of the system in practice and therefore not possible to know at this stage whether this mechanism would undermine the principle of collective bargaining. In order to allow a complete examination of the conformity of the reform with the Convention, the Employer members encouraged the Government to provide information in its next report on the operation of sections 611A and 611B of the CLT, in law and in practice. The analysis must take into account the extensive rights of workers enshrined in the Constitution and referred to in section 611B which concerned 30 areas of protection, including the right to unemployment insurance, minimum wage, paid weekly rest and vacation, maternity and paternity leave, occupational safety and health and freedom of association. It was of concern that the full list of protected rights was not included in the observation adopted by the Committee of Experts.

With respect to the issue of the relationship between individual contracts of employment and collective agreements, the Committee of Experts had noted that workers who had a higher education diploma and received a wage that was at least two times higher than the ceiling for benefits from the general social security would be able to derogate from the provisions of the legislation and collective agreements and accords in their individual contracts of employment. In that respect, the Employer members noted that it was not possible to have a full and informed discussion on the impact of such a provision in law and practice and to assess compliance with the Convention without further information from the Government and the social partners. In their view, the issue of the prevalence of individual contracts over the national legislation was not within the scope of application of the Convention.

Finally, regarding the extension of the definition of autonomous workers and its effect on the exclusion of workers from trade union rights, they noted that it was not possible to have a full and informed discussion without appropriate information and requested the Government to send its comments on the observations from the trade unions for examination by the Committee of Experts.

El miembro trabajador del Brasil, en nombre de las centrales sindicales brasileñas, felicitó a la Comisión de Expertos por la calidad de su trabajo que la ha convertido en una referencia inequívoca en las discusiones sobre las relaciones laborales. Sostuvo que los conocimientos técnicos y la imparcialidad de los expertos no deberían ser cuestionados sólo porque sus comentarios sean desfavorables a cierta posición. La función de los expertos es imprescindible para la orientación de los debates y para generar el necesario equilibrio en la Organización y, por lo tanto, quienes atacan a la Comisión de Expertos, atacan a la propia Organización. La gravedad de las violaciones ocasionadas por la ley núm. 13467 queda reflejada en las severas observaciones formuladas por los expertos. La nueva legislación constituye el ataque más grave a los derechos sindicales de los trabajadores en toda la historia del Brasil. El debate ante la Comisión no es nuevo ya que en 2001 el Gobierno había pretendido aprobar una ley que permitía la reducción de derechos previstos en la ley por medio de negociaciones colectivas. En 2002, en respuesta a una consulta formulada por la Central Única de Trabajadores (CUT) del Brasil, el Departamento de Normas Internacionales del Trabajo de la OIT había afirmado ya que la posibilidad de desconocer derechos contenidos en la ley a través de una negociación colectiva era contraria a los Convenios núms. 98 y 154. El proceso que culminó con la aprobación de la reforma laboral en julio de 2017 estuvo marcado por la absoluta falta de consulta tanto de los representantes de los trabajadores como de otros sectores vinculados al mundo del trabajo como la Asociación Nacional de los Jueces del Trabajo, el Ministerio Público del Trabajo y la Asociación de Abogados Laborales. La nueva ley promueve el debilitamiento general de todo el sistema de protección de los trabajadores, atacando la organización sindical y el derecho de los trabajadores a recurrir a la justicia para presentar sus demandas, imponiendo pesadas cargas financieras a aquellos que lo hacen. Al respecto, el orador repudió toda práctica tendiente a perseguir a magistrados del trabajo que, al aplicar la nueva ley, han seguido un enfoque jurídico distinto. Con el argumento de modernizar las relaciones laborales, la nueva ley representa un retorno a parámetros de relaciones jurídicas superados desde hace numerosos años. Tales parámetros se basan en la plena libertad de contratación y asumen que las partes de la relación laboral tienen el mismo poder de negociación. El retroceso es manifiesto si se tiene en cuenta que la ley permite que la negociación individual deje sin efecto la aplicación de convenios colectivos, en violación a lo dispuesto en el artículo 4 del Convenio. Asimismo, bajo el argumento de combatir el trabajo informal, la nueva ley legaliza diversos tipos de trabajo precario y permite que mujeres embarazadas y lactantes puedan trabajar en lugares insalubres. La reforma no sólo no generó el empleo prometido sino que aumentó los índices de desocupación. Así, mientras que en el momento de entrada en vigor de la ley la tasa de desempleo era del 12,2 por ciento, según datos del Instituto Oficial del Estado brasileño (IBGE), en abril de 2018, dicha tasa era del 13,1 por ciento, lo que equivale a 13,7 millones de desempleados. Si a esta cifra se suman los trabajadores potenciales que desistieron de buscar empleo (7,8 millones) y los subocupados (6,2 millones), resulta que un total de 27,7 millones de brasileños están fuera del mercado de trabajo (24,7 por ciento de la población económicamente activa). La posición del Gobierno según la cual la nueva ley contribuye a promover la negociación

colectiva está alejada de la realidad. Un estudio realizado por el Instituto de Investigación Económica de la Universidad de São Paulo a este respecto da cuenta de una caída del 34 por ciento en el número de acuerdos colectivos celebrados en los primeros meses de 2018. De acuerdo con la nueva ley, la negociación colectiva prevalece sobre la legislación incluso cuando ésta establece mejores condiciones; el acuerdo de empresa prevalece sobre la convención colectiva y los acuerdos individuales pueden excluir a trabajadores de la protección conferida por acuerdos y convenciones existentes, en clara violación del Convenio núm. 98. La reforma atacó duramente la organización sindical, en la medida en que extinguió el modelo de financiación existente sin crear un modelo alternativo. Se impide igualmente a los sindicatos aprobar en asamblea tasas o contribuciones para su sustento, violando una vez más el Convenio. Es imposible fortalecer la negociación colectiva debilitando a los sindicatos. Concluyó solicitando la derogación de la nueva ley dado que la misma retira derechos, ataca a los sindicatos, promueve la negociación individual en detrimento de la negociación colectiva y aleja el país de la agenda de trabajo decente.

El miembro empleador del Brasil sostuvo que no existe fundamento legal alguno que justifique el llamado del Brasil ante la Comisión para hacer aclaraciones alrededor de la negociación colectiva. La Comisión de Expertos, al no observar el ciclo regular de memorias establecido para examinar el Convenio, ha prejuzgado sobre la aplicación del mismo, basándose en un análisis superficial y abstracto de la nueva ley que no tiene en cuenta los resultados de su aplicación concreta sin base en cualquier dato o hecho, de manera rápida desde el texto de una legislación reciente (aplicada desde hace sólo seis meses). No se trata de un debate técnico sino de un debate político e ideológico. El Brasil es uno de los países que ha ratificado más convenios de la OIT y en el que los derechos laborales tienen rango constitucional. La reforma laboral no deroga ni modifica tales derechos laborales. La nueva ley sólo permite que los trabajadores y los empleadores puedan, si así lo desean, establecer normas relativas a las rutinas de trabajo, válidas por un tiempo determinado. No puede sostenerse que en virtud de la reforma la negociación colectiva deje sin efecto la legislación aplicable, en particular, dado que cuando no hay acuerdo en la negociación colectiva, debe aplicarse la legislación existente. Es claro que, contrariamente a lo que se ha sostenido, la ley núm. 13467 no menoscaba el Convenio sino que refuerza sus objetivos en el contexto de la legislación laboral brasileña, garantizando que los instrumentos colectivos puedan celebrarse teniendo en cuenta las modalidades actuales de trabajo y producción, sin interferencia del Estado. La Corte Suprema Constitucional del Brasil ha reconocido en 2015 el papel fundamental de la negociación colectiva como mecanismo de adecuación de las normas laborales a diferentes sectores de la economía y situaciones económicas. A este respecto, la reforma laboral simplemente confirma la premisa principal del Convenio de promover la negociación voluntaria, estableciendo expresamente que los derechos de los trabajadores, previstos en la Constitución Federal, no pueden ser objeto de supresión o reducción por medio de la negociación. Entre tales derechos figuran los ejemplificados por la portavoz de los empleadores. La nueva ley busca establecer un ambiente propicio para la negociación colectiva brindando seguridad jurídica a los actores sociales para que puedan reanudar el diálogo sobre cuestiones cuya negociación generaba incertidumbre al ser a menudo objeto de anulación por parte de la justicia del trabajo aunque efectivamente fuera la voluntad de las partes. Los trabajadores no han sido perjudicados por la reforma, contrariamente a lo que afirman ciertos sindicatos que reclaman la restauración del impuesto sindical obligatorio, sin ofrecer a cambio los servicios debidos a sus representados. Los recursos nacionales existentes no fueron utilizados antes de llegar a la OIT. En efecto, las centrales sindicales sólo recurrieron ante la Corte Constitucional para reclamar el impuesto sindical y no para alegar supuestas violaciones a la Constitución o al Convenio. La reforma laboral era necesaria para dar impulso a la negociación colectiva y modernizar una ley de principios de los cuarenta. La nueva ley, resultado de un proceso democrático en el que hubo numerosas audiencias públicas y aprobada por una amplia mayoría del Congreso Nacional, no menoscaba el Convenio sino que protege la negociación colectiva de interferencias externas; consolida un mecanismo eficaz para hacer frente a dificultades económicas; armoniza la legislación con la de otros países miembros de la OIT y tiende a lograr un equilibrio entre la libertad de negociación y el principio de protección de los trabajadores. Es preocupante que la OIT pueda considerar que la negociación sólo es válida si contiene términos y condiciones de empleo más favorables que los establecidos en la ley, en particular porque tal noción resulta de una interpretación extensiva del Convenio que, si adoptada, terminará por ser vinculante a todos los 165 países que tienen ratificado dicho instrumento, no debiendo permitirse una modificación de las reglas del juego establecidas por el Convenio. Recordando que su país sólo hace algunos años era considerado como una referencia para la Comisión, confió en que en el examen del caso prevalecerían la imparcialidad y el papel institucional de la OIT basado en el tripartismo y exento de intereses políticos e ideológicos y pidió que la Comisión en sus conclusiones tome en cuenta que la negociación colectiva debe ser libre y espontánea como propone el texto del Convenio núm. 98.

La miembro gubernamental del Paraguay hablando en nombre de una significativa mayoría del Grupo de los Estados de América Latina y el Caribe (GRULAC), reiteró su profunda preocupación con los métodos de trabajo adoptados por la Comisión de la Conferencia, que no cuentan con el consenso tripartito. Además, varios aspectos de los comentarios de la Comisión de Expertos generan interrogantes. En relación con la ruptura del ciclo regular sin memoria del Gobierno, la oradora consideró que la existencia de criterios al respecto sólo ilustra la necesidad

de una justificativa de la decisión de romper el ciclo. Refiriéndose al mandato de la Comisión de Expertos reflejado en su Informe General que indica que las opiniones de la Comisión de Expertos no son vinculantes y que toman en cuenta la aplicación de los convenios «en la legislación y en la práctica, teniendo en cuenta las diferentes realidades y sistemas jurídicos», lamentó que en el caso del Brasil, no se haya concedido el tiempo necesario para evaluar la complejidad de la reforma laboral, que se debe examinar en su conjunto, sus repercusiones prácticas y su interpretación por los tribunales. En ese sentido, tampoco se ha considerado el extenso rol de derechos laborales contenidos en la Constitución Federal del Brasil. En el caso brasileño, se debería considerar, no solamente la Constitución, sino también la justicia laboral especializada, la Fiscalía General del Trabajo, órgano independiente del Gobierno, la naturaleza de carrera de Estado de la inspección del trabajo y la manutención del marco de la Consolidación de las Leyes del Trabajo. Reiteró su compromiso con el fomento a la negociación colectiva y con el principio contenido en el artículo 4 del Convenio. El sentido ordinario del artículo es claro, incluso al referirse a las «condiciones nacionales».

El miembro gubernamental de Panamá se refirió al modelo de las mesas tripartitas de diálogo social tripartito establecidas en su país para la armonización del ordenamiento jurídico con los convenios y recomendaciones de la OIT y subrayó el carácter fundamental de la asistencia técnica brindada por el Departamento de Normas Internacionales del Trabajo de la OIT a este respecto. Expresó, sin embargo, preocupación en torno a los métodos regulatorios que determinaron la inclusión del Brasil en la lista de casos a ser examinados por la Comisión, incluyendo la ruptura del ciclo regular por la Comisión de Expertos que se pronunció sin memoria del Gobierno. Reiterando su compromiso con los órganos de control, subrayó la necesidad de adoptar mecanismos de trabajo que sean debidamente consensuados entre los mandantes.

The Worker member of Portugal considered that the labour legislation reform adopted by the Brazilian Government followed the matrix of reforms that had occurred in Spain, Portugal and Greece which, since 2009, had led to social regression for workers in southern Europe to levels of several decades earlier. Under the pretext of making labour relations more flexible, increasing employment, ending labour market fragmentation and enhancing collective bargaining, the “troika”, integrating the International Monetary Fund (IMF), the European Commission (EC), the European Central Bank (ECB), and the Governments had imposed labour law reforms on workers, allowing for collective bargaining to be carried out by informal organizations, eliminating the principle of favourability, increasing hours of work and lowering overtime pay. Such changes had had dire consequences for workers, with labour incomes dropping, unemployment rates reaching figures never seen before, rising from under 10 per cent to over 20 per cent in less than two years, forcing hundreds of thousands of workers, mainly young people, to look for work in other countries. He thus considered that these labour legislation reforms’ central objective had been to cut workers’ and pensioners’ incomes.

The reform that was being imposed on the Brazilian workers followed the same matrix, grounds and aims. By mandating that an individual contract of employment could stipulate lower terms and conditions than those set by law or by collective agreements; by permitting that collective bargaining could be engaged in without the participation of trade unions; and by allowing the development of precarious employment relations, the labour reform would lead to an increase in precarious work and to labour market segmentation, instead of combating them. The Brazilian Government’s labour reform undermined workers’ fundamental rights enshrined in the ILO core Conventions and was in violation of the Convention, since it allowed for collective bargaining without the participation of trade unions and to set aside collective labour agreements by individual contracts. He therefore urged the Brazilian Government to accept ILO assistance to align labour legislation with the international instruments to which they were bound and to respect the indispensable role of the Committee of Experts in ensuring that ILO Conventions were effective.

The Government member of India appreciated the efforts and the positive steps taken by the Government to reform its labour laws with a view to providing legal certainty and reliability to collective bargaining, in consultation with the social partners and in accordance with the Constitution of the country and its international obligations. Countries should not be included in the preliminary or final list of cases before the end of the reporting cycle and without following due process and for other reasons than the technical merits of a case. A genuine and constructive tripartism was sine qua non for an effective and credible ILO supervisory mechanism. In fulfilling its labour-related obligations, the Committee should fully support the Government.

The worker member of Italy stated that the Government had been implementing a series of reforms in Act No. 13.467/2017 in breach of foundational principles of the ILO. No consultation with the social partners had been held, no public debate had accompanied the discussion and the Act, which took away the set of existing guarantees had been approved in record time. Neoliberal policies enacted in a unilateral way had the effect of job insecurity and precariousness. The so-called “innovation” had only entailed the worsening of working conditions and the denial of trade union rights, undermining collective bargaining mechanisms. Act No. 13.467/2017 allowed for

collective agreements to worsen the conditions provided for in the law. For millions of Brazilian workers the reforms meant an increase in inequality in one of the most unequal industrialized countries. The criteria and procedure for breaking the reporting cycle of the examination of cases by the Committee of Experts provided for safeguards to ensure effective supervision of the application of ratified Conventions. That possibility not only strengthened the supervisory system of the ILO, but also ensured that time-sensitive issues, including matters of life and death or fundamental human rights were appropriately addressed. She urged the Government to amend the legislation so as to bring it into line with the Convention.

The Government member of the Russian Federation appreciated the information provided by the Government representative on the merits of the issue, as well as on its procedural aspects. The speaker shared many of the concerns expressed, in particular in relation to the decision to examine this case outside of the regular reporting cycle. Additional explanations regarding the reasons for that decision were needed. When considering the implementation of ILO Conventions, it was important to take into account both law enforcement practice and the general context conditioned by the peculiarities of the legal system of the country concerned. Since the reform had just been adopted, it was necessary to give the Government time to work before making unambiguous conclusions. The speaker believed that there was room for improvement in the working methods of the Conference Committee. The concrete proposals made in this respect deserved a comprehensive study. Given that the Committee was central to ensuring consistent and strict compliance with international labour standards, it must rely on the full trust of governments, workers and employers.

The Worker member of Pakistan recalled that the mandate of the Committee of Experts was clearly spelled out in its General Report. It was vital for the Conference Committee to recall that the legitimacy and rationality of the Committee of Experts' work was based on its impartiality, experience and expertise. It was on that basis that over the years, exceptional cases had been identified and the reporting cycle broken, when allegations had been sufficiently substantiated and there was an urgent need to address the situation. In addition, observations referring to legislative proposals or draft laws could be examined by the Committee of Experts in the absence of a reply from the Government when it could be of assistance to the country. Therefore, the speaker considered that the Committee of Experts had acted within its mandate and in line with the criteria for breaking the reporting cycle, as the right to organize and to bargain collectively was a fundamental human right that risked being eroded by the enactment of Act No. 13.467/2017.

El miembro empleador de Colombia señaló que la reforma laboral del Brasil es producto de amplias discusiones llevadas a cabo con los interlocutores sociales durante más de veinte años. Se trata de una norma expedida para mejorar las relaciones laborales en el Brasil, al adecuar la legislación a las nuevas realidades, siempre sobre la base de la negociación colectiva. Lo que se pretende con esta reforma laboral es establecer condiciones más favorables para la competitividad, la productividad y el desarrollo económico social con respeto a los derechos fundamentales del trabajo y al trabajo decente. Consideró que ha sido prematura la evaluación de los efectos generados por la reforma; un periodo razonable de implementación es necesario para poder llegar a conclusiones precisas y fundamentadas. La reforma laboral brasileña no concede una autorización general para derogar la legislación laboral por negociación colectiva como se ha denunciado. Los cambios realizados se enfocaron en dar seguridad al resultado de lo pactado entre trabajadores y empleadores y al alcance de la negociación colectiva. La nueva normativa laboral no priva a los trabajadores de sus derechos y garantías laborales y tampoco viola los Convenios núms. 98 y 154. La Legislación laboral actual protege las negociaciones colectivas, consolida un mecanismo necesario y eficaz para el enfrentamiento de adversidades económicas y brinda mayores posibilidades de negociación a empleadores y trabajadores, sin vulneración de los derechos laborales constitucionalmente previstos. En relación con la regulación del trabajo autónomo, el orador notó que la nueva legislación establece una definición clara sobre quiénes se consideran profesionales autónomos y los requisitos para identificarlos. Al ser independientes o autónomos, los trabajadores se rigen por normas diferentes a las de los empleados y en ambas se respeta el trabajo decente. No se restringen los derechos sindicales porque los profesionales autónomos no cuentan con un vínculo laboral y, por lo tanto, no están cubiertos por la legislación laboral.

El miembro trabajador de la Argentina señaló que en un estudio reciente presentado ante el Consejo de Derechos Humanos de las Naciones Unidas se afirma que más de 130 países se han embarcado en los últimos años en reformas de políticas y normas laborales pro austeridad y que la desregulación del mercado de trabajo no favorece el crecimiento ni el empleo. Por el contrario, un número creciente de estudios confirma que las normas del trabajo tienen efectos económicos positivos tanto en la productividad como en la innovación. La reforma laboral en el Brasil generaliza la tercerización y la subcontratación. De ese modo, menoscaba salarios, debilita los sindicatos y la negociación colectiva y favorece a las grandes corporaciones multinacionales. El incremento de la informalidad y la precarización conlleva un aumento de la desigualdad. La nueva ley elimina la idea de jornada de trabajo al crear el trabajo intermitente; elimina recursos con los que contaba el trabajador para efectuar reclamos ante la justicia laboral; permite a las mujeres embarazadas trabajar en ambientes insalubres, y elimina el financiamiento de los

sindicatos, con graves consecuencias sobre la existencia de los sindicatos y la negociación colectiva. Al imponer la «negociación» entre el empleador y el trabajador, sin presencia del sindicato, facilita la imposición de condiciones por debajo del acuerdo colectivo. La nueva ley constituye, asimismo, un ataque a las normas fundamentales de la OIT y es una medida regresiva que no puede considerarse como una respuesta admisible frente a las crisis económicas y financieras. Es necesario que se generen economías sustentables, con protección social, trabajos seguros y salarios decentes tanto en el Brasil como en todo el continente americano.

El miembro gubernamental de Honduras expresó su preocupación en relación con la interrupción del ciclo regular de presentación de memoria. Confío en que el Gobierno avanzará en el fomento de la negociación colectiva a través de la adopción de medidas adecuadas destinadas al uso de procedimientos de negociación libre y voluntaria y de contratos colectivos que reglamenten las condiciones de empleo.

The Worker member of the United States, speaking also on behalf of the Worker member of Canada, stated that stable labour market institutions, social dialogue and collective bargaining were being dismantled in Brazil. In November 2017, the amendments to the CLT had come into force reducing workers' capacity to defend their rights and to negotiate improved wages and conditions. The changes permitted unions and individuals to negotiate agreements that lowered wages and conditions while increasing precarious work. Contrary to the concept of collective bargaining, employers and workers could negotiate agreements that lowered standards below what was provided for in legislation. As indicated in the report of the Committee of Experts, Act No. 13.467/2017 was not based on negotiation, but on the abdication of rights on a wide range of issues. The changes to the CLT had created a new category of exclusive autonomous worker and denied an employment relationship even when a worker had been engaged exclusively and permanently by one firm. Such workers were denied freedom of association and collective bargaining rights, and this had resulted in atomized labour relations. The first three months of the new regime had seen a nearly 3,000 per cent increase in the number of stable employment relationships dissolved, mostly concerning low-wage positions held by workers without the higher education supposed to afford them greater individual bargaining power. The changes opened more workers to precarious work and unions would no longer receive a stable contribution from those they represented. In March 2018, unions had received approximately 20 per cent of what they had in March 2017. In the first quarter of 2018, the total number of collective agreements had fallen by 29 per cent over the same period in 2017. In 2018, there had been 1,000 fewer collective agreements than there had been over the six previous years. Unemployment, informality and precarious work had increased in the same period. Brazil was experiencing extreme polarization exacerbated by the deliberate dismantling of social dialogue and mature industrial relations. Labour law reform should not mean abandoning ILO standards. A different path could lead to broadly shared income growth and progress.

The Government member of Bangladesh commended the Government of Brazil for holding a series of discussions with the representatives of trade unions and employers in reforming the CLT that had entered into force in November 2017. Inclusive, comprehensive and extensive consultation with social partners was key in reforming any legislation concerning labour rights. One of the main aspects of labour reform in Brazil was the strengthening of collective agreements between unions and employers aimed at the possibility for each to negotiate collectively without affecting the rights of workers. Additional time was needed for understanding the impact of the law on the labour market, as it was still in its initial stage of implementation. He supported the view that the reporting cycle should not be broken and comments issued before a report was due and submitted, and agreed with the Government representative's statement with regard to the reform of the ILO supervisory mechanism. He concluded by underlining the importance of objectivity, transparency, neutrality and impartiality in the work of the Conference Committee through the use of tripartism in all decision-making processes, including for the establishment of the final list of cases and the consideration of conclusions.

The Worker member of the United Kingdom stated that the labour law reforms adopted in Brazil in July 2017 were in contravention of the Convention. The reform had deregulated more than 120 labour standards, including safeguards protecting pregnant women from working with toxic substances, rules on dismissal and equal pay laws. It had also dismantled the collective bargaining system, including by permitting collective agreements to displace statutory standards. The stated goal of the reforms had been to increase flexibility, reduce unemployment and regularize the informal economy. However, unemployment levels in Brazil had remained high with a growing informal economy and a rise in precarious forms of work. Workers in insecure work were deterred from joining trade unions for fear of victimization or job loss. The reforms had also permitted educated workers to enter into individualized contracts which opted out of collectively agreed pay and conditions. As the Committee of Experts had noted, that was a clear violation of the Convention. The speaker called on the Government of Brazil to reform its national legislation and to restore trade union rights, in line with the Convention.

El miembro gubernamental de México tomó nota con interés del proceso de consultas amplias que resultó en la adopción de una reforma legislativa que busca proporcionar más flexibilidad, mayor productividad laboral,

certidumbre legal y racionalidad tanto al mercado de trabajo como al ordenamiento jurídico. Destacando su preocupación por la ruptura injustificada del ciclo regular de presentación de memorias, consideró que los procesos de reforma requieren ser evaluados de una manera holística, tomando en cuenta el contexto en que se desarrollan, así como otras medidas prácticas que contribuyen a la construcción de un marco jurídico efectivo que se alinee a los principios y derechos fundamentales.

El miembro trabajador de Colombia declaró que la reforma deslegitima el objetivo de la negociación colectiva, que es mejorar las condiciones de trabajo, permitiendo que acuerdos o convenios colectivos desmejoren los mínimos establecidos en la ley. La restricción al tiempo de duración de acuerdos y convenciones colectivas a máximo dos años, conforme al artículo 614 de la reforma, y la prohibición de la ultraactividad de los acuerdos y convenios, limita la voluntad de las partes y es contraria al Convenio. Rechazó de manera enérgica la posibilidad de que los trabajadores individualmente o de forma colectiva, sin la participación de los sindicatos, negocien condiciones de trabajo fuera de la negociación colectiva o pacten la exclusión de la aplicación de los acuerdos o convenciones.

Otro miembro trabajador de Colombia lamentó profundamente el incumplimiento del Convenio por parte del Gobierno y expresó su solidaridad con las centrales obreras del Brasil.

The Government member of China shared the concerns expressed regarding the working methods of the Conference Committee. The Conference Committee was at the heart of the ILO supervisory system and its working methods could be improved. There was a lack of transparency in the selection of individual cases, which should be based on objective, fair and transparent criteria, and not on political considerations, in compliance with the established ILO procedures. Governments that were required to appear before the Conference Committee should be warned of the final list in advance, in order to have ample time to prepare. The recommendations made by the Conference Committee should reflect tripartite consensus. Governments should fully enjoy the right to information and the right to participate in the process of examining individual cases. Further, capacity building and technical assistance should be provided by the ILO to the Government concerned.

El miembro trabajador del Paraguay señaló que la reforma laboral en Brasil precariza el trabajo, debilita la negociación colectiva y el diálogo social y ataca a la organización sindical. La reforma fue aprobada en uno de los peores momentos de crisis política e institucional en la historia del Brasil, sin diálogo con los sindicatos y los trabajadores. Tendrá como consecuencia que los empresarios podrán hacer despidos colectivos, sin necesidad de discutir con el sindicato. Además de limitar la representación sindical, la reforma priva al movimiento sindical brasileño de sus principales fuentes de financiamiento. Recordando que en los últimos años las centrales sindicales del Brasil han venido denunciando las prácticas antisindicales y las propuestas de reformas que se acaban de concretizar, expresó su apoyo a la discusión de este caso de violación del Convenio.

El miembro trabajador del Uruguay manifestó su solidaridad con las centrales sindicales del Brasil ante los efectos de la nueva ley que ha aumentado el desempleo y la pobreza y ha llevado a un desmejoramiento de las condiciones de vida en el país. Con respecto a la necesidad de esperar el envío de la memoria por parte del Gobierno, sostuvo que más importante que la obligación de enviar memorias era la necesidad de dar cumplimiento a las disposiciones del Convenio. A nivel del Cono Sur, se cuenta con la Declaración Sociolaboral del MERCOSUR, una herramienta tripartita que protege los derechos laborales, obtenida tras largos debates entre los interlocutores sociales. La reforma laboral en el Brasil busca por el contrario imponer recetas de los años noventa para desregular las relaciones laborales.

Un observador en representación de la Organización Mundial de Trabajadores indicó que la reforma laboral en el Brasil contraviene al derecho sindical establecido en la Constitución brasileña y a los artículos 3 y 4 del Convenio. La reforma laboral reglamenta de manera individual y privada los contratos de trabajo, entre el trabajador y el empleador, sin participación de las organizaciones sindicales, colocando a los trabajadores en una situación de vulnerabilidad excesivamente peligrosa. Este desconocimiento de las organizaciones sindicales y de la negociación colectiva permite a los empleadores realizar despidos colectivos. En los últimos años, las centrales de trabajadores brasileñas han venido denunciando las prácticas antisindicales. Permitir los ataques contra la libertad sindical y la negociación colectiva, en varios países, puede dar lugar a un retroceso para la institucionalidad sindical en el mundo.

El miembro trabajador de la República Bolivariana de Venezuela consideró que la reforma laboral brasileña que permite la negociación a la baja de los derechos es un retroceso que conduce a la desprotección de los trabajadores y que viola el Convenio. También, permite la disolución del vínculo de afiliación sindical en el caso de trabajadores que perciban un salario por lo menos dos veces superior al límite máximo de beneficios del régimen general de la previsión social. Esto puede debilitar la fuerza y la unidad sindical. Además, la reforma permite la

creación de la figura del trabajador autónomo exclusivo, atacando los derechos de libertad sindical y negociación colectiva.

El miembro empleador de México enfatizó que la OIT reconoce la negociación colectiva como uno de los principales medios para establecer condiciones laborales y otras regulaciones de manera libre y voluntaria a través de los representantes designados para tal fin. La negociación colectiva es un instrumento vinculante que obliga a las partes y que asegura seguridad jurídica. Lamentablemente en el Brasil, antes de la reforma laboral, los contratos colectivos estaban sujetos continuamente a la intervención de las autoridades que los anulaban de manera recurrente. La reforma laboral reconoce y privilegia la importancia de la negociación colectiva, en el marco constitucional que establece unos derechos fundamentales que son irrenunciables.

El miembro empleador de Guatemala consideró que la nueva legislación responde a la necesidad de fortalecer la negociación colectiva, en los términos exigidos por el artículo 4 del Convenio. El hecho de que los derechos de los trabajadores consagrados en la Constitución constituyan el piso de la negociación es una garantía amplia de protección. Antes de la promulgación de la nueva legislación, un fallo de la Corte Constitucional reconoció expresamente el papel importante de la negociación colectiva en tanto que mecanismo de adecuación de las normas de trabajo a los diferentes sectores de la economía y las coyunturas económicas diferenciadas. Subrayó que antes de la reforma, la interferencia gubernamental por la cancelación de cláusulas acordadas entre las partes fue duramente criticada y objeto de quejas por parte de los trabajadores y empleadores brasileños. En 2011, un importante sindicato en el Brasil propuso la adopción de un convenio colectivo con un fin específico, encaminado a velar por la prevalencia de la negociación colectiva sobre la ley. La reforma permite que los que no quieren negociar colectivamente tengan las garantías del ordenamiento legal; quienes lo harán, tendrán la posibilidad de adecuar la legislación a su mejor conveniencia y según sus circunstancias, sin perjuicio de amplias garantías laborales consagradas a nivel constitucional.

El miembro trabajador de Chile señaló que en muchos aspectos la normativa brasileña referida a la libertad sindical, antes de la adopción de la ley núm. 13467, constituía un ejemplo. Tomó nota con preocupación de esta reciente ley que reforma la CLT y que estaría impactando en el cumplimiento del Convenio. Observó, con mucha preocupación, que en nombre de una supuesta defensa del empleo, de la inversión y del crecimiento económico, el país haya recurrido a la fórmula clásica de abdicar derechos a los trabajadores, contraviniendo las disposiciones del Convenio. Recordó que la desigualdad es el principal desafío de este siglo y posiblemente de la historia de la humanidad y que la negociación colectiva, con actores sindicales fuertes, puede contribuir a establecer una vía para un crecimiento equitativo e integrado que permita reducirla. Por ello, la Comisión debería instar al Gobierno a cumplir con el Convenio, revisando los aspectos de la ley núm. 13467 que no están en concordancia con éste y con el objetivo de promover la negociación colectiva libre y voluntaria y los objetivos de desarrollo sostenible.

El miembro empleador de España señaló que la reforma de la legislación laboral brasileña ha puesto el foco en la prevalencia de la negociación colectiva sobre la legislación ordinaria que, por su rigidez, concedía, antes de la reforma, muy poco espacio de negociación a los trabajadores y empleadores, lo que inducía numerosos conflictos. La modernización de la legislación laboral ha reforzado la negociación colectiva, de conformidad con el Convenio. Las empresas y los trabajadores, representados por los sindicatos, podrán negociar y acordar unas condiciones de trabajo adaptadas a la realidad específica de los sectores, regiones y empresas. Subrayó que la ley no establece la obligatoriedad de la negociación colectiva, que se basa en la autonomía y voluntariedad de las partes.

Una observadora en representación de la Asociación Latinoamericana de Abogados Laboralistas destacó la gravedad del caso y su importancia para la efectiva vigencia del sistema de control de la OIT. Subrayó el papel de la negociación colectiva como un mecanismo de compensación de las desigualdades que existen en la relación entre un empleador y un trabajador. La necesidad de normas mínimas internacionales se basa en esta premisa. Las normas internacionales son también consecuencia de procesos de negociación y prevalecen sobre el derecho interno cuando es menos favorable a los trabajadores. La reforma laboral brasileña que prevé que el acuerdo individual prevalezca sobre el convenio colectivo es una grave e inaceptable regresión en materia de derechos sociales que tiene un impacto sobre muchos países, incluyendo en la región latinoamericana.

El miembro empleador del Uruguay se refirió a la práctica llamada «industria del juicio laboral» que existe en los países de la región y que contamina la negociación colectiva y la gestión empresarial. Esta práctica es fomentada por un marco jurídico insuficiente. La reforma laboral brasileña ha buscado encontrar soluciones para estas situaciones de abuso, dando seguridad a todos los actores sociales sobre las consecuencias de lo pactado.

The Government member of Egypt noted the information provided by the Government representative on measures taken to comply with the Convention. She welcomed the efforts made to strengthen its labour legislation

and bolster collective bargaining. She called on the Government to pursue its efforts to fully respect the Convention, and to avail itself of ILO technical assistance in that respect.

El miembro empleador de Chile consideró que la Comisión de Expertos rompió el ciclo de memorias sin ninguna explicación, para hacer una evaluación precipitada de la ley num. 13467. Es evidente que la norma no ha tenido el tiempo mínimo necesario para que de manera seria y responsable se pueda evaluar su impacto. Los comentarios de la Comisión de Expertos dan al Convenio una interpretación que su articulado no contempla cuando consideran que el objetivo general de promoción de la negociación colectiva supone encontrar un acuerdo sobre términos y condiciones de trabajo que sean más favorables que los previstos en la legislación. Además, estos comentarios no destacan la amplitud y el detalle de los derechos laborales que contempla la Constitución brasileña, ni tampoco todos los recursos judiciales de que disponen los trabajadores para salvaguardar sus derechos. El artículo 4 del Convenio no contempla ninguna limitación a la negociación colectiva, en el sentido de que ésta sólo pueda establecer condiciones más favorables que las establecidas por la legislación. Muy por el contrario, contempla de manera expresa la posibilidad de que se adopten medidas que se adapten a las condiciones nacionales. En un mundo cambiante y frente a las nuevas formas de empleo, es importante que las leyes salvaguarden la libertad de las partes para adaptarse a los cambios y la modernización.

Le membre gouvernemental de l'Angola, soulignant les liens d'amitié entre les deux pays, a soutenu la déclaration du Brésil et considéré que la présentation orale de la délégation du Brésil indiquait que le gouvernement avait rempli ses obligations.

The Employer member of Greece indicated that there had been a methodological error in the data on unemployment and informality in Brazil which had been referred to during the discussion. This was misleading the Conference Committee. The relevant indicators released in May 2018 by the Brazilian Institute of Geography and Statistics made it clear that when the seasonality of economic activity was accounted for, the unemployment rate in Brazil had been reduced in 2018 as compared to the same period of 2017 since unemployment rate was reduced by 0.7 per cent repeating the trend recorded in the mobile quarter from January to march 2018. Furthermore, it was too early for an assessment of the new legislation as it had still not been fully implemented. The speaker considered that the labour reform had potential for growth in formal and quality jobs.

An observer representing Public Services International (PSI) stated that she was also speaking on behalf of Education International (EI), IndustriALL Global Union and the International Transport Federation (ITF). The possibility, by means of collective bargaining, to derogate from statutory minimum rights breached the fundamental objective of the Convention, as well as Conventions Nos 151 and 154. The speaker rejected the Government's assertion that the Committee of Experts had erred in its interpretation, and expressed support for that Committee's interpretation of Article 4 of the Convention and its technical comments. The new section 611A of the CLT that allowed collective bargaining agreements to reduce the rights and protections afforded by labour legislation could have catastrophic consequences for workers and trade unions. In the aviation and maritime sectors, such derogations could interfere and reduce sector-specific safety standards, including protections derived from technical ILO Conventions. The safeguards contained in section 611B of the CLT were not sufficient. It was also possible that collective bargaining would derogate from the application of ILO Conventions. A recent decision by the Superior Labour Court had contradicted the claim that the reform was a modernization of the labour legislation aimed at strengthening negotiations and unions. The Court had recently ruled on the illegality of a strike of oil workers and established a substantial daily fine for unions that had failed to suspend the strike. That created a hostile environment that was not conducive to mature social dialogue.

In December 2017, the President had vetoed Law No. 3831, regulating collective bargaining in the public administration, which was an affront to Brazilian civil servants, particularly as Brazil had ratified Convention No. 151. Law No. 3831 had been built by consensus in the bipartite Chamber of Government and Public Servants of the Ministry of Labour and Employment and had been approved unanimously in the Federal Senate and the Chamber of Deputies of Brazil. The labour reform also had direct consequences for the education sector relating to the privatization of secondary education and the minimum salary of teachers. Contrary to what had been indicated by the Employer member of Brazil, Act No. 13.467/2017 had not been preceded by a broad process of discussion. Brazilian trade unions had merely been informed of the proposed amendments. The ILO supervisory bodies had that it was imperative that full and frank consultation take place on any question or proposed legislation affecting trade union and collective bargaining rights. Comprehensive labour law reform, in consultation with all social partners, was therefore necessary to bring the Brazil's legislation into conformity with the Convention.

The Government representative appreciated the leadership, firmness and serenity of the Chairperson in conducting the work of the Conference Committee and expressed his gratitude to the countries and speakers who had expressed their support to Brazil and to the importance of improving the supervisory system for greater

predictability, transparency and real tripartism. The Government had come prepared to dialogue and had presented technical arguments to prove the full consistency of the labour reform with ILO standards. The discussion had reinforced the belief that the debate on the reform was premature and he reaffirmed his concern about the improper use of the mechanism to serve other purposes than the mandate and objectives of the Organization, which should remain technical, impartial and objective in order to keep its effectiveness and legitimacy. He then reacted to some of the points brought forward in the discussion, reiterating that the labour reform was the result of many years of discussions on labour market challenges in Brazil due to the shortcomings of the labour legislation and to the malfunction of the labour courts. Such discussions had become even more urgent, in a context of hard economic crisis in recent years. 2016 had witnessed the highest unemployment rate ever recorded since the beginning of the series, in 1992, and an 82 per cent increase in the unemployment rate since 2012. The crisis had not been generated by the Government, which could not be held responsible for it, but the reform was part of the solution and was already producing results. Between January and April 2018, more than 310,000 formal jobs had been created, the largest volume in the previous five years. Although statistics had been presented to criticize the modernization of labour in Brazil, when comparing the quarter from February to April 2018 with the same period from 2017, the unemployment rate had fallen 0.7 percentage points, repeating the trend recorded in the mobile quarter of January to March 2018, compared to the same quarter of 2017, when the reduction had been of 0.6 percentage points.

He rejected claims that the reform made rights precarious. He affirmed that the reform was fighting informality, the worst form of precariousness, and allowed for new forms of employment with all the legal guarantees and constitutional rights, namely as it had increased by almost eight times the amount of the fine applied to companies failing to register their workers.

With regard to article 444 of the CLT, the Committee of Experts' observation had no grounds as the Convention did not refer to individual contracts; moreover, Act No. 13.467/2017 only foresaw the application of such provision in exceptional cases, for workers with a higher education degree and with incomes at least two times higher than the ceiling for benefits of social security. The legal provision aimed at stimulating negotiations to best address the particular situation of such workers, usually not foreseen in collective agreements. While the previous legislation had already allowed the differential treatment for those workers, the labour reform had set objective criteria for ensuring the provision would only apply to those with negotiation capacity, without prejudice to their rights.

The reform had not weakened the unions, as the union contribution had not been eliminated and could still be deducted with the agreement of the worker or company. To promote the independence of trade unions from state funding, in line with the Convention, the obligation of every worker to contribute to a trade union had been abolished, but Brazilian unions could still rely on other sources of financing permitted by law.

He also rejected that the reform had taken place without consulting workers, as a series of debates had been organized by the previous Minister of Labour, who had met in December 2016 the six main trade union confederations [*centrais sindicais*], and representatives of the major employers' confederations, to discuss the proposal prepared by the Ministry of Labour, which had subsequently been forwarded to the National Congress. During the legislative process in 2017, 17 public hearings, seven regional seminars and more than 40 meetings with interested stakeholders had been held in Parliament and in different States, leading to the approval of the Bill by a significant majority in Congress and later in the Senate. The labour reform Bill had received 1,340 amendments, one of the largest numbers in the entire history of the Brazilian Parliament. Of the 452 amendments accepted, 62 had been authored by opposition parliamentarians. Amendment number 150, which had been accepted, proposed the possibility to bargain collectively on daily hours of work, within the constitutional limits, the protection against unjustified dismissal in the event of reduction of hours of work and/or salary among other measures related to the strengthening of collective bargaining. The author of the amendment had underlined that it "resulted from the valuable contribution of the combative National Confederation of Commerce Workers (CNTC)", demonstrating the effective participation and acceptance of suggestions from workers.

With regard to representation in the workplace, it had been a historical demand of the Brazilian trade union movement, foreseen for nearly 30 years in article 11 of the Constitution and regulated by the labour reform, in line with the provisions of ILO Convention No. 135. Workers' representatives in the company did not compete with the mandate of the unions.

The number of collective agreements had been dropping since 2016, which suggested that it was more related to the effects of the economic crisis than to the labour reform. In addition, the same study quoted by the workers' representative indicated that there had been a qualitative change in the agreements signed, which evidenced the expansion of the scope of bargaining and the concern to improve the representation at the workplace.

Concerning pregnant women, the new rule had been designed to prevent discrimination in hiring women; it had been formulated by health workers' unions and defended by the female Congressional Caucus, and guaranteed the protection of maternal and infant health. Regulatory Standard No. 15 had a broad definition of unhealthy place which included, for example, hospitals and airports, and the rule remained the protection of pregnant women.

A 12-hour working day was only permitted if followed by 36 hours of compulsory rest, which, at the end of the week and month, represented less hours worked with no reduction in wages.

The Committee of Experts had also made a serious mistake by considering that the law excluded the possibility of independent contractors to form unions and engage in collective bargaining. That was provided for in article 511, which dealt with trade union organization and had not been altered by the new law. The purpose of article 442B was simply greater conceptual clarity and certainty about the elements that characterized the employment relationship, in line with ILO Recommendation No. 198, and as defined by article 3 of the CLT, unchanged by the reform. The Government representative rejected the Committee of Experts' comment that the Convention should apply to autonomous workers, since it did not provide a definition of "worker" for the purposes of application of the Convention, and the new legislation did not change the characterization of employment already present in the CLT.

The Government had worked constructively and in respect for the common interest of all members of the Conference Committee despite the shortcomings of the current process. He reiterated the call for all members to engage in an urgent, collective and effectively tripartite effort to reform the standards supervisory system.

The Employer members expressed appreciation for the detailed information provided by the Government representative, including with regard to the consultations that had taken place in connection with the labour law reform, and on the nature of the reform. Certain aspects of the discussion in the Conference Committee had fallen outside the appropriate scope of the discussion on the application of the Convention. The Employer members were not able to conclude that Brazil was in violation of its obligations under the Convention as a result of the labour law reform. Modernizing labour law could be a difficult process leading to change and uncertainty. The discussion of the case had been premature.

Article 4 of the Convention required the Government to encourage and promote voluntary negotiation between employers and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. That obligation should guide the consideration given to the information provided by the Government. With respect to the labour law reform, a mechanism that allowed collective agreements to prevail over provisions of law could be seen as promoting collective bargaining in law, by extending the scope of collective bargaining while also ensuring that the floor of rights in the Constitution remained respected. It could not constitute a violation of the obligation to promote voluntary bargaining in law. There was also no information available to support the assertion that the reform constituted a violation of the Convention in practice. There had been no objective assessment of the impact of the reform on the labour market and on collective bargaining. Evidence was therefore required in order to assess the impact it had had on the social partners' ability to engage in collective bargaining.

The issue of the relationship between individual contracts and collective agreements could be further examined by taking into account the Employer members' view that workers also had contractual freedom and could not be bound by a collective agreement against their will. The issue of an individual contract prevailing over national legislation was not within the scope of the application of the Convention. Certain other issues that had been raised during the discussion, such as maternity protection, were also not within the appropriate scope of the discussion.

The Employer members encouraged the Government to provide information on the content and application of the labour law reform, in particular with respect to the extent to which the collective bargaining partners had made use of the possibility of negotiating collective agreements prevailing over national legislation and the extent to which workers had made use of the possibility to adopt individual contracts prevailing over collective agreements.

The Employer members noted the Government's indication that the views of the Committee of Experts on autonomous or self-employed workers had been inaccurate. Accordingly, more information on the effect of the extension of the definition of an autonomous worker should be provided by the Government, as well as information on the impact it had had on the ability of those workers to represent their interests. The Employer members concluded by encouraging the Government's continued commitment to international labour standards, in cooperation and consultation with the national workers' and employers' organizations.

The Worker members expressed their deep disappointment at the remarks of the Government representative describing trade unions as political instruments, which would have done little to advance the rights of workers. The right to freedom of association was a prerequisite for the right to organize and bargain collectively. Regarding remarks on the ability of the Committee of Experts to assess Brazilian legislation taking into account the context of the country, they recalled that members of the Committee of Experts were appointed by the ILO Governing Body and that they were eminent legal experts from all regions of the world. They reiterated their deep respect for the work of that Committee. They also recalled that document D.1 on the working methods of the Conference Committee had been adopted by unanimous tripartite consensus. Governments had ample opportunity to participate in the Conference Committee and to complement the information included in the report of the Committee of Experts.

They stressed that, as recalled in the preparatory work to Convention No. 154, collective bargaining was a process intended to improve the protection of workers provided for by law. As recognized in the ILO Constitution, in the Declaration of Philadelphia, in the 1998 Declaration on Fundamental Principles and Rights at Work and in the 2008 Social Justice Declaration, collective bargaining contributed to the establishment of just and equitable working conditions and other benefits, and thereby to social peace. That could not mean going below statutory minimum protections. That principle was well supported throughout many jurisdictions. For example, the Court of Justice of the European Union had established that collective bargaining agreements fell outside the scope of competition law provided that those agreements seek to adopt measures to improve conditions of work and employment. The European Court had even extended this principle in order to protect the right of workers who were falsely classified as self-employed to bargain collectively.

The Worker members were deeply worried about the extensive and structural reform of the collective bargaining system adopted in 2017 and its grave consequences on the enjoyment and realization of the fundamental right to collective bargaining for workers in the country. In undertaking that reform, the Government had failed to duly take into account prior comments of the Committee of Experts in this regard. The social partners had merely been informed of those permanent and far-reaching changes, which would effectively lead to the breakdown of industrial relations. A comprehensive legislative reform process had to be undertaken in order to reverse the devastating changes made. The Government should ensure that the legislation was in full conformity with Article 4 of the Convention. The legislative provisions with respect to the general possibility, by means of collective bargaining, to reduce the rights and protections afforded by the labour legislation for workers, had to be revoked. Moreover, the provisions permitting individual derogations from the law and from collective agreements for workers with a higher education diploma and earnings above a certain limit had to be repealed. The definition of an autonomous worker had to be revised to ensure that misclassified workers were not excluded from their right to organize and to bargain collectively.

Given the absence of effective tripartite consultations during the legislative reform process, the Worker members urged the Government to engage the social partners in genuine negotiations within the framework of the national tripartite body. In this regard, they called on the Government to avail itself of ILO technical assistance in order to develop a time-bound roadmap for legislative reform. The Government should also accept a direct contact mission before the next International Labour Conference in order to assess progress made. Finally, they believed that it was crucial that the case be included in a special paragraph of the report.

Conclusions

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

Taking into account the fact that the Committee of Experts examined this case outside of the regular reporting cycle, considering the Government's oral submissions to the Committee regarding the labour law reform and its compliance with its obligations under Convention No. 98, and the discussion that followed, the Committee recommends the Government to:

- **provide information and analysis on the application of the principles of free and voluntary collective bargaining in the new labour law reform; and**
- **provide information on the tripartite consultations with the social partners regarding the labour law reform.**

The Committee requests the Government to provide this information to the Committee of Experts before its November 2018 session.

The Government representative noted that a clear majority of Committee members had undeniably expressed criticism for the working methods of the Committee of Experts on the Brazilian case. He urged the Committee of Experts and the Conference Committee to give full consideration to this important fact. The examination of the Brazilian case was in breach of the most basic principles of due process. A system allowing for this to happen, with no effective checks and balances, failed the purposes and objectives of the ILO. It also impaired the necessary strong and shared perception by member states and social partners that the system should function in a fair and equitable way, based on the technical merits of the cases. The system had failed on all those accounts. Its reform was a matter of urgency and necessity for the good of the Organization.

His Government had presented robust arguments on the relevance and timeliness of the labour law modernization, which was creating more jobs, formalizing important sectors of the economy, preserving labour rights and promoting collective bargaining in full compliance with the country's international obligations and in particular Convention No. 98.

While thanking the majority of the Committee for their parliamentary behaviour, the speaker regretted that some members had passed judgement on issues that had no bearing on the work of the Committee. This was yet another example of the politicization of the Committee which should not be accepted.

His country rejected any attacks on its institutions. Over the last two years, Brazil had faced a political crisis and an economic recession. It had implemented important economic and labour reforms, enacted key legislation and promoted positive change. Democracy was alive, civil society was vibrant, political debate was in full force, the rule of law was in place and strong and the judiciary remained fully independent.

As to the conclusions agreed solely by the social partners, of which he had just been informed, they were yet another example of the flawed working methods of the Committee which lacked tripartite consensus. If information on the case was incomplete, this was not due to a lack of political engagement on behalf of his Government. It was rather a matter of reality imposing itself as the reform was only six months old and facts could not and, above all, should not be fabricated. Concerning the reference to consultations, the focus of the discussion should be the application of Convention No. 98 and any issue pertaining to other conventions should evidently be dealt with according to the relevant reporting cycles. The speaker concluded by indicating that his Government would examine the text of the conclusions that had just been submitted to him and, if appropriate, provide a response in due course.

Conclusions

La commission a pris note des informations écrites et orales fournies par le représentant gouvernemental et de la discussion qui a suivi.

Prenant en compte le fait que la commission d'experts a examiné ce cas en dehors du cycle régulier de présentation des rapports, considérant les éléments présentés oralement par le gouvernement devant la commission concernant la réforme de la législation du travail et la conformité de celle-ci avec ses obligations au titre de la convention n° 98, et la discussion qui a suivi, la commission recommande au gouvernement de:

- **fournir des informations et une analyse sur l'application des principes de la négociation collective libre et volontaire dans la nouvelle réforme de la législation du travail; et**
- **fournir des informations sur les consultations tripartites avec les partenaires sociaux à propos de la réforme de la législation du travail.**

La commission prie le gouvernement de communiquer ces informations à la commission d'experts avant sa session de novembre 2018.

Conclusiones

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

Teniendo en cuenta que la Comisión examinó este caso fuera del ciclo regular de presentación de memorias y tomando nota de las declaraciones orales realizadas por el representante gubernamental ante la

Comisión en lo que respecta a la reforma laboral y la conformidad de la misma con sus obligaciones en virtud del Convenio núm. 98, así como de la discusión subsiguiente, la Comisión recomienda al Gobierno que:

- proporcione información y análisis sobre la aplicación de los principios de la negociación colectiva libre y voluntaria en la nueva reforma de la legislación laboral, y
- suministre información sobre las consultas tripartitas con los interlocutores sociales relativas a la reforma de la legislación laboral.

La Comisión pide al Gobierno que remita dicha información a la Comisión de Expertos antes de su próxima reunión, que se celebrará en noviembre de 2018.

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

México (ratificación: 1950)

Mexico (ratification: 1950)

Mexique (ratification: 1950)

El Gobierno ha proporcionado por escrito las siguientes informaciones.

El Gobierno de México ha dado debido cumplimiento al Convenio núm. 87 y ha informado oportunamente de ello a la Organización Internacional del Trabajo (OIT) mediante las memorias de cumplimiento. Asimismo, ha respondido a las solicitudes de información del Comité de Libertad Sindical.

Parte 1. Libertades públicas y derechos sindicales

Respecto de los alegatos de la CSI e IndustriALL sobre violencia contra sindicalistas en el contexto de un conflicto colectivo en el sector de la educación en Oaxaca

El Gobierno de México lamenta y condena los hechos ocurridos, **pero niega categóricamente que constituyan actos de violencia contra sindicalistas — y mucho menos — que signifiquen una violación al Convenio núm. 87 de la Organización Internacional del Trabajo.**

Para respaldar nuestro posicionamiento, ponemos a la disposición de este Comité, los informes que — sobre el caso Nochixtlán — elaboraron una Comisión Especial del Senado de la República — como Poder Soberano y Autónomo al Gobierno de México —; y la Comisión Nacional de los Derechos Humanos — Órgano Constitucional Autónomo —, los cuales se hicieron públicos el 31 de agosto de 2016 y el 17 de octubre de 2017, respectivamente.

Ambos documentos coinciden en que se trata de **un conflicto de naturaleza sociopolítica y de uso excesivo de la fuerza, que ha sido reconocido y atendido por el Estado mexicano.**

Expresamos nuestra preocupación por el hecho de que este tipo de casos, a pesar de no tener indicio alguno de estar relacionados con violaciones a la libertad sindical y la protección del derecho de sindicación, sean utilizados con el fin de dar un matiz de gravedad por un supuesto incumplimiento al Convenio núm. 87.

Parte 2. Reforma en materia de justicia laboral

El presente apartado atiende lo señalado por la CEACR en su documento de observaciones al Gobierno de México, respecto de: i) la comunicación de la CSI, recibida el 1.º de septiembre de 2017, en la que señala que la reforma constitucional fue aprobada sin realizar consultas de algún tipo con las partes sociales; ii) la consulta tripartita del desarrollo legislativo para implementar la reforma constitucional; iii) evolución respecto a la legislación secundaria para aplicar la reforma constitucional, y iv) impacto de la reforma constitucional y de la creación del órgano descentralizado.

- i) **Consulta de la reforma constitucional.** El Gobierno de México informa que la reforma constitucional fue presentada por el Presidente de la República como resultado del diagnóstico «Diálogos por la Justicia Cotidiana. Diagnósticos conjuntos y soluciones»¹, elaborado por el Centro de Investigación y Docencia Económicas, uno de los centros de investigación de mayor prestigio en el país. Para su elaboración, se integraron nueve mesas de trabajo, incluida la laboral, y participaron más de 200 especialistas y 26 instituciones, a lo largo de catorce semanas, en las que se realizaron 123 sesiones.

La citada reforma constitucional fue **aprobada por unanimidad** en la Cámara de Senadores; mientras que en la Cámara de Diputados fue aprobada **con 377 votos a favor** y sólo dos sufragios en contra, lo que representa una **aprobación del 99,5 por ciento** del total de la votación emitida.

- ii) **Consulta tripartita para el desarrollo legislativo de la reforma.** Durante el presente año, la Secretaría del Trabajo y Previsión Social ha tenido 91 reuniones con **representantes de trabajadores, empleadores, académicos, barras y colegios de abogados, a fin de encontrar el consenso requerido para la aprobación de la reforma.** Asimismo, las Comisiones Unidas de Trabajo y Previsión Social, de Justicia y de Estudios Legislativos, Segunda, del Senado de la República acordaron el 27 de abril de 2018, la celebración de **audiencias públicas para conocer las sugerencias, observaciones y propuestas de trabajadores, empleadores, académicos y organizaciones de la sociedad civil** sobre el anteproyecto de dictamen de la legislación secundaria. Estas audiencias públicas serán realizadas en **cuatro sedes regionales donde concurren los actores del sector laboral del país.**

- iii) **Evolución respecto a la legislación secundaria.** Durante el período transcurrido entre la aprobación de la reforma constitucional a la fecha, **se han presentado** en el Senado de la República **cuatro iniciativas² de reforma a la legislación secundaria en materia de justicia laboral:** la primera fue presentada el 7 de diciembre de 2017 por los Senadores Tereso Medina e Isaías González, del Partido Revolucionario Institucional; la segunda fue presentada el 14 de diciembre de 2017 por el Senador Luis Sánchez, del Partido de la Revolución Democrática; la tercera fue presentada el 22 de febrero de 2018, por la Senadora M. del Pilar Ortega, del Partido Acción Nacional; la cuarta fue presentada el 24 de abril de 2018 por el Senador Alejandro Encinas Rodríguez, sin partido.

Las iniciativas fueron turnadas a las Comisiones Unidas de Trabajo y Previsión Social, de Justicia y de Estudios Legislativos, Segunda, para continuar con el proceso legislativo, en el que se realizarán las audiencias públicas antes mencionadas para su discusión y posterior aprobación.

En el orden local, **nueve entidades federativas han modificado su Constitución** para armonizarla con lo dispuesto por la Constitución Federal: i) Campeche; ii) Chiapas; iii) Estado de México; iv) Guanajuato; v) Hidalgo; vi) Morelos; vii) Nuevo León; viii) Quintana Roo, y ix) Sonora. Asimismo, **dos entidades federativas han aprobado las leyes de creación de sus Centros de Conciliación:** Chihuahua e Hidalgo.

- iv) **Impacto de la reforma constitucional y de la creación del Órgano Descentralizado.** Se trata de una Reforma histórica en materia laboral, mediante la cual se transforma el sistema de impartición de justicia laboral vigente por más de cien años.

Respecto de la **creación del Organismo Público Descentralizado** para la conciliación de conflictos de jurisdicción federal y el registro nacional de organizaciones sindicales y contratos colectivos de trabajo, la Secretaría del Trabajo y Previsión Social ha preparado diversas **herramientas administrativas, organizacionales, tecnológicas y logísticas para su puesta en marcha.**

Por su parte, para la creación de los Tribunales Laborales, el **Poder Judicial de la Federación** ha determinado la **creación de la Unidad de Implementación de la Reforma en Materia de Justicia Laboral** y cuenta para

¹ Disponible para consulta en: https://www.gob.mx/cms/uploads/attachment/file/79028/Di_logos_Justicia_Cotidiana.pdf.

² Disponibles para consulta en los siguientes enlaces: http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-07-1/assets/documentos/Inic_Justicia-Laboral_07122017.pdf.
http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-14-1/assets/documentos/Inic_PRD_Ley_Amaparo_y_Ley_Trab.pdf.
http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-02-22-1/assets/documentos/Inic_PAN_Justicia_Laboral.pdf.
http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-04-25-1/assets/documentos/Ini_Encinas_LFT.pdf.

tales efectos con un **presupuesto de 324 millones de pesos**. En el orden local, la **Comisión Nacional de Tribunales Superiores y Supremos de Justicia, acordó**, en mayo de 2017, **la instalación de una Comisión Laboral** para dar seguimiento a los trabajos de implementación de la reforma.

Parte 3. Representatividad sindical y transparencia

El presente apartado atiende lo señalado por la CEACR en su documento de observaciones y en la solicitud directa al Gobierno de México, respecto de la comunicación de la CSI, recibida el 1.º de septiembre de 2017, en la que señala: i) un alto número de contratos de protección patronal y la complicidad de las autoridades laborales en el registro de dichos contratos, ii) medidas legislativas y prácticas para solucionar lo que la CSI denomina «fenómeno de los sindicatos de protección y contratos de protección», incluido en relación al registro de sindicatos, iii) publicación de registros y estatutos sindicales, y iv) aplicación del protocolo de inspección del trabajo sobre la libre contratación colectiva.

- i) **«Contratos de protección patronal».** Reiteramos nuestra preocupación por el hecho de que se emitan observaciones con base en alegatos genéricos que no aluden a casos concretos, ni aportan elementos objetivos para presumir la existencia de una práctica «habitual» que menoscabe la libertad sindical y la negociación colectiva, mucho menos para presumir que existe complicidad del Gobierno para fomentarla.

El Gobierno de México ha informado de manera continua respecto a las acciones concretas que se han llevado a cabo para garantizar la representatividad sindical. Dentro de estas acciones se encuentra **la reforma constitucional de 2017**, recibida con satisfacción por la CEACR, **y su futura implementación, los acuerdos emitidos por Conferencia Nacional de Secretarios del Trabajo (CONASETRA), la expedición y aplicación del Protocolo del operativo sobre libre contratación colectiva**, medidas que el Gobierno de México ha informado con toda oportunidad.

Es importante reconocer que, en los casos en que se han señalado situaciones concretas de presuntas violaciones relativas a la existencia de los denominados «Contratos de Protección», el Gobierno de México siempre ha proporcionado información de manera puntual y oportuna, llevando a cabo las investigaciones pertinentes y ofrecido la información que contribuya a procurar justicia laboral. Este tema, es objeto de análisis en el marco del Comité de Libertad Sindical, en específico en relación al caso núm. 2694.

Al respecto, el Comité de Libertad Sindical, en su 382.º informe de junio de 2017 (párrafos 128-130), decidió no proseguir con el examen del alegato sobre una extendida práctica de contratos colectivos de protección patronal. El Comité de Libertad Sindical decidió, por el contrario, avocarse exclusivamente al análisis de alegatos concretos relativos a sectores o sindicatos específicos y de situaciones concretas en que se alega la presunta existencia de contratos de protección.

- ii) **Medidas legislativas y prácticas para solucionar el «fenómeno de los sindicatos de protección y contratos de protección».** Con el propósito de detectar prácticas de simulación de contratos; así como verificar que los trabajadores conozcan del contrato colectivo en sus centros de trabajo, se implementa, desde 2016, el Protocolo de inspección laboral sobre libre contratación colectiva. El Protocolo permite que los inspectores de trabajo, verifiquen la publicidad del contrato colectivo y que la relación de trabajo se preste en los términos y condiciones pactadas.

En materia legislativa, debe destacarse que en virtud de la reforma constitucional en materia de justicia laboral se adicionó un párrafo a la fracción XVIII del artículo 123, apartado A, en virtud del cual se tutela la representación de los trabajadores.

Asimismo, se agregó una fracción XXII *bis* al citado artículo para garantizar los principios de representatividad de las organizaciones sindicales, y certeza en la firma, registro y depósito de los contratos colectivos de trabajo. Mediante esta disposición se asegura que el voto de los trabajadores será personal, libre y secreto para la resolución de conflictos entre sindicatos, la solicitud de celebración de un contrato colectivo de trabajo y la elección de dirigentes sindicales.

- iii) **Publicación de registros y estatutos sindicales.** Como un avance, se informa que al 30 de abril del presente año se han publicado en el «Sistema de Consulta de Organizaciones Sindicales» la información de las **3 422 organizaciones sindicales (sindicatos, federaciones y confederaciones) registradas de competencia federal**. A la fecha, el sistema ha reportado **254 512 consultas**.

Respecto a los registros del ámbito local, se destaca que las Juntas de Conciliación y Arbitraje dan cumplimiento a sus obligaciones en materia de transparencia a través de los diversos mecanismos contemplados por el artículo 124, fracción V, de la Ley General de Transparencia y Acceso a la Información Pública. Dichas obligaciones recaerán en el Organismo Público Descentralizado tras la aprobación y entrada en vigor de la legislación secundaria, observando lo dispuesto por la reforma constitucional respecto a que su actuación se regirá, entre otros, por los principios de transparencia y publicidad.

- iv) **Aplicación del protocolo de inspección del trabajo sobre la libre contratación colectiva.** Se informa que, desde la fecha en que el protocolo inició su vigencia, hasta el mes de abril del año 2018, se han practicado **196** inspecciones derivando **528** medidas técnicas, beneficiando a **68 285** trabajadores.

Parte 4. Disposiciones legislativas y medidas prácticas observadas por la CEACR

El presente apartado atiende lo señalado por la CEACR en su documento de observaciones al Gobierno de México, respecto de: i) pluralismo sindical y reelección de dirigentes sindicales; ii) medidas para modificar la fracción II del artículo 372 de la Ley Federal del Trabajo; iii) información sobre la participación de extranjeros en las directivas de sindicatos.

- i) En materia de Pluralismo Sindical en las dependencias del Estado y posibilidad de Reelección de Dirigentes Sindicales, el Gobierno de México informa que, de 2013 a la fecha, se han presentado al Congreso de la Unión, cinco iniciativas de reforma en materia de pluralismo sindical; y dos más relativas a la reelección de dirigentes sindicales en organizaciones de trabajadores al servicio del Estado, sin que a la fecha hayan sido dictaminadas. No obstante, es necesario precisar que el Tribunal Federal de Conciliación y Arbitraje, garantizando la autonomía sindical, ha otorgado invariablemente la toma de nota respectiva, cuando se hace de su conocimiento algún cambio de directiva.

- ii) En relación a la observación que propone modificar el artículo 372 de la Ley Federal del Trabajo, el Gobierno de México reitera, que la prohibición de que los extranjeros formen parte de la directiva de los sindicatos no se aplica en la práctica. Además, no se ha verificado ningún caso concreto en este sentido y no se conoce de queja o reclamo sobre este asunto. Al contrario, algunos estatutos sindicales reconocen expresamente la posibilidad de que los extranjeros participen en la directiva de los sindicatos.

Además, ante la Comisión **un representante gubernamental** reafirmó el compromiso de México en el diálogo social y presentó los avances que se habían alcanzado en relación con las solicitudes de la Comisión de Expertos.

En cuanto a los alegatos sobre violencia contra sindicalistas del sector educativo, en el contexto del conflicto ocurrido el 19 de junio de 2016 en el municipio de Asunción Nochixtlán, Oaxaca, el orador, al tiempo que lamentó y condenó los hechos ocurridos, negó categóricamente que éstos hubieran constituido actos de violencia contra sindicalistas y que significaran una violación del Convenio. Basándose en los informes elaborados por una Comisión Especial del Senado de la República y la Comisión Nacional de los Derechos Humanos, los cuales se hicieron públicos el 31 de agosto de 2016 y el 17 de octubre de 2017 respectivamente, y lamentando que este tipo de hechos fuesen utilizados para llamar la atención de la Comisión, subrayó que se trataba en realidad de un conflicto de naturaleza sociopolítica y no de un conflicto sindical, pues en ninguno de los dos informes señalados se advertía la existencia de una relación causal entre los hechos de violencia y una posible restricción a la libertad sindical, o el hecho de que las víctimas hubiesen estado afiliadas a algún sindicato.

Acerca de la reforma constitucional del sistema de justicia laboral, el orador agradeció que, en su informe, la Comisión de Expertos hubiera reconocido la importancia de dicha reforma promulgada en febrero de 2017. Se trata de una transformación histórica, ya que establece un nuevo paradigma en la impartición de justicia laboral en México, construido mediante un amplio proceso de consultas. Como parte de su implementación, a nivel local se avanza de forma consistente en los estados de la República, muchos de los cuales ya han modificado sus Constituciones con miras a armonizarlas con lo dispuesto en la Constitución Federal, mientras que otros dos estados han aprobado las leyes de creación de sus centros de conciliación. Con el objetivo de construir la legislación secundaria en materia de justicia laboral, el Senado de la República analiza cuatro iniciativas presentadas por grupos parlamentarios de diversos signos ideológicos, prestándose particular atención a que dicha legislación secundaria se construyera de manera participativa e inclusiva, con los actores del sector laboral y las organizaciones de la sociedad civil. Por su parte, la Secretaría del Trabajo y Previsión Social ha iniciado la construcción de nueve herramientas para la implementación de los organismos públicos descentralizados a nivel federal y local. En el ámbito federal, un organismo tendrá la responsabilidad de ofrecer el servicio de conciliación al que acudirán trabajadores y empleadores como requisito previo al inicio de un juicio laboral, con el propósito de contar con la

resolución de los conflictos de manera pronta. Asimismo, dicho organismo llevará a cabo el registro de organizaciones sindicales, contratos colectivos de trabajo y procedimientos administrativos relacionados a nivel nacional. El nuevo mandato constitucional fortalece también al Poder Judicial federal y a los tribunales superiores de justicia de los estados de la República, facultándolos para resolver los diferendos laborales colectivos e individuales, a través de la creación de tribunales laborales. Con la finalidad de contribuir al cumplimiento del mandato de la reforma constitucional, la Secretaría del Trabajo ha iniciado un proceso de diagnóstico de los archivos laborales, en cada una de las Juntas Federal y Locales de Conciliación y Arbitraje, en los 32 estados del país. Por su parte, el Poder Judicial de la Federación, con mira a crear los tribunales laborales, ha establecido la creación de la Unidad de Implementación de la Reforma en Materia de Justicia Laboral. Para tales efectos, cuenta con un presupuesto de 324 millones de pesos para 2018. En el orden local, la Comisión Nacional de Tribunales Superiores y Supremos de Justicia, acordó la instalación de una comisión laboral para dar seguimiento a los trabajos de implementación de la reforma.

En cuanto a las observaciones de la Confederación Sindical Internacional (CSI) de fecha 1.º de septiembre de 2017, según las cuales existe un alto número de contratos de protección patronal y que éstos proceden de la complicidad de las autoridades laborales en el registro de dichos contratos, el Gobierno de México reiteró su preocupación por el hecho de que se emitieran observaciones basadas en alegatos generales y no en casos concretos. Asimismo, destacó su compromiso con la justicia laboral, con base en la adopción de nuevas leyes y acciones concretas que buscan garantizar la representatividad sindical. El orador declaró que en los casos en que se han señalado situaciones concretas de presuntas violaciones relativas a la existencia de los denominados «Contratos de Protección», el Gobierno siempre ha actuado de manera cooperativa, llevando a cabo las investigaciones pertinentes y ofrecido información que contribuya a procurar justicia laboral. Recordando que los alegatos de la CSI se habían presentado en el marco del Comité de Libertad Sindical, en particular en relación con el caso núm. 2694, el orador reafirmó la voluntad del Gobierno de seguir informando al Comité, en lo relativo a alegatos de situaciones concretas. Además, el Gobierno proporcionaría información actualizada a la Comisión de Expertos, sobre la evolución legislativa para dar aplicación a la reforma constitucional, así como sobre las medidas prácticas que se realicen para garantizar la representatividad sindical y la libre contratación colectiva. En relación con las disposiciones en materia de transparencia sindical que derivan de la reforma a la Ley Federal del Trabajo de 2012, se informó que, al 30 de abril de 2018, se habían publicado en el «Sistema de Consulta de Organizaciones Sindicales» el registro de 3 422 organizaciones sindicales, entre sindicatos, federaciones y confederaciones; además de reportar más de medio millón de consultas. Con el propósito de detectar prácticas de simulación de contratos y de verificar que los trabajadores conozcan del contrato colectivo en sus centros de trabajo, se implementa, desde 2016, el Protocolo de inspección laboral sobre libre contratación colectiva. Este protocolo permite que los inspectores de trabajo verifiquen la publicidad del contrato colectivo y se cercioren de que los trabajadores conocen su contenido, así como de que la relación de trabajo se presta en los términos y condiciones establecidas por éste.

Por lo que se refiere a la cuestión de la posibilidad de pluralismo sindical en la dependencias del Estado y la posibilidad de reelección de los dirigentes sindicales, se informó que, de 2013 a la fecha, que se han presentado al Congreso de la Unión, cinco iniciativas de reforma en materia de pluralismo sindical, y dos más relativas a la reelección de dirigentes sindicales en organizaciones de trabajadores al servicio del Estado, de las cuales tres están siendo analizadas en el Congreso de la Unión.

Respecto al último punto de las observaciones de la Comisión de Expertos, en el que se solicita al Gobierno que tome medidas para modificar el artículo 372 de la Ley Federal del Trabajo a fin de eliminar la prohibición de que los extranjeros formen parte de la directiva de los sindicatos, se recordó que esta prohibición no se aplica en la práctica, ya que la nacionalidad mexicana no es un requisito para el registro de las directivas sindicales. Además, no se ha verificado ningún caso concreto en este sentido y no se conocen quejas o reclamos al respecto. Por el contrario, algunos estatutos sindicales reconocen expresamente la posibilidad de que los extranjeros participen en la directiva de los sindicatos.

The Worker members stated that the repeated failure by the Government to comply with the Convention had led to the discussion of the case in the Committee on three occasions in recent years. During the most recent discussion in 2016, the Committee had called on the Government to enact the proposed reforms to the Constitution and federal labour law and to reinforce social dialogue through the adoption of complementary legislation. They recalled that their criticism had focused on protection contract unions – which were employer-dominated unions that had undermined the labour relations system in Mexico. Those unions negotiated “employer protection contracts”, without the involvement or even knowledge of the workers that the union was supposed to represent. Those contracts fixed low wages and “protected” employers from having independent unions in the workplace. Tragically, that had meant that millions of Mexican workers had no effective means to defend their rights at work. Once the protection contract union was established, it was extremely difficult for workers to form an independent union. When workers did attempt to rid themselves of a protection contract union through a *recuento* election, the

employer, the protection contract union and the Government often colluded to intimidate the workers through delays, verbal threats, physical violence and dismissal. That situation had remained the same.

As the Committee of Experts had noted, in February 2017, the Government had enacted meaningful reforms to the Constitution. Those reforms had addressed some of the key criticisms raised by the ILO and the global trade union movement and had given some hope for change. But as the Committee of Experts had also noted, the Government still had to enact secondary legislation. Unfortunately, proposals that the Government had put forward undermined both the letter and spirit of the Constitution and the Convention. For much of 2017, the Government had worked behind closed doors with business leaders on amendments to labour law, ostensibly to give effect to the constitutional reform - without independent union leaders being consulted during that process. In early 2018, a Bill had failed to pass in Congress, but the Government was trying to push through the same legislation during a special session of Congress in June 2018. While the Government had claimed that it was undertaking consultations, the only proposal under consideration remained the Bill rejected by Congress, which evidenced that the Government had capitulated to entrenched interests, including the protection contract union confederations, whose leaders had introduced the legislation in the Senate.

Addressing their concerns point by point, the Workers members first referred to the Conciliation and Arbitration Boards (CABs) which for many years had been widely criticized for their inefficiency, political bias and corruption. The constitutional reform was proposed to abolish the CABs and: (i) transfer the legal functions of the CABs to the judicial branch, foreseeing a process of conciliation by “specialized and impartial” federal and local level conciliation centres before referral of cases to the courts; and (ii) transfer the administrative functions of the CABs, such as union registration, to the new decentralized and autonomous federal entity whose president would be voted on by the Senate. The current Bill before the Senate proposed to create: (i) the new Federal Institute of Labour Conciliation and Registration; and (ii) a new “Technical Council” which would have broad powers over the programme, budget and staff. While autonomy of the Federal Institute could end the firm hold of the protection contract unions over the union registration process, collective bargaining and collective conflicts, the proposed tripartite control through the Technical Council would include the same protection contract unions that had perpetuated protection contracts through the CABs. Moreover, the Labour Secretary had stated that the independent Labour Tribunals would not begin to operate until the CABs had resolved all pending cases. Their number was in the thousands and would take many years to clear. Independent unions would therefore continue to suffer under the existing corrupt system and would have to wait years before the promise of neutral labour justice would be realized. That undermined previous commitments for an early transition to the new constitutional arrangements on labour justice. Additional concerns related to the proposal in the Bill that an agreement would take automatic effect if the Federal Institute did not take a decision to register a collective agreement within 20 days. That would provide employers with a mechanism to register collective agreements that did not comply with new legal requirements. It would allow employers to continue colluding with “protection unions” of their own choosing rather than engaging in good-faith bargaining with independent unions.

The second problem with the draft legislation concerned the so-called *recuento* procedure. The Bill made it practically impossible for workers to replace unrepresentative unions through a ballot by imposing new evidentiary requirements which had to be satisfied through a lengthy administrative process before a date for a vote was even granted. That would make the process needlessly burdensome. As that procedure was the only means for workers to establish an independent union where an illegitimate union already existed, the new process would ensure that undemocratic unions could continue to deny workers representatives of their choice. As the new Institute would be controlled by employers and protection contract unions, workers also had good reason to be concerned that employers would retaliate and dismiss them.

Thirdly, in Mexico the General Act on transparency and access to public information provided for the publication of trade union registration certificates and their statutes. Workers and the public could access information about unions, including their internal structure, leadership and any existing collective agreements. Such transparency was essential to ensure workers could access information about the entities that claimed to represent them, and any agreements those entities might have with employers. It was a vital tool in the fight against protection contract unions. The Government had reported that it had made progress in this area, claiming an 85 per cent compliance rate. If true, that would be a positive development. But the Bill would have the effect to significantly weaken those transparency provisions, including the requirement to disclose information about union registration and existing collective agreements and would continue to deprive the vast majority of Mexican workers covered by collective agreements of the right to obtain a copy.

Fourthly, under the constitutional reform, workers had to approve collective agreements by a secret ballot. That measure was introduced to ensure agreements could not be signed without the consent or knowledge of the affected workers. But the proposed implementing Bill would not require inspectors to verify that workers had

approved the collective agreement by a secret ballot. Instead, the Bill contained a vague requirement that entities claiming to represent the workers should prove there was support – but failed to set out any specific criteria. The proposal also gave the Institute a broad discretion to decide if there was evidence or not. Those provisions were all the more worrying as current labour law provided that collective agreements were automatically renewed if neither party sought modifications. Those rules would apply equally to the protection contracts, which could thus evade the minimal requirements regarding representation.

But the issue of protection contract unions and the flawed secondary legislation were not the only problems. As the Committee of Experts had once again highlighted, the prevalence of anti-union violence was a serious concern. And new acts of anti-union violence had occurred since the Committee of Experts had last met. In November 2017, mine workers had gone on strike to demand their rights to join a legitimate and democratic union. Dozens of armed police took over the mine. An armed group attacked the strikers and killed two trade unionists on mine property. In January 2018, a labour activist who had been travelling to meet the strikers had been beaten and threatened with further violence if he continued to advocate for a new trade union and a new contract. He was murdered later that month.

Finally, the 2012 amendments to the Labour Law had greatly expanded the use of outsourcing, although the Law provided that companies could not outsource a worker who was assigned work that was a core function of the company. Although illegal, the Government had done nothing to stop such practices. The use of outsourcing was a common tactic to prevent workers from forming a union or to bust unions by replacing the workforce with contracted workers. The Worker members urged the Government to withdraw the existing proposal. As national elections were imminent, the next Government should decide that issue after consultations so that all stakeholders had their voices considered.

Los miembros empleadores declararon que este caso se había analizado ya en tres oportunidades, dos de las cuales fueron en 2015 y 2016. En esos momentos, se destacaron los progresos que se venían suscitando por parte del Gobierno, con la expectativa de que se aprobara una reforma constitucional. Dicha reforma se realizó y ha habido un cambio a través de ella. La Comisión de Aplicación de Normas está analizando el caso de México por el Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87), pero el Estado no ha ratificado el Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98). Hay algunos aspectos de este caso que tienen conexión con la libertad de asociación y constitución de los sindicatos. Sin embargo, la Comisión de Aplicación de Normas, en referencia a la observación de la Comisión de Expertos, tiene que ser cuidadosa en la manera en que se trate el asunto y no dar orientaciones respecto a una norma que no ha sido ratificada. Asimismo, en relación con los artículos 2 y 3 del Convenio, disposiciones bastante generales, y sobre las cuales la Comisión de Expertos ha entrado en una serie de detalles que podría considerarse que van más allá del propio alcance de dichas disposiciones. El artículo 2 dispone que los trabajadores, sin ninguna distinción y sin autorización previa, tienen el derecho de constituir las organizaciones que estimen convenientes, así como el de afiliarse a estas organizaciones, con la sola condición de observar los estatutos, y el artículo 3 establece que las organizaciones de trabajadores tienen el derecho de redactar sus estatutos y sus reglamentos administrativos, elegir libremente a sus representantes, organizar su administración y sus actividades, y formular su programa de acción. Ese es el marco en el que debe desarrollarse la discusión de este caso.

En primer lugar, las organizaciones querellantes en el presente caso son de orden internacional, y no son las organizaciones de los trabajadores de México. Por eso, debe tenerse como referencia que la visión de la situación en el país puede ser más amplia, en comparación con la manera en que actúan los actores sociales internamente, concretamente las organizaciones sindicales. En relación con los temas de libertades públicas y derechos sindicales, los miembros empleadores rechazaron cualquier acto que atente contra la vida humana. Sin embargo, en el marco de la OIT debe tenerse una conexión con la libertad sindical. En su respuesta, el Gobierno manifiesta que dos comisiones especiales han averiguado que los actos no tienen causa sindical, sino que obedecen a una naturaleza sociopolítica y de uso excesivo de la fuerza, lo que ha sido reconocido y atendido por el Estado. Siendo ello así, éste es un asunto que, si bien es deplorable desde el punto de vista de la vida humana, la Comisión de Aplicación de Normas no debe profundizarlo y analizarlo con mayor detalle, tampoco la Comisión de Expertos ni cualquier otro órgano de control de la Organización.

En segundo lugar, en cuanto a la conciliación, el arbitraje y la justicia laboral, la reforma constitucional establece que sería la rama del Poder Público correspondiente la que atendería una serie de elementos, por lo que la Comisión de Expertos ha tomado nota «con satisfacción» de su adopción y entrada en vigor. Al respecto, es importante recordar lo que es una nota de satisfacción, porque son bastante escasas y tienen mucha relevancia para la Organización. La Comisión de Expertos toma nota con satisfacción en el caso de aquellos gobiernos que han adoptado medidas, ya sea a través de la adopción de una nueva legislación o de una enmienda a la legislación existente, o han realizado cambios significativos en la política o en la práctica nacional. Asimismo, la Comisión de

Expertos expresa su satisfacción cuando les indica a los gobiernos y a los interlocutores sociales que el asunto ya ha sido resuelto y que puede servir de modelo o ejemplo a otros Estados. Dicha reforma da seguridades jurídicas por las razones siguientes: 1) la justicia laboral será impartida por órganos del Poder Judicial federal o local; 2) los procesos de conciliación serán más ágiles y eficaces; 3) la instancia federal de conciliación será un organismo descentralizado, y 4) se adoptará una nueva legislación en materia procesal y de los órganos descentralizados en el servicio de conciliación. Como lo ha señalado el representante gubernamental, esto es lo que se está desarrollando en México, donde el Congreso está considerando una serie de iniciativas legislativas. Sin duda, es bueno que haya consultas sobre todos estos cambios legislativos. En las últimas conclusiones de la Comisión de Aplicación de Normas sobre este caso, se solicitó que se estableciera un diálogo social amplio sobre la materia. Al respecto, el Gobierno ha informado de la decisión del Congreso de abrir la participación a cuatro foros a audiencias regionales con una amplia participación, así como se ha informado que la reforma ya existente tuvo una amplia discusión. Los miembros empleadores, confiaron en que se seguiría haciendo estas reformas de una manera adecuada.

En tercer lugar, en lo que se refiere a la representatividad sindical y a los contratos de protección, los miembros empleadores indicaron que había que ser muy cuidadoso. Una cosa es constituir sindicatos que puedan ser considerados sindicatos de protección, es decir, que gocen de la prerrogativa de la negociación colectiva con exclusividad, y otra cosa son las negociaciones colectivas para la protección. No debe hacerse referencia a ese segundo tema, puesto que es típico del Convenio núm. 98 y no ha sido ratificado por el Estado mexicano. Asimismo, la Comisión de Expertos, en su momento, tomó nota con interés de una serie de propuestas, dada la modificación a la Ley Federal del Trabajo que se produjo en 2012. Al respecto, la Comisión de Expertos solicitó al Gobierno que indicara las razones por las cuales no había enviado información más detallada. Aunque el Gobierno no haya contestado, y convendría que lo hiciera en su segunda intervención, quizás el Gobierno no lo haga porque no ha ratificado el Convenio núm. 98. Los miembros empleadores subrayaron que había que ser muy cuidadoso en el enfoque e indicaron que no compartían lo que decía la Comisión de Expertos al tomar nota con preocupación de las observaciones de la CSI en relación con otros asuntos que se describen de manera general, y de los cuales sería interesante conocer más detalles, si es que hay más información que permita llegar a una conclusión diferente. Pero mientras, no debería dar lugar a una solicitud de información complementaria a ese respecto.

En cuanto a la publicación y registro de las organizaciones sindicales, el Gobierno indica que hay un sistema de información nuevo, el cual proporciona las cifras, incluso detalladas, del número de sindicatos que hay en México. Asimismo, el Gobierno da una respuesta adecuada a una solicitud, que en su momento se había formulado y que se encuentra en el documento D.10. En relación con el pluralismo sindical y la reelección de dirigentes sindicales, la Comisión de Expertos se refiere a asuntos legislativos que podrían entenderse como disconformes con el Convenio. Sin embargo, se encuentra tanto en el comentario de la Comisión de Expertos como en la respuesta del Gobierno, que la jurisprudencia de la Suprema Corte de Justicia, así como los usos y costumbres, han llevado a que no sean aplicables estas normas. Es algo similar a las normas obsoletas de la OIT y que no se han derogado. El año pasado se derogaron unas normas y este año otras. Sin embargo, el Grupo Cartier identificó cerca de 65 normas obsoletas que son vigentes, pero no aplicables. Entonces el concepto de la no aplicabilidad, que consideramos en esta Organización, también debería ser considerado para los Estados Miembros y es la respuesta que da el Gobierno. No se encontraría una vulneración a la libertad sindical si unas normas existentes no se aplican, y lo reconocen los propios órganos del Poder Judicial del Estado mexicano. Además, esto es reconocido por el Gobierno, al informar que es la elección libre de representantes sindicales, concretamente extranjeros, en donde manifiesta que no hay ninguna reclamación ni tampoco ningún caso particular al respecto. Asimismo, el Gobierno manifiesta que hay sindicatos que reconocen en sus estatutos la posibilidad de tener representantes extranjeros. Al respecto, los miembros empleadores se preguntaron por qué preocuparse por cambiar una legislación que no es aplicable; si no es aplicable podemos estar seguros y tranquilos de que en México se permite la libertad ampliamente como la conciben las organizaciones como la CSI, la IndustriALL y la Comisión misma cuando analiza estos casos. Es por eso que estas solicitudes donde se piden el número y los cargos de los extranjeros que participan en sindicatos, podrían ser consideradas como excesivas porque ya el Gobierno ha manifestado que no hay ni un solo caso de reclamación. Probablemente, se pide para observadores internacionales, pero no tiene sentido en la práctica donde no hay esa dificultad.

Los miembros empleadores estimaron que, en el análisis de este caso, habían encontrado puntos que se han superado y que hubieran merecido notarse con satisfacción. Manifestaron que la orientación dada por el Gobierno a su cambio legislativo era la correcta y había superado las expectativas que, en su momento, la Comisión tenía por preocupación desde mucho tiempo atrás, incluyendo, en el caso núm. 2694 del propio Comité de Libertad Sindical.

El miembro empleador de México agradeció la información proporcionada por el Gobierno en relación con los temas abordados por la Comisión de Expertos y, lamentando la falta de información objetiva proporcionada por los miembros trabajadores, señaló que en su país no existen acosos ni despidos, que hay más de 20 millones de

trabajadores en la economía formal, que se tiene contratación colectiva, y aunque existen desafíos, se tiene paz social y laboral.

La reforma ha sido considerada satisfactoria por la Comisión de Expertos y no ha generado ninguna oposición abierta a nivel nacional. En 2012, se llevó a cabo la reforma a la Ley Federal de Trabajo, y entre 2015 y 2017, la reforma constitucional. Las leyes reglamentarias están siendo discutidas ante el Senado, mediante varias iniciativas de ley presentadas por diversos actores con distintas corrientes de pensamiento. De acuerdo con el marco constitucional, se han realizado foros de discusión y consultas, y se ha acordado convocar a audiencias públicas, ejerciendo el diálogo social y cumpliendo con la exhortación que hizo la Comisión de Aplicación Normas en 2016. Asimismo, se han incluido aspectos complejos y de amplio alcance en relación con: la justicia laboral, la transparencia sindical y de contratación colectiva, la determinación del voto secreto en favor de los trabajadores. Los cambios en proceso requieren esfuerzos legislativos, de presupuesto e infraestructura, capacitación y formación.

Respecto al registro de los sindicatos y contratos colectivos de trabajo, estos estarían a cargo de un organismo público descentralizado, encabezado por una persona propuesta por el Poder Ejecutivo y aprobada por el Senado de la República, con lo que se alcanzaría plena autonomía. Del mismo modo, se crearían organismos de conciliación en las entidades federativas para la resolución eficaz de conflictos y en cumplimiento del Convenio. La sustitución de las juntas de conciliación y arbitraje por tribunales del Poder Judicial cumple una propuesta de la Comisión de Aplicación de Normas.

La reforma constitucional estableció un año, que ya ha transcurrido, para expedir las leyes reglamentarias. Sin embargo, hay aspectos que entraron en vigor al día siguiente de la publicación de la misma, como la obligación de acreditar la representación de los trabajadores para celebrar contratos colectivos de trabajo, al igual que los establecidos en el artículo 123, fracción XXII *bis* de la Constitución. Dicho precepto señala que los procedimientos y requisitos que establezca la ley para asegurar la libertad de negociación colectiva y los legítimos intereses de trabajadores y empleadores, deberán garantizar: *a)* los principios de representatividad de las organizaciones sindicales, y *b)* certeza en la firma, registro y depósito de los contratos colectivos de trabajo. Asimismo, que para la resolución de conflictos entre sindicatos, la solicitud de celebración de un contrato colectivo de trabajo y la elección de dirigentes, el voto de los trabajadores será personal, libre y secreto. El Poder Judicial y la reforma cumplirían con los presupuestos constitucionales establecidos.

Esta situación debería ser un ejemplo para otros países, y aunque sería deseable que el proceso legislativo concluyese, en virtud de su complejidad, aún se encuentra en curso. Debe alentarse al Gobierno a que se cumpla lo que está pendiente, y reconocerse los logros. El caso debería reflejarse como de progreso en las conclusiones de esta Comisión.

Un miembro trabajador de México señaló la importancia de recordar el contexto en el que se discute la reforma laboral en México. Es preciso destacar que se han llevado a cabo dos reformas importantes: la reforma laboral de 2012 y la reforma constitucional que entró en vigor en 2017. Esta última es el resultado de una serie de consultas previas realizadas por el Centro de Investigación y Docencia Económicas, a solicitud expresa del Ejecutivo Federal, a expertos juristas, académicos y una muestra representativa de la sociedad civil; pero con la ausencia de participación e incluso de convocatoria de las organizaciones de trabajadores, razón por la cual no se tomaron en cuenta sus opciones. Como resultado de esta consulta, en abril de 2016, la Presidencia de la República envió al Congreso de la Unión la iniciativa de ley correspondiente conocida como «justicia cotidiana» que trae aparejados cambios sustantivos en la Constitución, especialmente en materia laboral.

El orador recordó que, ya en su intervención de 2016 había expresado su rechazo a dichas reformas así como su preocupación respecto de distintos aspectos de las mismas, a saber: *a)* el traslado de la justicia laboral al Poder Judicial federal o local, perdiendo el equilibrio social brindado por el tripartismo; *b)* la implementación de la conciliación como instancia prejudicial obligatoria a través de centros de conciliación especializados autónomos, y *c)* la creación de un organismo descentralizado encargado de atender el registro de los contratos colectivos, de las organizaciones sindicales y de la función conciliatoria federal siendo el titular de dicho organismo designado por el Ejecutivo Federal.

Como resultado final de esta serie de enmiendas, el 13 de octubre de 2016 se aprobaron por unanimidad la reforma constitucional dando lugar a un giro sin precedentes en el derecho laboral mexicano. La reforma laboral propuesta más recientemente en México es consecuencia de dicha reforma constitucional. Es preciso estar atentos a las consultas anunciadas el 27 de abril de 2018 por el Senado de la República. Las organizaciones sindicales y sus dirigencias tienen la tarea de transitar de manera responsable e informada hacia el nuevo modelo de justicia laboral para dar a sus representados una verdadera certeza jurídica en la defensa de sus derechos. Para terminar, el orador

instó al Gobierno a ofrecer todas las garantías para que la Ley Federal del Trabajo sea fruto de la concertación y del diálogo entre los actores del tripartismo.

Otro miembro trabajador de México recordó que el 24 de febrero de 2017 entró en vigor la reforma del artículo 123 de la Constitución. Con esta reforma se atienden diversas recomendaciones: la justicia laboral deja de estar en manos del Poder Ejecutivo y se traslada al Poder Judicial, desapareciendo las juntas de conciliación y arbitraje y creándose los tribunales laborales; se implanta la conciliación obligatoria antes de acudir a los tribunales laborales y se crea un organismo descentralizado a nivel federal, encargado de la función conciliadora, del registro de todos los contratos colectivos de trabajo y de las organizaciones sindicales, así como de todos los procesos administrativos relacionados. El orador manifestó no obstante, su preocupación respecto del retraso que está sufriendo la reforma de la ley reglamentaria de dicho artículo 123 cuya fecha límite era el 24 de febrero de 2018. El plazo por tanto ha vencido sin que el Gobierno le haya dado la atención debida, dejando con ello una gran incertidumbre para la justicia laboral y un desconocimiento sobre la situación existente. En abril de 2018, el Senado ha lanzado un acuerdo convocando a los sectores sociales, pero fuera de plazo. Es preocupante que el Gobierno no haya adoptado las medidas necesarias para iniciar el proceso de adecuaciones legislativas.

Por último, el orador solicitó al nuevo Gobierno que surgiese del voto democrático y popular, que adoptase las medidas necesarias para la adecuación de la legislación laboral a los principios establecidos en el Convenio, y que diese cumplimiento a las observaciones de la Comisión de Expertos con miras a eliminar las prácticas indebidas que afectan a los trabajadores mexicanos y para poner fin a la persecución de dirigentes sindicalistas y a la muerte de trabajadores.

Un tercer miembro trabajador de México indicó que a casi treinta años de la aplicación de las políticas neoliberales por los organismos financieros del Fondo Monetario Internacional (FMI), del Banco Mundial (BM) y de la Comisión Trilateral, se han precarizado las condiciones laborales de los trabajadores en todo el mundo, y México no es la excepción. Denunció el abuso de la subcontratación, la cual vulnera no sólo la aplicación del Convenio, sino también la Constitución mexicana y los derechos humanos, toda vez que se niega el derecho a la sindicación, a la contratación colectiva y el derecho de huelga. La Constitución nacional expresa que los mexicanos tienen derecho a la salud, a la alimentación nutritiva, a la vivienda, a la cultura, al deporte, a la educación y al trabajo socialmente útil. La figura de la subcontratación trasgrede tales derechos. Existen empresarios nacionalistas de las micros, pequeñas y medianas empresas (pymes), que cumplen con todas las obligaciones en materia de prestaciones laborales y seguridad social, pero existen otros que eluden las mismas. El abuso de esta figura genera problemas sociales que se agravarán en un futuro cercano, especialmente en materia de pensiones, ya que al no pagar la seguridad social, las futuras generaciones no tendrán derecho a la vivienda, a la salud y a una pensión digna. La subcontratación también provoca que la maquinaria sea puesta a nombre de otra empresa para evitar que en caso de un conflicto laboral los trabajadores queden indefensos para cobrar sus indemnizaciones legales.

La miembro gubernamental del Paraguay, hablando en nombre de una amplia mayoría de los Estados de América Latina y el Caribe, agradeció las informaciones aportadas por el Gobierno en los últimos años respecto de las acciones y medidas adoptadas para atender las observaciones de la Comisión de Expertos. Al respecto, en 2016, la Comisión de Expertos tomó nota con satisfacción de la aprobación y entrada en vigor de la reforma constitucional, que buscaba, entre otras medidas, que la justicia laboral fuese impartida por órganos del Poder Judicial que no dependen del Poder Ejecutivo. También tenía por objetivo fortalecer la instancia conciliatoria y la creación de un organismo autónomo que se ocupase a nivel nacional del registro de contratos colectivos y de sindicatos. De igual forma, el Gobierno informa sobre los procesos de consulta y mesas de diálogo que se llevan a cabo con miras a desarrollar las adecuaciones legislativas para dar pleno efecto a la reforma constitucional, en especial el acuerdo del Senado para la celebración de audiencias públicas para conocer las sugerencias, observaciones y propuestas de los trabajadores, empleadores, académicos y organizaciones de la sociedad civil sobre el anteproyecto de dictamen de la legislación secundaria. Teniendo en cuenta la buena voluntad expresada y los resultados alcanzados, el orador deseó éxito al Gobierno en el ambicioso proceso de reformas y en la histórica transformación de la administración de la justicia social.

El miembro gubernamental de Panamá se adhirió a la declaración de la miembro gubernamental del Paraguay, y manifestó que valoraba los esfuerzos y el interés del Gobierno de aportar constantemente información actualizada sobre el cumplimiento del Convenio núm. 87. Debe destacarse lo relativo a la judicialización de los procesos laborales que se ventilan en instancias del Poder Ejecutivo en dicho país. Asimismo, las consideraciones de la Comisión de Expertos son relevantes, pues ponderan positivamente los avances en materia de justicia laboral que ha sostenido el Gobierno y que van de acuerdo con lo que la OIT promueve. La transformación se ha desarrollado, tomando en cuenta a los actores tripartitos del país, mostrando así el Gobierno la vigencia del diálogo social como herramienta indispensable para la libertad sindical y en la búsqueda de la justicia social. Finalmente,

reafirmó su apoyo al Gobierno en el proceso de mejora continua que ha estado implementando y subrayó la importancia del tripartismo en la OIT para la consecución del bien común.

Un observador en representación de la CSI declaró que, en febrero de 2017, se publicó un decreto introduciendo reformas al artículo 123 de la Constitución en materia de justicia laboral, siendo la más importante en cien años de vigencia de la Constitución. En 2016, la Comisión ofreció asistencia técnica al Gobierno y le solicitó que entablara el diálogo social en la preparación de la legislación secundaria. Sin embargo, el Gobierno fue omiso en promover dicho diálogo y en solicitar asistencia técnica. En consecuencia, senadores de la Confederación de Trabajadores de México (CTM) y de la Confederación Revolucionaria de Obreros y Campesinos (CROC) promovieron una iniciativa de reforma, considerada inconstitucional, y que derogaría el derecho social laboral mexicano, ya que éste no reglamenta todos los temas previstos en la reforma constitucional. Dicha iniciativa plantea la restitución del falso tripartismo de las juntas de conciliación y arbitraje, y el otorgamiento de facultades jurisdiccionales a órganos administrativos descentralizados, como conocer asuntos relativos al derecho de huelga, que sólo deberían corresponder a los órganos jurisdiccionales de conformidad con el artículo 123, fracción XX de la Constitución. Además, la Cámara de Senadores ha emitido un proyecto de dictamen de decreto que convalidaría dicha iniciativa. La semana pasada, dicha Cámara convocó a supuestos actores sociales para que opinasen exclusivamente sobre ese dictamen. De este modo, se ha omitido considerar otras iniciativas promovidas por otros senadores para la congruente reglamentación de las reformas constitucionales. Para alcanzar la justicia y paz sociales, debe reponerse el viciado proceso legislativo en relación con las reformas secundarias en las que incurre el Gobierno.

El miembro gubernamental de Honduras valoró positivamente las acciones y medidas adoptadas por el Gobierno en materia de justicia laboral desde febrero de 2017, como parte del proceso de reformas que realiza actualmente. Por otra parte, mostró su preocupación respecto a los casos que, a pesar de no evidenciar violaciones al Convenio, pretenden ser posicionados como actos de violencia contra sindicalistas. Por último, exhortó al Gobierno a seguir impulsando nuevos mecanismos interinstitucionales de diálogo, de conformidad con lo dispuesto en el Convenio y a favor de los derechos fundamentales de los trabajadores para garantizar el respeto a la libertad sindical en el país.

The Worker member of Germany stated that the progress invoked by the Government in the implementation of the Convention was merely progress on paper and that little had changed in practice. The constitution of independent unions and their work was alarmingly hampered by a fatal combination of: (i) an arbitrary registration procedure; (ii) the prevalence of protection contracts; and (iii) the absence of publication of both the registration of unions and the agreements concluded. The CABs, which were still the competent authorities at the federal and state level, were not independent and impartial, as demonstrated by their composition, and were always finding new ways to obstruct the registration and work of independent unions. The protection contracts were negotiated without the knowledge of workers, in some cases including German companies, even before a plant had been built or a company had started its work. If a company was already in the hands of a so-called protection union or if a protection contract existed, the CABs had many opportunities to reject applications from independent unions. To enforce a real collective agreement against a “protection union” was practically impossible. The process was overshadowed by a lack of transparency, bureaucratic hurdles, layoffs, threats, intimidation and violence.

In order to demonstrate progress towards compliance with the Convention, it was no longer sufficient for the Government to refer to lengthy reform processes, discussions between the various stakeholders and secondary legislation that had not yet come into force and which was designed to counteract the fundamental demands of the constitutional reform. She therefore called on the Government to fully comply with the findings of the ILO supervisory bodies and to this end: (i) demonstrate, by means of concrete actions, how it ensured swift and independent registration of trade unions; (ii) provide evidence of the publication of collective agreements, registrations, recognitions and other trade union statutes; (iii) explain in detail the specific measures taken to address all the problems arising in connection with the protection contracts (not only measures on paper); and (iv) consider a statutory obligation for employers to make the applicable collective agreement known in the work

Le membre gouvernemental de l'Algérie a déclaré soutenir les efforts du gouvernement pour réformer la justice du travail, renforcer l'organe de conciliation et promouvoir le droit d'organisation et de négociation collective. Toutes les dispositions nécessaires ont été prises pour respecter les droits fondamentaux, y compris les droits à la liberté d'expression et d'association, ainsi que les garanties procédurales, tout en renforçant les prérogatives du système d'inspection du travail. Rien ne prouve qu'il y ait eu des violations de la liberté syndicale. Il s'est réjoui des avancées enregistrées dans le renforcement des instruments nationaux existants pour donner plein effet à la réforme constitutionnelle et a souhaité que la commission tienne compte des progrès réalisés.

The Worker member of the United States stated that CABs impeded the freedom of association of workers. One example was the strike of the independent union of miners initiated in 2008, on the legality of which the federal CAB has never pronounced itself. In 2013, a company union run by the owner of the mine had applied for collective bargaining rights and had occupied the mine in an effort to end the strike. Rather than protecting the strike, the CAB had accepted the illegal application of the company union, and had allowed elections in 2017, in which both the employer and company union had submitted identical lists of eligible voters to the CAB. The lists had included not only miners recruited by the company to vote in its favour, but also workers who should not have been eligible to vote (including retired miners, those that had received severance pay and even miners that had died). In spite of the irregularities (collusion between company union and employer as evidenced by the identical lists, and failure to demonstrate who had been an active worker eligible to vote), the CAB had allowed the election, which the company union had won. In January 2018, however, a court had reversed the election and had forced the company union to abandon its claim for collective bargaining rights, finally offering some protection for the legal strike of the independent union.

That example demonstrated the problems with the CABs: (i) they were not impartial and actually biased against independent unions; and (ii) they had close ties to both the protection unions and employers. At the time when the federal CAB had decided to allow the second election, the secretary of the Board for collective matters had been a person that had formerly been employed as attorney for the company and was currently in that position again. In addition, workers had to wait years before being afforded protection concerning freedom of association rights. As promised in the constitutional reform, the CABs had to be replaced by a labour justice system that was fully independent from the executive branch and allowed workers full freedom of association. Those changes had to occur before any renegotiated North American Free Trade Agreement (NAFTA) or other free trade agreements, or even Mexico itself, could comply with the Convention.

El miembro Gubernamental del Uruguay apoyó la declaración la miembro gubernamental del Paraguay y destacó, dentro de las medidas adoptadas por el Gobierno, la reforma procesal laboral de 2011, así como la promoción de una reforma procesal. La implementación completa de leyes de este tipo requiere tiempo, exigiendo generalmente diversas adaptaciones hasta alcanzar los objetivos previstos. La reforma laboral ha permitido la reducción en más de un 60 por ciento de la duración habitual de los juicios laborales, lo que constituye un claro beneficio para el justiciable, quien accede a una justicia más rápida y eficiente. No obstante, aún perduran pequeños aspectos de la reforma que será necesario ajustar. Resulta razonable que se requiera de un plazo adecuado para su plena adaptación e instrumentación. En ese sentido, y teniendo en cuenta la experiencia adquirida por el Uruguay al respecto, el orador ofreció cooperación técnica al Gobierno y lo estimuló a seguir en el camino del diálogo social.

Un miembro trabajador de Colombia reprochó a México las violaciones a la libertad sindical, especialmente las que se derivan de la existencia de los contratos de protección patronal. Todos los órganos de control de la OIT coinciden en señalar la violación de derechos que implican los contratos de protección patronal. La gravedad y reincidencia de dichas violaciones requieren medidas drásticas por parte de la OIT.

La reforma legal de 2012 y la constitucional de 2017 en lugar de eliminar la figura que en sí misma desnaturaliza a las organizaciones sindicales y los fines de la negociación, reforman el registro, la publicación, las votaciones u otras disposiciones. Así, cinco años después de la reforma legal y quince meses después de la reforma constitucional, las juntas de conciliación y arbitraje siguen registrando sindicatos y contratos de protección patronal. El Gobierno debe acatar las recomendaciones y observaciones de los órganos de control de la OIT en relación con los sindicatos de protección y los contratos de protección patronal, y erradicar la posibilidad de estas figuras mediante leyes que cursen consultas reales y efectivas con las organizaciones representativas de trabajadores, y mediante un control efectivo de las autoridades que impida que sindicatos no democráticos y negociaciones simuladas sigan siendo utilizados.

Otro miembro trabajador de Colombia destacó que todos los hechos que coartan la libertad sindical, sobre todo en lo relativo al Convenio, son absolutamente inaceptables. Para el desarrollo de un país es indispensable tener un sindicalismo libre de toda clase de presiones. Por ello, solicitó a la tripartita de México información más detallada sobre los contratos de protección. Asimismo, urgía al Gobierno para que junto con las organizaciones sindicales y los empresarios concertase la Ley Federal del Trabajo a fin de evitar manipulaciones en detrimento del Convenio.

El miembro gubernamental del Brasil saludó los logros del Gobierno reconocidos en el informe de la Comisión de Expertos en relación con la modernización de la administración de la justicia laboral, así como el expresivo apoyo a la reforma constitucional recibido por las Cámaras de Diputados y de Senadores. Destacó igualmente las medidas legislativas y prácticas llevadas a cabo para solucionar el «fenómeno de los sindicatos de protección y contratos de protección» así como los ambiciosos procesos de consulta y mesas de diálogo llevados a cabo por el Gobierno para dar pleno efecto a la reforma constitucional por medio de la legislación secundaria.

Con relación a los temas de representatividad sindical y transparencia, señaló que se emiten observaciones en base a alegatos genéricos que no aluden a casos concretos y que no se podía admitir que los órganos de control hicieran comentarios sin elementos objetivos. Asimismo, México no ha ratificado el Convenio núm. 98. Por ello, no se puede permitir que se examinen en la Comisión comentarios sobre México con arreglo a dicho Convenio. Las discusiones de esta Comisión deben ceñirse a los términos técnicos de la aplicación del Convenio pertinente. Para concluir, el orador alentó al Gobierno a seguir avanzando en sus propósitos de reforma laboral, en línea con sus compromisos internacionales.

El miembro trabajador de la Argentina señaló que en varias ocasiones el Gobierno de México había presentado ante esta Comisión informaciones sobre avances que no se concretizaron en la práctica. La vigencia de la Ley Federal de Trabajadores al Servicio del Estado constituye un ejemplo de estas prácticas dilatorias. La Ley fue adoptada en 1963 y, cinco años después, la Comisión de Expertos tomó nota de que el Gobierno estaba reconsiderando los aspectos de la ley contrarios al Convenio. Cincuenta años pasaron y dichos aspectos de la Ley siguen vigentes. El Gobierno ha señalado que las disposiciones en cuestión no son aplicables porque han sido observadas por la Suprema Corte de Justicia. Sin embargo, los pronunciamientos de la Corte no implican la derogación de los artículos de la ley contrarios al Convenio y los trabajadores siguen presentando demandas al respecto. Esta situación constituye un ejemplo claro de una violación persistente del Convenio. Las violaciones a la libertad sindical también afectan a los trabajadores de la educación que luchan contra la «reforma educativa» que restringe la libertad de asociación y de negociación. Los que protestan contra la reforma son objeto de represión, tal como sucedió en junio de 2016 en el estado de Oaxaca. La represión se saldó con la muerte de diez personas, 30 detenidos y 100 heridos, hechos que aún permanecen impunes, al igual que la desaparición de los 43 estudiantes de Ayotzinapa. El Gobierno debe implementar acciones concretas que ajusten la legislación y la práctica nacionales al Convenio. Además, la Comisión debe instar al Gobierno a cesar con las prácticas violatorias de la libertad sindical que tienen lugar desde hace décadas.

El miembro trabajador del Paraguay señaló que algunas de las recomendaciones de la Comisión de Expertos han sido tomadas en cuenta por el Gobierno y otras no. México ha realizado reformas constitucionales en materia laboral, en virtud de las cuales desaparecen las juntas de conciliación y arbitraje y se crean los tribunales laborales. No obstante, el plazo para reformar la ley que reglamenta dichos organismos y tribunales ha vencido y el Congreso mexicano tiene suspendido el proceso de reforma para convocar consultas con los sectores. El proceso se encuentra fuera de los términos constitucionales.

El orador recordó que las reformas deben garantizar la representatividad de las organizaciones sindicales y la transparencia en la firma, registro y depósito de los contratos colectivos de trabajo para asegurar que correspondan a organizaciones que realmente representen los intereses y derechos de los trabajadores. Se necesitan mecanismos que privilegien la práctica de la vida sindical y el derecho de huelga. Por ello el orador recomendó al Gobierno y al Congreso mexicanos adoptar, a través del diálogo con las organizaciones de trabajadores y de empleadores más representativas, las medidas necesarias para adecuar la legislación a los principios establecidos en el Convenio.

The Worker member of Canada regretted the widespread use of illegitimate collective bargaining agreements signed between an employer and an employer-dominated union with the blessing of the government authorities. Workers trying to organize independent and democratic trade unions were harassed, threatened and assassinated: in November 2017, Victor and Marcelino Shaunitla Peña had been murdered while participating in a work stoppage at a gold mine, refusing to join a union imposed upon them by the company. This had shone a spotlight on Mexico's corrupt and anti-democratic labour relations system of protection contracts. In January 2018, Quintin Salgado had been murdered after being threatened if he kept advocating for a change of unions. There had been no investigation of these murders. Also in January 2018, after receiving threats by the corporate union, Eli Manuel Robelleo, a mine worker, had seen his house burned down. A few days later, another worker, Monica Lopez, had been beaten and left unconscious. No investigations had been carried out. The speaker recalled that rights of workers' organizations could only be exercised in a climate free from violence and that it was the responsibility of governments to ensure that this principle was respected. The free choice of workers to establish and join organizations was so fundamental to freedom of association as a whole that it could not be compromised by delays and simulated reforms. She called on the Government to reform and enforce the rule of law in order to protect workers' demands for democratic unions, better wages and working conditions, and health and safety at work. Mexico was under the obligation to change its law and its practice in order to restore workers' rights, in compliance with the Convention, before any free trade agreement could be signed.

An observer representing the International Transport Workers' Federation (ITF) stated that protection contracts presented the most serious obstacle to the exercise of freedom of association in Mexico. The Conference Committee, the Committee of Experts and the Committee on Freedom of Association had all urged the Government to effectively abolish the protection contract system but there had been no real change. That system deprived workers

of any right to safe working conditions, labour inspections, compensation or social security and was designed to dismantle genuine and democratic trade unionism. Unfortunately, this had been achieved in the road transport and port sectors. The constitutional reform required the enactment of secondary legislation. However, the proposed legislation undermined the spirit of this reform and contained numerous provisions that would negatively affect workers, including the amendment to section 388 of the Federal Labour Act. Unions representing workers in the aviation sector had been frustrated by protection unions that had claimed to represent all workers and sought to negotiate a single agreement. The proposed amendment to section 388 would exacerbate that problem in prohibiting professional unions from negotiating separate agreements with a common employer. That was inconsistent with the obligation to promote free and voluntary collective bargaining. The ILO supervisory bodies had made it clear that in order to satisfy trade union plurality where a single agreement policy was in place, minority or professional unions should at a minimum be able to conclude collective agreements on behalf of their members. That principle was particularly important in Mexico due to the impact of protection contracts. The speaker called on the Government to withdraw the proposed secondary legislation to bring its labour laws into conformity with the Convention.

An observer representing IndustriALL Global Union indicated that protection contracts had been a vital part of the state policy and economy for a long time. This model had spread to cover all industrial sectors: it guaranteed the lowest labour costs and prevented any negotiation with workers. Following the privatization of the energy and gas sectors, the concession and exploration contracts contained specific clauses mentioning the chosen union, thus depriving workers of any choice. Despite promises on the international scene, the Mexican had not done anything to eradicate these protection contracts. Every new investment announced, be it in the auto sector, energy, electronics, textile, comes with “the cherry on the cake”, a protection contract already signed with the accomplice corporate unions, long before the plant is built and any worker appears. Last week, approximately 50 women workers in the textile sector had been fired for defending their rights: the management had said that there would be no other union than the one already in place in the plant. Only the official corporate unions could obtain a collective bargaining agreement: a request for union elections by the union “Mineros”, an affiliate of IndustriALL, had been blocked for 6 years by the government authorities, the company and the protection contract union. And even when it had won elections in a mining site in April 2016, the company and the protection contract union had refused to abide by the official ruling published and continued to occupy the union facilities. She concluded that the Government had the obligation to respect Mexican workers’ rights and to implement freedom of association.

Un observador, hablando en nombre de la Confederación de trabajadores y trabajadoras de las Universidades de las Américas (CONTUA), declaró que hay persistentes y graves prácticas del Gobierno que contravienen el Convenio. Desde 2015, la Comisión ha pedido al Gobierno solucionar el fenómeno de los sindicatos de protección e incluir en las discusiones sobre ese mismo a los actores sociales. En 2017, la Comisión pidió nuevamente al Gobierno realizar las consultas con los interlocutores sociales, pues existe una grave preocupación por la opacidad en las medidas implementadas. Hoy de nuevo, el Gobierno debe brindar explicaciones a esta Comisión por la omisión reiterada de realizar consultas tripartitas auténticas, institucionalizadas y permanentes en el marco del proceso de transición con motivo de la reforma constitucional en materia de justicia laboral, lo que contraviene al Convenio sobre la consulta tripartita (normas internacionales del trabajo), 1976 (núm. 144). Tal obligación es responsabilidad del Gobierno y no podrá alegar su derecho interno para justificar su incumplimiento a las disposiciones del Convenio. En el mismo sentido, no podrá alegar consulta alguna para al establecimiento de un supuesto diálogo social con las organizaciones de trabajadores más representativas, por la habitual, persistente y reiterada práctica sindical corporativa y antidemocrática contraria a los intereses de los trabajadores, por lo que una consulta en ese sentido no refleja la realidad laboral mexicana.

Según la *Gaceta Oficial* del Senado, las audiencias públicas debían realizarse en los meses de mayo y junio de 2018, pero en la realidad no se contempla la realización de las audiencias públicas en las cuatro sedes regionales. Dichas audiencias versarían respecto de la iniciativa presentada por el Gobierno el 7 de diciembre de 2017, por conducto de la Confederación de Trabajadores México (CTM) y la Confederación Revolucionaria de Obreros y Campesinos (CROC), sin referirse a otras tres iniciativas de ley que también fueron presentadas, sin que hasta hoy se haya realizado una convocatoria oficial. Prueba de las prácticas de simulación del Estado es el caso de la solicitud realizada por el presidente del colegiado de la Unión Nacional de Trabajadores (UNT) y secretario general del Sindicato de Trabajadores de la Universidad Nacional Autónoma de México (STUNAM), quien en mayo de 2018 solicitó al Senado el lugar, la fecha y la hora para la celebración de una audiencia pública sobre el anteproyecto de dictamen en materia de Justicia Laboral, sin que hasta el momento haya recibido respuesta.

La iniciativa revivirá el falso tripartismo, ya que se propone la creación del Instituto federal de conciliación y registro laborales, en donde la integración del órgano de gobierno será de doce miembros en los siguientes términos: cuatro integrantes del Gobierno, cuatro del sector obrero y cuatro del sector patronal, reiterándose un control corporativo total, ya que el mecanismo antes dicho establece que cuatro de los 12 integrantes serán de las organizaciones nacionales de trabajadores, pero únicamente de aquellas «más representativas», es decir hay un

persistente fortalecimiento por parte del Gobierno mexicano hacia el sindicalismo proteccionista y antidemocrático, privilegiando esos sectores y excluyendo otras representaciones, lo que es contrario a los principios fundamentales de la OIT y particularmente al Convenio. Tal persistencia enarbola un régimen contrario al bienestar de los trabajadores mexicanos, propiciando, con el respaldo de la ley, prácticas violatorias a la libertad sindical. Finalmente, urgió la inmediata ratificación del Convenio núm. 98.

El representante gubernamental destacó que muchas intervenciones se centraron en el proceso de la reforma laboral. Si bien es cierto que la parte constitucional que ya está aprobada implica responsabilidades para distintos actores, entre ellos el Gobierno Federal y los gobiernos estatales, también lo es el hecho de que la implementación de la ley secundaria requerirá la adopción de instrumentos que permitan, tanto al Poder Judicial (en la parte relativa a la justicia laboral), como al órgano desconcentrado y los centros de conciliación, llevar a cabo sus funciones. Dicho proceso se está analizando en el Senado, a través de cuatro iniciativas, las cuales no han sido rechazadas a nivel parlamentario. La decisión del Senado, a partir de la petición de muchos grupos en México, fue abrir la consulta, no solamente al trabajo en las comisiones legislativas, sino convocar a foros de consulta. Los términos de la convocatoria son una decisión del Senado. Sin embargo, el Gobierno está comprometido con insistir en que se celebren consultas tripartitas con el objetivo de elaborar la legislación secundaria, y con que dicha legislación logre alcanzar consensos mínimos que permitan llevar a cabo la reforma constitucional en los mejores términos. En este sentido, a lo largo de 2018, la Secretaría del Trabajo encabezada por el propio Secretario del Trabajo, ha celebrado más de 91 reuniones con organizaciones de empleadores y de trabajadores. La voluntad del Gobierno y del Estado es fomentar consensos con los trabajadores, empleadores y con organizaciones de la sociedad civil, acerca de lo que es más conveniente en materia de reforma laboral, teniendo siempre en cuenta los derechos de los trabajadores.

Por otro lado, el orador manifestó que otro aspecto fundamental de la discusión residía en la repetida mención a la existencia de contratos de protección. México ha cooperado en aquellos casos concretos en los que se plantean problemas de este tipo. Al respecto destacó que en la reforma constitucional se toma en consideración la cuestión que da origen a los contratos de protección y que de alguna manera procede de la Ley Federal del Trabajo, evitando así problemas tales como los «emplazamientos por extorsión».

En relación con los registros de sindicatos, el orador indicó que, contrariamente a lo expuesto por los participantes en sus intervenciones al respecto, actualmente la autoridad federal responde a una solicitud de registro en el plazo de tres o cuatro días: como consecuencia se ha producido el mayor incremento experimentado en México del número de asociaciones sindicales. Asimismo, existe un sistema en línea a nivel federal que comprende más de 3 400 registros de asociaciones. El orador concluyó su intervención agradeciendo el reconocimiento de los miembros del grupo de los Estados de América Latina y el Caribe por los esfuerzos realizados, lo cual es un incentivo para seguir adelante y tratar de dar las mejores cuentas posibles, en el marco del respeto a las disposiciones del Convenio.

The Workers members welcomed the willingness of the Government to work towards bringing its practice and legislation in line with the Convention and hoped that this would be translated into concrete actions. It was nevertheless regrettable that the Government did not accept the serious shortcomings of its current regulations and legislative proposals with regard to the Convention. The numerous problems encountered were rooted in the protection contracts system. In response to comments made by the Government that it had for many years submitted detailed information and evidence to the Committee of Experts and the Conference Committee, the current discussion had once again provided specific examples demonstrating the impact of protection contract unions. That system had for many years seriously impeded the exercise of freedom of association and freedom to bargain collectively. They challenged the statement that the issue of protection contract unions did not fall within the scope of the Convention. In fact, that phenomenon was closely linked to both Conventions Nos 98 and 87. The existence of protection contract unions constituted an obstacle to the establishment of free and independent unions. A member State was not complying with Convention No. 87 if it put in place or retained regulations which prevented workers from challenging the presence of protection contract unions and which restricted their ability to elect democratic and independent unions of their choice. The ability for workers to form and join a trade union of their choice and the ability of that trade union to represent, defend and promote the interest of its members through collective bargaining was at the heart of the Convention. Therefore, the Government had to take all measures to put an end to the use of protection contracts.

In that respect, they made a number of recommendations to the Government: (i) they invited the Government to submit information on the proposed legislation aimed at implementing the constitutional reform. It was essential that there be consultation with all the social partners on that legislation, including independent trade unions. The Bill significantly affected the exercise of the right to freedom of association and its impact would be felt throughout the country and indeed the region; (ii) as the CABs had been incapable of guaranteeing freedom of association and the right to collective bargaining, they should be replaced by genuinely independent and impartial bodies to settle

labour disputes and register unions and their collective agreements. The Government should also provide information on how it would guarantee the establishment of truly independent institutions, as well as the measures planned to ensure an efficient transition from the CABs to new, independent bodies; (iii) the Government had to ensure that there was transparency and genuine access to information regarding the registration of trade union organizations and the collective agreements concluded. The Government should communicate any information in this respect; (iv) workers wishing to exercise their right to freedom of association and to collective bargaining had to be able to do so and, where appropriate, effectively and expeditiously challenge the validity of protection contract unions and the agreements they had negotiated; (v) they urged the Government to apply the existing law and ensure that outsourced workers were not used to interfere with the exercise of the right to freedom of association and the right to collective bargaining; (vi) the proposed legislation also removed basic safeguards concerning dismissals and redundancy. The Government had to protect workers from arbitrary dismissals and retaliation for their trade union activities. The same was true for collective redundancies; and (vii) the Government should explicitly repeal the restrictions on trade union pluralism and the free election of trade union leaders. Finally, they urged the Government to put an end to violence against trade unionists, including those engaging in social and political issues which was part of their job as trade unionists, by ending the reign of impunity for those crimes. Those responsible, both the material and intellectual authors, had to be arrested and brought to justice. Failure to do so only further invited the use of violence, including murder, by some employers and their agents in industrial disputes. In order to comply with those recommendations, and given the significance of the issues being discussed, they urged the Government to seek technical assistance from the ILO on the draft legislation and to accept a direct contacts mission. Mexico should be included in a special paragraph of the report.

Los miembros empleadores agradecieron a todos los intervinientes en este debate, el cual había sido rico en información y también diverso en opiniones, lo que mostraba la alternativa de juntar posiciones abiertas y francas sobre los distintos aspectos que trae este caso. Las respuestas complementarias presentadas por el Gobierno reafirman muchos de los puntos mencionados en su intervención inicial, y también aclaran algunos puntos que anteriormente los miembros empleadores habían planteado. De las posiciones de los distintos representantes de los trabajadores, se observan diferentes puntos de opinión y enfoques que, como los miembros empleadores mencionaron anteriormente, pueden ir más allá del propio Convenio.

En su observación, la Comisión de Expertos se refiere al caso núm. 2694 del Comité de Libertad Sindical. En su informe de junio de 2017, el Comité distingue las cuestiones de carácter global de los alegatos concretos. En las cuestiones globales se enfocan todos los aspectos legislativos que precisamente dejan a consideración de la Comisión de Expertos y de la Comisión de Aplicación de Normas, como esta última lo ha debatido hoy. Sin embargo, los aspectos concretos que tienen que ver con los aspectos conectados con lo que podría ser el Convenio núm. 98, los analiza el Comité de Libertad Sindical para dar cabida a un análisis más detallado sobre muchos aspectos que han tomado en consideración hoy los representantes de distintas partes. Por lo tanto, ni la Comisión de Aplicación de Normas ni la Comisión de Expertos tendrían que abordar los aspectos derivados de los principios de la libertad sindical y de la negociación colectiva. Por ello, el asunto de los sistemas de contratación colectiva no es parte de la discusión y debe estar excluido completamente de las consideraciones y conclusiones que emita esta Comisión.

El Gobierno se ha referido a un Protocolo de inspección laboral sobre la libre contratación colectiva, el cual ha permitido que los inspectores del trabajo hayan desarrollado múltiples actividades y que se haya protegido a muchos trabajadores en México. También, el Gobierno se refiere al sistema de consulta de organizaciones sindicales, indicando que ha tenido más de 1 millón de visitas y que contiene información detallada sobre más de 3 400 organizaciones sindicales, lo que da respuesta a las preocupaciones que tenía la Comisión en relación con el sistema de registro y el sistema de información. Asimismo, informa el Gobierno que está en proceso de desarrollo la creación de un organismo público descentralizado derivado de la reforma constitucional, mecanismo donde existirán herramientas administrativas, organizacionales, tecnológicas y logísticas para su implementación. De igual manera, se realizaron más de 91 reuniones con representantes de trabajadores, de empleadores, académicos, barras y colegios de abogados, además de las audiencias públicas determinadas por el Senado para dar efecto a las nuevas legislaciones, los cuatro proyectos o iniciativas legislativas. Todo está en un proceso de evolución, a través de un amplio diálogo social, que es lo que promueve esta Organización. La implementación de tribunales laborales independientes, con una asignación presupuestal ya definida, para el montaje y aplicación de éstos, todo es parte de un proceso sobre el cual se están implementando medidas claras y específicas.

El Gobierno ha proporcionado muchas respuestas a las distintas inquietudes que tenían tanto la Comisión de Expertos como la Comisión de Aplicación de Normas. Sobre las libertades civiles y los derechos sindicales, el Gobierno ha presentado información de distintos órganos de carácter independiente sobre distintos actos de violencia que no tienen conexión con la libertad sindical, lo que lleva a que no se deba profundizar en esos detalles.

En consecuencia, la solicitud de la Comisión de Expertos, para que el Gobierno dé comentarios sobre estos actos de violencia, debe considerarse que éstos han sido ya presentados y no se requeriría ya mayores informaciones.

En relación con la reforma constitucional, la recomendación en la que se alienta al Gobierno a que tome mayores medidas y que haga una consulta de carácter tripartito sobre la reforma constitucional, los miembros empleadores la consideraron adecuada si se presenta por el Gobierno en la memoria que debe presentar en virtud del artículo 22 de la Constitución, y no en un informe complementario o anticipado a la forma en la que normalmente se presentan las memorias. En cuanto a la representación y los contratos de protección, es un asunto que analizará el Comité de Libertad Sindical y el Gobierno debe referirse a este Comité para su detalle.

Por ello, los miembros empleadores consideraron que la conclusión referida a que el Gobierno podría adoptar medidas con los actores tripartitos para estos efectos, es un asunto que sería referido al Comité de Libertad Sindical y no a la Comisión de Aplicación de Normas. En relación con la publicación de los registros de los sindicatos, ya existe este sistema informativo y hay información completa. Por ello, la conclusión en donde el Gobierno podría continuar proveyendo información acerca del cumplimiento de su obligación sobre la publicación de los registros y de los estatutos, tampoco es indispensable.

Por último, los miembros empleadores consideraron que, respecto al tema de las reformas legislativas, existen muchos aspectos que por razón de las explicaciones brindadas por el Gobierno, así como por la propia jurisprudencia resultan inaplicables, y por ello, no es indispensable la recomendación de la Comisión de Expertos que le requiere al Gobierno que tome medidas para enmendar restricciones de la Ley Federal de los Trabajadores al Servicio del Estado. Tampoco es pertinente la recomendación de tomar las medidas necesarias para enmendar la sección 372 de la Ley Federal del Trabajo sobre la prohibición de que extranjeros sean miembros de las directivas de los sindicatos para que se haga explícito. Las conclusiones deben estar orientadas a que se proporcionen informaciones complementarias dentro de los informes recurrentes y periódicos de acuerdo con los procedimientos generales que deben darse para el seguimiento de cualquier convenio. Los miembros empleadores consideraron que se podía cerrar el presente caso.

Conclusiones

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

La Comisión también tomó nota de que la Comisión examinó este caso anteriormente, la última vez en 2016.

Teniendo en cuenta la información proporcionada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión alentó al Gobierno a que:

- **siga adoptando las medidas legislativas previstas en el contexto de la reforma constitucional en consulta continuada con los interlocutores sociales a nivel nacional;**
- **asegure, en consulta con los interlocutores sociales, que la legislación secundaria necesaria para dar efecto a las reformas de la Constitución y la legislación federal del trabajo estén de conformidad con el Convenio;**
- **siga cumpliendo con su actual obligación legal de publicar el registro y los estatutos de los sindicatos, así como los convenios colectivos existentes, y**
- **se asegure de que los sindicatos puedan ejercer su derecho de libertad sindical en la legislación y en la práctica.**

La Comisión invitó al Gobierno a proporcionar información detallada sobre las medidas adoptadas para aplicar estas recomendaciones antes de la próxima reunión de la Comisión de Expertos en noviembre de 2018.

La representante gubernamental agradeció a la Comisión por el diálogo constructivo y abierto que se había producido. Señaló haber escuchado con especial atención los comentarios y las cuestiones abordadas durante la discusión, así como las conclusiones presentadas que serán debidamente valoradas y tomadas en cuenta por las autoridades. Reiteró asimismo, el compromiso del Gobierno con los principios y derechos fundamentales en el

trabajo así como con la promoción y consecución del trabajo decente. El diálogo social es la mejor herramienta para identificar acciones que permitan seguir dando cumplimiento a los principios fundamentales en el trabajo y especialmente a los principios del Convenio. México reitera su compromiso a dicho diálogo así como a los mecanismos de control de la OIT que promueven su fortalecimiento. En este sentido, atenderá de forma puntual y oportuna las solicitudes de información formuladas.

Conclusions

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

The Committee also noted the prior discussion of this case in the Committee, most recently in 2016.

Taking into account the Government's submissions and the discussion that followed, the Committee encouraged the Government to:

- continue to pursue further legislative action envisaged in the context of the Constitutional reform in continued consultation with the social partners at national level;
- ensure, in consultation with the social partners, that the secondary legislation required to enact the reforms to the Constitution and federal labour law are in conformity with the Convention;
- continue to fulfil its existing legal obligation to publish the registration and statutes of trade unions, as well as existing collective agreements; and
- ensure that trade unions are able to exercise their right to freedom of association in law and practice.

The Committee invited 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 2018.

Conclusions

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

La commission a également pris note des discussions qu'elle a déjà eues sur ce cas, la dernière ayant eu lieu en 2016.

Prenant en compte les exposés du gouvernement et la discussion qui a suivi, la commission a encouragé le gouvernement:

- à continuer de s'attacher à adopter les mesures législatives prévues dans le contexte de la réforme constitutionnelle, dans le cadre de consultations suivies avec les partenaires sociaux au niveau national;
- à faire en sorte que, en consultation avec les partenaires sociaux, la législation secondaire nécessaire pour lancer la réforme de la Constitution et la loi fédérale du travail soient conformes à la convention;
- à continuer de s'acquitter de son obligation légale de publier l'enregistrement des syndicats et leurs statuts, ainsi que les conventions collectives applicables; et
- à veiller à ce que les syndicats puissent exercer leur droit de liberté syndicale, en droit et dans la pratique.

La commission a invité le gouvernement à rendre compte en détail des mesures prises pour donner suite aux présentes recommandations, à la prochaine session de la commission d'experts, en novembre 2018.

**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)

Myanmar (ratification: 1955)

Myanmar (ratification: 1955)

Myanmar (ratificación: 1955)

A **Government representative** indicated that the Government had set the following priorities for the country and the people: rule of law, the improvement of the socio-economic life of the people, national reconciliation and peace, and amending the Constitution for building a democratic federal republic. Undoubtedly, the tasks were not easy in the face of various internal and external challenges. In dealing with such challenges, the Government had adopted a path consistent with the needs and situation of the country, while respecting the views and opinions of the international community and bearing in mind Myanmar's international responsibility. Improving the socio-economic life of the people, including workers, had always been high on the agenda. Labour law reform was well under way, and a culture of tripartite dialogue had been successfully introduced and developed. Progress made included upgrading skills, the establishment of the National Skills Standard Authority, opening of migrant resource centres, and, for the first time in history, setting the minimum wage. In close cooperation with the ILO, considerable progress had been made in eliminating the practice of forced labour. A new chapter had opened for the workers with respect to their right to associate and organize. Since the adoption of the Labour Organization Law of 2011, many workers' and employers' organizations as well as three federations and one confederation were in place and functioning.

In response to the request for information made by the Committee of Experts concerning the chapter on Rules and the corresponding chapter on Offences and Penalties, the speaker indicated that the Law on the Right to Peaceful Assembly and Peaceful Procession of 2016 allowed for a wider democratic space for all Myanmar citizens, including workers, in their exercise of freedom of association. It also allowed for them to assemble and process without prior permission by providing a 48-hour notice to the relevant authority. Penalties for offences had also been reduced substantially, for instance for procession without notifying. Directives, rules and regulations were being developed to implement the Law on the Right to Peaceful Assembly and Peaceful Procession in its letter and spirit. In the meantime, its section 26 provided that rules, notifications, orders, directives and procedures issued under the previous version of the law might continue to apply in so far as they were not contrary to the 2016 version. The Labour Organization Law and the Settlement of Labour Disputes Law of 2012 were currently reviewed and their amendment was under consideration in close consultation and cooperation with all stakeholders including workers, employers, members of Parliament, and ILO experts. In fact, the ILO had been involved in developing the draft text since the beginning of process, and the Government would continue informing the Committee on the progress made in the labour law reform. With regard to the Labour Organization Law, the Government had constantly sought the outcomes of discussions among the social partners, as well as comments, views and suggestions by labour federations, employer organizations, the Union of Myanmar Federation of Chamber of Commerce and Industry, and the ILO, and had taken them into consideration in the review process. The question of the 10 per cent membership requirement and the impact of the pyramidal structure formed part of the Government's considerations under the labour law reform process. The requirements for the eligibility to trade union office set out in the Rules to the Labour Organization Law sought to preserve local ownership, and to capture adequate and genuine representation of workers to the body which would be entrusted to promote and protect the interest of workers.

Disputes in the special economic zones (SEZs) were settled by respective Management Committees in accordance with Chapter 16 "Matters relating to Labour" of the Special Economic Zone Law of 2014 (SEZ Law). A labour officer from the Ministry of Labour, Immigration and Population (MOLIP) was attached to such committees, and provided advice and guidelines in the dispute settlement process. If no settlement was reached within the Management Committee, such dispute would be settled pursuant to the Settlement of Labour Disputes Law, although the SEZ Law currently referred to the repealed Trade Disputes Act.

The right to freedom of association in Myanmar continued to be strengthened. With the political will of the Government, close tripartite cooperation, technical assistance of the ILO and the support of the international

partners, the speaker was confident that workers and employers would be able to enjoy their fundamental rights increasingly, and that such progress would eventually lead to decent work and sustainable development.

The Worker members recalled the circumstances under which the case of Myanmar had last been discussed in the Committee in 2011 and considered that much had changed since then: the Labour Organization Law and the implementation regulations had been enacted; independent unions had been allowed to form and carry out activities for the first time in decades; the Federation of Trade Unions of Burma (FTUB) had returned home from exile, had begun to organize thousands of workers and had obtained registration as the Confederation of Trade Unions of Myanmar (CTUM); and trade unionists had been released from prison and had continued their union activities. However, despite such important steps, the situation for unionists was deteriorating and many serious issues remained. Although unions had welcomed the Government's decision to amend the Labour Organization Law and the Settlement of Labour Disputes Law, a draft of the Labour Organization Law prepared by the MOLIP failed to address most of the concerns raised by the Committee of Experts and the International Trade Union Confederation (ITUC) and was worse in several respects. Furthermore, completed applications for union registration had been denied for arbitrary reasons or on the basis of unpublished Government directives. In some cases, the police had violated workers' civil liberties, including through physical harassment or arrest, in response to the exercise of trade union rights, including strikes. Workers attempting to organize were routinely fired with near impunity due to a broken dispute resolution system, and blacklisting was a common practice in the industrial zones.

With regard to legislation, they stated that since the Government had ignored much of the technical advice of the ILO, the Labour Organization Law restricted the fundamental rights of workers' and employers' organizations, as had been repeatedly confirmed by the Committee of Experts. The following concerns were raised: the minimum membership requirement of 30 workers to form a basic labour organization combined with the additional support of 10 per cent of the workplace was too high, particularly in large workplaces; a requirement for labour organizations at all levels to be formed only of workers of the same trade or activity had limited the ability of unions to determine their own membership, and a narrow interpretation of the terms "trade" and "activity" had led to narrowly defined unions; union structure was strictly organized and mirrored the administrative structures of the Government leading to workers being unable to form unions that corresponded to their needs; burdensome requirements for the formation of higher-level organizations; restrictions on the eligibility of executive committee members who must be Myanmar citizens or foreigners legally residing in the country for at least five years, 21 years of age, and workers in the relevant trade or activity for at least six months; a prohibition on strikes without first proceeding through the steps of the dispute resolution mechanisms thus limiting strikes to industrial disputes and prohibiting sympathy strikes and strikes over economic and social policy; and a list of workplaces in the law where a 500-yard perimeter must be respected, which could render ineffective the strike by locating it far from the employer.

While the Government had initiated a process to reform the Labour Organization Law and the Settlement of Labour Disputes Law, the numerous tripartite meetings over the past year and a half had been superficial, had not led to meaningful progress, and it was clear from the Government's statements and its draft proposals that it had no intention of addressing workers' concerns or complying with the Convention. Although a later draft of the Labour Organization Law withdrew the minimum membership number to form a union, it failed to address many other concerns and created several new problems. In particular, the draft: excluded informal economy workers, which would lead to the dissolution of the majority of unions in the country (unions of self-employed agricultural workers); provided that there could be no more than three basic unions in a trade; kept the rigid trade union structure, and established overly high minimum numbers to form higher level unions; provided for "acknowledgment" of trade unions instead of registration, which would only last two years and would have to be renewed; created new and illegitimate reasons for the chief registrar to deregister unions; and included a new and expansive provision on interfering with or obstructing workers from coming to work which could be easily used to frustrate strikes. The Government must therefore engage in a meaningful process of consultations with workers and employers and should request the ILO to provide detailed comments on the drafts to assist it in developing amendments that would bring the laws into compliance with the Convention.

As regards registration, it was stated that despite clear rules about registration requirements, registrar officials had denied complete applications for arbitrary reasons, referring in some cases to "directives" from the Ministry containing additional registration requirements, without however providing them to the unions and claiming that they were not public. According to unionists, the directives required, for instance: all executive committee members to submit their curriculum vitae; all union members to submit photocopies of identification cards (many workers were unable to obtain government-issued identification cards); and the union to obtain a letter from the employer acknowledging that it had informed the management of its intent to register, thus giving employers the ability to veto the union's registration by withholding the letter. More recently, unions had reported a supposed requirement to obtain signatures and photocopies of identification cards from at least 10 per cent of the workforce who were not

union members so as to show their support for union formation, thus distorting section 4 of the Labour Organization Law (itself in violation of the Convention) and giving non-union members a veto. Such new and secret requirements clearly frustrated what should be a simple, administrative process. The Government must prohibit registrars from requesting anything beyond the Labour Organization Law and its regulations, and if the mentioned directives did in fact exist, they should be withdrawn immediately.

Turning to the issue of strikes, the speaker noted that in addition to the obvious flaws in the legal framework governing strikes, workers had been unable to exercise their right to strike freely, and had often faced dismissal, harassment and lawsuits for raising workplace concerns. For example, a strike had been staged by union members at a sock factory in Industrial Zone 3 in January 2018 after the employer's refusal to reach a collective agreement which had responded to the union's demands. Even though the arbitration body to which the dispute had been submitted had ordered the employer to sign the agreement and negotiate over the remaining issues, the employer had dismissed the 48 workers involved in the strike, had filed a lawsuit against 13 of the strike leaders and subsequently dismissed another 25 workers. In other cases, workers had been arrested or threatened with legal proceedings for their role in strikes or had reported threats by the police, security guards or employer-hired thugs, sometimes leading to serious injuries. In most cases, law enforcement took no action in response to such attacks, complaints submitted to the police were often not accepted and such approach had become a normalized way of dealing with unions.

Concerning deregistration, the speaker had been informed that labour officials in some areas had ordered union leaders to report to their offices every Sunday, as failure to do so could result in the union's de-registration. Such a requirement constituted serious interference in trade union activity and would infringe upon workers' ability to conduct union activities, and deregistration in those circumstances would constitute an extremely serious violation of freedom of association.

The Employer members recalled that the fundamental Convention had been ratified by Myanmar in 1955, and that its application had been the subject of 18 hearings in the Conference Committee and 26 observations by the Committee of Experts. Myanmar was in the process of re-establishing a democratic system of government after many years of military rule. As part of the process, legislation had been adopted on a range of issues within the purview of the Convention, for instance the Law on the Right to Peaceful Assembly and Peaceful Procession. Since the advances were relatively new, there had been limited ability to assess their effectiveness and compliance with the Convention, as also reflected in the report of the Committee of Experts.

Nonetheless, the Employer members noted that the Committee of Experts had raised the following issues bearing the potential for breaches to occur: (i) possibility that the chapter on Rules and the corresponding chapter on Offences and Penalties of the Law on the Right to Peaceful Assembly and Peaceful Procession could allow for serious restrictions on the right of organizations to carry out their activities without interference, as contemplated by Article 3 of the Convention; (ii) lack of information on the labour law reform process seeking to address potentially onerous and non-compliant requirements for the establishment of trade unions, restrictive eligibility criteria for union officials and a residency threshold for foreign workers to be able to join a union; and (iii) a lack of guaranteed coverage of the Convention for workers in SEZs.

In this regard, the Employer members observed that the Government had assured the Committee of Experts that its new Law on the Right to Peaceful Assembly and Peaceful Procession was in full conformity with the Convention, requiring only 24-hour advance notification and repealing sanction provisions. However, they noted that the Committee of Experts continued to express the concern that the law might still permit serious restrictions on the right of organisations to conduct their activities without interference. With respect to the labour law reform process, a draft law to amend the Settlement of Labour Disputes Law had been discussed with tripartite partners at the Labour Law Reform Technical Working Group in July 2017. While noting the Government's indication that it was reviewing the penalties in the draft law and drafting amendments, the Employer members also noted the concerns of the social partners over the lack of information from the Government about the process and over instances of resistance to making amendments, leading to fears that the result might be worse than the current situation, in particular in view of the Government's reluctance to grant informal workers the right to organize, despite the fact that thousands had already formed unions under the Labour Organization Law.

Furthermore, the Committee of Experts had expressed concern over threshold requirements for unions to have 30 members as well as 10 per cent affiliation in the same trade or activity before being able to establish a basic labour organization, the eligibility requirement for union officials to have been working in the same trade or activity for six months and the requirement for foreign workers to be resident in the country for five years to be able to join a union. Subject to the caveat that certain threshold criteria were appropriate, for instance the basic criteria to

establish any incorporated body, the Employer members endorsed the latest request formulated by the Committee of Experts in this regard, since dual or overly restrictive criteria could have the effect of inhibiting the freedom to form and join organizations and to elect representatives as provided in Article 3 of the Convention. Emphasizing also that the Convention applied equally to workers' and employers' organizations, they suggested that unions should not be treated differently to employers' organizations with respect to the freedom to establish organizations. The Employer members further recalled the 2015 governments' statement, which recognized that the right to strike was a matter for national regulation.

With respect to SEZs, concerns had been expressed around the fact that dispute procedures for workers in SEZs were more cumbersome than for other workers, and that labour inspector powers had been delegated to SEZ management bodies. In response, the Government had indicated that the labour inspectorate was permitted to coordinate and cooperate with SEZ management to have jurisdiction, and that the Labour Organization Law could be enforced in SEZs. The Employer members echoed the request of the Committee of Experts that the Government take the necessary steps to ensure that SEZ workers were treated consistently with other workers as well as provide information about the actual practice of dispute settlement and the results of labour inspectorate activities in SEZs.

The Employer members believed that the current situation in Myanmar could be described as one of concern that things might go wrong rather than of certainty that things had gone wrong. In many ways, Myanmar was standing at a new beginning, which rendered the task of establishing labour laws in conformity with international standards all the larger. It was time to consider carefully and thoughtfully how the future should look with respect to labour relations, using a careful and highly consultative approach involving all the social partners and involving independent expert advice from the ILO when appropriate. They noted that, in February 2018, the ILO had briefed Parliament and tripartite constituents on the application of international labour standards in Myanmar, with a view to gathering support for the development of a strategic approach to the promotion of international labour standards for the upcoming Decent Work Country Programme. The subsequently developed proposals were now under consideration.

In conclusion, in the Employer members' view, nothing was too late at this juncture. It was the right moment for the Government to take heed of the concerns expressed by the Committee of Experts and the Conference Committee, and to collaborate with the social partners in the development of a sound platform for the conduct of labour relations. The Employer members therefore urged the Government: (i) to continue to avail itself of the expertise and technical assistance of the ILO with a view to completing the development and introduction of labour laws in line with the explicit standards and guarantees set out in the Convention; (ii) to consult with the social partners with the aim of ensuring that workers were able to elect their officers freely as envisaged by Article 3 of the Convention; (iii) to apply the Convention without distinction between workers' and employers' organizations; and (iv) to provide information, as soon as available, on the steps taken to ensure that SEZ workers were treated consistently with other workers as well as on the actual practice of dispute settlement and the results of labour inspectorate activities in SEZs.

The Worker member of Myanmar expressed the hope that with the significant recent changes, including the enactment of the Labour Organization Law, Myanmar would enter a new era, where workers would enjoy their trade union rights in full freedom and would be included in the economic and social development of the country. Workers were still struggling for the development of an independent and strong labour movement, and organizing in the country remained severely hindered by major shortcomings in the legislation and the lack of an enabling environment. The Labour Organization Law contained numerous provisions that hindered union formation and registration by setting excessive requirements and thresholds. It also interfered with the right of workers' organizations to elect their officers freely and to formulate their programmes and activities.

In practice, trade union density remained extremely low, and workers were deprived of their fundamental right to organize and defend their interests. In the absence of protection against anti-union discrimination, many workers who had formed or joined labour unions had subsequently been dismissed or subjected to other forms of reprisal by their employers.

Furthermore, workers and unions were prohibited from taking industrial action. The Labour Organization Law required that a majority of workers voted for strike action to be undertaken, a threshold that excessively restricted the exercise of industrial action. In addition, permission from the relevant federation to go on strike was required, which was a severe infringement of unions' right to organize their activities freely. Even when a strike action was staged, its impact was severely hampered by the 500-yard picketing restriction, as demonstrations were prohibited within 500 yards from hospitals, schools, religious buildings, airports, railways, bus terminals, ports or diplomatic missions and military or police installations.

The 2018 series of amendments to the Law on the Right to Peaceful Assembly and Peaceful Procession, as passed by the Upper House, had been denounced by labour and human rights organizations. Among the many contentious provisions, a new section provided that anyone who supported a protest either financially, materially or through other means would be deemed in breach of national security, the rule of law, public order, or public moral, and could face up to three-year imprisonment and a fine. Such a vague formulation could be used by the authorities to curb industrial action and suppress unions. The previous law had already been used to arrest and jail students, farmers, journalists and other activists.

The Committee of Experts had repeatedly emphasized the need to bring the national legislation into full conformity with the principles and rights enshrined in the Convention; but the Government had failed to take into account the concerns raised. In fact, the amendments proposed by the Government to the Labour Organization Law and the Settlement of Labour Disputes Law would further restrict freedom of association and trade union rights. The last draft proposal maintained a strict control over the formation of unions, which would only be “acknowledged” and not registered, and also increased the powers of the chief registrar to deregister unions.

Myanmar had been undergoing major political transformation, while opening the country to investments which fostered economic development. It was crucial to ensure that workers were included from the start in the process of structuring the economic change in the country, and a solid labour movement led by independent and strong unions was therefore necessary. Such changes could only be achieved in an environment conducive to the exercise of the right to freedom of association. The current legislative framework highly restricted trade union rights, and it appeared that the draft amendments proposed by the Government would not improve the situation.

To implement the decision of the Governing Body urging the Government to further engage in the process of the labour law reform to promote freedom of association through tripartite dialogue, it was important that ILO renew the related project and provide support to all the tripartite partners.

In conclusion, the speaker urged the Government to engage in a meaningful and constructive process of consultations with workers and employers, and to amend the current labour laws in a way that would guarantee to all workers the right to freedom of association and the right to organize freely.

The Employer member of Myanmar highlighted the significant growth of the private sector over the last five years. The private sector of Myanmar was a major contributor to the gross domestic product (GDP) of the country. Over the past years, the country had experienced a steady GDP growth pattern (5.9 per cent in 2016; 6.4 per cent in 2017; and a 6.8 per cent forecast for 2018). The growth constituted evidence of employment creation, productivity output and harmonized co-operation between employers and workers. In recent years, hundreds of thousands of new jobs had been created by the private sector. In the labour-intensive manufacturing sector alone, the jobs created had doubled from 2013 (approximately 200,000) to date (over 400,000). Moreover, according to the 2017 Annual Labour Force Survey, child labour participation in the workforce had decreased significantly, thanks to the tripartite partners. Recently, the Government had developed the Myanmar Sustainable Development Plan, in line with the national economic policy as well as the Sustainable Development Goals (SDGs), which aimed at ensuring inclusive and sustained growth of the country and its people. In that context, the private sector had been identified as a prominent contributor to the development of the country.

The speaker considered that the Labour Organization Law, which provided for the establishment of labour organizations as well as their rights and responsibilities, was in line with the Convention. In her view, the country knew best the needs of the society based on the culture and customs of the country, and the Conference Committee should not be micro-managing national legislation. After all, Article 8 of the Convention clearly stated that, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectivities, should respect the law of the land. The speaker indicated that, employers, workers and Government had been meeting for the tenth time since 2015 during the National Tripartite Dialogue Forum, openly dialoguing the needed reforms of the laws, based on reality and practice. The Government’s proposed revision to the Labour Organization Law included a new chapter on the formation of employers’ organizations, which represented a positive step. To date, there was only one township-level employers’ organization and one employer federation in the whole country.

Regarding the Committee of Experts’ observations on penalties, the speaker noted that the issue should not be limited to penalty levels and penalties against employers. The lack of significant penalties to deter illegal activities of unions had a significant, negative impact on industrial peace in Myanmar. While noting the right of workers under national law to engage in legal industrial action, she stated that union members had repeatedly carried out strikes using illegal tactics, such as fully blocking the entrance to factories, in violation of national law and

international best practice. Such actions inevitably had resulted in physical confrontation, including instances where unionists had assaulted factory management and other, non-union workers. Violations of the Labour Organization Law and regulations on strikes were also observed. The speaker called on the Government to devise, through tripartite dialogue, ways and solutions to deter such actions, or else industrial relations and rule of law would be undermined. The anarchy currently characterizing industrial action was not in accordance with national law and not conducive to positive labour relations. Illegal industrial action was detrimental to current and potential foreign investment and could negatively affect job creation. Moreover, the speaker denounced the repeated calls by national trade unions during labour law reform meetings for prison sentences against employers for minor, administrative labour law infractions, contrary to the recommendations of the ILO. A punitive system of labour relations would be unhelpful to the promotion of harmonious labour relations.

Furthermore, the speaker highlighted the lack of employer confidence in the arbitration system. Albeit created for collective disputes and even though the law stated clearly that individual cases were for the competent courts, the Government insisted on sending individual cases to the arbitration system (currently over 80 per cent of the total number of cases). Tripartite dialogue on establishing a proper dispute resolution system had taken place but results remained uncertain. Arbitrators were not required to have legal background and, at the conciliation and first arbitration phase, members of unions and employers' organizations could act as conciliator or arbitrator themselves. The lack of knowledge and conflicts of interest often yielded verdicts that were clearly against the law and undermined employer confidence in the arbitration system. Lastly, the speaker indicated that, under the Factories Act, only two types of businesses were regulated: continuous work where the law allowed for 48 working hours in a week (eight industries) and non-continuous work with 44 hours per week (all other industries). Such rigid working hours were not in tune with the flexibility needs of the newly developed industries (such as security service, oil and gas, garment, and food processing industry) and rendered them uncompetitive.

In conclusion, the speaker emphasized that, for a young democracy like Myanmar, the journey was long, and it would undoubtedly take time to get where all stakeholders wanted to be. The social partners needed to work together constructively.

The Government member of Bulgaria, speaking on behalf of the European Union (EU), as well as Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Norway and Serbia, attached great importance to the respect, protection and fulfilment of human rights, including freedom of association of workers and employers and the right to organize, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The EU and its Member States were engaged in the promotion of the universal ratification and implementation of the eight fundamental Conventions. The speaker welcomed the positive steps made by the Government to improve labour rights in a number of areas. The ILO's involvement was also welcomed, particularly with respect to the recent development of a Decent Work Country Programme outline which included freedom of association as a priority. It should be implemented swiftly. Together with the Governments of Denmark, Japan and the United States, as well as with the ILO, the EU had actively provided support for the Myanmar Labour Rights Initiative to Promote Fundamental Labour Rights and Practices, notably through funding the last Stakeholders' Forum which had taken place in Nay Pyi Taw on 17 January 2018 to discuss progress and challenges in labour market reforms including labour law reform. In view of the constructive dialogue on the way forward during the event, the speaker reiterated the need for the Government to continue its efforts to bring national law in line with international labour standards, to foster tripartite dialogue, and to ensure freedom of association. Noting with interest that tripartite dialogue was being strengthened through the National Tripartite Dialogue Forum, she encouraged the Government to finalize the Labour Organization Law in consultation with the social partners. Observing that the first draft amendment to the Settlement of Labour Disputes Law had been discussed on the basis of tripartite consultations in July 2017, the speaker encouraged the Government to move forward with the reform process in close consultation with the social partners. With reference to the concerns raised with respect to some provisions in the Rules to the Labour Organization Law containing restrictions for eligibility to trade union office, and a requirement for the affiliation of 10 per cent of the workers in order to establish a basic labour organization, she requested the Government to take measures to amend the Rules to ensure that workers were able to elect their officers freely, and to form and join organizations of their own choosing. Lastly, the Government was requested to ensure that the rights under the Convention were also guaranteed in SEZs, where specific laws might apply. The EU would remain committed to close and constructive engagement and partnership with the Government.

The Government member of Thailand, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), recognized the positive developments in the country, including the demographic reform process, and noted with appreciation the information provided by the Government. The ILO had provided technical assistance on the promotion and protection of labour rights, and tangible results had been achieved in that regard. Moreover,

the Decent Work Country Programme outline endorsed by the national tripartite body would be implemented. The speaker called upon the ILO to recognize the abovementioned positive developments.

An observer representing the IndustriALL Global Union emphasized that the Labour Organization Law deprived workers of their right to establish and join organizations of their own choosing. Section 4 of the Labour Organization Law imposed restrictions on the structure of trade unions, required that workers worked in the same trade or activity to form a union, and set strict requirements to form higher-level organizations.

With respect to the restrictions related to the structure of trade unions, section 4 of the Labour Organization Law required unions to strictly follow the administrative structure of the country. Specifically, unions could only be formed as: (i) basic level unions that covered a single workplace; (ii) township level unions which brought together unions in the same township; (iii) regional or state-level unions, comprised of township unions; (iv) federations formed of state-level unions; and (v) confederations. Under that scheme, it was impossible for example to create an enterprise-based union, if the employer was in more than one township. Instead, each workplace of that employer would have a separate union. It was also impossible to form an industry or occupational union at a national level, without having created intermediate structures such as township and state-level unions. This pyramidal structure did not serve the interests of workers or employers.

The requirement that workers be in the “same trade or activity” to form a union, created silos from bottom to top. As a result, unions could not be formed among workers in similar or even unrelated “trades or activities”. Moreover, registrars had narrowly interpreted the law and regulations. For example, workers in the “transport” sector had been forced to form separate unions for truck drivers, train drivers, inland waterways, taxis, etc. It had led to the creation of basic township unions of workers from the same township performing the same task.

Turning to higher-level organizations, township unions could only form a state-level union of workers performing the same task. Similarly, federations were formed of state-level unions of workers performing the same activities. There could be no structure representing workers of different trades or activities. The Committee on Freedom of Association had held that any restriction, either direct or indirect, on the right of unions to establish and join associations of unions belonging to the same or different trades, on a regional basis, would not be in conformity with the principles of freedom of association. Finally, the speaker urged the Government to rethink the system, together with the unions, so as to ensure respect for the workers’ right to association.

Le membre gouvernemental de la Suisse a soutenu la déclaration faite par l’Union européenne. En ce qui concerne la loi sur le droit de réunion et de manifestation pacifiques, il a souhaité encourager le gouvernement à poursuivre des amendements qui réduisent les restrictions au droit de réunion, et a salué les consultations avec les partenaires sociaux menées par le gouvernement quant au processus de réforme de la loi sur le règlement des conflits du travail. Des relations de travail basées sur le bon fonctionnement du partenariat social et la confiance dans le cadre du dialogue social constituent des facteurs clés pour le développement durable d’une économie. La liberté syndicale et la protection du droit syndical et du droit d’organisation et de négociation collective font partie des fondements d’une démocratie et constituent la base des négociations entre partenaires sociaux dans d’autres domaines. Pour cette raison, l’orateur appelle le gouvernement à envisager la ratification d’autres conventions fondamentales. Il l’encourage à prendre les mesures nécessaires afin de garantir que la nouvelle loi sur le droit de réunion et de manifestation pacifiques corresponde pleinement aux dispositions de la convention, ainsi que les mesures nécessaires pour que le processus de réforme de la législation du travail se fasse en concertation avec les partenaires sociaux et soit en conformité avec les normes internationales. Mettant à disposition l’expertise de son gouvernement en matière d’implication des partenaires sociaux dans les réformes importantes, l’orateur soutient les projets de coopération de l’OIT au Myanmar visant une amélioration du dialogue social en entreprise.

The Worker member of Japan drew attention to the increasing discrimination against union leaders in Myanmar, which made it difficult for unions to organize or conduct activities and went against the core ILO principles of freedom of association and the right to organize. She reminded the Government of the Decision on the follow-up to the resolution concerning remaining measures on the subject of Myanmar taken by the ILO Governing Body in March 2018, which had urged the Government to engage in the process of labour law reform to promote freedom of association through genuine and effective tripartite dialogue and in line with international labour standards. The reality of the trade union situation was bleak. Although the formation of unions had been progressing rapidly since the Labour Organization Law’s enactment, so had cases of union-busting and discrimination against trade union leaders, in clear violation of the Convention. Since 2017, the CTUM had reported 29 cases of unfair dismissal as a result of trade union organizing that had led to the termination of 3,424 union leaders and members. In many cases, the Arbitration Council had ordered their reinstatement; but to no avail. Moreover, multiple problems surrounded the dispute process: the arbitration process was time-consuming; fines

provided by the Labour Organization Law for non-compliance with Arbitration Council decisions were so low (amounting to US\$750) that employers often opted to disregard them; employers' failures to enforce agreements concluded with unions went unpunished, and as a result, many unfair dismissal cases reached the court as individual cases. In an environment where legal enforcement was weak and collective bargaining non-existent, workers could be subjected to criminal punishment for industrial actions. The speaker requested the Government to take concrete measures to guarantee freedom of association, including the amendment of the Labour Organization Law and the Settlement of Labour Disputes Law, in order to protect trade union activists from employers' discriminatory treatment and dismissals.

El miembro gubernamental de la República Bolivariana de Venezuela valoró que, pese a los cambios políticos y económicos, el Gobierno afirmara su compromiso de continuar garantizando los derechos laborales. Con base en la Ley sobre Organizaciones Sindicales, se han constituido sindicatos y federaciones, y la tendencia es un aumento de esos registros. En virtud del compromiso del Gobierno, este aumento debería mantenerse. También se está llevando a cabo un proceso de reforma de la legislación laboral, sobre la base de consultas tripartitas. A este respecto, el orador alentó al Gobierno a fortalecer sus relaciones con los interlocutores sociales. Por lo tanto, la Comisión debería tomar nota de todos los aspectos positivos que se desprenden de las explicaciones suministradas así como de la buena disposición del Gobierno, y adoptar conclusiones objetivas y equilibradas, lo que dará lugar a que el Gobierno pueda considerar y valorar las conclusiones en el marco del cumplimiento del Convenio.

An observer representing Building and Wood Workers International (BWI), speaking on behalf of the Building and Wood Workers Federation of Myanmar (BWFM), stressed that the unions in the construction sector were discriminated against and referred to the specific situation of two unions. First, a union created in a Special Economic Zone had been denied its registration application on the ground that a special MOLIP order had been issued to deny registrations from unions in the construction sector. MOLIP officers had argued that the country was not ready for the registration of unions in the informal economy. The second case concerned the denial of a union's registration on the ground that the applicants had not been employed by the company for more than six months. The requirement was impossible to meet in the construction sector where work was intermittent and informal. In conclusion, the speaker urged the Government to end discrimination against unions in the construction sector, and to stop using arguments such as informality and intermittence of the work to deny registrations. In particular, the legal requirement of the six months of service had to be lifted.

The Government member of the United States indicated that although union density remained low, since the 2011 enactment of the Labour Organization Law, more than 2,400 basic labor organizations had been registered at various levels specified in the law. Still, according to the ILO Liaison Officer, restrictions on freedom of association continued in both law and practice. The Government and the social partners had committed to reform the Labour Organization Law and the Settlement of Labour Disputes Law of 2012, and a Technical Working Group on Labour Law Reform had been established and convened to hold tripartite consultations on potential amendments. However, the amendments circulated by the Government in September 2017, while lifting some restrictions on the formation of workers' and employers' organizations, would not address the issue of lowering the minimum membership requirements for basic labour organizations and removing the eligibility requirements for executive committee members.

Furthermore, the following issues were also raised: the slowing down of the registration rate of trade unions; imposition of registration requirements not set out in the law by some local labor offices, thus frustrating trade union registration; reprisals against workers during and after union formation, as well as lack of penalties against violating employers; low number of registered employers' organizations (27 basic employers' organizations, one township organization and one employers' federation); and low organizational density amongst employers, partly caused by structural restrictions in the law, that inhibited the growth of strong industrial relations in the country.

The Government was therefore urged to take full advantage of the tripartite consultative process on labor law reform to bring the laws into compliance with the Convention, in full consultation with the social partners, and in particular to: reduce the minimum membership threshold; remove eligibility requirements for executive committee membership; protect workers from unfair labor practices during trade union formation, including by prohibiting all forms of retaliation; revise the tiered structural requirements so that both workers' and employers' organizations could form and federate more freely; and ensure that penalties for non-compliance with the law were sufficiently dissuasive, including by explicitly prohibiting non-compliance with Arbitration Council decisions. To conclude, the speaker urged the Government to enact legal reforms through tripartite consultations and encouraged the tripartite partners to avail themselves of ILO technical assistance in that regard.

The Worker member of the Republic of Korea, speaking also on behalf of the Australian Council of Trade Unions and the Canadian Labour Congress, clarified that procedures for dispute settlement within the SEZs were more cumbersome because, although required by the SEZ Law, no procedure had been established for parties in a dispute to notify the Management Committee so that it could mediate. SEZs aimed to attract foreign investment, and the law offered incentives for export-oriented businesses. Many Korean companies were operating in the SEZs, and although no concrete information was available about working conditions, due to denial of access for trade union organizers, the numerous cases of violations by Korean companies of labour law and of freedom of association indicated that SEZs must be given special attention. For instance, in November 2017, unionized workers in a Yangon sock factory had gone on a 21-day strike to obtain the employer's respect for labour law; the employer had not only disregarded the regional arbitration body's award, but had also dismissed 73 workers and filed a lawsuit against 13 union leaders for leading the strike. In another instance at a wig factory, the arbitration body had ordered the reinstatement of the union president and a central committee member who had been dismissed; instead the employer had dismissed 60 union members and threatened to sue the workers for defamation and unlawful strike. The Government of the Republic of Korea had recently announced that, under its New Southern Policy, it would tighten economic ties with ASEAN countries, including Myanmar. She expressed concern that increased Korean investment would prove very harmful for Myanmar's workers and would undermine fundamental labour rights. The ILO principles were clear: all workers should enjoy fundamental labour rights, including those working in SEZs. She urged the Government to take all necessary measures to fully guarantee rights enshrined in the Convention to workers in SEZs, and to ensure that the SEZ Law did not interfere with the application of other laws.

The Worker member of Turkey stated that in March 2018, the Upper House had approved amendments to the Law on the Right to Peaceful Assembly and Peaceful Procession which would include: a potential three-year jail term for anybody deemed to have supported, financially or otherwise, a protest that had the intention to "break national security, rule of law, public order or public morals"; and a new obligation for those seeking permission to hold a rally to inform the relevant local authorities of how much money would be used to fund the gathering and who would fund it. Thousands of people had protested against the proposed changes, and some parliamentarians had considered that they would diminish protection for the rights of workers, farmers, ethnic groups, as well as the rights of citizens to protest against corruption. If adopted, the amendments would stifle freedom of expression and peaceful assembly and would mark a significant shrinking of democratic space in the country. The Government must therefore repeal or amend the Law.

The right to free assembly and the right to strike were inalienable rights for workers and their families, including those that had been displaced. However, in practice, the Labour Organization Law had weakened the trade union movement, and support was therefore expressed for the call by the Worker members and the CTUM to amend the Labour Organization Law to ensure its compliance with the Convention on the right to strike. The speaker also expressed solidarity with the Worker member of Myanmar regarding the strive to ensure that the right to organize was fully protected.

The Government representative indicated that he had carefully listened to all concerns, views and suggestions raised during the discussion, which would be brought back to the capital for due consideration with a view to ensuring better compliance with the Convention. The Convention had been ratified in 1955, but the Labour Organization Law had been adopted in 2011. Since then, more than 20,000 employers' and workers' organization had been established. More organizations would mean more collective bargaining. As Myanmar continued to improve the Law on the Right to Peaceful Assembly and Peaceful Procession, it was heartening to note that tripartite spirit, which was the hallmark of the Committee, was taking root and developing in Myanmar. That should be viewed as progress. Based on a tripartite spirit, three Technical Working Groups relating to a Decent Work Country Programme, labour law reform and communication had been established. All suggestions received in the Committee would be discussed by the Labour Law Reform Technical Working Group. Three Stakeholder Forums on Labour Law Reform had also been held in 2015, 2016 and 2018, thanks to the Governments of Denmark, Japan and the United States, as well as the ILO. Local and international partners had participated to exchange views and experiences, and the forums had produced the intended outputs. The Labour Law Reform Technical Working Group and tripartite participants were constantly interacting. The achievements so far could be seen as a glass half empty or half full. A lot had been done compared to the labour law situation in the past, but more needed to be done for gradual progress towards compliance with the Convention. For this purpose, assistance from international partners and technical cooperation from the ILO would be necessary with a view to achieving compliance with the Convention.

The Employer members indicated that fixing a threshold per se did not amount to a violation regarding the right to establish organizations. Many countries fixed thresholds for establishing organizations, and some even aligned the thresholds with those for forming societies. Many interventions had underlined, however, the

cumbersome nature of the process of establishing organizations in Myanmar, due to additional and unnecessary thresholds. In that context, the Employer members also drew attention to the need to ensure equality between workers' organizations and employers' organizations as far as conditions for establishment of organizations were concerned. On the other hand, the right of workers to establish organizations of their own choosing also involved the risk of the creation of a multitude of scattered unions, which would give rise to serious problems and would entail the need for a better organization of the trade union movement. In that regard, the Government must be mindful of lessons that could be learned from others.

Furthermore, the Employer members stated that many interventions had referred to repressive activities concerning strikes, although the gatherings rather amounted to public protests. They wished to emphasize that the Law on the Right to Peaceful Assembly and Peaceful Procession constituted a general civil law applicable to all and not only to trade unions, whereas the Labour Organization Law and the Settlement of Labour Disputes Law were of a distinct nature and genuinely belonged to the area of labour legislation. The Employer members urged the Government to take heed of all requests related to labour legislation and the SEZs.

In their view, Myanmar was still at the beginning of the implementation process. There were concerns, but as yet, nothing was broken to the extent that it could not be fixed. Social dialogue was the way forward, and Myanmar had the platform to succeed in this regard.

The Worker members stated, in reply to some of the comments made, that the question of trade union plurality was a challenge for workers in many countries, as there were different models and different solutions, but it was for the workers to decide on their own form of organization. The issue of the Law on the Right to Peaceful Assembly and Peaceful Procession was a question for democracy, democratic space and social movement, and organized labour unions formed part of it.

The speaker further indicated that starting in 2012, interest in investment in Myanmar had considerably grown, largely because the country had been (and continued to be) the world's next low-cost manufacturing hub, with wages among the lowest in Asia. At the time, workers had warned that, in the absence of a demonstrated commitment to the rule of law and coherence in economic and social policy, there had been no guarantee that the generated employment would constitute decent work. Indeed, interest in foreign investment had waned, which was partly due to the poor legal environment for social dialogue and the absence of coherent labour relations policies and of the rule of law, particularly for workers. Since both employers and workers had agreed that the dispute settlement system was broken, more tripartite social dialogue was needed as the law was being reformulated. In March 2018, trade associations representing the major United States apparel and footwear brands had sent an urgent letter to the State Counsellor explaining that the potential to initiate, maintain, and expand business relationships in Myanmar would be greatly enhanced by the ability to engage with workers that enjoyed freedom of association and collective bargaining, and the ability to address any grievances through predictable, transparent channels, enforced by the Government, that had the confidence of all stakeholders. The brands had noted, however, that the existing labour laws were not fit for that purpose and that the Government had so far failed to enforce even those flawed laws. They had further found that factory managers had routinely intimidated workers, had urged them not to form unions and had called the police during work stoppages as an intimidation tactic to break strikes.

Rather than following a high road development strategy, it would appear that Myanmar was racing to the bottom. The Worker members had expected much more from the Government. However, if it pursued truly authentic social dialogue that could be seen in results, put in place the proper laws and invested in developing a mature industrial relations strategy, Myanmar could still distinguish itself and attract more and more responsible businesses. Consequently, the Government was requested to: engage in meaningful dialogue with Worker and Employer representatives to ensure that the Labour Organization Law and the Settlement of Labour Disputes Law complied with the Convention; ensure that workers' and employers' organizations were able to register through a simple, administrative process – any directives containing additional requirements to those contained in the Labour Organization Law and its Rules should be withdrawn immediately, and all registrar officials should be instructed not to request any such additional documentation; ensure that workers were able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security; address the shortcomings in law and practice regarding labour rights in the SEZs; accept a technical mission as soon as possible to develop an industrial relations system based on freedom of association and collective bargaining, including to review all drafts of the Labour Organization Law and Settlement of Labour Disputes Law and recommend amendments consistent with the Convention; and inform the Committee of Experts at its next session on the progress made in the implementation of the Convention in law and practice.

Conclusions

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

The Committee regretted the absence of progress with respect to the long-awaited legal framework in which workers and employers may freely exercise their rights under the Convention.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:

- ensure that the Labour Organisations Law and the Settlement of Labour Disputes Law are brought into full compliance with Convention No. 87 by availing itself of ILO technical assistance during the legislative reform process;
- ensure that workers are able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security;
- ensure that the registration of workers and employers organisations is not subject to unreasonable requirements to guarantee that the right to join or establish organisations of their own choosing is not hindered in practice;
- 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; and
- bring the labour legislation in Special Economic Zones (SEZs) into conformity with Convention No. 87, with full consultation of the social partners.

The Committee urged the Government to accept a direct contacts mission before the next International Labour Conference and to report on progress made on the above mentioned recommendations to the Committee of Experts for its meeting in November 2018.

The Government representative took the opportunity to thank his country's international partners which had engaged in the discussions and expressed gratitude for their readiness to provide assistance to Myanmar in its efforts to ensure compliance with the Convention. He further indicated his Government's intention to work closely with the ILO in order to advance with the Convention's implementation as completely as possible and as quickly as possible.

Conclusions

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

La commission a regretté l'absence de progrès en ce qui concerne le cadre législatif tant attendu dans lequel les travailleurs et les employeurs pourront exercer librement leurs droits en vertu de la convention.

Prenant en compte la déclaration du gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement de:

- veiller à ce que la loi sur les organisations syndicales et la loi sur le règlement des différends du travail soient pleinement conformes à la convention n° 87, en se prévalant de l'assistance technique du BIT pendant le processus de réforme législative;
- veiller à ce que les travailleurs puissent mener leurs activités syndicales sans menace de violence ou d'autres violations de leurs libertés civiles par la police ou les services de sécurité privés;
- veiller à ce que l'enregistrement des organisations de travailleurs et d'employeurs ne soit pas soumis à des exigences déraisonnables, afin de garantir que leur droit de constituer des organisations de leur choix ou de s'y affilier ne soit pas entravé dans la pratique;

- veiller à ce que les demandes d'enregistrement de syndicats soient traitées rapidement et ne soient pas repoussées, sauf si elles ne satisfont pas à des critères clairs et objectifs énoncés dans la loi; et
- rendre la législation du travail dans les zones économiques spéciales (ZES) conforme à la convention n° 87, en pleine consultation avec les partenaires sociaux.

La commission a prié instamment le gouvernement d'accepter une mission de contacts directs avant la prochaine session de la Conférence internationale du Travail et de faire rapport, sur les progrès réalisés en ce qui concerne les recommandations susmentionnées, à la commission d'experts pour sa session de novembre 2018.

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 la falta de progresos con respecto al tan esperado marco jurídico en el que los trabajadores y los empleadores puedan ejercer libremente sus derechos en virtud del Convenio.

Teniendo en cuenta la información presentada por el Gobierno y la discusión que tuvo lugar a continuación, la Comisión instó al Gobierno a que:

- vele por que la Ley de Organizaciones Sindicales y la Ley de Solución de Conflictos Laborales se pongan plenamente en conformidad con el Convenio núm. 87 recurriendo a la asistencia técnica de la OIT durante el proceso de reforma legislativa;
- asegure que los trabajadores puedan desempeñar sus actividades sindicales sin amenazas de violencia ni otras violaciones de sus libertades civiles por parte de la policía o de la seguridad privada;
- asegure que el registro de organizaciones de trabajadores y de empleadores no esté sujeto a requisitos no razonables para garantizar que en la práctica no se obstaculice el derecho a constituir las organizaciones que se estimen convenientes o a afiliarse a ellas;
- se asegure de que las solicitudes de registro de sindicatos se tramiten con rapidez y no se denieguen a menos que incumplan criterios claros y objetivos establecidos en la legislación, y
- ponga la legislación del trabajo en relación con las zonas económicas especiales de conformidad con el Convenio núm. 87, en plena consulta con los interlocutores sociales.

La Comisión instó al Gobierno a que acepte una misión de contactos directos antes de la próxima Conferencia Internacional del Trabajo y a que informe a la Comisión de Expertos, para su reunión de noviembre de 2018, sobre los progresos realizados en relación con las recomendaciones anteriores.

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

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

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

Nigeria (ratification: 1960)

Nigéria (ratification: 1960)

Nigeria (ratificación: 1960)

A Government representative indicated that the Government was fully committed to meet its obligations under the Convention, which had been ratified in 1960. The allegations relating to anti-union discrimination and impediment to collective bargaining were unfounded. Employers and workers had the right to establish and join organizations of their own choosing in full freedom. The right to freedom of association and to organize derived from the Constitution and the Trade Unions Act. Such Act made the recognition of registered trade unions obligatory

for employers whenever workers expressed their interest to join a trade union. The only categories of workers excluded from unionization were those engaged in essential services such as the Customs and Excise Department, the Immigration Department, the Prison Services and the Central Bank of Nigeria. Those exclusions were due to national interests and security reasons. However, the Joint Consultative Committees established in those institutions protected the interests of the workers, who were often afforded better working conditions than those engaged in other sectors of the public service. On the issue of impediment to collective bargaining, trade unions or workers' representatives had the right to bargain collectively with their employers for the purpose of setting terms and conditions of work without any interference whatsoever by the Government. Moreover, the issue of prohibiting an employer from granting a general wage increase without the approval of the Minister as stipulated in section 19 of the Trade Disputes Act, would be brought to the attention of the Tripartite Technical Committee which was currently reviewing labour legislation. Yet, it was important to affirm that in practice, there were no restrictions whatsoever as to general or percentage increases in wages by an employer. The national minimum wage was stipulated by law and the social partners needed to reach a consensus with the tripartite plus body before a minimum national wage could be fixed. The statutory requirement of depositing collective agreements with the Federal Ministry of Labour was purely for record purposes and for monitoring their implementation. In relation to export processing zones (EPZs), trade unions were now fully operating and involved in resolution of disputes. Trade unions operating in the EPZs included the Amalgamated Union of Public Corporations, the Civil Service Technical and Recreational Services Employees (AUPCTRE), the National Union of Food, Beverage, and Tobacco Employees (NUFBTE), the National Union of Hotels and Personal Services Workers (NUHPSW), the National Union of Civil Engineering, Construction, Furniture and Wood Workers (NUCECFWW), the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG).

The Employer members addressed the following issues raised by the Committee of Experts in 2010, 2012 and 2017: the denial of the right to organize to certain categories of employees and anti-union discrimination; the requirement for collective agreements to be approved by the Minister of Labour; and the handling of employer–employee disputes by the authorities. According to the Committee of Experts, acts of anti-union discrimination included the use of blacklists against trade union officers; transfers, relocation, demotion, withdrawal of benefits, restrictions of all kinds non-renewal of contracts, and dismissals. At the national level, the Trade Disputes Act included the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry out banking business under the Banking Act, postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection in the definition of essential services. The Employer members recalled that the Committee of Experts had observed that certain categories of workers were denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Mining Company Limited, the prison services and the Central Bank of Nigeria) and therefore were deprived of the right to collective bargaining. It had also considered that essential services included “those the interruption of which would endanger the life, personal safety or health of the whole or part of the population”. Nigeria had listed a number of services as essential services, considering their importance to national security and stability. The Employer members did not agree that the definition of essential services was broad as observed by the Committee of Experts. The list was in response to the national needs of Nigeria and therefore in compliance with Articles 5 and 6 of the Convention. However, taking into account the concerns raised by the trade unions regarding these exceptions, the Government had elaborated the Collective Labour Relations Bill which had expressly removed the exceptions. The Employer members expressed their satisfaction at the tripartite process that had led to the development and validation of the Bill and looked forward to its submission to Parliament for enactment.

Concerning the registration of collective agreements with the Ministry of Labour, the Employer members had always considered that the sections of the Wages Board and Industrial Council Acts and the Trade Dispute Act, which made it an offence for an employer to generally adjust wages upwards without approval of the Minister, were irrelevant, had never been enforced and should therefore be repealed. They disagreed with the Committee of Experts' view that private sector collective bargaining rights were restricted by the requirement of the Government's approval of any collective agreements on wages. Sectorial unions and the respective employers' organizations in the private sector freely negotiated and entered into collective agreements every two years. The agreements were then filed with the Ministry of Labour whose main role was to assist in the event there was a need for mediation.

Finally, the Employer members indicated that, under the 1992 Decree on Export Processing Zones, the functions of the EPZ Authority included the resolution of disputes between employers and employees in consultation with the Federal Ministry of Employment, Labour and Productivity. The Authority's role was to facilitate and serve as observer through collective bargaining between sectorial unions and the respective employers. This was in line with the consultative nature of its functions under the Decree. Therefore, the rights of workers to organize and bargain collectively had been preserved.

In conclusion, the Employer members considered that the Convention had been adhered to, but Nigeria had, in a consultative manner, put in place mechanisms to better implement its provisions. The Collective Labour Relations Bill responded to concerns raised by the trade unions regarding the exemptions from the rights to organize and bargain collectively and unions, such as the Technical and Recreational Services Employees, had started organizing their members within the EPZs. They therefore encouraged the Government to expedite the processes of enactment.

The Worker members considered that the right to organize and bargain collectively had witnessed a steady and systematic erosion. For a number of years, the Committee of Experts had been pointing to serious violations of the Convention and had been asking the Government to bring its laws and practice into line with the Convention and to report on all progress made in this regard. However, the last time the Government had submitted its report was in 2012. Since then, it had ignored the Committee of Experts' requests and disregarded its reporting obligations. This was a case of serious failure to report and was to be regretted. The very essence of the ILO supervisory system was in the dialogue with the constituents. This system was based on the information on the application of the Conventions provided by governments. The failure to submit reports undermined the supervisory system and the very functioning of the ILO. The Worker members called on the Government to live up to its reporting obligations as a matter of urgency.

The Convention was interwoven with the realization of other fundamental rights at work and it was unfortunate that many new violations had occurred in the country since 2012. Those without the right to organize were also denied the right to bargain collectively. Anti-union dismissals, transfers, relocations, demotions, non-renewal of contracts of employment, pressure and harassment and withdrawal of benefits or non-payment of remuneration had been taking place in the public and private sectors alike. In January 2018, 21,000 primary school teachers had been dismissed by the Kaduna State for having protested against the introduction of a competency test administered without due consultations and aimed at unilaterally reducing the number of teachers on the payroll of the State. Kaduna State had also failed to implement the collective bargaining agreements. When the Nigerian Labour Congress (NLC) had expressed its solidarity with the affected teachers it had received public threats of sanction from the State Government. The Governor of the State had prohibited trade union activities. In this respect, it should be emphasized that the Convention applied to public sector workers and only the rights of those involved in the defence and security forces and those directly engaged in the administration of the State could be restricted. The Convention did not exclude persons employed by the Government, workers in public enterprises or autonomous public institutions, nor teachers. Furthermore, the denial of the rights to organize and bargain collectively, and lack of protection of trade unionists from violence and hostility may have very serious consequences. It could result in violent murders of trade unionists. The Worker members recalled the assassination of Abdulmumuni Yakubu, the branch chairperson of the Non-Academic Staff Union of Kogi State (NASU) at his home by an unknown gunman in November 2017. This murder had occurred at the height of negotiations with the Kogi State Government and strike actions over prolonged non-payment of wages. Kogi State had effectively banned the academic and non-academic staff unions in the tertiary institutions. They further recalled the assassination of Mr Alhaji Saula Saka, the Lagos Zonal Chairman of the National Union of Road Transport Workers in 2010. Both cases remained unresolved and reflected the dangerous situation trade union leaders were confronting and the absence of security and protection in the performance of their activities. The Government must arrest and prosecute the perpetrators and stop the growing and brazen impunity. In the private sector, the situation was equally serious. According to the Association of Senior Staff of Bank and Financial Institutions, 337 workers had been dismissed in June 2015 for having tried to join a union. About 700 workers of another company had been dismissed in Lagos in September 2015 for the same reason. The situation was no different for workers in the telecommunications sector. In some cases they had to denounce their intention of unionization as a condition of employment.

The Wages Board and Industrial Council Act was particularly alarming as it provided that every agreement on wages must be registered with the Ministry of Labour for approval or disapproval as to its binding nature. It also made it an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister. In practice, the effect of this was that national minimum wage negotiations were used as a pretext to frustrate, prevent, delay and, in some cases, deny, voluntary collective bargaining over wages. This was not in compliance with the Convention, which required member States to ensure that collective bargaining was implemented through a voluntary mechanism. Furthermore, the Convention applied to workers in EPZs. However, sections 3(1) and 4(e) of the Decree on Export Processing Zones run counter to the right to organize and the right to collective bargaining. Its section 4(e) provided that "employer-employee" disputes were not matters to be handled by trade unions but rather by an authority managing the zone. Section 3(1) also made it very difficult for workers to form or join trade unions by making it almost impossible for workers' representatives to gain free access to such zones. The Worker members believed that this situation of violation, anti-union discrimination, interference and lack of protection for trade unionists existed because of the gaps in the labour legislation and the very weak labour administrative mechanisms. Section 11 of the Trade Unions Act denied the personnel of the Customs and Excise

Department, the Immigration Department, the Nigerian Security Printing and Minting Company, the Prison Services, Nigeria Telecommunications and the Central Bank of Nigeria the right to organize and thus, to collective bargaining. They expressed their concern at section 7(9) of the Trade Unions Act, which empowered the responsible Minister to revoke the certificate of registration of trade unions without a judicial process or clearly outlined administrative procedures and guarantees. Section 8 of the Act automatically imposed trade union membership on federal government teachers without their consent. They further regretted that section 3(1) and (2) of the Act required a very high threshold of a minimum of 50 workers to establish a trade union at the enterprise level and restricted the formation and registration of other unions in sectors where one union already existed. They noted with concern that sections 30 and 42 of the Act imposed restrictions on the right to collective action and provided for imprisonment for non-recognized strikes and for compulsory arbitration with an overly broad definition of essential services. Sections 39 and 40 granted the registrar of trade unions the power to supervise union accounts at any time. Furthermore, the Collective Labour Relations Bill, which had been drafted with the support of the ILO and the involvement of the social partners and which had been pending for a decade or so, had been unilaterally amended by the Government ignoring the views of the social partners. The Worker members, like the Committee of Experts, requested that the Bill be brought into full conformity with the Convention and further urged that the Bill be adopted without unnecessary delay.

The situation of the near breakdown in collective bargaining was systemic and was the outcome of the existing legislation and the way the governance institutions functioned in Nigeria. It was therefore urgent for the Government to take a holistic review of its labour legislation to ensure that it was amended to reflect international labour standards and to give effect to the principle of free collective bargaining. The labour administration mechanisms and institutions, including the police and other law enforcement agencies, needed to receive training in order to effectively inspect and supervise compliance with international labour standards to avoid any abuses and prevent impunity. Many of the serious violations of the Convention could have been prevented if the Government had followed the recommendations of the Committee of Experts. The Worker members urged the Government to comply with its obligations and restore, in full consultation with the social partners and in cooperation with the ILO, the right to organize and to bargain collectively in the country.

The Worker member of Nigeria stated that Nigeria operated a federal system with 36 states with their own governments, a Federal Government Territory and a central Government. Issues of labour relations were in the Exclusive List of the Nigerian Constitution with federal government supervision and oversight. While infractions with respect to the Convention existed in the private sector, most of those in the public sector were perpetrated by State Governments. In 2017, the Government of Kaduna State had dismissed 38,000 workers, of which 21,000 teachers, about 5,000 local government council staff and over 8,000 from ministries, departments, agencies, as well as those in the tertiary institutions under the guise of a vague reform. Dismissal had been carried out without any respect or consideration for the established rules, notably the provisions in the existing public sector collective bargaining procedures. The NLC had officially reported this violation to the Ministry of Labour, with no tangible outcome to date from the intervention proposed by the Ministry, while the situation continued to deteriorate. The disregard for collective bargaining laws and practices was such that the Nigeria Union of Teachers had challenged the dismissal in court, had obtained a restraining order to hold the dismissal until the substantive lawsuit was decided, but nonetheless the court order had been disregarded by the State Government. The Kaduna State Government had also violated section 16(A) of the Trade Unions Act, which made it mandatory for employers to deduct and remit union members' dues to trade unions, not only by withholding seven months deductions to all the unions, but also by issuing a circular to stop deduction completely. All the affected trade unions had filed legal complaints against such actions of the State Government.

In Kogi State, the Government was refusing to abide by the collective agreement concerning the payment and protection of wages. Workers and pensioners were owed over seven months' salary and pension benefits, in spite of repeated genuine efforts by the federal Government to ameliorate the problem through the granting, three times, of financial bailout to all affected States. In July 2017, instead of negotiating with the teaching and non-teaching staff in the tertiary institutions, the Kogi State Government had proscribed and confiscated the assets of the affected unions, in violation of article 40 of the Nigerian Constitution. The NLC had officially reported such infractions to the Ministry of Labour, who had in turn invited the Kogi State Government to a mediation meeting which the latter did not attend. In November 2017, Abdulmumuni Yakubu Branch Chairman of the NASU had been violently murdered during the period his union was in a hard and difficult negotiation with the Kogi State Government. The non-respect for the provisions of the Convention impacted on people, households and their communities, as the State Government had failed to honour collective bargaining agreements, especially on salaries and wages.

He recalled that interference in collective bargaining in the private sector had been a cause of worry to the Committee of Experts since 2009, but there were still benchmarks for wages, since the Government's approval was required for any collective agreement before it became implementable, allegedly to ensure that there would be no

“undue economic disruption”. This contradicted Article 4 of the Convention. It was reported that the National Minimum Wage Bill would not be finalized by September 2018, contrary to the agreement with the social partners. The Minister was thus unilaterally determining the negotiation outcome, in infraction to the Convention.

Discussions on the Collective Labour Relations Bill were ongoing for over ten years. The process had been very slow and delayed, which raised concerns as to the Government’s intention. Against the advice of the Committee of Experts to bring labour laws into conformity with the Convention, the Government had been using the process to weaken and destroy trade unions. Indeed, the new version of the Collective Labour Relations Bill foresaw that if after two years of commencement of its application, the NLC had not amended its constitution to conform to it, the latter would stand proscribed. Such Bill was not a product of consultation, as it was largely different from the one the unions had made inputs to, and would have surreptitiously been passed into law, but for their vigilance and Parliament’s due diligence. He concluded by asking the Committee to call on the Government to allow for genuine and good faith engineering of the intended labour law reforms and to ensure that the Government worked genuinely with the high-level mission that had been proposed on several occasions.

The Government member of Zimbabwe welcomed the information submitted by the Government, in particular in relation to the current review of the legislation on collective bargaining. It was encouraging that trade unions were now allowed to fully operate in the EPZs and were involved in the dispute resolution mechanisms. That was also a sign of progress and the result of an effort to meet the social partners’ needs. All social partners were urged to show the same commitment in complying with the Convention. The ILO’s technical support to the Government and its social partners was necessary to strengthen their tripartite structures.

An observer representing Public Services International (PSI) pointed out that section 11 of the Trade Dispute Act prohibited workers in a number of sectors and state-run companies to organize and thus deprived them of the right to bargain collectively. Moreover, the right of firefighters to organize was also denied pursuant to the Trade Unions (Prohibition) (Federal Fire Service) Order. In 2013, under the Universal Periodic Review, at its 17th Session, the Human Rights Council had also recommended to the Government to amend the Trade Unions Act in order to guarantee freedom of association and the effective recognition of the right of collective bargaining. He drew the Committee’s attention to the fact that workers in the public sector, including in such critical sectors as health services, across more than half of the 36 States were currently owed monthly salaries for a period of between three and 18 months. While the Government had announced in October 2017 its intention to make another tranche of bailout funds available to address the situation, it appeared that the funds had not been yet secured. The lack of an appropriate system of social dialogue had made this problem even worse and the situation had led to unrest and protests in many sectors in those States. The Committee should request the Government to fully involve the unions in the legislative reform and to ensure that the bailout funds, once released, were fully disbursed for the payment of outstanding salaries to public sector workers, with no part thereof being diverted or otherwise appropriated by the State Governments.

Le membre gouvernemental de l’Algérie a exprimé son soutien au gouvernement du Nigéria et l’a encouragé à poursuivre les efforts déployés pour remplir les obligations découlant de la convention. Le gouvernement est conscient de ses obligations et a pris toutes les mesures nécessaires pour s’y conformer, tant sur le plan législatif que dans la pratique. Ainsi, par exemple, la protection des droits des travailleurs est-elle garantie dans les services essentiels par l’intermédiaire des comités consultatifs mixtes. Les informations fournies sur la négociation collective permettent à la commission de maintenir un lien avec la réalité. Il est en effet essentiel que la commission prenne en considération l’environnement socio-économique des Etats dans son évaluation de leur performance en vue de respecter la souveraineté nationale.

The Worker member of Eswatini, speaking also on behalf of trade unions in the Southern African Trade Union Coordinating Council (SATUCC), recalled the ILO definition of essential services. The Trade Disputes Act classified employees in the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Minting Company Limited, the Prisons Services and the Central Bank of Nigeria as persons providing essential services who could not enjoy the right to organize. That list was familiar as it was similar to the list of essential services in the South African region. The basis for services to be qualified as essential was unclear. The list referred not only to services related to the safety and security of people, but also to workers engaged in currency printing and in fiscal and monetary management. Workers in charge of essential services made sacrifices for the economy and their communities. Their rights should not be stifled. Experience proved that when workers had an organized platform to express their grievances, industrial disharmony was substantially reduced. In October 2017, in Kaduna State and in January 2018 in Delta State, personnel of the police force had peacefully protested for the non-payment of two months’ salary. If the personnel were allowed to organize, they certainly would have made use of their organization to negotiate and resolve the issue. To allow those workers to organize themselves into unions of their free choice was a right unambiguously provided for by the Convention. The Government should avail itself

of ILO technical assistance to comprehensively reform the Trade Disputes Act with the genuine and full consultation and participation of the social partners.

The Government member of Libya supported the statement made by the Government of Nigeria and indicated that Nigeria was in compliance with the Convention. The Constitution guaranteed the right to freedom of association without interference whatsoever by the Government. The willingness of the Government to ensure compliance with the Convention was also proved by the bills brought before Parliament. It was important to support the efforts made by the Government in collaboration with the social partners and it was hoped that the Committee would consider those efforts when adopting its conclusions.

Le membre travailleur du Mali a exprimé sa solidarité avec la population du Nigéria et s'est référé au défi de l'insécurité liée à la présence de forces criminelles et extrémistes au Nigéria comme au Mali. Le fait que les travailleurs et les dirigeants syndicaux du Nigéria soient attaqués, intimidés, licenciés et même tués en raison de leur activité syndicale constitue une source de grave préoccupation. Il en est de même de l'absence d'enquêtes ou d'arrestations concluantes, de poursuites initiées ou de sanctions prononcées dans ces affaires. Tel est le cas du meurtre, en 2010, d'Alhaji Saula Saka, Président de la section locale du Syndicat national des travailleurs des transports routiers de Lagos, ainsi que de l'assassinat de Mallam Abdulmumuni Yakubu, président de l'Union syndicale non universitaire des sciences et technologies qui a trouvé la mort à la fin de l'année 2017 au moment où son syndicat était engagé dans une négociation difficile avec le gouvernement de l'Etat de Kogi. Il est inacceptable que ces deux meurtres n'aient pas été élucidés et que les coupables n'aient pas été traduits en justice. Cette impunité a des conséquences. Tout d'abord, l'intimidation, le harcèlement, les menaces et les décès font partie des outils que les autres partenaires sociaux utilisent pour interagir avec les travailleurs et leurs dirigeants. Ces pratiques ont pour but de faire peur aux syndicalistes, de les disperser, de nuire à leur volonté de jouir de leurs droits humains et d'autres libertés civiles nécessaires à leur organisation et à leur engagement dans les négociations collectives. Ensuite, l'impunité qui entoure ces actes odieux est érigée en règle et elle empêche toute responsabilité et équité. Elle doit par conséquent être combattue. En conclusion, le gouvernement doit être exhorté à prendre des mesures dissuasives pour mettre fin aux attaques subies par les travailleurs et les dirigeants syndicaux et à diligenter rapidement les enquêtes appropriées et initier les poursuites judiciaires concernant les affaires de meurtre. Enfin, il importe de créer un climat propice, et exempt d'intimidation, dans lequel les organisations syndicales pourront s'engager de manière constructive dans le dialogue social.

La membre gouvernementale du Cameroun a exprimé son soutien au gouvernement du Nigéria et l'a remercié pour les informations produites devant la commission. Des mesures ont été mises en place pour assurer une meilleure application de la convention, notamment à travers la préparation des textes de loi qui sont soumis au Parlement. Le gouvernement doit être encouragé à poursuivre sur cette voie, avec la nécessaire coopération technique du Bureau.

The Worker member of Ghana pointed out that the case was being discussed by the Committee not to shame the Government but rather in order to obtain additional information on the alleged violations of the Convention with a view to seek better implementation thereof. The reported infractions included threats, arrests, beatings and detention used as strategies to discourage and frighten workers and trade union leaders from organizing and pursuing collective bargaining. In April 2015, Aminu Kolawole, the chairperson of the Air Transport Services Senior Staff Association of Nigeria (ATSSSAN) and Lawson Imotto, the secretary, together with Chukwu Jude and Kingsley Ejiogu, the chairperson and the secretary of the National Union of Air Transport Employees (NUATE), were dismissed for organizing workers and demanding that the management enter into negotiation with the union. Lawson Imotto was arrested and taken to an unknown destination. In September 2015, over 700 workers were fired in one swoop in south-west Nigeria for having wanted to exercise their right to freedom of association. The workers had only found out about their dismissal when they had returned to work and found the gate locked with a notice of employment termination. The company in question had prevented workers from unionizing even after the intervention by the Ministry of Labour. The tactic of firing trade union leaders was a direct way of undermining the right to organize: "deal with the leader, and the members will flee". The cases of four leaders, Akeem Ambali, the chairperson of the NLC in Ogun State (south-west Nigeria) and three other officers, Dare Ileko, Nola Balogun and Eniola Atiku, who in April 2017 had been suspended along with 15 others for demanding that the State Government respect the agreement it had reached with the union on salary payment, was another case in point. While 15 of the 19 suspended workers had been reinstated, the leaders remained suspended indefinitely. Mr Joseph Ogunyemi, former chairperson of an automobile union, had demanded that working conditions be regulated through collective bargaining and had suffered a similar fate. The speaker called on the Committee to urge the Government to accept an ILO high-level mission to improve and advance Nigeria's industrial relations practice.

The Worker member of Norway, speaking on behalf of trade unions in the Nordic countries, recalled that since 2010, several serious allegations of violation of the Convention had been observed, including restrictions on

the right to organize and the right to bargain collectively. The Trade Disputes Act denied the right to organize to certain categories of workers. The Decree on Export Processing Zones made it almost impossible for workers to form or join trade unions as these did not have free access to the EPZs, which operated as “protected territories”. It appeared that article 40 of the Nigerian Constitution, which gave the right to freely assemble, associate and to form trade unions and other associations was not operational. As a result, a large number of workers were deprived of the right to collective bargaining. Every agreement on wages needed to be registered and approved by the Ministry of Labour. This did not contribute to free collective bargaining. She fully supported the recommendations of the Committee of Experts and urged the Government to ensure that the legislation be amended so as to ensure that workers could bargain collectively, and to step up social dialogue with workers and employers instead of limiting fundamental workers’ rights.

An observer representing IndustriALL Global Union expressed concern at the reported anti-union activities of international oil companies operating in Nigeria which were preventing tens of thousands of contract workers from joining a union and defending their rights. The fragmentation of contracts to frustrate unionizing efforts was common and the practice of casualization and precarious working conditions were entrenched in the Nigerian oil industry. Workers were obliged to sign a pre-engagement commitment not to become a union member. This made precarious workers dread association with the union. The companies refused to implement rulings of Industrial Arbitration Panels whenever they ruled against them and severed ties with a contracting company if the latter had unionized workers. Denied collective bargaining powers, contract workers endured poverty wages, dire health and safety conditions, and absence of job security and labour rights. This had led to social deprivation and an upsurge in crime and defiant behaviour. The repressive anti-labour activities of oil and gas companies had accentuated the social upheavals in the Niger Delta region, resulting in revolts in the form of organized attacks on installations, hostage taking and community insurgence. She called on the Government to ensure that all workers at international oil companies had the right to organize.

The Government representative took note of the discussions and reiterated the Government’s full commitment to the application of the Convention. As stated by the Worker member of Nigeria, the country operated a very complex social and economic structure, with a Federal State and 36 State Governments. She clarified that the infringements under examination had been made by State Governments and not by the federal Government and that the latter had no control whatsoever over the autonomous State Governments. The federal Government had the constitutional responsibility to administer labour issues. When infractions by a State Government were brought to its attention, the federal Government did not fail to invite the parties to solve the issues. That had also occurred in relation to the case of Kogi State mentioned above. It was important to note that the transactions related to the case had lasted approximately seven months and the State Governor had engaged with the social partners but no agreement had been reached. The Ministry of Labour was still engaging with Kogi State Governor to find a solution. With regard to the decision of the State Governor of Kaduna State to terminate 21,000 teachers in public primary schools, it was important to clarify that many of those teachers had been appointed fraudulently and were not qualified for their work. Before reaching that decision, the State Governor had engaged with the national union of teachers for a period for two years to solve the issue. That dismissal had been the result of an investigation and only teachers that had fraudulent documents had been dismissed. She requested the Committee to take that information into account when preparing the conclusions. In relation to salaries, most cases of non-payment of wages affected State Governments, therefore the federal Government was not involved. On the contrary, the federal Government had released 1.8 trillion naira to State Governments for solving the issue of wage arrears. However, some State Governments had not prioritized that issue. The federal Government had therefore engaged with the social partners concerned to ensure that resources were used for the purpose for which they were allocated. With regard to the assassination of trade union leaders, the speaker indicated that the statements made during the present discussion were ungrounded. The issue of security was prominent in Nigeria and episodes of murders did not only concern trade unionists. Investigations were being carried out and the cases were before national courts awaiting decisions. The Government committed to provide further information on the outcome once the decisions became available. With regard to the Collective Labour Relations and other Bills, there had been progress but, based on the comments of the Committee of Experts and the Conference Committee, the Government had recalled the bills to improve their content and bring them into conformity with international labour standards. It was also important to underline that the Government carried out consultations with the social partners concerned with a view to reform legislation and ensure its conformity with international labour standards and with Convention No. 98 in particular.

The Worker members, while welcoming the Government’s stated intention to comply with the obligations under the Convention, expressed disappointment at the attitude of denial that serious problems with regard to trade union rights existed in the country. Noting the Government’s explanation on the separation of powers between the federal and State Governments, they recalled that when a member State ratified a Convention, it was the responsibility of the federal Government to ensure compliance therewith. The Worker members expressed their serious and grave concerns about the gradual and systematic erosion of collective bargaining rights in Nigeria as

well as the failure of the Government to submit its reports in response to the observations of the Committee of Experts. They further regretted that legal gaps and disregard for collective bargaining rights had resulted in systematic and repeated anti-union discrimination. The Worker members expressed concern at the harassment, intimidation and anti-union discrimination of workers who had expressed the desire to join a union and to bargain collectively in the private sector, including in the telecommunications, and oil and gas sectors. They were equally concerned about the denial of the right to organize to some public sector workers, including those engaged in the EPZs, customs, and the Central Bank of Nigeria. To address the growing impunity, the Government should investigate the killings of trade unionists, arrest and prosecute the perpetrators. The Government must reform the labour governance mechanisms to ensure effective supervision and regular inspections backed by an efficient labour market information system for monitoring and evaluating compliance with the Convention. The Government should also build the capacity of labour inspectors and administrators, the police and law enforcement authorities and provide them with adequate resources and training to deliver on their mandate. The Government must, in consultation with social partners, amend relevant laws, including the Trade Unions Act, the Wages Board and Industrial Council Act, the Decree on Export Processing Zones and the Collective Labour Relations Bill. In order to effectively address these concerns and engage in the necessary reforms, the Worker members urged the Government to accept an ILO direct contacts mission and avail itself of ILO technical assistance.

The Employer members considered that the Government was acting in good faith and had responded with clear arguments to the numerous allegations made against it. However their view was that it was inappropriate to comment on cases that had not been concluded before competent Courts in Nigeria. It was their view that in this regard the Government had satisfied the request to have the matters investigated. The respective cases had already been submitted to the competent courts and were awaiting decisions. It was important to underline that Nigeria operated in a complex government system and that the Convention left it to national law to determine which categories of employees could be excluded from its application. Consultations were still taking place on the adoption of the Collective Labour Relations Bill. The Government should be encouraged to fast track the process and to avail itself of ILO technical assistance with a view to addressing the issues raised. In relation to EPZs, taking note of the fact that certain employers did not have unions in place, the Government needed to support those employers to promote unionization in those areas without affecting their rights under Convention 87 on freedom of association and protection of the right to organise.

Conclusions

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

The Committee deeply regretted the Government's failure to submit its report to the Committee of Experts since 2012.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:

- **bring relevant legislation, including the Trade Union Act, Trade Dispute Act, Wages Board and Industrial Council Act, the 1992 Decree on Export Processing Zones and the Collective Labour Relations Bill in line with the Convention;**
- **conduct effective investigations and carry out prosecutions with respect to all allegations of anti-union violence and discrimination; and**
- **put adequate and effective enforcement mechanisms in place to ensure that the principles and rights protected by the Convention are effectively applied in practice.**

The Committee repeats the Committee of Experts invitation to the Government to accept an ILO direct contacts mission in order to tackle the pending issues and report progress to the Committee of Experts before its November 2018 meeting.

The Government representative indicated that all the comments of the Committee members had been duly noted, as had the conclusions reached by the Committee. He pledged, once again, his country's full commitment to respect all the articles of the Convention, and to ensure that all levels of Government fully complied with the Convention's obligations. However, that would involve engaging the social partners in a time-consuming process of constructive dialogue. Social dialogue and consensus-building, which were essential to an enabling industrial

relations environment, required the patience and cooperation of all. He therefore appealed to the Committee for more time to allow the process to continue, with the expectation that full compliance would be achieved. His Government further solicited technical assistance from the ILO to strengthen its capacity to drive and deliver the process of engagement with the social partners. He expressed confidence that, with perseverance and cooperation, the process would mature and flourish as an example to be followed. He also expressed the view that the proposed direct contacts mission was premature, in light of the proactive steps taken by his Government and the social partners. He assured the Committee that the report to the next ILC session in 2019 would reflect full or substantial compliance, both in law and in practice, with all the observations of the Committee of Experts, and reaffirmed his Government's commitment to comply with the provisions of the Convention.

Conclusions

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

La commission a profondément regretté le défaut de soumission par le gouvernement de son rapport à la commission d'experts depuis 2012.

Prenant en compte les éléments fournis par le gouvernement et la discussion qui a suivi, la commission a prié instamment le gouvernement de:

- mettre la législation pertinente, notamment la loi sur les syndicats, la loi sur les conflits syndicaux, la loi sur la commission des salaires et sur le conseil du travail, le décret de 1992 sur les zones franches d'exportation et le projet de loi sur les relations collectives du travail, en conformité avec la convention;
- diligenter des enquêtes efficaces et engager des poursuites en rapport avec toutes les allégations de violence et de discrimination antisyndicales; et
- mettre en place des mécanismes d'application adéquats et efficaces pour assurer que les principes et les droits protégés par la convention soient effectivement appliqués dans la pratique.

La commission réitère l'invitation faite par la commission d'experts au gouvernement d'accepter une mission de contacts directs de l'OIT afin de traiter les questions en suspens et de faire rapport sur les progrès accomplis à la commission d'experts avant sa session de novembre 2018.

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 lamentó profundamente que el Gobierno no hubiera presentado su memoria a la Comisión de Expertos desde 2012.

Teniendo en cuenta la información proporcionada por el Gobierno y la discusión que tuvo lugar seguidamente, la Comisión insta al Gobierno a que:

- ponga la legislación pertinente, con inclusión de la Ley de Sindicatos, la Ley de Conflictos Laborales, la Ley sobre la Junta Salarial y el Consejo Laboral, el Decreto de 1992 sobre Zonas Francas de Exportación, y el proyecto de ley sobre relaciones colectivas de trabajo, en conformidad con el Convenio;
- lleve a cabo investigaciones efectivas y emprenda acciones judiciales con respecto a todas las alegaciones de violencia antisindical y discriminación, y
- establezca mecanismos de supervisión y cumplimiento adecuados y efectivos para velar que los principios y derechos protegidos por el Convenio se observen efectivamente.

La Comisión reitera la invitación de la Comisión de Expertos al Gobierno para que acepte una misión de contactos directos de la OIT a fin de abordar las cuestiones pendientes, e informe a la Comisión de Expertos antes de su reunión de noviembre de 2018 sobre los progresos realizados.

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

Convention (nº 182) sur les pires formes de travail des enfants, 1999

Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182)

Samoa (*ratification: 2008*)

Samoa (*ratification: 2008*)

Samoa (*ratificación: 2008*)

The representative of the Secretary-General informed the Committee that the delegation of Samoa was not accredited to the Conference this year. The Government had sent a communication to the Committee of Experts relating to its compliance with Convention No. 182 in which it also explained that the absence of its delegation at the 107th Session of the International Labour Conference was due to financial difficulties. The Government also communicated its commitment to provide a full report to the Committee of Experts by the end of August 2018.

El Presidente de la Comisión anunció que, como se indica en la parte VII del documento D.1, el último día de la discusión de los casos individuales, la Comisión trata los casos en que los gobiernos no hubieran respondido a la invitación. La negativa de un gobierno a participar en los trabajos de la Comisión constituye un obstáculo significativo para la consecución de los objetivos principales de la Organización Internacional del Trabajo. En el caso de los gobiernos que no están presentes en la Conferencia, la Comisión no debatirá sobre el fondo del caso, aunque pondrá de relieve en el informe la importancia de las cuestiones planteadas. Cuando se dan estas circunstancias, se recalcan especialmente las medidas que deberán tomarse para reanudar el diálogo.

The Worker members expressed regret at the absence of the Government delegation at the current session of the Conference, which prevented the Committee's examination of the case. Governments' participation at the Conference was essential to the effective functioning of the supervisory system. The Worker members highlighted key aspects of the Committee of Experts' comments that required follow-up action by the Government to redress the situation of child labour in the country. An ILO pilot study had revealed that around 38 per cent of child labour in Samoa was performed by under 15-year-olds, which compromised children's development and called into question the Government's capacity and commitment to address the worst forms of child labour. Child protection laws were inadequate and the absence of any protection for young persons between 16 and 18 years put them at particular risk of exploitation. Institutions for the protection of children did not function properly and legislative reforms had stalled. The legislative process had not advanced, for example, for bills drafted in accordance with the Optional Protocols to the United Nations Convention on the Rights of the Child, which the Government had ratified in 2016. More needed to be done to address the concerns regarding the worst forms of child labour. The Worker members urged the Government to provide a detailed report on the application of the Convention to the Committee of Experts at its next session. The Government should avail itself of ILO technical assistance to comply with its reporting obligations and tackle the worst forms of child labour.

The Employer members echoed the Worker members' statement and expressed regret that the Government had not attended the Conference. Non-compliance with the Convention was a serious concern and the Committee of Experts had identified three main aspects in that regard: the disparity between the ratifications of the Optional Protocols to the United Nations Convention on the Rights of the Child and the real protection of children in the country; the absence of a list of hazardous work for young persons; and the prevalence of under 15-year-olds exploited as street vendors and subjected to other abusive practices. The Government's failure to submit replies to those issues to the Committee, irrespective of its absence, was a matter of deep concern. The Employer members urged the Government to provide replies and commit to participating fully at the next session of the International Labour Conference.

Appendix I. Table of Reports on ratified Conventions due for 2016 and received since the last session of the CEACR (as of 8 June 2018)

(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.

Albania 11 reports requested

(Paragraph 34)

- All reports received: Conventions Nos. 29, 97, 102, 105, 122, 138, 143, 168, 176, 181, 182

Bahamas 10 reports requested

(Paragraph 34)

- 9 reports received: Conventions Nos. 12, 17, 19, 29, 42, 97, 105, 138, 182
- 1 report not received: Convention No. MLC

Belize 30 reports requested

(Paragraph 28)

- 15 reports received: Conventions Nos. 11, 12, 26, 42, 81, 87, 94, 95, 98, 99, 108, 135, 141, 144, 151
- 15 reports not received: Conventions Nos. 19, 29, 88, 97, 100, 105, 111, 115, 138, 150, 154, 155, 156, 182, (MLC)

Burundi 14 reports requested

- 13 reports received: Conventions Nos. 1, 12, 17, 19, 29, 42, 62, 64, 90, 101, 105, 138, 182
- 1 report not received: Convention No. 27

Cabo Verde 10 reports requested

- 7 reports received: Conventions Nos. 29, 87, 98, 105, 138, 182, (MLC)
- 3 reports not received: Conventions Nos. 17, 19, 118

China 7 reports requested

- All reports received: Conventions Nos. 19, 27, 32, 122, 138, 182, (MLC)

Croatia 31 reports requested

- 26 reports received: Conventions Nos. 11, 12, 13, 14, 19, 24, 25, 27, 29, 45, 87, 90, 100, 102, 103, 105, 111, 113, 119, 121, 122, 132, 138, 148, 155, 161
- 5 reports not received: Conventions Nos. 32, 98, 106, 156, 182

Democratic Republic of the Congo 27 reports requested

(Paragraph 34)

- 19 reports received: Conventions Nos. 11, 12, 19, 26, 29, 62, 81, 87, 88, 98, 100, 102, 105, 111, 118, 121, 135, 138, 182
- 8 reports not received: Conventions Nos. 27, 94, 95, 119, 120, 144, 150, 158

Eritrea 7 reports requested

(Paragraph 34)

- 4 reports received: Conventions Nos. 87, 98, 100, 111
- 3 reports not received: Conventions Nos. 29, 105, 138

Estonia	6 reports requested
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 27, 29, 105, 122, 138, 182	
France	16 reports requested
· 15 reports received: Conventions Nos. 11, 12, 27, 29, 36, 97, 105, 122, 124, 138, 141, 152, (181), 182, MLC	
· 1 report not received: Convention No. 137	
Germany	8 reports requested
· All reports received: Conventions Nos. 27, 81, 87, 97, 98, 129, 152, MLC	
Greece	21 reports requested
· All reports received: Conventions Nos. 11, 17, 19, 27, 42, 77, 78, 81, 87, 90, 95, 98, 100, 102, 111, 122, 124, 126, 141, 156, 160	
Ireland	13 reports requested
· 10 reports received: Conventions Nos. 11, 27, 32, 100, 111, 121, 122, 139, (MLC), (189)	
· 3 reports not received: Conventions Nos. 81, 87, 98	
Italy	9 reports requested
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 27, 81, 87, 97, 98, 129, 137, 143, 152	
Jamaica	8 reports requested
<i>(Paragraph 34)</i>	
· 6 reports received: Conventions Nos. 11, 19, 81, 87, 98, 152	
· 2 reports not received: Conventions Nos. 94, 97	
Lao People's Democratic Republic	8 reports requested
· 7 reports received: Conventions Nos. 29, 100, 111, 138, 144, (171), 182	
· 1 report not received: Convention No. 6	
Lebanon	15 reports requested
· 14 reports received: Conventions Nos. 17, 19, 59, 77, 78, 90, 95, 98, 100, 111, 122, 131, 150, 152	
· 1 report not received: Convention No. 81	
Libya	10 reports requested
<i>(Paragraph 34)</i>	
· 8 reports received: Conventions Nos. 81, 87, 95, 98, 102, 118, 121, 131	
· 2 reports not received: Conventions Nos. 53, 130	
Madagascar	12 reports requested
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 6, 26, 81, 87, 88, 95, 97, 98, 124, 129, 159, 173	
Malawi	18 reports requested
· 9 reports received: Conventions Nos. 11, 12, 19, 87, 98, 100, 111, 158, 159	
· 9 reports not received: Conventions Nos. 26, 45, 81, 97, 99, 129, 144, 150, 182	
Mexico	15 reports requested
· All reports received: Conventions Nos. 27, 87, 90, 95, 100, 102, 111, 123, 124, 131, 134, (138), 152, 155, 173	
Nepal	4 reports requested
· All reports received: Conventions Nos. 98, 100, 111, 131	

Netherlands - Aruba	15 reports requested
<i>(Paragraph 34)</i>	
· 12 reports received: Conventions Nos. 17, 25, 81, 87, 90, 95, 113, 114, 118, 121, 122, 131 · 3 reports not received: Conventions Nos. 94, 140, 142	
Netherlands - Curaçao	8 reports requested
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 10, 33, 81, 87, 90, 94, 95, (MLC)	
Pakistan	7 reports requested
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 27, 32, 90, 98, 100, 111, 144	
Paraguay	12 reports requested
· All reports received: Conventions Nos. 26, 59, 77, 78, 79, 90, 95, 99, 100, 111, 123, 124	
Rwanda	17 reports requested
· 16 reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 81, 87, 94, 100, 105, 111, 118, 123, 138, 182 · 1 report not received: Convention No. 42	
Saint Vincent and the Grenadines	19 reports requested
<i>(Paragraph 28)</i>	
· 1 report received: Convention No. (102) · 18 reports not received: Conventions Nos. 11, 12, 19, 26, 29, 81, 94, 95, 100, 105, 108, 111, 122, 129, 138, 144, 182, (MLC)	
San Marino	19 reports requested
<i>(Paragraph 34)</i>	
· 5 reports received: Conventions Nos. 100, 103, 111, 143, 150 · 14 reports not received: Conventions Nos. 29, 105, 119, 138, 140, 142, 144, 148, 151, 156, 159, 160, 161, 182	
Slovenia	17 reports requested
· All reports received: Conventions Nos. 27, 29, 32, 90, 95, 97, 100, 105, 111, 114, 131, 143, 144, 156, 173, 182, (187)	
The former Yugoslav Republic of Macedonia	10 reports requested
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 27, 32, 90, 94, 97, 100, 111, 131, 143, 144	
Tunisia	19 reports requested
· All reports received: Conventions Nos. 26, 29, 77, 81, 90, 95, 99, 100, 107, 111, 114, 118, 124, 138, (144), (151), (154), 182, (185)	
United Kingdom	7 reports requested
· All reports received: Conventions Nos. 32, 97, 100, 111, 124, 144, MLC	
Viet Nam	12 reports requested
<i>(Paragraph 29)</i>	
· All reports received: Conventions Nos. 6, 27, 29, 81, 100, 111, 123, 124, 138, 144, 182, (187)	
Yemen	21 reports requested
<i>(Paragraph 28)</i>	
· 5 reports received: Conventions Nos. 81, 87, 98, 138, 182 · 16 reports not received: Conventions Nos. 16, 19, 29, 58, 59, 94, 95, 100, 105, 111, 122, 131, 144, 156, 158, 185	
Zambia	10 reports requested
· All reports received: Conventions Nos. 95, 97, 98, 100, 111, 124, 131, 138, 144, 173	

Grand Total

A total of 2,083 reports (article 22) were requested,
of which 1,543 reports (74.08 per cent) were received.

A total of 159 reports (article 35) were requested,
of which 147 reports (92.45 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 8 juin 2018)

(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)*

Albanie	11 rapports demandés
<i>(Paragraphe 34)</i>	
· Tous les rapports reçus: Conventions nos 29, 97, 102, 105, 122, 138, 143, 168, 176, 181, 182	
Allemagne	8 rapports demandés
· Tous les rapports reçus: Conventions nos 27, 81, 87, 97, 98, 129, 152, MLC	
Bahamas	10 rapports demandés
<i>(Paragraphe 34)</i>	
· 9 rapports reçus: Conventions nos 12, 17, 19, 29, 42, 97, 105, 138, 182	
· 1 rapport non reçu: Convention no MLC	
Belize	30 rapports demandés
<i>(Paragraphe 28)</i>	
· 15 rapports reçus: Conventions nos 11, 12, 26, 42, 81, 87, 94, 95, 98, 99, 108, 135, 141, 144, 151	
· 15 rapports non reçus: Conventions nos 19, 29, 88, 97, 100, 105, 111, 115, 138, 150, 154, 155, 156, 182, (MLC)	
Burundi	14 rapports demandés
· 13 rapports reçus: Conventions nos 1, 12, 17, 19, 29, 42, 62, 64, 90, 101, 105, 138, 182	
· 1 rapport non reçu: Convention no 27	
Cabo Verde	10 rapports demandés
· 7 rapports reçus: Conventions nos 29, 87, 98, 105, 138, 182, (MLC)	
· 3 rapports non reçus: Conventions nos 17, 19, 118	
Chine	7 rapports demandés
· Tous les rapports reçus: Conventions nos 19, 27, 32, 122, 138, 182, (MLC)	
Croatie	31 rapports demandés
· 26 rapports reçus: Conventions nos 11, 12, 13, 14, 19, 24, 25, 27, 29, 45, 87, 90, 100, 102, 103, 105, 111, 113, 119, 121, 122, 132, 138, 148, 155, 161	
· 5 rapports non reçus: Conventions nos 32, 98, 106, 156, 182	
Erythrée	7 rapports demandés
<i>(Paragraphe 34)</i>	
· 4 rapports reçus: Conventions nos 87, 98, 100, 111	
· 3 rapports non reçus: Conventions nos 29, 105, 138	
Estonie	6 rapports demandés
<i>(Paragraphe 34)</i>	
· Tous les rapports reçus: Conventions nos 27, 29, 105, 122, 138, 182	

Ex-République yougoslave de Macédoine**10 rapports demandés****(Paragraphe 34)**

- Tous les rapports reçus: Conventions nos 27, 32, 90, 94, 97, 100, 111, 131, 143, 144

France**16 rapports demandés**

- 15 rapports reçus: Conventions nos 11, 12, 27, 29, 36, 97, 105, 122, 124, 138, 141, 152, (181), 182, MLC
- 1 rapport non reçu: Convention no 137

Grèce**21 rapports demandés**

- Tous les rapports reçus: Conventions nos 11, 17, 19, 27, 42, 77, 78, 81, 87, 90, 95, 98, 100, 102, 111, 122, 124, 126, 141, 156, 160

Irlande**13 rapports demandés**

- 10 rapports reçus: Conventions nos 11, 27, 32, 100, 111, 121, 122, 139, (MLC), (189)
- 3 rapports non reçus: Conventions nos 81, 87, 98

Italie**9 rapports demandés****(Paragraphe 34)**

- Tous les rapports reçus: Conventions nos 27, 81, 87, 97, 98, 129, 137, 143, 152

Jamaïque**8 rapports demandés****(Paragraphe 34)**

- 6 rapports reçus: Conventions nos 11, 19, 81, 87, 98, 152
- 2 rapports non reçus: Conventions nos 94, 97

Lao, République démocratique populaire**8 rapports demandés**

- 7 rapports reçus: Conventions nos 29, 100, 111, 138, 144, (171), 182
- 1 rapport non reçu: Convention no 6

Liban**15 rapports demandés**

- 14 rapports reçus: Conventions nos 17, 19, 59, 77, 78, 90, 95, 98, 100, 111, 122, 131, 150, 152
- 1 rapport non reçu: Convention no 81

Libye**10 rapports demandés****(Paragraphe 34)**

- 8 rapports reçus: Conventions nos 81, 87, 95, 98, 102, 118, 121, 131
- 2 rapports non reçus: Conventions nos 53, 130

Madagascar**12 rapports demandés****(Paragraphe 34)**

- Tous les rapports reçus: Conventions nos 6, 26, 81, 87, 88, 95, 97, 98, 124, 129, 159, 173

Malawi**18 rapports demandés**

- 9 rapports reçus: Conventions nos 11, 12, 19, 87, 98, 100, 111, 158, 159
- 9 rapports non reçus: Conventions nos 26, 45, 81, 97, 99, 129, 144, 150, 182

Mexique**15 rapports demandés**

- Tous les rapports reçus: Conventions nos 27, 87, 90, 95, 100, 102, 111, 123, 124, 131, 134, (138), 152, 155, 173

Népal**4 rapports demandés**

- Tous les rapports reçus: Conventions nos 98, 100, 111, 131

Pakistan**7 rapports demandés****(Paragraphe 34)**

- Tous les rapports reçus: Conventions nos 27, 32, 90, 98, 100, 111, 144

Paraguay	12 rapports demandés
· Tous les rapports reçus: Conventions nos 26, 59, 77, 78, 79, 90, 95, 99, 100, 111, 123, 124	
Pays-Bas - Aruba	15 rapports demandés
<i>(Paragraphe 34)</i>	
· 12 rapports reçus: Conventions nos 17, 25, 81, 87, 90, 95, 113, 114, 118, 121, 122, 131	
· 3 rapports non reçus: Conventions nos 94, 140, 142	
Pays-Bas - Curaçao	8 rapports demandés
<i>(Paragraphe 34)</i>	
· Tous les rapports reçus: Conventions nos 10, 33, 81, 87, 90, 94, 95, (MLC)	
République démocratique du Congo	27 rapports demandés
<i>(Paragraphe 34)</i>	
· 19 rapports reçus: Conventions nos 11, 12, 19, 26, 29, 62, 81, 87, 88, 98, 100, 102, 105, 111, 118, 121, 135, 138, 182	
· 8 rapports non reçus: Conventions nos 27, 94, 95, 119, 120, 144, 150, 158	
Royaume-Uni	7 rapports demandés
· Tous les rapports reçus: Conventions nos 32, 97, 100, 111, 124, 144, MLC	
Rwanda	17 rapports demandés
· 16 rapports reçus: Conventions nos 11, 12, 17, 19, 26, 29, 81, 87, 94, 100, 105, 111, 118, 123, 138, 182	
· 1 rapport non reçu: Convention no 42	
Saint-Marin	19 rapports demandés
<i>(Paragraphe 34)</i>	
· 5 rapports reçus: Conventions nos 100, 103, 111, 143, 150	
· 14 rapports non reçus: Conventions nos 29, 105, 119, 138, 140, 142, 144, 148, 151, 156, 159, 160, 161, 182	
Saint-Vincent-et-les Grenadines	19 rapports demandés
<i>(Paragraphe 28)</i>	
· 1 rapport reçu: Convention no (102)	
· 18 rapports non reçus: Conventions nos 11, 12, 19, 26, 29, 81, 94, 95, 100, 105, 108, 111, 122, 129, 138, 144, 182, (MLC)	
Slovénie	17 rapports demandés
· Tous les rapports reçus: Conventions nos 27, 29, 32, 90, 95, 97, 100, 105, 111, 114, 131, 143, 144, 156, 173, 182, (187)	
Tunisie	19 rapports demandés
· Tous les rapports reçus: Conventions nos 26, 29, 77, 81, 90, 95, 99, 100, 107, 111, 114, 118, 124, 138, (144), (151), (154), 182, (185)	
Viet Nam	12 rapports demandés
<i>(Paragraphe 29)</i>	
· Tous les rapports reçus: Conventions nos 6, 27, 29, 81, 100, 111, 123, 124, 138, 144, 182, (187)	
Yémen	21 rapports demandés
<i>(Paragraphe 28)</i>	
· 5 rapports reçus: Conventions nos 81, 87, 98, 138, 182	
· 16 rapports non reçus: Conventions nos 16, 19, 29, 58, 59, 94, 95, 100, 105, 111, 122, 131, 144, 156, 158, 185	
Zambie	10 rapports demandés
· Tous les rapports reçus: Conventions nos 95, 97, 98, 100, 111, 124, 131, 138, 144, 173	

Total général

Au total, 2.083 rapports (article 22) ont été demandés,
1.543 (soit 74,08 pour cent) ont été reçus.

Au total, 159 rapports (article 35) ont été demandés,
147 (soit 92,45 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 8 de junio de 2018)

(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*

Albania	11 memorias solicitadas
(Párrafo 34)	
· Se han recibido todas las memorias: Convenios núms. 29, 97, 102, 105, 122, 138, 143, 168, 176, 181, 182	
Alemania	8 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 27, 81, 87, 97, 98, 129, 152, MLC	
Bahamas	10 memorias solicitadas
(Párrafo 34)	
· 9 memorias recibidas: Convenios núms. 12, 17, 19, 29, 42, 97, 105, 138, 182	
· 1 memoria no recibida: Convenio núm. MLC	
Belice	30 memorias solicitadas
(Párrafo 28)	
· 15 memorias recibidas: Convenios núms. 11, 12, 26, 42, 81, 87, 94, 95, 98, 99, 108, 135, 141, 144, 151	
· 15 memorias no recibidas: Convenios núms. 19, 29, 88, 97, 100, 105, 111, 115, 138, 150, 154, 155, 156, 182, (MLC)	
Burundi	14 memorias solicitadas
· 13 memorias recibidas: Convenios núms. 1, 12, 17, 19, 29, 42, 62, 64, 90, 101, 105, 138, 182	
· 1 memoria no recibida: Convenio núm. 27	
Cabo Verde	10 memorias solicitadas
· 7 memorias recibidas: Convenios núms. 29, 87, 98, 105, 138, 182, (MLC)	
· 3 memorias no recibidas: Convenios núms. 17, 19, 118	
China	7 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 19, 27, 32, 122, 138, 182, (MLC)	
Croacia	31 memorias solicitadas
· 26 memorias recibidas: Convenios núms. 11, 12, 13, 14, 19, 24, 25, 27, 29, 45, 87, 90, 100, 102, 103, 105, 111, 113, 119, 121, 122, 132, 138, 148, 155, 161	
· 5 memorias no recibidas: Convenios núms. 32, 98, 106, 156, 182	
Democrática del Congo, República	27 memorias solicitadas
(Párrafo 34)	
· 19 memorias recibidas: Convenios núms. 11, 12, 19, 26, 29, 62, 81, 87, 88, 98, 100, 102, 105, 111, 118, 121, 135, 138, 182	
· 8 memorias no recibidas: Convenios núms. 27, 94, 95, 119, 120, 144, 150, 158	

Eritrea	7 memorias solicitadas
(Párrafo 34)	
· 4 memorias recibidas: Convenios núms. 87, 98, 100, 111 · 3 memorias no recibidas: Convenios núms. 29, 105, 138	
Eslovenia	17 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 27, 29, 32, 90, 95, 97, 100, 105, 111, 114, 131, 143, 144, 156, 173, 182, (187)	
Estonia	6 memorias solicitadas
(Párrafo 34)	
· Se han recibido todas las memorias: Convenios núms. 27, 29, 105, 122, 138, 182	
Ex República Yugoslava de Macedonia	10 memorias solicitadas
(Párrafo 34)	
· Se han recibido todas las memorias: Convenios núms. 27, 32, 90, 94, 97, 100, 111, 131, 143, 144	
Francia	16 memorias solicitadas
· 15 memorias recibidas: Convenios núms. 11, 12, 27, 29, 36, 97, 105, 122, 124, 138, 141, 152, (181), 182, MLC · 1 memoria no recibida: Convenio núm. 137	
Grecia	21 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 11, 17, 19, 27, 42, 77, 78, 81, 87, 90, 95, 98, 100, 102, 111, 122, 124, 126, 141, 156, 160	
Irlanda	13 memorias solicitadas
· 10 memorias recibidas: Convenios núms. 11, 27, 32, 100, 111, 121, 122, 139, (MLC), (189) · 3 memorias no recibidas: Convenios núms. 81, 87, 98	
Italia	9 memorias solicitadas
(Párrafo 34)	
· Se han recibido todas las memorias: Convenios núms. 27, 81, 87, 97, 98, 129, 137, 143, 152	
Jamaica	8 memorias solicitadas
(Párrafo 34)	
· 6 memorias recibidas: Convenios núms. 11, 19, 81, 87, 98, 152 · 2 memorias no recibidas: Convenios núms. 94, 97	
Lao, República Democrática Popular	8 memorias solicitadas
· 7 memorias recibidas: Convenios núms. 29, 100, 111, 138, 144, (171), 182 · 1 memoria no recibida: Convenio núm. 6	
Líbano	15 memorias solicitadas
· 14 memorias recibidas: Convenios núms. 17, 19, 59, 77, 78, 90, 95, 98, 100, 111, 122, 131, 150, 152 · 1 memoria no recibida: Convenio núm. 81	
Libia	10 memorias solicitadas
(Párrafo 34)	
· 8 memorias recibidas: Convenios núms. 81, 87, 95, 98, 102, 118, 121, 131 · 2 memorias no recibidas: Convenios núms. 53, 130	
Madagascar	12 memorias solicitadas
(Párrafo 34)	
· Se han recibido todas las memorias: Convenios núms. 6, 26, 81, 87, 88, 95, 97, 98, 124, 129, 159, 173	

Malawi	18 memorias solicitadas
· 9 memorias recibidas: Convenios núms. 11, 12, 19, 87, 98, 100, 111, 158, 159 · 9 memorias no recibidas: Convenios núms. 26, 45, 81, 97, 99, 129, 144, 150, 182	
México	15 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 27, 87, 90, 95, 100, 102, 111, 123, 124, 131, 134, (138), 152, 155, 173	
Nepal	4 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 98, 100, 111, 131	
Países Bajos - Aruba	15 memorias solicitadas
<i>(Párrafo 34)</i>	
· 12 memorias recibidas: Convenios núms. 17, 25, 81, 87, 90, 95, 113, 114, 118, 121, 122, 131 · 3 memorias no recibidas: Convenios núms. 94, 140, 142	
Países Bajos - Curazao	8 memorias solicitadas
<i>(Párrafo 34)</i>	
· Se han recibido todas las memorias: Convenios núms. 10, 33, 81, 87, 90, 94, 95, (MLC)	
Pakistán	7 memorias solicitadas
<i>(Párrafo 34)</i>	
· Se han recibido todas las memorias: Convenios núms. 27, 32, 90, 98, 100, 111, 144	
Paraguay	12 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 26, 59, 77, 78, 79, 90, 95, 99, 100, 111, 123, 124	
Reino Unido	7 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 32, 97, 100, 111, 124, 144, MLC	
Rwanda	17 memorias solicitadas
· 16 memorias recibidas: Convenios núms. 11, 12, 17, 19, 26, 29, 81, 87, 94, 100, 105, 111, 118, 123, 138, 182 · 1 memoria no recibida: Convenio núm. 42	
San Marino	19 memorias solicitadas
<i>(Párrafo 34)</i>	
· 5 memorias recibidas: Convenios núms. 100, 103, 111, 143, 150 · 14 memorias no recibidas: Convenios núms. 29, 105, 119, 138, 140, 142, 144, 148, 151, 156, 159, 160, 161, 182	
San Vicente y las Granadinas	19 memorias solicitadas
<i>(Párrafo 28)</i>	
· 1 memoria recibida: Convenio núm. (102) · 18 memorias no recibidas: Convenios núms. 11, 12, 19, 26, 29, 81, 94, 95, 100, 105, 108, 111, 122, 129, 138, 144, 182, (MLC)	
Túnez	19 memorias solicitadas
· Se han recibido todas las memorias: Convenios núms. 26, 29, 77, 81, 90, 95, 99, 100, 107, 111, 114, 118, 124, 138, (144), (151), (154), 182, (185)	
Viet Nam	12 memorias solicitadas
<i>(Párrafo 29)</i>	
· Se han recibido todas las memorias: Convenios núms. 6, 27, 29, 81, 100, 111, 123, 124, 138, 144, 182, (187)	

(Párrafo 28)

- 5 memorias recibidas: Convenios núms. 81, 87, 98, 138, 182
- 16 memorias no recibidas: Convenios núms. 16, 19, 29, 58, 59, 94, 95, 100, 105, 111, 122, 131, 144, 156, 158, 185

Zambia**10 memorias solicitadas**

-
- Se han recibido todas las memorias: Convenios núms. 95, 97, 98, 100, 111, 124, 131, 138, 144, 173
-

Total general

Se ha solicitado un total de 2 083 memorias (artículo 22),
de las cuales se recibieron 1 543 (74,08 por ciento)

Se ha solicitado un total de 159 memorias (artículo 35),
de las cuales se recibieron 147 (92,45 por ciento)

Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

Reports received as of 8 June 2018

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered 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 registered for the session of the Committee of Experts		Reports registered 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 were requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%
As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals							
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%	1781	77.3%
2017	2083	785	37.7%	1386	66.5%	1543	74.1%

Annexe II. Tableau statistique des rapports reçus sur les conventions ratifiées
(article 22 de la Constitution)

Relevé des rapports reçus au 8 juin 2018

Année de la réunion de la commission d'experts	Rapports demandés	Rapports reçus à la date demandée		Rapports enregistrés pour la session de la commission d'experts		Rapports enregistrés 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 enregistrés pour la session de la commission d'experts		Rapports enregistrés 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 jusqu'en 1994, selon certains critères, à des intervalles 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 ont été demandés, selon certains critères, à des intervalles 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%
A la suite d'une décision du Conseil d'administration (mars 2011), des rapports sont demandés, selon certains critères, à des intervalles 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%	1781	77,3%
2017	2083	785	37,7%	1386	66,5%	1543	74,1%

**Anexo II. Cuadro estadístico de las memorias recibidas
sobre los convenios ratificados
(artículo 22 de la Constitución)**

Memorias recibidas hasta el 8 de junio de 2018

Año de la reunión de la Comisión de Expertos	Memorias solicitadas	Memorias recibidas en la fecha solicitada		Memorias registradas para la reunión de la Comisión		Memorias registradas 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 registradas para la reunión de la Comisión		Memorias registradas para la reunión de la Conferencia	
De acuerdo con una decisión del Consejo de Administración (noviembre de 1976), desde 1977 hasta 1994, las memorias detalladas fueron solicitadas según determinados criterios, a intervalos de 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 de 1993), fueron solicitadas 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 de 1993), las memorias se solicitaron, según determinados criterios, a intervalos de 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%
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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%	2177	77,4%
De acuerdo con una decisión del Consejo de Administración (marzo de 2011), las memorias se solicitan, según determinados criterios, a intervalos de 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%	1781	77,3%
2017	2083	785	37,7%	1386	66,5%	1543	74,1%

INDEX BY COUNTRY

Afghanistan

Part One: General Report, paras 163, 170
Part Two: A

Algeria

Part Two: B No. 87

Angola

Part One: General Report, para. 163
Part Two: A

Armenia

Part One: General Report, paras 163, 170
Part Two: A

Azerbaijan

Part One: General Report, paras 156, 170
Part Two: A

Bahamas

Part One: General Report, para. 156
Part Two: A

Bahrain

Part One: General Report, para. 156
Part Two: A
Part Two: B No. 111

Barbados

Part One: General Report, paras 161, 170
Part Two: A

Belarus

Part Two: B No. 29

Belize

Part One: General Report, paras 156, 160, 161, 163, 174
Part Two: A

Bolivia, Plurinational State of

Part One: General Report, para. 164
Part Two: A
Part Two: B No. 131 and No. 138

Botswana

Part One: General Report, paras 161, 163, 170
Part Two: A
Part Two: B No. 87

Brazil

Part Two: B No. 98

Brunei Darussalam

Part One: General Report, paras 161, 170
Part Two: A

Cambodia

Part Two: B No. 105

Chad

Part One: General Report, paras 161, 163, 170
Part Two: A

Comoros

Part One: General Report, paras 156, 160, 170
Part Two: A

Congo

Part One: General Report, paras 160, 163, 170
Part Two: A

Cook Islands

Part One: General Report, paras 159, 160, 163, 174
Part Two: A

Croatia

Part One: General Report, paras 156, 170
Part Two: A

Djibouti

Part One: General Report, paras 161, 170
Part Two: A

Dominica

Part One: General Report, paras 156, 159, 161, 163, 174
Part Two: A

El Salvador

Part One: General Report, paras 156
Part Two: A
Part Two: B No. 144

Equatorial Guinea

Part One: General Report, paras 156, 159, 160, 161, 170
Part Two: A

Eritrea

Part Two: B No. 29

Eswatini

Part One: General Report, para. 163
Part Two: A

Fiji

Part One: General Report, paras 156, 170
Part Two: A

Gabon

Part One: General Report, paras 156, 160, 170
Part Two: A

Gambia

Part One: General Report, paras 159, 161, 174
Part Two: A

Georgia

Part Two: B No. 100

Greece

Part Two: B No. 98

Grenada

Part One: General Report, paras 161, 163, 174
Part Two: A

Guinea-Bissau

Part One: General Report, paras 156, 159, 161, 163, 174
Part Two: A

Guyana

Part One: General Report, paras 160, 163, 174
Part Two: A

Haiti

Part One: General Report, paras 156, 159, 161, 163
Part Two: A
Part Two: B Nos 1/14/30/106

Honduras

Part Two: B No. 87

Ireland

Part One: General Report, para. 163
Part Two: A

Japan

Part Two: B No. 87

Kiribati

Part One: General Report, paras 156, 161, 163
Part Two: A

Kuwait

Part One: General Report, paras 156, 170
Part Two: A

Kyrgyzstan

Part One: General Report, paras 156, 161, 174
Part Two: A

Liberia

Part One: General Report, paras 156, 161, 163
Part Two: A

Libya

Part One: General Report, paras 156, 163, 170
Part Two: A
Part Two: B No. 122

Malawi

Part One: General Report, para. 161
Part Two: A

Malaysia

Part One: General Report, para. 161
Part Two: A

Malaysia – Malaysia – Peninsular

Part One: General Report, para. 161
Part Two: A
Part Two: B No. 19

Malaysia – Malaysia – Sabah

Part One: General Report, paras 159, 161
Part Two: A

Malaysia – Malaysia – Sarawak

Part One: General Report, para. 161
Part Two: A
Part Two: B No. 19

Maldives, Republic of

Part One: General Report, paras 160, 163, 174
Part Two: A

Marshall Islands

Part One: General Report, paras 163, 174
Part Two: A

Mexico

Part Two: B No. 87

Moldova, Republic of

Part Two: B Nos 81/129

Mozambique

Part One: General Report, para. 161
Part Two: A

Myanmar

Part Two: B No. 87

Nicaragua

Part One: General Report, para. 160
Part Two: A

Nigeria

Part Two: B No. 98

Pakistan

Part One: General Report, para. 156
Part Two: A

Papua New Guinea

Part One: General Report, paras 156, 161, 163, 170
Part Two: A

Rwanda

Part One: General Report, paras 164, 174
Part Two: A

Saint Kitts and Nevis

Part One: General Report, paras 156, 174
Part Two: A

Saint Lucia

Part One: General Report, paras 156, 159, 161, 163, 174
Part Two: A

Saint Vincent and the Grenadines

Part One: General Report, paras 156, 160, 161, 174
Part Two: A

Samoa

Part One: General Report, paras 156, 171, 172, 173, 174
Part Two: A

Sao Tome and Principe

Part One: General Report, paras 163, 174
Part Two: A

Serbia

Part One: General Report, para. 160
Part Two: A
Part Two: B No. 144

Seychelles

Part One: General Report, paras 156, 170
Part Two: A

Sierra Leone

Part One: General Report, paras 156, 161, 163, 174
Part Two: A

Singapore

Part One: General Report, para. 161
Part Two: A

Solomon Islands

Part One: General Report, paras 156, 159, 161, 163, 174
Part Two: A

Somalia

Part One: General Report, paras 156, 159, 160, 161, 163, 170
Part Two: A

South Sudan

Part One: General Report, para. 163
Part Two: A

Syrian Arab Republic

Part One: General Report, paras 156, 170
Part Two: A

Timor-Leste

Part One: General Report, paras 159, 161, 163, 174
Part Two: A

Tonga

Part One: General Report, paras 163, 174
Part Two: A

Trinidad and Tobago

Part One: General Report, paras 161, 170
Part Two: A

Tuvalu

Part One: General Report, paras 163, 174
Part Two: A

Ukraine

Part Two: B Nos 81/129

United Arab Emirates

Part One: General Report, para. 163
Part Two: A

Vanuatu

Part One: General Report, paras 156, 159, 161, 163, 174
Part Two: A

Yemen

Part One: General Report, paras 161, 163
Part Two: A

INDEX PAR PAYS

Afghanistan

Première partie: Rapport général, paragr. 163, 170

Deuxième partie: A

Algérie

Deuxième partie: B, n° 87

Angola

Première partie: Rapport général, paragr. 163

Deuxième partie: A

Arménie

Première partie: Rapport général, paragr. 163, 170

Deuxième partie: A

Azerbaïdjan

Première partie: Rapport général, paragr. 156, 170

Deuxième partie: A

Bahamas

Première partie: Rapport général, paragr. 156

Deuxième partie: A

Bahreïn

Première partie: Rapport général, paragr. 156

Deuxième partie: A

Deuxième partie: B, n° 111

Barbade

Première partie: Rapport général, paragr. 161, 170

Deuxième partie: A

Bélarus

Deuxième partie: B, n° 29

Belize

Première partie: Rapport général, paragr. 156, 160, 161, 163, 174

Deuxième partie: A

Bolivie, Etat plurinational de

Première partie: Rapport général, paragr. 164

Deuxième partie: A

Deuxième partie: B, n°s 131, 138

Botswana

Première partie: Rapport général, paragr. 161, 163, 170

Deuxième partie: A

Deuxième partie: B, n° 87

Brésil

Deuxième partie: B, n° 98

Brunéi Darussalam

Première partie: Rapport général, paragr. 161, 170

Deuxième partie: A

Cambodge

Deuxième partie: B, n° 105

Comores

Première partie: Rapport général, paragr. 156, 160, 170

Deuxième partie: A

Congo

Première partie: Rapport général, paragr. 160, 163, 170

Deuxième partie: A

Croatie

Première partie: Rapport général, paragr. 156, 170

Deuxième partie: A

Djibouti

Première partie: Rapport général, paragr. 161, 170

Deuxième partie: A

Dominique

Première partie: Rapport général, paragr. 156, 159, 161, 163, 174

Deuxième partie: A

El Salvador

Première partie: Rapport général, paragr. 156

Deuxième partie: A

Deuxième partie: B, n° 144

Emirats arabes unis

Première partie: Rapport général, paragr. 163

Deuxième partie: A

Erythrée

Deuxième partie: B, n° 29

Eswatini

Première partie: Rapport général, paragr. 163

Deuxième partie: A

Fidji

Première partie: Rapport général, paragr. 156, 170

Deuxième partie: A

Gabon

Première partie: Rapport général, paragr. 156, 160, 170

Deuxième partie: A

Gambie

Première partie: Rapport général, paragr. 159, 161, 174

Deuxième partie: A

Géorgie

Deuxième partie: B, n° 100

Grèce

Deuxième partie: B, n° 98

Grenade

Première partie: Rapport général, paragr. 161, 163, 174
Deuxième partie: A

Guinée-Bissau

Première partie: Rapport général, paragr. 156, 159, 161, 163, 174
Deuxième partie: A

Guinée équatoriale

Première partie: Rapport général, paragr. 156, 159, 160, 161, 170
Deuxième partie: A

Guyana

Première partie: Rapport général, paragr. 160, 163, 174
Deuxième partie: A

Haïti

Première partie: Rapport général, paragr. 156, 159, 161, 163
Deuxième partie: A
Deuxième partie: B, nos 1, 14, 30, 106

Honduras

Deuxième partie: B, n° 87

Iles Cook

Première partie: Rapport général, paragr. 159, 160, 163, 174
Deuxième partie: A

Iles Marshall

Première partie: Rapport général, paragr. 163, 174
Deuxième partie: A

Iles Salomon

Première partie: Rapport général, paragr. 156, 159, 161, 163, 174
Deuxième partie: A

Irlande

Première partie: Rapport général, paragr. 163
Deuxième partie: A

Japon

Deuxième partie: B, n° 87

Kirghizistan

Première partie: Rapport général, paragr. 156, 161, 174
Deuxième partie: A

Kiribati

Première partie: Rapport général, paragr. 156, 161, 163
Deuxième partie: A

Koweït

Première partie: Rapport général, paragr. 156, 170
Deuxième partie: A

Libéria

Première partie: Rapport général, paragr. 156, 161, 163
Deuxième partie: A

Libye

Première partie: Rapport général, paragr. 156, 163, 170
Deuxième partie: A
Deuxième partie: B, n° 122

Malaisie

Première partie: Rapport général, paragr. 161
Deuxième partie: A

Malaisie - Malaisie - Péninsulaire

Première partie: Rapport général, paragr. 161
Deuxième partie: A
Deuxième partie: B, n° 19

Malaisie - Malaisie - Sabah

Première partie: Rapport général, paragr. 159, 161
Deuxième partie: A

Malaisie - Malaisie - Sarawak

Première partie: Rapport général, paragr. 161
Deuxième partie: A
Deuxième partie: B, n° 19

Malawi

Première partie: Rapport général, paragr. 161
Deuxième partie: A

Maldives, République des

Première partie: Rapport général, paragr. 160, 163, 174
Deuxième partie: A

Mexique

Deuxième partie: B, n° 87

Moldova, République de

Deuxième partie: B, nos 81, 129

Mozambique

Première partie: Rapport général, paragr. 161
Deuxième partie: A

Myanmar

Deuxième partie: B, n° 87

Nicaragua

Première partie: Rapport général, paragr. 160
Deuxième partie: A

Nigéria

Deuxième partie: B, n° 98

Pakistan

Première partie: Rapport général, paragr. 156
Deuxième partie: A

Papouasie-Nouvelle-Guinée

Première partie: Rapport général, paragr. 156, 161, 163, 170

Deuxième partie: A

Rwanda

Première partie: Rapport général, paragr. 164, 174

Deuxième partie: A

Saint-Kitts-et-Nevis

Première partie: Rapport général, paragr. 156, 174

Deuxième partie: A

Sainte-Lucie

Première partie: Rapport général, paragr. 156, 159, 161, 163, 174

Deuxième partie: A

Saint-Vincent-et-les Grenadines

Première partie: Rapport général, paragr. 156, 160, 161, 174

Deuxième partie: A

Samoa

Première partie: Rapport général, paragr. 156, 171, 172, 173, 174

Deuxième partie: A

Sao Tomé-et-Principe

Première partie: Rapport général, paragr. 163, 174

Deuxième partie: A

Serbie

Première partie: Rapport général, paragr. 160

Deuxième partie: A

Deuxième partie: B, n° 144

Seychelles

Première partie: Rapport général, paragr. 156, 170

Deuxième partie: A

Sierra Leone

Première partie: Rapport général, paragr. 156, 161, 163, 174

Deuxième partie: A

Singapour

Première partie: Rapport général, paragr. 161

Deuxième partie: A

Somalie

Première partie: Rapport général, paragr. 156, 159, 160, 161, 163, 170

Deuxième partie: A

Soudan du Sud

Première partie: Rapport général, paragr. 163

Deuxième partie: A

Syrienne, République arabe

Première partie: Rapport général, paragr. 156, 170

Deuxième partie: A

Tchad

Première partie: Rapport général, paragr. 161, 163, 170

Deuxième partie: A

Timor-Leste

Première partie: Rapport général, paragr. 159, 161, 163, 174

Deuxième partie: A

Tonga

Première partie: Rapport général, paragr. 163, 174

Deuxième partie: A

Trinité-et-Tobago

Première partie: Rapport général, paragr. 161, 170

Deuxième partie: A

Tuvalu

Première partie: Rapport général, paragr. 163, 174

Deuxième partie: A

Ukraine

Deuxième partie: B, n°s 81, 129

Vanuatu

Première partie: Rapport général, paragr. 156, 159, 161, 163, 174

Deuxième partie: A

Yémen

Première partie: Rapport général, paragr. 161, 163

Deuxième partie: A

Índice por país

Afganistán

Primera parte: Informe general, párrafos 163, 170
Segunda parte: A

Angola

Primera parte: Informe general, párrafo 163
Segunda parte: A

Argelia

Segunda parte: B, núm. 87

Armenia

Primera parte: Informe general, párrafos 163, 170
Segunda parte: A

Azerbaiyán

Primera parte: Informe general, párrafos 156, 170
Segunda parte: A

Bahamas

Primera parte: Informe general, párrafo 156
Segunda parte: A

Bahrein

Primera parte: Informe general, párrafo 156
Segunda parte: A
Segunda parte: B, núm. 111

Barbados

Primera parte: Informe general, párrafos 161, 170
Segunda parte: A

Belarús

Segunda parte: B, núm. 29

Belice

Primera parte: Informe general, párrafos 156, 160, 161, 163, 174
Segunda parte: A

Bolivia, Estado Plurinacional de

Primera parte: Informe general, párrafo 164
Segunda parte: A
Segunda parte: B, núms. 131, 138

Botswana

Primera parte: Informe general, párrafos 161, 163, 170
Segunda parte: A
Segunda parte: B, núm. 87

Brasil

Segunda parte: B, núm. 98

Brunei Darussalam

Primera parte: Informe general, párrafos 161, 170
Segunda parte: A

Camboya

Segunda parte: B, núm. 105

Chad

Primera parte: Informe general, párrafos 161, 163, 170
Segunda parte: A

Comoras

Primera parte: Informe general, párrafos 156, 160, 170
Segunda parte: A

Congo

Primera parte: Informe general, párrafos 160, 163, 170
Segunda parte: A

Croacia

Primera parte: Informe general, párrafos 156, 170
Segunda parte: A

Djibouti

Primera parte: Informe general, párrafos 161, 170
Segunda parte: A

Dominica

Primera parte: Informe general, párrafos 156, 159, 161, 163, 174
Segunda parte: A

El Salvador

Primera parte: Informe general, párrafo 156
Segunda parte: A
Segunda parte: B, núm. 144

Emiratos Árabes Unidos

Primera parte: Informe general, párrafo 163
Segunda parte: A

Eritrea

Segunda parte: B, núm. 29

Eswatini

Primera parte: Informe general, párrafo 163
Segunda parte: A

Fiji

Primera parte: Informe general, párrafos 156, 170
Segunda parte: A

Gabón

Primera parte: Informe general, párrafos 156, 160, 170
Segunda parte: A

Gambia

Primera parte: Informe general, párrafos 159, 161, 174
Segunda parte: A

Georgia

Segunda parte: B, núm. 100

Granada

Primera parte: Informe general, párrafos 161, 163, 174
Segunda parte: A

Grecia

Segunda parte: B, núm. 98

Guinea-Bissau

Primera parte: Informe general, párrafos 156, 159, 161, 163, 174

Segunda parte: A

Guinea Ecuatorial

Primera parte: Informe general, párrafos 156, 159, 160, 161, 170

Segunda parte: A

Guyana

Primera parte: Informe general, párrafos 160, 163, 174

Segunda parte: A

Haití

Primera parte: Informe general, párrafos 156, 159, 161, 163

Segunda parte: A

Segunda parte: B, núms. 1, 14, 30, 106

Honduras

Segunda parte: B, núm. 87

Irlanda

Primera parte: Informe general, párrafo 163

Segunda parte: A

Islas Cook

Primera parte: Informe general, párrafos 159, 160, 163, 174

Segunda parte: A

Islas Marshall

Primera parte: Informe general, párrafos 163, 174

Segunda parte: A

Islas Salomón

Primera parte: Informe general, párrafos 156, 159, 161, 163, 174

Segunda parte: A

Japón

Segunda parte: B, núm. 87

Kirguistán

Primera parte: Informe general, párrafos 156, 161, 174

Segunda parte: A

Kiribati

Primera parte: Informe general, párrafos 156, 161, 163

Segunda parte: A

Kuwait

Primera parte: Informe general, párrafos 156, 170

Segunda parte: A

Liberia

Primera parte: Informe general, párrafos 156, 161, 163

Segunda parte: A

Libia

Primera parte: Informe general, párrafos 156, 163, 170

Segunda parte: A

Segunda parte: B, núm. 122

Malasia

Primera parte: Informe general, párrafo 161

Segunda parte: A

Malasia – Malasia – Peninsular

Primera parte: Informe general, párrafo 161

Segunda parte: A

Segunda parte: B, núm. 19

Malasia – Malasia – Sabah

Primera parte: Informe general, párrafos 159, 161

Segunda parte: A

Malasia – Malasia – Sarawak

Primera parte: Informe general, párrafo 161

Segunda parte: A

Segunda parte: B, núm. 19

Malawi

Primera parte: Informe general, párrafo 161

Segunda parte: A

Maldivas, República de

Primera parte: Informe general, párrafos 160, 163, 174

Segunda parte: A

Moldova, República de

Segunda parte: B, núms. 81, 129

Mozambique

Primera parte: Informe general, párrafo 161

Segunda parte: A

Myanmar

Segunda parte: B, núm. 87

México

Segunda parte: B, núm. 87

Nicaragua

Primera parte: Informe general, párrafo 160

Segunda parte: A

Nigeria

Segunda parte: B, núm. 98

Pakistán

Primera parte: Informe general, párrafo 156

Segunda parte: A

Papua Nueva Guinea

Primera parte: Informe general, párrafos 156, 161, 163, 170

Segunda parte: A

Rwanda

Primera parte: Informe general, párrafos 164, 174

Segunda parte: A

Saint Kitts y Nevis

Primera parte: Informe general, párrafos 156, 174

Segunda parte: A

Samoa

Primera parte: Informe general, párrafos 156, 171, 172, 173, 174
Segunda parte: A

San Vicente y las Granadinas

Primera parte: Informe general, párrafos 156, 160, 161, 174
Segunda parte: A

Santa Lucía

Primera parte: Informe general, párrafos 156, 159, 161, 163, 174
Segunda parte: A

Santo Tomé y Príncipe

Primera parte: Informe general, párrafos 163, 174
Segunda parte: A

Serbia

Primera parte: Informe general, párrafo 160
Segunda parte: A
Segunda parte: B, núm. 144

Seychelles

Primera parte: Informe general, párrafos 156, 170
Segunda parte: A

Sierra Leona

Primera parte: Informe general, párrafos 156, 161, 163, 174
Segunda parte: A

Singapur

Primera parte: Informe general, párrafo 161
Segunda parte: A

Siria, República Árabe

Primera parte: Informe general, párrafos 156, 170
Segunda parte: A

Somalia

Primera parte: Informe general, párrafos 156, 159, 160, 161, 163, 170
Segunda parte: A

Sudán del Sur

Primera parte: Informe general, párrafo 163
Segunda parte: A

Timor-Leste

Primera parte: Informe general, párrafos 159, 161, 163, 174
Segunda parte: A

Tonga

Primera parte: Informe general, párrafos 163, 174
Segunda parte: A

Trinidad y Tabago

Primera parte: Informe general, párrafos 161, 170
Segunda parte: A

Tuvalu

Primera parte: Informe general, párrafos 163, 174
Segunda parte: A

Ucrania

Segunda parte: B, núms. 81, 129

Vanuatu

Primera parte: Informe general, párrafos 156, 159, 161, 163, 174
Segunda parte: A

Yemen

Primera parte: Informe general, párrafos 161, 163
Segunda parte: A